

*Readopt with amendment Env-Dw 1100, eff. 1-24-15 (doc. #10772), to read as follows:*

## CHAPTER Env-Dw 1100 DRINKING WATER STATE REVOLVING LOAN FUND PROGRAM

Statutory Authority: RSA 486:14, I(a) & (c)

### PART Env-Dw 1101 PURPOSE; APPLICABILITY; USE OF STANDARD TERMS

Env-Dw 1101.01 Purpose. The purpose of this chapter is to implement RSA 486:14 and 40 CFR Part 35, Subpart L, by establishing:

- (a) The procedures and criteria applicable to public water systems that apply to the state for financial assistance from the drinking water state revolving loan fund (DWSRF) established pursuant to RSA 486:14; and
- (b) The requirements for completing projects financed under the DWSRF, complying with DWSRF program loan conditions, and repaying or otherwise returning such assistance.

Env-Dw 1101.02 Applicability. This chapter shall apply to any community water system or non-community non-profit water system that applies for financial assistance from the DWSRF.

Env-Dw 1101.03 Standard Terms. Any terms used in this chapter that are subject to Env-Dw 101.03 or that are defined in Env-Dw 103 shall have the meaning established therein.

### PART Env-Dw 1102 CHAPTER-SPECIFIC DEFINITIONS

Env-Dw 1102.01 “Administrative costs” means expenses associated with managing DWSRF projects. The term includes but is 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.

Env-Dw 1102.02 “Allonge” means an amendment to initial loan documents in which the final project cost and repayment terms are established.

Env-Dw 1102.03 “Applicant” means an entity that files a pre-application or an application, or both, for financial assistance from the DWSRF.

Env-Dw 1102.04 “Application” means the written document(s), with attachments, through which financial assistance is requested. The term includes the pre-application and the final application.

Env-Dw 1102.05 “Asset maintenance and renewal plan” means a plan developed and implemented by a recipient to maintain and eventually replace water system infrastructure funded in whole or in part by the DWSRF.

Env-Dw 1102.06 “Asset management program” means a systematic process of financing, inventorying, assessing, operating, maintaining, upgrading, and replacing assets.

Env-Dw 1102.07 “Authorized representative” means an individual authorized by the applicant to sign documents associated with applying for and receiving funds from the DWSRF.

Env-Dw 1102.08 “Binding commitment” means a legal obligation between the state and a recipient that defines the terms and the timing for assistance under the DWSRF.

Env-Dw 1102.09 “Bypass procedure” means the process used to skip over a project on the project priority list that is not ready to proceed.

Env-Dw 1102.10 “Capitalization grant” means funds made available to the state by the federal government for use in the DWSRF program in accordance with:

- (a) Section 1452 of the federal Safe Drinking Water Act, codified as 42 U.S.C. §300j-12 (federal SDWA); or

(b) Any other applicable federal initiative.

Env-Dw 1102.11 “Construction” means the erection, building, acquisition, alteration, remodeling, improvement, or extension of any components of a water system.

Env-Dw 1102.12 “Contingency section” means the portion of a project priority list consisting of projects that might receive financial assistance due to a bypass procedure or additional funds becoming available.

Env-Dw 1102.13 “Department” means the department of environmental services.

Env-Dw 1102.14 “Disbursement” means a transfer of funds from the DWSRF to a recipient.

Env-Dw 1102.15 “Eligible costs” means project costs that are eligible for funding from the DWSRF, as specified in Env-Dw 1104.01.

Env-Dw 1102.16 “Eligible entity” means a governmental entity or non-governmental entity that owns an eligible system as defined in 40 CFR §35.3520, reprinted in Appendix C.

Env-Dw 1102.17 “Engineering services” means consultations, investigations, reports, or other services relating to the design or construction, or both, of projects for which RSA 310-A requires a licensed professional engineer.

Env-Dw 1102.18 “Environmental review” means an analysis of the potential impact on the human and natural environment of a project for which funding is sought from the DWSRF.

Env-Dw 1102.19 “Excusable delay” means a delay that is beyond the recipient’s control in beginning or completing the planning, design, construction, or implementation of a project, such as a delay caused by an act of nature or war.

