

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

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CHAPTER Env-Wq 500 STATE WATER POLLUTION CONTROL REVOLVING LOAN FUND

Statutory Authority: RSA 486:14, I

REVISION NOTE #1:

Document #8883, effective 5-8-07, readopted with amendments and redesignated former Parts Env-C 501-509, State Water Pollution Control Revolving Loan Fund, as Env-Wq 500 pursuant to a rules reorganization plan for Department rules approved by the Director of the Office of Legislative Services on 9-7-05.

The prior filings for former Env-C 501-509 included the following documents:

- #4609, eff 5-15-89
- #5642, eff 6-23-93
- #6302, INTERIM, eff 8-14-96, EXPIRED 12-12-96
- #6461, eff 2-21-97
- #6998, eff 5-20-99
- #7390, eff 10-28-00

REVISION NOTE #2:

Document #9394, effective 3-1-09, was the next filing affecting the rules in Env-Wq 500. Document #9394 was an interim rule that readopted with amendments selected existing rules in Env-Wq 500. Document #9394 also adopted two new definitions, Env-Wq 502.13 “Financial assistance agreement” and Env-Wq 502.29 “Recipient”. Document #9394 therefore also renumbered selected rules in Env-Wq 502, including rules that were not readopted with amendments. Those existing rules which were renumbered but not filed in Document #9394 retained the 5-8-07 effective date from Document #8883.

Document #9531, effective 8-26-09, subsequently readopted or readopted with amendments the rules in Env-Wq 500 which had been filed in Document #9394, thereby affirming the renumbering of the rules under Document #9394.

REVISION NOTE #3:

The next filing was Document # 10984, effective 12-1-15, which adopted, readopted, and readopted with amendments the rules in Chapter Env-Wq 500, and extensively re-organized and renumbered Parts Env-Wq 501-510 as Env-Wq 501-511. Document #10984 replaces all prior filings for the rules in Env-Wq 500.

PART Env-Wq 501 PURPOSE AND APPLICABILITY

Env-Wq 501.01 Purpose. The purpose of this chapter is to implement RSA 486:14, I, and 40 CFR Part 35, Subparts I and K, by establishing:

- (a) The procedures and criteria applicable to eligible entities that apply for financial assistance from the state water pollution control revolving fund (CWSRF) authorized by RSA 486:14, I;
- (b) The requirements for completing projects for which financial assistance from the CWSRF is received; and
- (c) The process for establishing repayment requirements for the financial assistance received.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 501.02 Applicability. The rules in this chapter shall apply to any eligible entity that applies for financial assistance from the CWSRF.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

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PART Env-Wq 502 DEFINITIONS

Env-Wq 502.01 “Administrative costs” means expenses associated with managing CWSRF projects. Such costs include but are not limited to costs for engineering and other consultants, environmental and technical reviews of proposed projects, participation in state overview inspections, and accounting and disbursement functions.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.02 “Applicant” means the person who files a pre-application or an application, or both, for financial assistance from the CWSRF.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.03 “Application” means the written document(s), with attachments, through which financial assistance is requested. The term includes the pre-application and the final application.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.04 “Asset maintenance and renewal plan” means a plan developed and implemented by the applicant to maintain and eventually replace infrastructure funded in whole or in part by the CWSRF.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.05 “Asset management program” means a systematic process of financing, inventorying, assessing, operating, maintaining, upgrading, and replacing infrastructure cost-effectively while maintaining a sustainable level of service.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.06 “Authorized representative” means an individual authorized by the applicant to sign documents associated with applying for and receiving funds from the CWSRF.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.07 “Capitalization grant” means funds made available to the state by the federal government for use in the CWSRF program in accordance with:

- (a) Title VI of the federal CWA, 33 U.S.C. §§1381-1387; or
- (b) Any other federal initiative.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.08 “Clean Water Act (CWA)” means the federal Clean Water Act, 33 U.S.C. Chapter 26, Water Pollution Prevention and Control, §§1251 - 1387.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.09 “Collector sewer” means a lateral sewer installed primarily to collect wastewater directly from individual building sewers or private property.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

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Env-Wq 502.10 “Combined sewer” means a sewer that serves as both a sanitary sewer and a storm sewer.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.11 “Consulting engineer” means the licensed professional engineer engaged by a recipient to provide engineering services.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.12 “Department” means the department of environmental services.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.13 “Disbursement” means a transfer of funds from the CWSRF to a recipient.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.14 “Eligible entity” means a governmental entity or a person other than a governmental entity that is authorized by 33 U.S.C. §§1381-1387 to apply for financial assistance from the CWSRF.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.15 “Engineering services” means consultations, investigations, reports, or other services for the design and construction of projects for which RSA 310-A requires a licensed professional engineer.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.16 “Eligible costs” means project costs that are eligible for funding from the CWSRF as specified in Env-Wq 504.03.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.17 “Environmental review” means an analysis of the potential impact of a proposed project on the human and natural environment.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.18 “Excusable delay” means a delay that is beyond the recipient’s control in beginning or completing the planning, design, or construction of a pollution abatement project such as, but not limited to, a delay caused by an act of nature or war.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.19 “Final project cost” means the dollar amount of eligible project expenditures plus any outstanding interest on the loan accrued during project planning, design, or construction.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.20 “Financial assistance” means funds provided from the CWSRF to pay in whole or in part for an infrastructure project, whether as a loan, grant, or any other form of assistance.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

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Env-Wq 502.21 “Financial assistance agreement” means the contract between the state and a recipient that establishes the rights and obligations of the state and the recipient relative to financial assistance from the CWSRF. The term includes original loan agreements and supplemental loan agreements.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.22 “Governing body” means the group of individuals that has the authority and responsibility to authorize the applicant to enter into contracts and expend funds.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.23 “Governmental entity” means a city, town, district, association, county, or other public body created under state law, having jurisdiction over stormwater management or disposal of sewage, industrial waste, or other wastes.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.24 “Green project” means an infrastructure project that:

- (a) Uses natural systems in place of or to supplement existing infrastructure to protect water resources;  
or  
(b) Incorporates water or energy efficiency improvements or other environmentally-protective measures as defined by federal capitalization grants.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.25 “Industrial waste” means “industrial waste” as defined in RSA 485-A:2, VI, as reprinted in Appendix B.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.26 “Infiltration/Inflow (I/I)” means water other than wastewater that enters a sewer system.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.27 “Infrastructure” means all structures and all mechanical and electrical equipment that contain and/or convey wastewater from the point of generation to the point of discharge after treatment, and the land necessary for such structures and equipment, whether for wastewater treatment, nonpoint source pollution control, watershed management, or estuary management.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.28 “Infrastructure project” means a project intended to construct, expand, or rehabilitate infrastructure for wastewater collection/treatment, nonpoint source pollution control, watershed management, or estuary management, including the requisite planning, land acquisition, design, and construction. The term includes a green project.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.29 “Initiation of operation” means the date on which the project that was funded in whole or in part using funds from the CWSRF is placed into use for the purposes for which it was planned, designed, and constructed.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

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Env-Wq 502.30 “Intended use plan (IUP)” means a document prepared by the department in accordance with 40 CFR §35.3150.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.31 “Interceptor sewer” means a sewer designed to collect wastewater from collector sewers and transport it to a wastewater treatment plant.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.32 “Loan recipient” means an applicant that receives a loan from the CWSRF.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.33 “Market rate” means the prevailing market rate determined by the department pursuant to Env-Wq 507.02, upon which the interest rate for new loans is based.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.34 “Nonpoint source (NPS) pollution” means pollution caused by sources that are not regulated as point sources, such as pollution caused by runoff from agricultural, silvicultural, and urban areas.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.35 “Other wastes” means “other wastes” as defined in RSA 485-A:2, VIII, as reprinted in Appendix B.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.36 “Original loan agreement” means the initial contract between the state and a loan recipient through which the department agrees to provide funds from the CWSRF to the loan recipient and the loan recipient promises to repay the loan to the CWSRF.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.37 “Person” means “person” as defined in RSA 485-A:2, IX, as reprinted in Appendix B.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.38 “Planning” means all necessary reports and studies to determine the cost effective alternatives and feasibility of a pollution abatement project.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.39 “Pollution abatement project” means a project, including the planning, design, or construction of any or all aspects of the project, necessary to prevent, minimize, or abate water pollution caused by point or nonpoint sources.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.40 “Priority list” means a list of projects expected to receive assistance under the CWSRF program.

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Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.41 “Priority system” means the criteria for ranking projects on the priority list.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.42 “Project completion” means the date of substantial completion of a pollution abatement project or the scheduled completion date in the financial assistance agreement, unless modified with the consent of all parties.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.43 “Recipient” means an applicant that receives financial assistance from the CWSRF. The term includes loan recipients.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.44 “Repayment” means the payment by a recipient of principal or interest, or both, on funds received by a recipient, which must be credited directly to the CWSRF.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.45 “Resident project representative” means an individual who:

- (a) Is qualified by reason of education and experience to inspect infrastructure projects; and
- (b) Reports to a licensed professional engineer if necessary based on the project and type of work to be done.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.46 “Responsible bidder” means an entity that:

- (a) Has the technical knowledge necessary to perform the contract;
- (b) Has adequate financial resources to perform the contract;
- (c) Is able to comply with the legal or regulatory requirements associated with the contract;
- (d) Is able to deliver according to the contract schedule;
- (e) Has either a history of satisfactory performance or no history of unsatisfactory performance;
- (f) Has good reputation regarding integrity; and
- (g) Has or can obtain necessary data, equipment, and facilities to perform the contract.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.47 “Security” means a recipient’s real or personal property or other collateral that is pledged by the recipient to ensure repayment to the department.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.48 “Septage” means “septage” as defined in RSA 485-A:2, IX-a, as reprinted in Appendix B.

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Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.49 “Septic system” means an on-site wastewater disposal system as regulated by RSA 485-A:29-44 and Env-Wq 1000.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.50 “Sewage” means “sewage” as defined in RSA 485-A:2, X, as reprinted in Appendix B.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.51 “Sludge” means “sludge” as defined in RSA 485-A:2, XI-a, as reprinted in Appendix B.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.52 “State” means the state of New Hampshire.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.53 “State match” means funds equaling 20 percent of the capitalization grant, which the CWA requires the state to deposit into the CWSRF.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.54 “Substantial completion” means the date certified, based on a report of the resident project representative, that the construction of the project or a specified part thereof is sufficiently completed, in accordance with the contract documents, so that the project or specified part can be used for the purposes for which it is intended.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.55 “Supplemental agreement” means an amendment to a financial assistance agreement executed between the state and a recipient which stipulates the final project cost and the applicable repayment terms.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.56 “Wastewater” means the spent water of a community. The term includes water carrying domestic, commercial, and industrial wastes as well as other wastes.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.57 “Wastewater facilities” means “wastewater facilities” as defined in RSA 485-A:2, XIX, as reprinted in Appendix B.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 502.58 “Wastewater treatment plant” means “wastewater treatment plant” as defined in RSA 485-A:2, XVI-a, as reprinted in Appendix B.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

PART Env-Wq 503 ESTABLISHMENT OF CWSRF

Env-Wq 503.01 Authority for Loan Fund. RSA 486:14, I(a) authorizes New Hampshire “to participate in the federally funded state water pollution control ...revolving loan funds or grants as may be provided under the Clean Water Act... or related federal legislation as amended from time to time. The loan funds shall be administered by the commissioner of the department of environmental services under rules adopted by the commissioner under the provisions of RSA 541-A.”

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 503.02 Deposits to CWSRF. Pursuant to RSA 486:14, the state shall deposit in the CWSRF the following:

- (a) Capitalization grants as appropriated by the United States Congress;
- (b) The state match as appropriated by the general court, deposited to the CWSRF on a schedule coinciding with the payment of federal funds into the CWSRF;
- (c) Repayments of principal and interest by loan recipients;
- (d) Investment earnings credited to the assets of the CWSRF, which shall become part of the total assets of the CWSRF; and
- (e) Any other funds as may be appropriated or available.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 503.03 Public Records. All records of the department relating to the financial assistance program covered by the rules of this chapter shall be public records available for public inspection by any interested person as provided in RSA 91-A.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

PART Env-Wq 504 USE OF CWSRF; ELIGIBLE PROJECTS AND COSTS

Env-Wq 504.01 Availability of Financial Assistance from the CWSRF. The CWSRF shall be used to provide financial assistance as authorized by a specific capitalization grant to eligible entities for the planning, design, construction, and refinancing of pollution abatement projects, whether covered under §211, §212, §319, or §320 of the CWA or a specific capitalization grant, including but not limited to the projects listed in Env-Wq 504.02 and Env-Wq 504.04.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 504.02 Eligible Pollution Abatement Projects. The construction, expansion, or upgrading of any of the following shall be eligible for funding from the CWSRF:

- (a) Wastewater facilities, including:
  - (1) Wastewater treatment plants;
  - (2) Interceptor sewers;
  - (3) Collector sewers in accordance with §211 of the CWA, provided that loans for construction of collector sewers shall be considered only in areas of documented pollution problems, including but not limited to surface or groundwater contamination, public health threats, or nuisance conditions, that are the result of failed septic systems or direct wastewater discharges;
  - (4) Wastewater pumping stations;

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- (5) I/I correction;
  - (6) Sewer rehabilitation;
  - (7) Treatment or abatement of combined sewer overflows;
  - (8) Septage disposal and treatment facilities; and
  - (9) Septic systems, as allowed by 40 CFR 35.2034;
- (b) Stormwater management projects, including:
- (1) Storm sewers when construction results in elimination of a combined sewer overflow structure and does not result in a new point source discharge; and
  - (2) Other stormwater management measures implemented as specified in Env-Wq 1508;
- (c) The capping and closure of unlined landfills;
- (d) Best management practices that address nonpoint source (NPS) pollution;
- (e) Eligible §319 and §320 projects as listed in Env-Wq 504.04; and
- (f) Any appurtenant facilities directly related to (a) through (e), above.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 504.03 Eligible Costs for Pollution Abatement Projects. The following shall be eligible costs:

- (a) All costs directly related to the construction, expansion, or upgrading of an eligible project as listed in Env-Wq 504.02 or Env-Wq 504.04;
- (b) All costs directly related to the planning and design of an eligible project as listed in Env-Wq 504.02 or Env-Wq 504.04, including the following:
- (1) Design fees, including fees for pre-closure investigations for landfill capping and closure;
  - (2) Costs of hydrological investigations, subsurface investigations, and soil borings, including costs of pre-closure hydrogeological investigations;
  - (3) Environmental or archaeological consultants fees where required;
  - (4) Property boundary survey and engineering survey costs; and
  - (5) Recipient administrative costs to obtain approval of the design of the pollution abatement projects that are attributable to additional administrative duties outside of normal duty hours;
- (c) Purchase of necessary land used for wastewater or NPS pollution control infrastructure or for ultimate disposal of residues resulting from wastewater treatment, such as spray irrigation or land application of sludge;
- (d) Construction administration, including but not limited to resident project representatives, operations and maintenance manual preparation, and preparation of record drawings;
- (e) Loan recipient administrative costs directly related to the pollution abatement project that are attributable to additional administrative duties outside of normal duty hours; and
- (f) Interest accrued on disbursements.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

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Env-Wq 504.04 Additional Eligible Projects. Pollution abatement projects under §319 or §320 of the CWA that are eligible for CWSRF funding shall include the following:

- (a) Preparation and implementation of estuary conservation and management plans;
- (b) Restoration projects for the following estuarine habitats or living resources:
  - (1) Salt marshes;
  - (2) Eelgrass and other submerged aquatic vegetation;
  - (3) Riparian buffers;
  - (4) Diadromous fish; and
  - (5) Shellfish;
- (c) Projects to restore hydraulic connectivity, such as culvert resizing and replacement and dam removal or repair; and
- (d) Elimination of illicit discharges to storm sewers, including but not limited to:
  - (1) Illicit Discharge Detection and Elimination (IDDE) assessments; and
  - (2) Correction of illicit discharges.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

### PART Env-Wq 505 ESTABLISHING PRIORITY FOR FUNDING

#### Env-Wq 505.01 Preliminary Project Priority List.

(a) The department shall prepare a preliminary list of projects that are eligible to receive financial assistance from the CWSRF based on the pre-applications submitted and accepted as described in Env-Wq 505.03 through Env-Wq 505.09.

(b) If available funds are sufficient to fund all projects for which pre-applications are accepted, the preliminary list shall contain the information specified in (d), below, for all projects for which pre-applications have been accepted.

(c) If available funds are not sufficient to fund all projects for which pre-applications are accepted, the preliminary project priority list shall contain:

- (1) A fundable portion, consisting of those eligible projects to which available funds have been assigned; and
  - (2) A contingency portion, consisting of those eligible projects that will receive financial assistance if funds become available.
- (d) The preliminary project priority list shall contain the following information for each project on the list:
- (1) The name of the applicant;
  - (2) The name and location of the applicant's project;
  - (3) A brief description of the project;
  - (4) Project priority, if applicable; and
  - (5) The amount of financial assistance requested.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 505.02 Prioritization of Proposed Projects.

(a) If available funds are not sufficient to fund all projects for which pre-applications are accepted or if otherwise required by a specific capitalization grant, the department shall:

(1) Develop a priority system as part of the applicable Intended Use Plan (IUP) that is based on the following objectives:

- a. Achieving compliance with the CWA and any applicable requirements in 40 CFR Part 35;
- b. Achieving the most cost-effective reduction or elimination of pollutant discharges;
- c. Furthering public health protection;
- d. Maintaining affordability for users of the infrastructure, if applicable; and
- e. Achieving compliance with any applicable requirements of the specific capitalization grant from which the funds are loaned;

(2) Rank the pre-applications according to the priority system; and

(3) Allocate the available funds starting with the highest priority and proceeding down the list until all available funds have been allocated.

(b) If a priority system is developed, the department shall:

(1) List the projects on that priority list in order of priority; and

(2) If 2 or more projects on the same list have equal ranking under the priority system, assign the higher ranking to the project that would provide the greatest environmental benefit.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 505.03 Pre-Application Procedures.

(a) If requested by an entity that wants to apply for CWSRF funding, the department shall meet with the entity's representative(s) to provide information, advice, instruction, guidance, and other information to help the entity determine the scope of work needed to describe an eligible project and complete the application process.

(b) Any entity that wants to borrow money from the CWSRF shall submit a pre-application as described in Env-Wq 505.04 to:

NHDES Clean Water SRF Program  
29 Hazen Drive  
P.O. Box 95  
Concord, NH 03302-0095

(c) Upon receipt of a pre-application, the department shall review the pre-application to determine whether the pre-application is complete, meaning all information required by Env-Wq 505.05 through Env-Wq 505.08 has been provided and the pre-application has been signed and dated as required by Env-Wq 505.04.

(d) If the pre-application is not complete, the department shall notify the applicant in writing within 30 days of what is needed to complete the pre-application.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 505.04 Submission of Pre-Applications.