Env-Dw 1102.20 “Final project cost” means the dollar amount of eligible project expenditures plus any unpaid interest on the loan accrued during project planning, design, or construction, or any combination thereof.

Env-Dw 1102.21 “Financial assistance” means funds provided from the DWSRF to pay, in whole or in part, eligible costs for a project, in any of the formats allowed by 40 CFR §35.3525, reprinted in Appendix C.

Env-Dw 1102.22 “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 DWSRF. The term includes original loan agreements, supplemental loan agreements, initial loan documents, and allonges.

Env-Dw 1102.23 “Fundable portion” means the portion of a project priority list that identifies projects scheduled for financial assistance within the limits of currently-available funds.

Env-Dw 1102.24 “Funding year” means the year that a project is funded from the DWSRF.

Env-Dw 1102.25 “Governing body” means the group of individuals that has the authority and responsibility to authorize the applicant to enter into contracts and expend funds. The term applies to governmental entities as well as non-governmental entities.

Env-Dw 1102.26 “Governmental entity” means any of the following that has responsibility for providing drinking water for public consumption or otherwise funding a water system:

- (a) Any state agency, board, or commission;
- (b) Any political subdivision of the state, including but not limited to a county, city, town, or district; and
- (c) Any other public body created under state law.

Env-Dw 1102.27 “Green project” means an infrastructure project that:

- (a) Uses natural systems in place of or to supplement existing infrastructure or to protect or supplement water supply sources; or
- (b) Incorporates water- or energy-efficiency improvements or other environmentally-protective measures.

Env-Dw 1102.28 “Infrastructure” means all structures and all mechanical and electrical equipment that connect a source of water to end users in a water system or that provide source water protection, including but not limited to all sources, treatment, storage, and distribution facilities and the land necessary therefor.

Env-Dw 1102.29 “Infrastructure project” means a project intended to control, improve, or develop a water system’s source of water or its infrastructure, including the requisite planning, land acquisition, design, and construction. The term includes a green project.

Env-Dw 1102.30 “Initial loan documents” means the initial financial assistance agreement between the state and a non-governmental recipient through which the state agrees to provide funds from the DWSRF to the recipient and the recipient promises to use the funds as specified in its application and to repay the funds to the DWSRF.

Env-Dw 1102.31 “Initiation of operation” means the date on which a project that was funded in whole or in part using funds from the DWSRF is placed into use for the purposes for which it was intended.

Env-Dw 1102.32 “Intended use plan (IUP)” means a document prepared by the department in accordance with 40 CFR 35.3555.

Env-Dw 1102.33 “Land acquisition” means the purchase of an interest in land that is needed to complete an eligible project, whether in fee or by easement. The term includes associated professional services such as appraisals, title searches, title opinions, and title insurance.

Env-Dw 1102.34 “Maintenance” means actions taken to preserve the functional integrity and efficiency of infrastructure. The term includes preventive maintenance, corrective maintenance, and replacement of equipment and other infrastructure components, including but not limited to roofing, signs, and fences.

Env-Dw 1102.35 “Materially or significantly affect project cost or estimated revenues” means a change in estimated costs or revenues of more than 10%.

Env-Dw 1102.36 “Materially or significantly affect project design” means a change that would:

- (a) Alter the project’s performance standards;
- (b) Alter the type of water treatment provided by the project;
- (c) Delay or accelerate the project schedule by more than 10%; or
- (d) Alter the design drawings and specifications, or the location, size, capacity, or quality of any major part of the project, such that amended plans and specifications are required under RSA 485:8 or the applicable sections of Env-Dw 400.

Env-Dw 1102.37 “Non-traditional project” means a project other than one that will replace or enhance existing water treatment, storage, or distribution infrastructure.

Env-Dw 1102.38 “Operation” means control of the processes and equipment that make up the water system. The term includes financial and personnel management, records, laboratory control, process control, safety, and emergency operation planning.

Env-Dw 1102.39 “Operation and maintenance” means activities required to ensure the safe, dependable, and economical function of a water system.

Env-Dw 1102.40 “Original loan agreement” means the initial financial assistance agreement between the state and a governmental recipient through which the state agrees to provide funds from the DWSRF to the recipient and the recipient promises to repay the funds to the DWSRF.