- (a) The applicant shall provide the information required by Env-Wq 505.05 through Env-Wq 505.08 to the department on or with a pre-application form obtained from the department.
- (b) The applicant shall sign and date the pre-application as follows:
  - (1) If the applicant uses a paper-based pre-application form, the applicant's authorized representative shall sign and date the form and print his or her name and title in the location indicated on the form; and
  - (2) If the applicant uses the web-based pre-application form, submitting the form shall constitute the signature and the date the submission is received by the department shall constitute the date of the pre-application.
- (c) Submission of the form, whether electronically or on paper, shall constitute certification by the applicant that:
  - (1) The information provided is true, complete, and not misleading to the best of the applicant's knowledge and belief;
  - (2) The applicant understands that any department determination that the applicant and the applicant's project qualify for funding from the CWSRF that is based on false, incomplete, or misleading information is subject to modification, up to and including reversal, through an adjudicative proceeding conducted in accordance with applicable provisions of Env-C 200; and
  - (3) The signer is subject to the penalties specified in New Hampshire law, currently RSA 641:3, for making unsworn false statements.
- (d) If the applicant's authorized representative is or is acting on behalf of a listed engineer as defined in Env-C 502.10, the signature also shall constitute certification that the signer understands that the submittal of false, incomplete, or misleading information is grounds for debarring the listed engineer from the roster.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 505.05 Information Required for Pre-Applications: Identification of Applicant, Project. Each applicant shall provide the following information to identify the applicant and the project for which funding is being requested:

- (a) The applicant's name and mailing address;
- (b) The name, title, email address, and daytime telephone number of the individual who can answer questions on behalf of the applicant regarding the project;
- (c) A short title for the project, the proposed project's location, and a brief description of the project;
- (d) The name of each surface water that would be affected by the project, and for each, whether the surface water is impaired and if so, whether the proposed project addresses the impairment;
- (e) Whether the project is a wastewater project, a stormwater/NPS project, or a wastewater project with stormwater/NPS components and whether the project includes planning, design, or construction or some combination thereof;
- (f) The date the applicant received governing body approval to borrow funds for the project or the date the applicant anticipates receiving such approval, as applicable;
- (g) The amount of loan requested and loan term requested;

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(h) The intended use of the funds, for example to evaluate feasible alternatives, to prepare design plans, or for construction, or some combination thereof; and

(i) A concise explanation of the need for the proposed project, including:

(1) How it will meet the criteria listed in Env-Wq 505.02(a)(1)a. through e.; and

(2) Whether the project would address a federal or state administrative order or consent decree, a surface water quality impairment, a chronic NPDES compliance issue, surface water quality in unimpaired waters, an NPDES MS4 compliance issue, chronic flooding that causes water quality to degrade, or a recommendation in the state Nonpoint Source Plan, a watershed-based plan that meets Clean Water Act Section 319 guidelines, or the 2010 Piscataqua Region Comprehensive Conservation and Management Plan; and

(j) If the applicant uses a paper-based pre-application form, the name and title of the individual authorized by the applicant to sign the pre-application form on behalf of the applicant.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 505.06 Information Required for Pre-Applications for Planning. Each applicant for funding for a planning project or a project that has a separate planning component shall provide the following information:

(a) An estimate of the costs attributable to planning and the rationale for the estimate;

(b) The anticipated date that the planning contract will be awarded and completed;

(c) Any other information specifically required by the capitalization grant being disbursed;

(d) Any additional information the applicant believes would be helpful to the department's assessment of how the proposed project meets the criteria in Env-Wq 505.02; and

(e) As much information required by Env-Wq 505.07 and Env-Wq 505.08 as is available.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 505.07 Information Required for Pre-Applications for Design. Each applicant for funding for a design project or a project that has a separate design component shall provide the following information:

(a) An estimate of the costs attributable to design and the rationale for the estimate;

(b) The anticipated date that the design contract will be awarded and completed; and

(c) Any other information specifically required by the capitalization grant being disbursed;

(d) Any additional information the applicant believes would be helpful to the department's assessment of how the proposed project meets the criteria in Env-Wq 505.02; and

(e) As much information required by Env-Wq 505.08 as is available.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 505.08 Information Required for Pre-Applications for Construction. Each applicant for funding for a construction project or a project that has a separate construction component shall provide the following information:

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(a) An estimate of construction costs including costs of planning and design unless itemized separately, a construction contingency, and construction administration costs, plus the amount and a description of any other costs, where applicable;

(b) The anticipated dates that the construction contract will be awarded and construction will be completed;

(c) If the cost estimates are based on a facility plan or preliminary design report signed by a professional engineer, professional geologist, or other licensed professional, identification of the document by name and date and identification of the licensed professional by name and license type and number;

(d) If the cost estimates are not based on a facility plan or preliminary design report signed by a licensed professional, the rationale for the cost estimates;

(e) For traditional wastewater projects:

(1) Estimates of the current and projected resident and non-resident populations served, where non-resident populations comprise tourists and transient, seasonal, and commuter workers;

(2) The percentage of total estimated costs allocated to water efficiency, energy efficiency, green projects, or other environmentally-innovative design;

(3) Information to demonstrate the sustainability of the proposed project, as follows:

a. Average monthly facility flow as a percentage of design capacity;

b. The pollutant(s) and loading(s), as a percentage of design capacity, that exceed, on an average monthly basis, 80% design loading capacity;

c. Whether the project will reduce flow or loadings, or increase design capacity of the WWTF, and if so, how;

d. Whether the project will implement a climate change adaptation or mitigation strategy, and if so, how;

e. Whether the project will address excessive infiltration and inflow as defined in 40 CFR 35.2005 (16);

f. Whether the project will implement recommendations of an existing asset management program, and if so, identification of the specific section of the program and what percentage of the facility's operation and maintenance budget is set aside for a repair and replacement reserve account; and

g. Whether the project will accommodate reuse or recycling of stormwater, wastewater, or treatment products;

(4) Whether an energy audit has been completed or is planned and, if so, the date or anticipated date and whether the project will address any of the audit findings and if so, how, and a copy of the audit;

(5) A calculation of the total annual sewer user fee for a typical residence, based on water use of 67,400 gallons water per year, or 185 gallons per day; and

(6) Any other information specifically required by the capitalization grant being disbursed; and

(f) For stormwater and NPS projects:

(1) If the project addresses an MS4 compliance issue, a description of the requirement being addressed;

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- (2) If the project addresses chronic flooding, a description of the water quality problem caused by the flooding;
- (3) If the project implements a recommendation in the NH Nonpoint Source Management Plan, a watershed-based plan, or the 2010 Piscataqua Region Comprehensive Conservation and Management Plan, identification of the specific plan by document name and recommendation being implemented, including the section number, if any, and page number;
- (4) Whether the project will address one or more of the following:
  - a. Disconnection of impervious cover from a stormwater drainage system and, if so, an estimate of the area of impervious cover to be disconnected in square feet;
  - b. Protection or restoration of natural hydrology, floodplains, and wetlands and, if so, a description of how the project protects or restores natural hydrology, floodplains, or wetlands;
  - c. Improved stream connectivity with respect to aquatic life and, if so, a description of the barriers to be removed and an estimate of the number of miles of stream to be reconnected; or
  - d. Smart growth as defined in RSA 9-B:3 and, if so, a description of how the proposed project addresses water quality goals through smart growth;
- (5) Any other information specifically required by the capitalization grant being disbursed; and
- (6) Any additional information the applicant believes would be helpful to the department's assessment of how the proposed project meets the criteria in Env-Wq 505.02.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 505.09 Department Action on Pre-Application.

- (a) The department shall determine that the applicant's project is eligible for financial assistance from the CWSRF if:
  - (1) The pre-application is complete;
  - (2) The applicant is an eligible entity; and
  - (3) The proposed project is within the scope of projects identified in Env-Wq 504.
- (b) The department shall notify the applicant in writing of its eligibility determination within 30 days of determining that a pre-application is complete.
- (c) If the department determines that the applicant's project is eligible, the department shall place the project on the preliminary project priority list prepared pursuant to Env-Wq 505.01.
- (d) If the department determines that the applicant's project is not eligible, the department shall state the reason(s) for the determination in the notice sent pursuant to (b), above.
- (e) In response to being notified that a project is not eligible, the applicant may modify or supplement any information and submit a new pre-application to the department.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 505.10 Intended Use Plan (IUP).

(a) For each federal fiscal year, the department shall prepare an IUP that complies with 40 CFR §35.3150 and any applicable guidance issued by the U.S. Environmental Protection Agency (EPA), specifically including the preliminary project priority list prepared pursuant to Env-Wq 505.01.

(b) The preliminary IUP shall be subject to public comments and review as specified in Env-Wq 505.11 before being finalized and submitted to EPA.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 505.11 Annual Hearing.

(a) The department shall hold a non-adjudicative public hearing annually to present the preliminary IUP. Except as modified by this section, the hearing shall be conducted in accordance with the provisions of Env-C 200 that apply to non-adjudicative proceedings and oral public hearings.

(b) The department shall publish a notice of the hearing in a newspaper of general circulation and on its web site at least 7 days prior to the date of the hearing.

(c) The department also shall provide written notice of the hearing at least 7 days in advance of the hearing to those applicants whose projects are on the list to be presented and to any person who has submitted a written request for such notice.

(d) The department shall send the notice required by (c), above, by email to each applicant and any person who has provided an email address and by first class mail to any applicant or person who has not provided an email address.

(e) As a supplement to the procedures specified in Env-C 205.07, any person desiring priority to speak at the hearing shall submit a copy of the testimony to be presented to the department no later than 2 days prior to the scheduled date of the hearing. All persons who wish to testify at the hearing who have submitted written testimony at least 2 days prior to the hearing shall be given priority to speak at the hearing. If sufficient time exists after all persons who submitted testimony have spoken, the individual presiding at the hearing shall allow other persons to testify.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 505.12 Management of Project Priority List.

(a) Following the hearing required by Env-Wq 505.11, the department shall:

(1) Prepare a current project priority list using the same process as described in Env-Wq 505.02 for the preliminary project priority list; and

(2) Notify each applicant having a project on the list that a final application is required if the applicant wants to receive the funds allocated for the project.

(b) The department shall substitute a project from the contingency portion of the project priority list for a project on the fundable portion of the list if an application is not received or if the project will not be ready to proceed during the funding year. If a prioritization system was developed pursuant to Env-Wq 505.02, substitutions shall be based on the priority system.

(c) The department shall review the fundable portion of the list whenever updates are necessary, such as revised estimated construction assistance amounts and any project substitutions.

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(d) If additional funds become available during the time period covered by the IUP, the department shall extend the fundable portion of the list to include as many of the projects in the contingency section of the list that are ready to proceed as can be funded.

(e) The department shall not fund a project on the list if any of the following is true:

(1) The project is fully funded from other sources, unless the applicant is requesting refinancing of previously-incurred costs that are otherwise eligible costs;

(2) The project is found to be ineligible based on information received by the department subsequent to the placement of the project on the list; or

(3) The applicant informs the department in writing that it does not intend to pursue financial assistance from the CWSRF.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

### PART Env-Wq 506 PROCEDURES FOR RECEIPT OF CWSRF FUNDS

#### Env-Wq 506.01 Final Application Procedures.

(a) An applicant whose project has been approved for funding shall submit the information required by Env-Wq 506.03 and Env-Wq 506.04 and the documents required by Env-Wq 506.05 in writing to the department, on or with a form obtained from the department.

(b) If the pre-application was filed prior to preparation of the priority list in the draft IUP, the applicant shall submit the final application by the deadline specified in the IUP.