Env-Dw 1102.41 “Person” means “person” as defined in RSA 485:1-a, XIII, reprinted in Appendix B.

Env-Dw 1102.42 “Planning” for purposes of an eligible infrastructure project means preparing and evaluating reports and studies of alternative solutions to water system problems in order to select the most cost-effective feasible option.

Env-Dw 1102.43 “Pledge” means the act or process through which a recipient commits, obligates, and encumbers its real or personal property or its existing or anticipated revenues to the state as security and means for repayment of the financial assistance received by the recipient from the DWSRF.

Env-Dw 1102.44 “Priority system” means the criteria in the IUP for ranking projects on the project priority list.

Env-Dw 1102.45 “Project” means the project proposed to be completed with DWSRF funding, including the planning, design, or construction, or any combination thereof, of any or all aspects of the project. The term includes infrastructure projects and non-traditional projects.

Env-Dw 1102.46 “Project cost” means the applicant’s total direct and incidental costs of acquiring services, materials, and land, constructing infrastructure, and implementing the project for which assistance is sought.

Env-Dw 1102.47 “Project priority list (PPL)” means the list of projects for which DWSRF assistance is expected to be offered in current and subsequent years. A project priority list can include a fundable portion and a contingency section.

Env-Dw 1102.48 “Project priority points” means the total number of points assigned to a project by using the priority system established in the applicable IUP.

Env-Dw 1102.49 “Recipient” means an applicant that receives financial assistance from the DWSRF.

Env-Dw 1102.50 “Repayment” means the payment of principal or interest, or both, on funds received as a loan by a recipient from the DWSRF.

Env-Dw 1102.51 “Replacement” means the installation of new or refurbished equipment, accessories, or appurtenances for existing equipment, accessories, or appurtenances that no longer perform as originally intended.

Env-Dw 1102.52 “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 when the project’s plan and scope of work indicate supervision by an engineer is required.

Env-Dw 1102.53 “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 and regulatory requirements associated with the contract;
- (d) Is able to deliver or otherwise perform according to the contract schedule;
- (e) Has either a history of satisfactory performance or no history of unsatisfactory performance;
- (f) Has good reputation for integrity; and

(g) Has or can obtain necessary data, equipment, and other resources to perform the contract.

Env-Dw 1102.54 “Scheduled completion date” means the date stated in the original loan agreement or initial loan documents on which the project that received DWSRF funds is intended to be placed into use for the purposes for which it was intended.

Env-Dw 1102.55 “Security” means real or personal property or other collateral that is pledged by a non-governmental recipient to ensure repayment of a loan to the state.

Env-Dw 1102.56 “Significant adverse comments” means comments that cause the department to conclude that the recommended action might not be the alternative with the best balance between minimizing environmental impact and maximizing benefit to the applicant’s project.

Env-Dw 1102.57 “Source water protection (SWP)” means protection of the source of drinking water by delineating the area to be protected, acquiring undeveloped land or easements on such land in the protection area, identifying land uses which may threaten its use for water supply, managing or eliminating identified threats, and contingency planning.

Env-Dw 1102.58 “State revolving fund (SRF) attorney” means the attorney(s) under contract to the department for the purpose of providing:

- (a) Legal review of initial loan documents and allonges; and
- (b) Other legal services associated with providing financial assistance to non-governmental entities.

Env-Dw 1102.59 “State revolving fund (SRF) financial advisor” means the individual or entity under contract to the department for the purpose of assessing the financial risk of providing financial assistance to non-governmental entities.

Env-Dw 1102.60 “State” means the state of New Hampshire.

Env-Dw 1102.61 “State match” means funds equaling the percentage of the capitalization grant that the federal SDWA requires the state to deposit into the DWSRF.

Env-Dw 1102.62 “Substantial completion” means that construction of the project, or a discrete part thereof, is sufficiently completed that the project or discrete part can be used for the purposes for which it is intended.

Env-Dw 1102.63 “Supplemental loan agreement” means an amendment to the original loan agreement between the state and a governmental recipient that stipulates the final project cost and applicable repayment terms.

Env-Dw 1102.64 “User charge” means a charge levied on users of a water system for the user’s share of the cost of water system operation and maintenance, plus any allocable portion of capital improvements.