(c) If the need for funding was not known prior to the priority list being prepared, an applicant may submit a pre-application that meets the requirements of Env-Wq 505.03 through Env-Wq 505.08 at the time the need for the funds is discovered.

(d) For any pre-application filed pursuant to (c), above, the department shall:

(1) Review the pre-application as described in Env-Wq 505.09; and

(2) If the department determines that the applicant is an eligible entity, the project is an eligible project, and funds are available for the project, so notify the applicant and establish a deadline for submission of a final application in consultation with the applicant.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 506.02 Conditions Arising from Final Application. By submitting a final application for financial assistance, the applicant shall be deemed to agree to the following:

(a) From the time of first application for financial assistance for a project throughout all stages of construction and implementation, and at any other time while any assistance from the CWSRF to the applicant is outstanding, the applicant shall allow the department to inspect:

(1) The project and any and all incidental works, areas, facilities, and premises otherwise pertaining to the project for which application is made; and

(2) Any and all books, accounts, records, contracts or other instruments, documents or other information possessed by the applicant or its contractors, agents, employees, or representatives which relate in any respect to the receipt, deposit, or expenditure of financial assistance funds; and

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- (b) After project completion, the recipient shall allow the department to conduct periodic site visits.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 506.03 Required Information: Applicant and Project. The applicant shall provide the following information to identify the applicant and describe the project:

- (a) The applicant's name and mailing address;
- (b) The name, title, daytime telephone number including area code, and email address, if any, of a contact for administrative matters, a contact for financial and contractual matters, and a contact for technical and engineering matters;
- (c) The name and title of the individual authorized by the applicant to sign financial documents, which may be the same individual as the authorized representative;
- (d) A short title for the project;
- (e) The project location and, if required by the capitalization grant, the congressional district in which the project is located;
- (f) A statement that the project description provided pursuant to Env-Wq 505.05 through Env-Wq 505.08 has not changed or, if the information has changed, updated information;
- (g) As applicable, information on the population served by the wastewater or stormwater infrastructure affected by the project or the stormwater volume for the project and the receiving facility;
- (h) For construction projects funded under §212 of the CWA, a statement that the applicant has an asset maintenance and renewal plan in place for funding the maintenance and eventual replacement of the funded infrastructure, or, if there is no such plan in place, a plan for developing such a plan as part of the funded infrastructure project; and
- (i) The estimated project completion schedule, including the estimated dates of opening bids, initiating the project, substantial completion, and initiation of operation, if applicable.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 506.04 Required Financial Information. The applicant shall provide the following financial information:

- (a) The amount of financial assistance and loan term requested;
- (b) The most current estimate of total project cost, itemized as to major facilities and related expenses such as land and easement costs, fees for engineering or other consulting services, fees for financial services, and contingencies;
- (c) For construction projects, the percentage of total estimated costs allocated to water efficiency, energy efficiency, green projects, or other environmentally-innovative design;
- (d) If the total estimated cost of the project exceeds the requested loan amount, the amount and anticipated source of each additional source of funds for the project;
- (e) A description of each source of loan repayment funds;
- (f) The applicant's Dun & Bradstreet data universal numbering system (D-U-N-S) number;
- (g) For an applicant that is not a governmental entity, in the most recent completed fiscal year of the organization to which the D-U-N-S number belongs, a statement of whether the organization:

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- (1) Received 80 percent or more of its annual gross revenues in U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements; or
- (2) Received \$25,000,000 or more in annual gross revenues from U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements; and
- (h) An estimated schedule of disbursements.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 506.05 Required Documentation. The applicant shall provide the following documentation, as applicable to the proposed project:

- (a) For projects that are subject to Env-Wq 700, a basis of design as specified in Env-Wq 707;
- (b) For construction projects other than those covered by (a), above, a report to facilitate review of the proposed project and alternatives thereto from the viewpoints of function, operation, economics, reliability, safety, efficiency, cost, and effectiveness, and environmental compatibility, which includes the following:
  - (1) A concise explanation of the need for the proposed project, including how it will meet the criteria listed in Env-Wq 505.02(a)(1)a. through e.;
  - (2) A cost-effectiveness analysis of the project and all feasible alternatives capable of meeting state and federal requirements, which details all monetary costs including the present worth or equivalent annual value of all capital costs, operation, and maintenance; and
  - (3) All information necessary for the design of the proposed project and alternatives;
- (c) A certified and sealed copy of the resolution adopted by the applicant's governing body that authorizes the filing of the application and identifies the name and title of each individual who has been authorized to serve as the applicant's authorized representative for purposes of signing the application and related documents and all loan documents on behalf of the applicant;
- (d) A certified and sealed copy of the warrant article or other authorization from the applicant's governing body to raise, appropriate, and spend the requested funds on the proposed project;
- (e) A letter signed by an authorized representative that states the application has been submitted to the office of energy and planning for review through the New Hampshire intergovernmental review process and provides the current status of that process;
- (f) A letter signed by an authorized representative certifying that the applicant has the financial capability and, for entities other than governmental entities, adequate security to support on-going operation and maintenance and loan repayment, if applicable;
- (g) For governmental applicants, a letter signed by an authorized representative stating whether or not the applicant has any debt outside the NH Municipal Bond Bank and, if the debt is rated, the rating;
- (h) For non-governmental applicants, documentation of the extent of the applicant's existing debt;
- (i) A copy of the applicant's latest annual report or financial statements; and
- (j) The information needed for the environmental review under Env-Wq 508;

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 506.06 Signatures for Final Applications.

- (a) The applicant's authorized representative shall sign and date the application as follows:
- (1) If the applicant uses a paper-based application form, the authorized representative shall sign and date the application form and print his or her name and title in the location indicated on the form; and
  - (2) If the applicant uses the web-based application form, submitting the form shall constitute the signature and the date the submission is received by the department shall constitute the date of the application.
- (b) Submission of the form, whether electronically or on paper, shall constitute certification by the applicant that:
- (1) The information contained in or otherwise submitted with the application is true, complete, and not misleading to the best of the applicant's knowledge and belief;
  - (2) The applicant understands that any department determination that the applicant and the applicant's project qualifies for funding from the CWSRF that is based on false, incomplete, or misleading information is subject to modification, up to and including reversal, through an adjudicative proceeding conducted in accordance with applicable provisions of Env-C 200; and
  - (3) The signer is subject to the penalties specified in New Hampshire law, currently RSA 641:3, for making unsworn false statements.
- (c) If the applicant's authorized representative is or is acting on behalf of a listed engineer as defined in Env-C 502.10, the signature shall also constitute certification that the signer understands that the submittal of false, incomplete, or misleading information is grounds for debarring the listed engineer from the roster.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 506.07 Department Action on Final Application.

- (a) The department shall determine that the application is complete and all or a portion of the proposed project is eligible for financial assistance from the CWSRF if:
- (1) All or a portion of the proposed project is within the scope of eligible projects identified in Env-Wq 504;
  - (2) The applicant has submitted all information and documents required by Env-Wq 506.03 through Env-Wq 506.05; and
  - (3) The applicant has signed the application as required by Env-Wq 506.06.
- (b) The department shall notify the applicant in writing of its eligibility determination.
- (c) If the department determines that the applicant's project is not eligible, the notice sent pursuant to (b), above, shall specify the reason(s) for the determination and inform the applicant that the department will reconsider the determination if the applicant submits modified or supplemental information within 30 days of the date of the notice.
- (d) If the applicant wants the department to reconsider its determination that a project is ineligible, the applicant shall submit modified or supplemental information within 30 days of the date of the notice and request the department to reconsider its decision in light of the new information.

(e) Upon receipt of a request to reconsider in light of new information, the department shall review the information and make a decision in accordance with (a) through (c), above, except that no further reconsideration shall be undertaken.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

PART Env-Wq 507 FINANCIAL ASSISTANCE; PAYMENTS; ACCOUNTING

Env-Wq 507.01 Original Financial Assistance Agreement.

(a) Following acceptance of the application and upon availability of funds, a financial assistance agreement shall be executed between the state and the applicant.

(b) The original financial assistance agreement shall contain the following provisions:

- (1) The amount of funds being provided;
- (2) The interest rate for the loan and the length of the repayment term;
- (3) A description of the project;
- (4) Authorization for representatives of the department and applicable federal agencies to examine any of the loan recipient's records that pertain to transactions relating to the loan agreement, construction contracts, engineering contracts, or other consulting contracts for the purpose of inspection, audit, and copying during normal business hours;
- (5) A requirement for the recipient to develop and adhere to an asset maintenance and renewal plan for the funded improvements, if applicable; and
- (6) Any other provision(s) required by state or federal law in order for the agreement to be valid.

(c) The original financial assistance agreement shall be subject to approval by the governor and executive council.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 507.02 Market Rate.

(a) The department's purpose in establishing a market rate is to remain competitive in the infrastructure financing marketplace.

(b) The department shall establish the initial market rate on the date of the annual public hearing held pursuant to Env-Wq 505.11, at or below the interest rate established in the 11-Bond Index published the prior week by The Bond Buyer on-line at [www.bondbuyer.com](http://www.bondbuyer.com).

(c) The department shall review the 11-Bond Index not less than monthly.

(d) If at any time the arithmetic average of the 11-Bond Index values published in any 4 consecutive weeks falls below 90% of the market rate in effect at that time, then:

- (1) The department shall adjust the market rate to equal the 11-Bond Index published in the last week of that 4-week period; and
- (2) The new rate shall become effective on Monday of the following week.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 507.03 Interest Rates Established.

(a) The interest rate charged on disbursed loan funds prior to the date of substantial completion or the date of scheduled completion, whichever is earliest, shall be equal to 1.0% annually.

(b) The interest rate charged on disbursed loan funds during repayment of the loan shall be the rate based on the repayment period selected by the applicant and the market rate in effect at the time the loan is made as shown in (c), below, subject to adjustment pursuant to Env-Wq 507.04, but in no case lower than 2.0%.

(c) The interest rate based on the repayment period selected by the applicant shall be as shown in table 507-1, below:

Table 507-1: Interest Rate Based On Repayment Period Selected by Applicant

<b>Repayment Period Selected</b>	<b>Interest Rate</b>
5 years or fewer	25% of market rate
Greater than 5 years to 10 years	50% of market rate
Greater than 10 years to 15 years	75% of market rate
Greater than 15 years to 20 years	80% of market rate
More than 20 years, if available under the specific capitalization grant from which the funds are loaned	Calculated in accordance with the capitalization grant

(d) If the interest rate determined pursuant to (b) and (c), above, is higher than the interest rate charged by federal agencies for water or wastewater infrastructure projects, the interest rate shall be set at the lower of the following, but not less than 2.0%:

- (1) The rate determined as specified in accordance with criteria established by the specific capitalization grant from which the funds are loaned; or
- (2) The interest rate charged by federal agencies for water or wastewater infrastructure projects.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 507.04 Accrual of Interest Charges; Administrative Fee.

(a) Interest on any loan funds disbursed to a loan recipient shall begin to accrue as of the date of each disbursement of such funds by the state.

(b) The loan recipient shall pay interest charges incurred on disbursed loan funds in accordance with one of the following, at the election of the applicant:

- (1) Semi-annually, prior to the commencement of the loan repayment;
- (2) Prior to the commencement of loan repayment;
- (3) At the time of the first repayment; or
- (4) By adding the charges to the outstanding principal balance.

(c) Interest charges during loan repayment shall be fixed over the loan repayment period.

(d) As required by RSA 486:14, I(b), the department shall set aside as an administrative fee a sum equal to 2% of all loan principal balances outstanding each year.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 507.05 Adjustments to Stipulated Interest Rate.

(a) The department shall review the interest rate stipulated in the original loan agreement at the completion of the project prior to establishing the final repayment schedule in the supplemental agreement.

(b) If the market rate established pursuant to Env-Wq 507.02 is lower than the market rate used to establish the interest rate in the original loan agreement, the loan interest rate shall be adjusted downward from the initial rate as specified in Env-Wq 507.03(c), table 507-1, using the market rate on the execution date of the supplemental agreement.

(c) If the market rate established pursuant to Env-Wq 507.02 is higher than the market rate used to establish the interest rate in the original loan agreement, the loan interest rate shall be the rate stipulated in the original loan agreement.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 507.06 Timely Use of Funds.

(a) A recipient shall submit a request for disbursement within 6 months of the execution of the financial assistance agreement.

(b) If the recipient fails to comply with (a), above, the department shall request the recipient to show cause why the financial assistance agreement should not be canceled.

(c) The department's request shall:

(1) Be in writing;

(2) Specify a date by which the recipient must respond to the request, which shall be 20 working days from the date of the notice; and

(3) Inform the recipient that the recipient may request an adjudicative hearing prior to the financial assistance agreement being cancelled.

(d) If the recipient wishes to have an adjudicative hearing, the recipient shall:

(1) Respond in writing to the request sent by the department pursuant to (b), above; and

(2) Include a request for a hearing in the response.

(e) If a hearing is requested and a settlement is not reached, the hearing shall be conducted in accordance with the provisions of Env-C 200 that apply to adjudicative proceedings.

(f) If the recipient shows that the delay in expending the funds was based on an excusable delay, the department shall not cancel the financial assistance agreement.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 507.07 Disbursements.

(a) To obtain a disbursement for eligible work and equipment from the awarded funds, the recipient shall submit a written disbursement request to the department by mail, email, or fax.

(b) The written request shall include the following, as applicable to the request:

(1) The completed, signed Request for Disbursement form, NHDES-W-09-021, obtained from the department;

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- (2) A list of the invoices or payment requisitions included with the request, by number and date, separated into the appropriate classifications of funds;
- (3) Invoices for equipment and materials delivered and properly stored;
- (4) Invoices for engineering or consulting services;
- (5) Payment requisitions from the contractor(s); and
- (6) Invoices for eligible costs not covered under (3) through (5), above.

(c) The department shall approve the request if it determines that the costs covered by the request are eligible under Env-Wq 504.03 and the recipient's financial assistance agreement.

(d) Upon approval of the request, the department shall authorize the disbursement to be made from the CWSRF.

(e) The recipient shall not make disbursement requests more frequently than once per calendar month per loan.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 507.08 Supplemental Agreement. Upon completion of the project, the department and the recipient shall execute a supplemental agreement to reflect actual project expenditures and to establish:

(a) The loan term selected by the loan recipient and the corresponding interest rate based on the established market rate at the time that the supplemental agreement is prepared; and

(b) The loan repayment schedule based on the final project cost.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 507.09 Repayments.

(a) The loan recipient shall repay funds received and interest accrued thereon to the state as stipulated in the supplemental agreement.

(b) Repayments shall:

(1) Not exceed the maximum repayment period allowed by the CWA or a capitalization grant, as appropriate; and

(2) Begin by the earlier of one year following the date of substantial completion of the project or one year following the scheduled completion date established in the financial assistance agreement, unless modified with the consent of all parties.

(c) Should excusable delay be incurred beyond the scheduled completion date, the department shall offer to modify the financial assistance agreement to account for the delays.

(d) Any modification of the financial assistance agreement shall be negotiated with and approved by the recipient and the state prior to any formal modification of the financial assistance agreement.

(e) Loans may be repaid prior to the date stipulated in the financial assistance agreement with no prepayment penalty.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

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Env-Wq 507.10 Use of Funds; Return of Funds.

(a) The recipient shall use and expend financial assistance provided from the CWSRF solely and exclusively for the payment of authorized eligible costs of the project for which the financial assistance was approved.

(b) If the recipient uses any funds provided from the CWSRF for anything other than eligible costs on the specific project for which such funds were furnished, the recipient shall return or otherwise repay to the department all such funds.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 507.11 Retainage on Construction Contracts.

(a) The recipient shall withhold 10% of all partial payments as retainage until 50% of the project is complete.

(b) After the project is 50% complete, no additional retainage shall be withheld from any partial payments.

(c) Upon substantial or final completion of the project, the recipient shall reduce the retainage to 2%. The final 2% retainage shall be held during the one-year warranty period and released only after the recipient has accepted the project.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 507.12 Loan Amortization.

(a) Loan repayment shall be made according to a fixed amortization schedule based on:

- (1) The final project cost;
- (2) The repayment period selected by the loan recipient; and
- (3) The interest rate established in the supplemental agreement.

(b) Loan amortization shall be made on a semi-annual or annual basis with either level debt service, or level payments of principal plus interest according to RSA 33:2, at the option of the loan recipient, over the repayment period selected by the loan recipient.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 507.13 Assurances. Prior to receipt of financial assistance, the recipient shall provide evidence of the following, as applicable:

- (a) Approved project plans and specifications;
- (b) Agreement to develop a user charge system as required by 40 CFR §35.2140 and sewer use ordinance as required by 40 CFR §35.2130, RSA 485-A:5, and Env-Wq 305 prior to 80% of construction completion;
- (c) Compliance with best practicable waste treatment technology;
- (d) The sewer collection system is not subject to excessive infiltration/inflow (I/I) as defined in 40 CFR 35.2005 (16), as required by 40 CFR §35.2120;
- (e) Innovative and alternative treatment technologies were considered during design;
- (f) Potential recreation and open space opportunities were considered;

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(g) Compliance with federal DBE requirements, including bidding specifications, procurement efforts, and reporting accountabilities;

(h) Agreement to maintain project financial accounts as separate accounts and in accordance with generally accepted accounting principles (GAAP) as defined in 2 CFR Part 49;

(i) Agreement to conduct a financial audit in accordance with applicable federal requirements, such as 2 CFR Part 200 and OMB Circular A-133, for any fiscal year of the recipient in which federal funds from any source of \$750,000 or greater are expended by the recipient or if otherwise required by the CWA or implementing regulations;

(j) A letter signed by an authorized representative certifying that the loan recipient who will be implementing the project has the necessary legal, financial, institutional, and managerial resources available to insure the construction, operation, and maintenance of the proposed project;

(k) For projects funded under §212 of the CWA, either:

(1) Certification that the applicant has developed and implemented an asset maintenance and renewal plan for the funded asset that includes:

- a. An inventory of critical components of the funded asset(s);
- b. An evaluation of the condition and performance of inventoried assets or asset groupings;
- c. A certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan; and
- d. A plan for maintaining, repairing, and, as necessary, replacing the funded asset(s) and a plan for funding such activities; or

(2) An agreement to develop and implement an asset maintenance and renewal plan as described in (1), above;

(l) Agreement to provide notice of initiation of operation to the department upon beginning operation of the project; and

(m) Completion of value engineering for projects greater than \$20 million in construction costs, provided that if the project is subject to 33 U.S.C. § 1298(c), value engineering shall be completed for projects costing greater than \$10 million.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

### PART Env-Wq 508 ENVIRONMENTAL REVIEW

Env-Wq 508.01 Environmental Review Required. Any construction project for which a loan from the CWSRF is provided shall be reviewed for impacts on the human and natural environment in accordance with this part.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

#### Env-Wq 508.02 General Procedure.

(a) The department shall prepare an environmental review report for the applicant's proposed construction project based on the information submitted by the applicant pursuant to Env-Wq 506.05(j).

(b) The environmental review shall result in one of the following:

(1) A categorical exclusion (CE);

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- (2) A finding of no significant impact (FNSI); or
- (3) A requirement for the applicant to prepare an environmental impact statement (EIS).

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 508.03 Categorical Exclusion (CE) Review.

(a) The department shall review the proposed project to determine whether the project qualifies for a CE.

(b) A CE determination shall be made if the project comprises only:

- (1) Work on existing facilities where no new disruption of the environment will occur, such as correction of infiltration and inflow, replacement of equipment, or addition of small new structures on site; or
- (2) Work where only a small disturbance is required, such as for upgrades, and no increase or expansion is planned.

(c) If the department determines that the project qualifies for a CE, the department shall:

- (1) Prepare a review document describing the basis for its determination; and
- (2) Publish a notice on its website that contains the following:
  - a. The name, mailing address, and daytime telephone number of the individual representing the applicant who can answer questions regarding the proposed project;
  - b. A link to an on-line copy of the CE determination or the name and daytime telephone number of the individual to contact to obtain a copy of the determination;
  - c. The name, mailing address, daytime telephone number, and e-mail address of the individual at the department to whom comments should be directed; and
  - d. The deadline for submitting comments, which shall be no sooner than 10 days from the date on which the notice is published.