Env-Dw 1102.65 “Water system” means a public water system as defined by RSA 485:1-a, XV, reprinted in Appendix B.

#### PART Env-Dw 1103 ESTABLISHMENT OF DWSRF

Env-Dw 1103.01 Authority for Loan Fund. RSA 486:14, I(a) authorizes New Hampshire “to participate in the federally funded state ... drinking water revolving loan funds or grants as may be provided under the ... Safe Drinking 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.”

Env-Dw 1103.02 Deposits to DWSRF. Pursuant to RSA 486:14, the state shall deposit in the DWSRF 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 DWSRF on a schedule coinciding with the payment of federal funds into the DWSRF;
- (c) Repayments of principal and interest by recipients;
- (d) Investment earnings credited to the assets of the DWSRF, which shall become part of the total assets of the DWSRF; and
- (e) Any other funds as may be appropriated or available.

Env-Dw 1103.03 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 in accordance with RSA 91-A.

#### PART Env-Dw 1104 ELIGIBILITY; PRE-APPLICATION REQUIREMENTS

##### Env-Dw 1104.01 Eligible Projects and Costs.

- (a) The following shall be eligible for financial assistance from the DWSRF:
  - (1) The categories of projects identified in 40 CFR § 35.3520(b), including but not limited to the following:
    - a. Installation, replacement, rehabilitation, or enhancement of treatment facilities so as to meet MCLs or SMCLs;
    - b. Rehabilitation or replacement of distribution systems and facilities;
    - c. Source development and rehabilitation;
    - d. Installation, rehabilitation, or enhancement of storage facilities;
    - e. Interconnections between water systems owned by eligible entities; and
    - f. Interconnections needed to consolidate water supplies where a supply has become contaminated or a system is unable to maintain compliance for technical, financial, or managerial reasons; and
  - (2) Any other projects authorized by EPA, including but not limited to:
    - a. Meters and meter reading equipment;
    - b. Innovative environmental projects that increase water use efficiency, reduce energy usage, or supplement existing infrastructure; and
    - c. Non-traditional projects.
- (b) Eligible costs shall be as identified in 40 CFR §35.3520(c), subject to the following:
  - (1) Eligible land acquisition costs shall be limited to acquisition of an interest in land, whether in fee or by easement, that is needed to complete the eligible project, the value of which shall be calculated based on fair market value as determined by a certified appraisal; and
  - (2) Preparation of an asset management program, including an asset maintenance and renewal plan, shall be eligible for financial assistance from the DWSRF.

Env-Dw 1104.02 Additional Eligibility Criteria. In order to be eligible for financial assistance from the DWSRF, infrastructure projects also shall:

- (a) Comply with applicable federal requirements;
- (b) Comply with applicable state design criteria as specified in Env-Dw 400;
- (c) For water supply treatment, distribution, or storage projects, meet eligible design capacity as determined in accordance with the following:
  - (1) The eligible design capacity shall be based on average daily flow and peak flows in accordance with population and per capita flow figures;
  - (2) Eligible design capacity for treatment facilities shall be based on a period of 20 years from the estimated date of initiation of operation; and
  - (3) Eligible design capacity for water distribution mains and intake or raw water mains shall be based on 40 years from the estimated date of initiation of operation;
- (d) If a distribution system, consist of the common lines of the water system that distribute water directly from source or treatment facilities; and
- (e) Meet any other requirements specified in the applicable capitalization grant.

Env-Dw 1104.03 Pre-Application Procedures.

- (a) If requested by an entity that wants to apply for DWSRF 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 receive financial assistance from the DWSRF shall file a pre-application by:
  - (1) Completing a pre-application as described in Env-Dw 1104.04;
  - (2) Signing and certifying the pre-application as described in Env-Dw 1104.05; and
  - (3) Submitting the completed, signed pre-application:
    - a. Electronically, per the instructions in the pre-application announcement; or
    - b. In writing, by US Postal Service mail, private delivery service, or other in-hand delivery to:
 

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

Env-Dw 1104.04 Pre-Application Information.