(d) If comments are received by the department prior to the deadline specified in the notice that provide a reasonable basis for revisiting the CE determination, the department shall prepare an EA in accordance with Env-Wq 508.04.

(e) The department shall notify the applicant in writing if a determination is made to prepare an EA.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 508.04 Environmental Assessment (EA).

(a) For projects that do not qualify for a CE, the department shall prepare an EA in accordance with this section.

(b) The EA shall contain the following information:

- (1) The purpose of and need for the proposed project;
- (2) A list of all environmental concerns raised by the proposed project;
- (3) A list of alternatives to the proposed project, including a no action alternative;

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(4) Details of the recommended action, which shall be the proposed project or an alternative identified in the planning document prepared pursuant to Env-Wq 506.05(a) or (b), as applicable, that:

a. Is most likely to ensure compliance with federal and state water quality requirements over the projected life of the funded infrastructure; and

b. Best meets the criteria specified in Env-Wq 505.02(a)(1); and

(5) Mitigation measures required for the recommended action, if any.

(c) The department shall forward the EA to the applicant to distribute for review and comment in accordance with Env-Wq 508.05.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 508.05 Public Notification and Review Period.

(a) Following the issuance of a draft EA, the department shall send a copy of the draft EA to the applicant.

(b) The applicant shall publish a notice in a daily newspaper of general circulation in the project's community and on the applicant's web site, if any, that the draft EA is open for public comment.

(c) The notice published pursuant to (b), above, shall specify:

(1) The name, mailing address, and daytime telephone number of the individual representing the applicant who can answer questions regarding the proposed project;

(2) The name and location of the public place where the draft EA can be reviewed or the name and daytime telephone number of the individual to contact to obtain a copy of the document and, if available, a link to an on-line copy of the draft EA;

(3) The name, mailing address, daytime telephone number, and e-mail address of the individual at the department to whom comments should be directed; and

(4) The deadline for submitting comments, which shall be no sooner than 30 days from the last date on which the notice is published.

(d) No formal action shall be taken during the public review period.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 508.06 Department Decision.

(a) At the close of the review and comment period for an EA, the department shall make a determination in accordance with the following:

(1) If no comments are received that establish a reasonable basis for concluding that the project might have a significant adverse impact on the environment, the department shall issue a FNSI as the final action; or

(2) If comments are received that establish a reasonable basis for concluding that the project might have a significant adverse impact on the environment, the department shall direct the applicant to convene a public information meeting in accordance with applicable requirements, including RSA 91-A for governmental entities.

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(b) Within 60 days of the public information meeting conducted pursuant to (a)(2), above, the department shall assess the comments and issue a written decision containing one of the following determinations:

- (1) The department shall issue a FNSI if the department finds either that:
  - a. The comments received do not indicate that the proposed project will actually have a significant adverse impact on the environment;
  - b. The benefit to public health or the environment conferred by the project as proposed outweighs any significant adverse impact on the environment caused by the project as proposed; or
  - c. Any significant adverse impact on the environment caused by the project as proposed has been or will be addressed through another permit issued by the department, the Army Corps of Engineers, or EPA;
- (2) If the department finds that the project is likely to have a significant adverse impact on the environment that could be lessened or eliminated by implementing an alternative proposal, the department shall order the applicant to re-review the proposed project to identify an alternative with less environmental impact;
- (3) If the department finds that the project will have a significant adverse impact on the environment that could be lessened or eliminated by modifying the project as proposed to incorporate mitigating procedures, the department shall require mitigating procedures to be implemented as a condition of receiving financial assistance from the CWSRF; or
- (4) If the department finds that the project will have a significant adverse impact on the environment that cannot be lessened or eliminated by implementing an alternative proposal or by incorporating mitigating procedures, the department shall:
  - a. Direct the applicant to initiate an EIS in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. §§4321 - 4370f., and EPA procedures; and
  - b. Require the applicant to use a private consultant if the department finds that the applicant does not possess the requisite technical resources to prepare the EIS without the aid of a private consultant.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

### Env-Wq 508.07 Appeal.

(a) Within 30 days of the date of the written department decision issued pursuant to Env-Wq 508.06(b), any person aggrieved by the decision may appeal the decision as a permitting decision as specified in RSA 21-O:14.

(b) If no petition for appeal is filed within the specified period, the decision shall be final upon the expiration of that period.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 508.08 Duration of Decision. Final decisions under this part shall be valid for 5 years. If a project is not initiated within that time period, a new environmental review shall be undertaken.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

PART Env-Wq 509 PROCUREMENT OF ENGINEERING SERVICES

Env-Wq 509.01 Purpose. The purpose of this part is to establish the requirements for selecting and contracting with a consulting engineer for projects funded in whole or in part by the CWSRF that require engineering services.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 509.02 Listed Engineer Required for Funding. In order to receive funding from the CWSRF for engineering services for projects funded in whole or in part by the CWSRF that require the services of a professional engineer and for which pre-qualification is available under Env-C 500, the recipient shall contract only with a listed engineer, as defined in Env-C 502.10, who has been selected in accordance with this part.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 509.03 Solicitation of Proposals.

(a) Prior to soliciting proposals, the recipient shall submit a copy of its request for proposals (RFP) for a particular wastewater project to the department.

(b) The department shall review the RFP to ensure that the RFP accurately describes the project for which bids are being solicited.

(c) The recipient shall:

- (1) Modify the RFP if necessary in response to comments provided by the department, if any; and
- (2) Send the RFP to at least 3 listed engineers.

(d) If the recipient does not receive 3 proposals in response to the initial solicitation, the recipient shall send the RFP to at least 3 additional listed engineers.

(e) Department review of the RFP shall not release the recipient from its obligation to prepare an accurate RFP to provide to potential bidders.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 509.04 Selection of a Consulting Engineer. Following receipt of proposals, the recipient shall:

(a) Interview at least 3 of the responding listed engineers to discuss the details of the proposal and other information such as:

- (1) Experience with similar projects that have been successfully completed;
- (2) Current workload and availability of personnel to be assigned to the project;
- (3) References from clients with completed projects; and
- (4) Names of intended subcontractors for professional services, if any;

(b) Rate the listed engineers in order of preference based on their respective qualifications to undertake the work, and list the factors used in making the choices;

(c) Inform the department in writing of:

- (1) The name of the listed engineer selected by the recipient;
- (2) The names of the recipient's second and third choices;

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- (3) Details of the selected proposal; and
- (4) Estimated dates for project commencement and completion;
- (d) Inform the selected listed engineer in writing of the final terms of the proposal and that:
  - (1) The recipient has informed the department of the listed engineer's selection by the recipient; and
  - (2) The department will be reviewing the process by which the recipient selected the listed engineer to determine whether the requirements of Env-Wq 509 have been met.
- (e) Send a copy of the notification required by (d), above, to the department;
- (f) Negotiate the proposed fee and contract terms with the selected listed engineer, such terms to be consistent with Env-Wq 509.05; and
- (g) Repeat steps (a) through (f), above, if the interviews with the rated listed engineers fail to result in the selection of a consulting engineer for the project.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 509.05 Engineering Services Contracts for Expenditures of CWSRF Funds.

- (a) For all projects funded from the CWSRF that require consulting engineering services, the contract for such services shall contain the following:
  - (1) A description of the services to be provided by the consulting engineer, including the due date for any report or plans that will be prepared;
  - (2) The loan recipient's responsibilities under the contract;
  - (3) The estimated time of completion of the services covered by the contract;
  - (4) Compensation to be paid to the consulting engineer; and
  - (5) Termination provisions.

(b) The recipient shall comply with all applicable procedures and incidental legal requirements in awarding the engineering services contract.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 509.06 Final Terms for Engineering Services Contracts; Contract Revisions.

- (a) On receipt of the draft engineering services contract from the recipient, the department shall review the draft contract to confirm that the contract conforms with Env-Wq 509.05.
- (b) The department shall inform the selected listed engineer and the recipient in writing of any comments regarding the contract terms, proposed work, and fee, based on the department's knowledge of work and fees for comparable projects in the state.
- (c) The recipient shall submit to the department for review any revisions to the contract made subsequent to acceptance.

(d) In order for costs to remain eligible for funding from the CWSRF, the contract and any subsequent revisions shall be subject to negotiated changes if the department determines that the terms would result in payments to the listed engineer that do not qualify for reimbursement under applicable federal requirements, including but not limited to 2 CFR §§200.403-404.

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(e) Subject to (f) and (g), below, the recipient shall use the following contract forms, as applicable, for the final contract(s):

- (1) For WWTF construction, form NHDES-W-09-023, dated 11-19-15;
- (2) For WWTF design, form NHDES-W-09-024, dated 11-19-15; and
- (3) For WWTF reports, form NHDES-W-09-025, dated 11-19-15.

(f) Any recipient that wishes to use an alternate contract form shall submit the request in writing to the department together with:

- (1) A copy of the alternate contract form;
- (2) A table that shows where each provision of the department's contract form appears in the alternate contract form; and
- (3) A legal opinion from an attorney licensed to practice in New Hampshire that the alternative contract form is the same in substance as the department's contract form.

(g) The department shall allow the recipient to use the alternative contract form only if:

- (1) Every provision in the department's form appears in the alternative form with the same substantive meaning;
- (2) No provision in the alternative form changes the meaning or otherwise precludes the full effect of the department's form; and
- (3) The legal opinion provided with the request confirms that there are no substantive differences between the alternative form and the department's form.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 509.07 Consulting Engineer Status During Project Construction Phase; Resident Project Representative Supervision Required.

(a) After the contract for engineering services has been signed by the recipient and the consulting engineer, the consulting engineer shall act as the agent for the recipient in all matters related to the project that also involve the department.

(b) Engineering services contracts for the construction phase of a project shall require a resident project representative to assure that the project meets the plans, technical specifications, and agreement for construction of the project.

(c) The consulting engineer shall notify the department in writing of the name of the resident project representative and all assistant engineers and construction inspectors, together with a brief history of the resident project representative's construction experience.

(d) The consulting engineer shall notify the department of any request for a change or any actual change of resident project representative by submitting the name and qualifications of the proposed new resident project representative in writing to the department.

(e) The department shall approve the change if the proposed new resident project representative meets the criteria specified in Env-Wq 502.45.