- (a) To be processed as provided in Env-Dw 1104.06(a), the applicant shall provide the following information to the department on a document to facilitate the submission of pre-application information attached or linked to the pre-application announcement issued by the department:
  - (1) The water system's name and the town or city in which it is located;
  - (2) The water system's PWS identifier;
  - (3) The name, title, email address, and daytime telephone number of the applicant's point of contact (POC) for the pre-application;
  - (4) A short title for the project;

- (5) A concise description of the proposed project, for example “replace water main on Elm Street” or “upgrade treatment and storage system”;
- (6) The amount of loan requested;
- (7) The loan term requested; and
- (8) If the applicant uses a paper-based pre-application, the name and title of the individual authorized by the applicant to sign the pre-application on behalf of the applicant.

(b) The applicant also shall provide to the department as much of the following information as practicable:

- (1) A concise description of the need for the proposed project, including how it will address public health protection, whether it includes any energy or water efficiency components, and whether any alternatives have been considered;
- (2) An estimate of total project costs, including construction costs, a construction contingency, and estimated planning and engineering costs, plus the amount and a description of any other costs;
- (3) The current residential water rate per single family home per year;
- (4) The median household income of the population served, which may be based on:
  - a. The results of an income survey done within the prior 3 years;
  - b. Data from the American Community Survey, available at <http://www.census.gov/acs>; or
  - c. Data available on the department’s website;
- (5) The date the applicant received governing body approval to borrow funds for the project or the date the applicant anticipates receiving such approval; and
- (6) The anticipated date that the:
  - a. Design will be started;
  - b. Construction contract will be awarded; and
  - c. Project will be completed.

Env-Dw 1104.05 Pre-Application Signatures and Certifications.

(a) The applicant shall sign and date the pre-application as follows:

- (1) If the applicant uses a paper-based pre-application, the applicant’s authorized representative shall sign and date the pre-application and print his or her name and title in the location indicated; and
- (2) If the applicant uses the electronic pre-application, submitting the pre-application shall constitute the signature and the date the submission is received by the department shall constitute the date of the pre-application.

(b) Submission of the pre-application, whether electronically or on paper, shall constitute certification by the applicant that:

- (1) The information provided is true, not misleading, and as complete as practicable, to the knowledge and belief of the applicant;
- (2) The applicant understands that any department determination that the applicant and the applicant’s project qualifies for funding from the DWSRF 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 for falsification in official matters, currently RSA 641.

(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 also shall constitute certification that the signer understands that the submittal of false or misleading information is grounds for debarring the listed engineer from the roster.

#### Env-Dw 1104.06 Department Processing of Pre-applications.

(a) The department shall include the applicant's project on the preliminary project priority list (PPL) prepared pursuant to Env-Dw 1105.02 if:

- (1) The pre-application contains sufficient information for the department to determine the identity of the applicant and the applicant's POC, the nature and scope of the proposed project, and the term and amount of funding likely to be needed;
- (2) The applicant is an eligible entity; and
- (3) The proposed project meets the criteria specified in Env-Dw 1104.01 and Env-Dw 1104.02.

(b) If the applicant's project does not meet the criteria in (a), above, to be placed on the preliminary PPL, the department shall notify the applicant of the reason(s) why in writing within 14 days of making the determination.

(c) In response to being notified that a project cannot be placed on the preliminary PPL, an applicant that is an eligible entity may modify or supplement any information and submit a new pre-application to the department no later than the end of the public comment period established pursuant to Env-Dw 1105.04(b)(2).

### PART Env-Dw 1105 ESTABLISHING PRIORITY FOR FUNDING

#### Env-Dw 1105.01 Prioritization of Proposed Projects.

(a) The department shall rank each project that is placed on the preliminary project priority list (PPL) pursuant to Env-Dw 1104.06 according to the priority system established in the applicable intended use plan (IUP) based on the following objectives:

- (1) Achieving compliance with the federal SDWA;
- (2) Furthering public health protection;
- (3) Maintaining affordability for the water user; and
- (4) Achieving compliance with any applicable requirements of the specific capitalization grant from which the funds are provided.

(b) If available funds are sufficient to fund all projects for which pre-applications are accepted, the preliminary PPL shall contain the information specified in Env-Dw 1105.02 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 PPL 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) If 2 or more projects on the list have equal points under the project priority system, the project with the greatest existing population served shall receive the higher ranking.

Env-Dw 1105.02 Preliminary Project Priority List (PPL). The department shall prepare a preliminary PPL by listing the eligible projects in order of their priority as established pursuant to Env-Dw 1105.01, together with the following information for each project on the list:

- (a) The name of the applicant;
- (b) The name and location of the applicant's water system;
- (c) The short title for the project that was provided pursuant to Env-Dw 1104.04(a)(4);
- (d) The population served by the water system;
- (e) Whether the service area qualifies for disadvantaged community status, considering its median household income if known at the time of submission of the pre-application;
- (f) Project priority points in accordance with the priority system; and
- (g) The amount of financial assistance requested.

Env-Dw 1105.03 Proposed Intended Use Plan (IUP).

(a) For each capitalization grant, the department shall prepare a proposed IUP that complies with 40 CFR §35.3555, any DWSRF guidance issued by EPA, and any requirements established in the applicable capitalization grant.

- (b) The proposed IUP shall include:
  - (1) The items required by 40 CFR §35.3555, as reprinted in Appendix C;
  - (2) A description of any funding available for non-traditional projects;
  - (3) A description of any funding options being offered by or through the department in addition to those listed in Env-Dw 1107.01(a)(1)-(4); and
  - (4) An explanation of how interest rates that comply with 42 U.S.C. 300j-12(f)(1)(A) will be established for funds provided under the proposed IUP, including whether the interest rate will be subject to adjustment in response to market conditions.
- (c) The proposed IUP shall be subject to public comment and review as specified in Env-Dw 1105.04.

Env-Dw 1105.04 Opportunity to Comment; Final IUP, PPL.

(a) The department shall provide an opportunity for applicants and the public to review and comment on the proposed IUP and the preliminary PPL in accordance with this section.

- (b) The department shall:
  - (1) Schedule a non-adjudicative public hearing to receive comments on the proposed IUP and the preliminary PPL;
  - (2) Establish a deadline for receiving written public comments, which shall be not less than 5 non-holiday weekdays after the public hearing;

- (3) At least 7 calendar days prior to the scheduled public hearing, send to each person that filed a pre-application a notice of the hearing and deadline for public comment together with a copy of, or a link to, the proposed IUP and the preliminary PPL; and
- (4) At least 7 calendar days prior to the date of the hearing, post on its web site, [www.des.nh.gov](http://www.des.nh.gov):
  - a. A notice that the proposed IUP and preliminary PPL are available for review and comment, together with the date, time, and place of the public hearing and the deadline for submitting comments; and
  - b. A copy of the proposed IUP and preliminary PPL.

(c) The department shall:

- (1) Conduct the public hearing in accordance with the provisions of Env-C 200 that apply to non-adjudicative proceedings;
- (2) Provide information about the proposed IUP and the preliminary PPL; and
- (3) Accept oral and written comments on the documents.

(d) After the end of the public comment period, the department shall consider all comments received and finalize the proposed IUP and preliminary PPL by making such adjustments as are appropriate based on the comments, including but not limited to revising the number of priority points assigned to a project based on additional or revised information and re-ordering the projects to account for the changed point totals.

Env-Dw 1105.05 Allocation of Funds.

(a) After completing the process specified in Env-Dw 1105.03, the department shall allocate the available funds starting with the highest priority project on the PPL and proceeding down the PPL until all available funds have been allocated. The projects for which funding is initially available shall comprise the fundable portion of the PPL. Any projects for which funding is not initially available shall be listed in the contingency section of the PPL.

(b) Within the limits of available funds, the department shall fund projects over multiple years if project design and all phases of construction cannot be accomplished within the timeframes established in the IUP prepared pursuant to Env-Dw 1105.04. Subsequent portions of such projects shall be listed in the funded portion of the following year's PPL, and in the funded portion for future years, as applicable.

(c) The PPL that results from (a) and (b), above, shall:

- (1) Become effective and supersede all previous lists upon finalization of the IUP as specified in Env-Dw 1105.04; and
- (2) Remain in effect until such time as it is superseded by a new list, subject to Env-Dw 1105.06.