(f) The department shall notify the consulting engineer of its decision on the proposed new resident project representative:

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- (1) By telephone, e-mail, or fax, as soon as practicable; and
- (2) If the initial notice was by telephone, by sending written confirmation by email or fax within 30 days of receiving the written notification from the firm.

(g) If the department does not approve the proposed resident project representative, the notice provided pursuant to (f), above, shall specify the reason(s) for the decision.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

### PART Env-Wq 510 DESIGN, CONSTRUCTION, AND IMPLEMENTATION PHASES

#### Env-Wq 510.01 Plans and Specifications.

(a) Pursuant to RSA 485-A:4, IX, the applicant shall submit plans and specifications for wastewater facilities for review and approval in accordance with Env-Wq 700.

(b) For projects to abate NPS pollution, the applicant shall submit plans and specifications that meet the applicable requirements of Env-Wq 1503.07 through Env-Wq 1503.09 and demonstrate compliance with the applicable provisions of Env-Wq 1508.

(c) For dam removal and repair projects, the applicant shall submit plans and specifications that meet the applicable requirements of Env-Wr 100 through Env-Wr 600.

(d) For subdivision and individual sewage disposal system projects, the applicant shall submit plans and specifications that meet the applicable requirements of Env-Wq 1000.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

#### Env-Wq 510.02 Construction Contract Documents.

(a) The recipient shall submit construction contract documents to the department for review and approval.

(b) No construction project shall be offered for public bid until the department has reviewed and approved the contract documents as specified in Env-Wq 510.03.

(c) The construction contract documents submitted by the recipient to the department shall contain the following information:

- (1) Bidding requirements for the construction of the project that meet the requirements in Env-Wq 510.04, including bid advertisement or solicitation for competitive quotations, information for bidders, a bid proposal structure that separates eligible construction from ineligible construction, and applicable bid security requirements;
- (2) Agreement and applicable requirements for the payment bond, performance bond, notice to proceed, and related documents such as the contractor's affidavit, the contractor's release, the certificate of substantial completion, and the format for change orders;
- (3) Applicable federal requirements;
- (4) Plans and specifications as specified in Env-Wq 510.01;
- (5) Appendices including boring logs, permits and other details as appropriate;

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(6) Provisions giving authorized representatives of the department access to all construction activities, books, records, and documents for the purpose of inspection, audit, and copying during normal business hours; and

(7) Such conditions, specifications, and other provisions as are required to comply with state and federal law.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 510.03 Department Review of Contract Documents.

(a) The department shall review the contract documents submitted pursuant to Env-Wq 510.02 within 60 days of receipt.

(b) The department shall approve the contract documents if they:

(1) Meet the requirements stated in Env-Wq 510.02(c);

(2) Are consistent with all applicable state and federal requirements; and

(3) Are consistent with the report submitted pursuant to Env-Wq 506.05(a) or (b), as applicable.

(c) After the contract documents are approved, no changes to the contract documents shall be made unless the recipient obtains prior approval from the department pursuant to Env-Wq 510.06(d).

(d) After the contract documents are approved, no increases in project cost or scope shall be made unless the recipient obtains prior approval from the department pursuant to Env-Wq 510.06(e).

(e) Approval of the contract documents shall not relieve the applicant of any liabilities or responsibilities with respect to the design, construction, operation, or performance of the project.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 510.04 Bidding Requirements. Recipients of state or federal funds for projects covered under §211 or 212 of the CWA shall comply with the following bidding requirements:

(a) The bid period shall be not less than 30 calendar days;

(b) The advertisement for bids shall include the following information as commensurate with the nature and magnitude of the project:

(1) The project name and contract number;

(2) The location of work;

(3) A description of work to be performed;

(4) The names and addresses of persons receiving bids;

(5) The time and date at which the bids will be publicly opened and read aloud, and a statement that bids received after that time will not be accepted;

(6) An address and cost information for obtaining plans and specifications; and

(7) The addresses where plans and specifications can be examined.

(c) A bid security in the amount of 5% of the bid shall be required in the form of a certified check or a bid bond executed by a surety company authorized to do business in New Hampshire and made payable to the recipient;

(d) A 100% performance bond and a 100% payment bond shall be required;

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- (e) The recipient shall reserve the right to:
  - (1) Reject any or all bids;
  - (2) Accept any bid;
  - (3) Waive any informalities or minor defects on bids received; and
  - (4) Omit any bid item; and
- (f) If any addenda to the bid are needed, the recipient shall:
  - (1) Submit the proposed addenda to the department for review as much in advance of issuing it as possible;
  - (2) Refrain from issuing the addenda without approval from the department; and
  - (3) Issue the approved addenda no less than 5 days prior to bid opening.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 510.05 Awarding Construction Contracts.

(a) The recipient of financial assistance from the CWSRF for a construction project shall comply with all applicable legal procedures and other legal requirements in advertising for bids and awarding the construction contract.

(b) The text of the construction contract documents shall not vary from the text of the contract documents approved pursuant to Env-Wq 510.03 unless a change has been approved pursuant to Env-Wq 510.06.

(c) After receiving and reviewing bids, the recipient shall select the lowest responsive bid or competitive quotation, unless approval is requested and obtained from the department to award the contract to a higher bid or quotation based on the lowest bid or quotation not being from a responsible bidder.

(d) The recipient shall request approval from the department to award the construction contract by submitting the following to the department in writing:

- (1) A revised, detailed total project cost estimate of eligible project costs, including construction, construction administration, and other costs;
- (2) Evidence of advertisement for bids;
- (3) A tabulation of all bids that were received;
- (4) A letter signed by the recipient's authorized representative indicating the contract value and the name of the bidder to whom the contract is planned to be awarded;
- (5) A copy of the bid proposal of the bidder to whom the contract is planned to be awarded;
- (6) An itemized breakdown of bid quantities and associated costs eligible for CWSRF participation;
- (7) For projects funded under §211 or §212 or both of the CWA, certification that the loan recipient has retained an engineer that is prequalified by the department under Env-C 500 to provide construction phase engineering services;
- (8) Documentation assuring bidder compliance with EPA's Disadvantaged Business Enterprise (DBE) participation requirements, 40 CFR Part 33, or other federal requirements for contracting

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with disadvantaged business enterprises, including but not limited to those specified in 2 CFR § 200.321, as applicable, including bidding specifications, procurement efforts, and reporting accountabilities; and

(9) Certification that all necessary permits, land acquisitions, and easements have been secured.

(e) The department shall approve the award of the construction contract if it determines that all applicable requirements have been met. The applicant shall not award the construction contract until after it has received written approval to do so from the department.

(f) For all construction projects funded by the CWSRF program, following receipt of approval from the department the recipient shall execute a construction contract with the selected contractor.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

### Env-Wq 510.06 Changes to Contract Documents and Project Cost or Scope.

(a) After the contract documents have been approved by the department and prior to awarding the contract, the recipient shall not make, allow, or authorize any changes, modifications, or amendments to or departure from the approved plans and specifications that would materially or significantly affect project cost, estimated revenues, or project design without the prior written approval of the department.

(b) A request to modify contract documents as described in (a), above, shall:

(1) Identify the specific change(s) for which approval is sought;

(2) Explain the reasons for the request, including an explanation of the operational or economic consequences of the requested changes not being approved; and

(3) Explain how the request meets the criteria specified in (d) or (e), below, as applicable.

(c) The department shall approve or deny the request within 10 working days of receipt of a request meeting the criteria of (b), above.

(d) For changes other than increases to project cost or scope, the department shall approve the requested change(s) in the contract documents if the recipient's request demonstrates that the change(s) are:

(1) Consistent with applicable federal and state requirements; and

(2) In the best interests of the CWSRF and the public served or to be served by the project.

(e) The department shall approve a request for an increase in project cost or scope if the following criteria are met:

(1) The increased scope was not reasonably foreseeable at the time the original project proposal was submitted;

(2) The cost increase results in a total cost no greater than the prevailing rate for the item to which the cost is attributable such as, but not limited to, labor and materials;

(3) If the recipient is requesting additional CWSRF funds, the item to which the cost increase is attributable is an eligible cost as specified in Env-Wq 504; and

(4) If the recipient is requesting additional CWSRF funds, the fund has sufficient monies available at the time the request is filed to cover the proposed cost increase.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 510.07 Recipient's Obligations for Inspections During Construction.

(a) During the construction phase of the project, the recipient shall obtain the engineering or other consulting services necessary to assure completion of the project in accordance with the loan agreement and the approved plans and specifications.

(b) After the construction contract is awarded, the recipient shall provide for on-site inspections of the project by a resident project representative that are sufficient to provide assurance to the recipient and the department that the work is being performed in a satisfactory manner in accordance with the approved plans and specifications, approved alterations, and sound engineering principles and building practices.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 510.08 Department Inspections During Construction.

(a) The recipient shall allow department personnel to inspect the project at any time in order to confirm that:

- (1) The materials furnished meet the approved specifications; and
- (2) The project is being built in accordance with the approved plans and specifications and any approved alterations.

(b) In conjunction with project inspections, the department shall:

- (1) Inspect the materials that are visible at the time of the inspection to determine compliance with the approved plans and specifications; and
- (2) Document the manner and progress of the project, conditions relating to the materials furnished, and on the contractor's compliance with the approved plans and specifications for the project.

(c) Inspections by the department shall not release the contractor from any obligation to perform the work in accordance with the requirements of the contract documents, nor shall such inspections release the recipient and the resident project representative or consulting engineer from determining compliance with the requirements of the contract documents.

(d) The contractor and recipient shall provide the department with such accommodations as are needed for the department to determine whether the work as performed is in accordance with the requirements and intent of the contract.

(e) The department shall, as soon as practicable, bring to the attention of the recipient and the resident project representative, and the consulting engineer, if any, any discrepancies between the approved plans and specifications and the actual work observed of which it becomes aware through its inspections.

(f) Upon being notified of any such discrepancies, the recipient, the resident project representative, and the consulting engineer, if any, shall immediately:

- (1) Initiate necessary action to rectify the deficiencies; or
- (2) Provide documentation explaining the reason(s) for the discrepancy and demonstrating that the installation meets applicable requirements.

(g) If the recipient's resident project representative or consulting engineer disagrees with the department as to whether material furnished or work performed conforms with the terms of the construction contract, the recipient shall direct the resident project representative or consulting engineer to reject questionable materials and initiate other action provided for in the construction contract, including suspension where necessary, until all disputed issues are resolved in accordance with the terms of the construction contract.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 510.09 Limitations on Project Modifications; Requests for Approval.

(a) After construction has commenced, the recipient shall not make, allow, or authorize any changes, modifications, or amendments to, or any departures from, the approved plans and specifications that would materially or significantly affect project cost, estimated revenues, or project design without prior written approval from the department.

(b) The recipient shall request such approval by submitting the following information in writing to the department:

- (1) The name of the recipient and the name and location of the recipient's water pollution abatement project;
- (2) The loan agreement project number;
- (3) A description of the modification(s) for which the recipient is seeking approval;
- (4) The reason why the modification(s) are necessary; and
- (5) The operational and economic consequences to the recipient and the project of the department not approving the modifications.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 510.10 Approval of Project Modifications.

(a) Subject to (b) and (c), below, the department shall approve a request submitted pursuant to Env-Wq 510.09 if:

- (1) The scope of the project as modified is consistent with the original intent of the financial assistance; and
- (2) If additional CWSRF funds are requested, the increased cost is approvable under the criteria established in Env-Wq 505.

(b) The department shall review the request and notify the recipient and resident project representative and consulting engineer, if any, as soon as practicable considering the scope of the request.

(c) A change of project scope, such as the addition of new construction items, shall not be eligible for additional funding after loan closing unless one of the following conditions are met:

- (1) The change of scope is necessary due to an oversight, and is needed to provide a functional end result and not to replace faulty construction or equipment already funded; or
- (2) The change of scope is necessary due to changes in federal or state requirements.

(d) The amount of funding provided from the CWSRF shall be increased only by a formal amendment in writing with the department, with governor and council approval.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 510.11 Construction Phase Submittal. During the construction phase of the project, the recipient shall submit:

(a) A notice of completion of construction to the department, upon completion of project construction; and

(b) Any other construction-phase submittals required by the financial assistance documents to be submitted for the department's approval.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 510.12 Final Inspection and Review of Records.

(a) Upon completion of any project for which financial assistance from the CWSRF has been provided, the recipient shall furnish to the department written notification of completion.

(b) Upon receipt of such notification, or upon project completion should notification not be furnished as required, and prior to the department approving the final loan disbursement, the department shall:

- (1) Conduct a final on-site inspection of the project with the recipient or the recipient's designee; and
- (2) Review the recipient's records relative to funds furnished to the recipient from the CWSRF.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 510.13 Project Performance Certification.

(a) One year after the initiation of operation, the recipient shall certify that any project constructed or otherwise implemented using funds made available through the CWSRF meets applicable design specifications and any applicable effluent limitations.

(b) The certification required by (a), above, shall include the following information and certification:

- (1) The recipient's name;
- (2) The CWSRF project number;
- (3) A brief project description;
- (4) The name and title of the authorized representative providing the certification;
- (5) The date of the certification;
- (6) A statement that the project meets applicable design standards; and
- (7) A statement either that the project is not subject to any effluent limitations or that the project is in compliance with all applicable effluent limitations.

(c) The authorized representative shall sign and date the certification. Such signature shall constitute certification by the applicant that:

- (1) The information provided is true, complete, and not misleading to the best of the signer's knowledge and belief;
- (2) The signer understands that any official department determination that the recipient has complied with the terms and conditions of the loan that is based on false, incomplete, or misleading information is subject to modification, up to and including reversal, through an adjudicative proceeding conducted in accordance with applicable provisions of Env-C 200.; and
- (3) The signer is subject to the penalties specified in New Hampshire law, currently RSA 641:3, for making unsworn false statements.

(d) If the signer is or is acting on behalf of a listed engineer as defined in Env-C 502.10, the signature also shall constitute certification that the signer understands that the submittal of false, incomplete, or misleading information is grounds for debarring the listed engineer from the roster.

- (e) The recipient may use a form obtained from the department to provide the certification required by (a), above.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

PART Env-Wq 511 WAIVERS

Env-Wq 511.01 Purpose. The purpose of the rules in this part is to accommodate situations in which strict compliance with all rules in this chapter may not be in the best interests of the public or the CWSRF.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 511.02 Procedures.

(a) Any applicant or recipient who is or would be directly and adversely affected by the strict application of a rule in Env-Wq 500 may request a waiver thereof.

(b) Each request for a waiver shall be filed in writing.

(c) Each request for a waiver shall include the information specified in Env-Wq 511.03 and be signed as required by Env-Wq 511.04.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 511.03 Content and Format of Requests. The person requesting the waiver shall provide the following information:

(a) The name, mailing address, and daytime telephone number of the requestor;

(b) The project to which the waiver request relates;

(c) The number(s) of the specific section(s) of the rules for which a waiver is sought;

(d) A full explanation of why a waiver is being requested, including an explanation of the economic and operational consequences of complying with the rule as written;

(e) If applicable, a full explanation of the alternate(s) proposed to be substituted for the requirement in the rule, including documentation or data, or both, to support the alternative;

(f) Whether the need for the waiver is time-limited and, if so, the estimated length of time the waiver will be needed; and

(g) A full explanation of why the applicant believes that having the waiver granted will meet the criteria specified in Env-Wq 511.05.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 511.04 Signature Required.

(a) The person requesting the waiver shall sign the request.

(b) The signature shall constitute certification that:

(1) The information provided is true, complete, and not misleading to the best of the signer's knowledge and belief; and

(2) The signer understands that any waiver granted based on false, incomplete, or misleading information shall be subject to revocation; and

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(3) The signer is subject to the penalties specified in New Hampshire law, currently RSA 641:3, for making unsworn false statements.

(c) If the signer is or is acting on behalf of a listed engineer as defined in Env-C 502.10, the signature also shall constitute certification that the signer understands that the submittal of false, incomplete, or misleading information is grounds for debarring the listed engineer from the roster.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 511.05 Criteria.

(a) Subject to (b), below, the department shall grant a waiver if:

(1) Granting the waiver, conditional upon implementation of alternatives, if applicable, will result in circumstances that are as protective of the public, the environment, and the integrity of the CWSRF program as complying with the requirements contained in this chapter;

(2) Granting the waiver, conditional upon implementation of alternatives, if applicable, will not adversely impact the department's obligations under RSA 486, the CWA, or any capitalization grant; and

(3) Strict adherence to the rule would not be in the best interest of the public, the environment, or the CWSRF.

(b) No waiver shall be granted if the effect of the waiver would be to waive or modify a state or federal statutory requirement, including but not limited to any requirement of RSA 486, the CWA, or a capitalization grant, unless:

(1) Such statute or grant expressly provides that the requirement may be waived or modified; and

(2) In the case of a federal statute or capitalization grant, EPA does not object to granting the waiver.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

Env-Wq 511.06 Decisions.

(a) The department shall notify the person requesting the waiver of the decision in writing within 30 days of receiving a complete request. If the request is denied, the department shall specify the reason(s) for the denial in the notice.

(b) The department shall include such conditions in a waiver as are necessary to ensure that the criteria specified in Env-Wq 511.05 are met, including if applicable the implementation of alternatives.

(c) If the need for a waiver is temporary, the waiver shall specify the date on which it will expire.

Source. (See Revision Notes #1-#3 at chapter heading) ss by #10984, eff 12-1-15

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**APPENDIX A: STATE AND FEDERAL STATUTES, REGULATIONS IMPLEMENTED**

<b>Rule</b>	<b>State Statute(s) Implemented</b>	<b>Federal Statute(s), Regulations Implemented</b>
Env-Wq 501-502	RSA 486:14	33 U.S.C. §§1251-1387; 40 CFR Part 35, Subparts I & K
Env-Wq 503	RSA 486:14	33 U.S.C. §§1251-1387; 40 CFR §35.2012, 3110 , 3135
Env-Wq 504	RSA 486:14	33 U.S.C. §§1251-1387; 40 CFR §35.3115, 3120, 3125,
Env-Wq 505	RSA 486:14	33 U.S.C. §§1251-1387; 40 CFR §35.3150
Env-Wq 506	RSA 486:14	33 U.S.C. §§1251-1387; 40 CFR Part 35, Subparts I & K
Env-Wq 507	RSA 486:14	33 U.S.C. §§1251-1387; 40 CFR §35.3120, 3135
Env-Wq 508	RSA 486:14	33 U.S.C. §§1251-1387; 40 CFR 35.2113, 3140
Env-Wq 509	RSA 485-A:4, XIII; RSA 486:14	33 U.S.C. §§1251-1387; 40 CFR Part 35, Subparts I & K
Env-Wq 510	RSA 486:14	33 U.S.C. §§1251-1387; 40 CFR Part 35, Subparts I & K
Env-Wq 511	RSA 541-A:22, IV	

**APPENDIX B: STATUTORY DEFINITIONS**

**RSA 485-A:2:**

VI. “Industrial waste” means any liquid, gaseous or solid waste substance resulting from any process of industry, manufacturing trade or business or from development of any natural resources.

VIII. “Other wastes” means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, ashes, offal, oil, tar, chemicals and other substances other than sewage or industrial wastes, and any other substance harmful to human, animal, fish or aquatic life.

IX. “Person” means any municipality, governmental subdivision, public or private corporation, individual, partnership, or other entity.

IX-a. “Septage” means material removed from septic tanks, cesspools, holding tanks, or other sewage treatment storage units, excluding sewage sludge from public treatment works and industrial waste and any other sludge.

X. “Sewage” means the water-carried waste products from buildings, public or private, together with such groundwater infiltration and surface water as may be present.

XI-a. “Sludge” means the solid or semisolid material produced by water and wastewater treatment processes, excluding domestic septage; provided, however, sludge which is disposed of at solid waste facilities permitted by the department is considered solid waste and regulated under RSA 149-M.

XIX. “Wastewater facilities” means the structures, equipment, and processes required to collect, convey, and treat domestic and industrial wastes, and dispose of the effluent and sludge.

XVI-a. “Wastewater treatment plant” means the treatment facility or group of treatment devices which treats domestic or combined domestic and industrial wastewater through alteration, alone or in combination, of the physical, chemical, or bacteriological quality of the wastewater and which dewater and handles sludge removed from the wastewater.