(d) The department shall notify each person who submitted a pre-application of whether the person's project is on the fundable or contingency portion of the PPL. For those applicants whose projects are on the fundable portion, the department shall provide instructions for filing a final application as described in Env-Dw 1106.01.

Env-Dw 1105.06 Management of the PPL.

(a) A project on the fundable portion of the PPL shall be bypassed if the project will not be ready to proceed during the funding year. Projects that have been bypassed shall be placed in the contingency section and funded if the project is ready to proceed when sufficient funds become available.

(b) The department shall update the PPL as needed to reflect any necessary changes, such as revised estimated construction assistance amounts and project bypass.

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

- (d) The department shall remove a project from the PPL if any of the following is true:
- (1) The project is fully funded from other sources;
  - (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;
  - (3) The applicant informs the department in writing that it does not intend to pursue financial assistance from the DWSRF; or
  - (4) The applicant loses its managerial or financial capability to construct and implement the project.

#### PART Env-Dw 1106 PROCEDURES FOR RECEIPT OF DWSRF FUNDS

Env-Dw 1106.01 Final Application Requirements. An applicant whose project is on the PPL who wishes to obtain funding shall submit to the department, on the applicable document to facilitate the submission of information the applicant obtains from the department, the following:

- (a) The information required for a final application specified in Env-Dw 1106.03;
- (b) Confirmation of the applicant's authority to borrow as specified in Env-Dw 1106.04;
- (c) Information regarding the environmental review required by Env-Dw 1108, as specified in Env-Dw 1106.05;
- (d) A capacity assurance self-assessment as specified in Env-Dw 1106.06;
- (e) The bank information specified in Env-Dw 1106.07;
- (f) A planning document as specified in Env-Dw 1106.08; and
- (g) Verification of a revenue program as specified in Env-Dw 1106.09.

Env-Dw 1106.02 Conditions Arising from Application. By applying for financial assistance, the applicant shall be deemed to have agreed 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 DWSRF to the recipient is outstanding, the recipient 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, and other information possessed by the recipient or its contractors, agents, employees or representatives which relate in any respect to the receipt, deposit, or expenditure of financial assistance funds; and
- (b) After project completion, the recipient shall allow the department to conduct periodic site visits to confirm that the project is functioning as intended.

Env-Dw 1106.03 Information Required for Final Application. The information required by Env-Dw 1106.01(a) shall be as follows:

- (a) The water system's name and PWS identifier;

- (b) Whether the applicant is a governmental or non-governmental eligible entity;
- (c) The water system's mailing address, including street name and number or post office box number, city or town, and zip code;
- (d) The name, title, email address, and daytime telephone number including area code of the applicant's contact for:
  - (1) Questions regarding the final application; and
  - (2) Repayment billing;
- (e) A short title for the project;
- (f) The primary location where the work will be done;
- (g) A concise explanation of the need for the proposed project, including how it will address public health protection, whether it includes any energy or water efficiency components, and whether any alternatives have been considered;
- (h) An estimate of the following project costs:
  - (1) Estimated construction costs;
  - (2) A construction contingency of 10%;
  - (3) Estimated planning and engineering costs;
  - (4) The amount and a description of any other costs; and
  - (5) The total estimated costs;
- (i) The amount of the loan being requested;
- (j) The term requested based on Env-Wq 1107.04(c), table 1107-1;
- (k) The current residential water rate per single family home per year;
- (l) The tentative project schedule, including:
  - (1) The actual or anticipated date the applicant was or will be authorized by its governing body to borrow funds for the project;
  - (2) The actual or anticipated date the design was or will be started;
  - (3) The anticipated date the construction contract will be awarded; and
  - (4) The anticipated date the project will be completed;
- (m) The applicant's data universal numbering system (DUNS) number or, if the applicant does not have a DUNS number, the DUNS number obtained by the applicant from the Dun & Bradstreet (D&B) website at <http://www.dnb.com/duns-number.html>;
- (n) A state vendor code number obtained pursuant to the vendor code requirements established by the New Hampshire department of administrative services, currently Adm 603;
- (o) For a non-governmental applicant, whether the applicant received the threshold amount or more in U.S. federal contracts, subcontracts, loans, grants, subgrants, or cooperative agreements, or any combination thereof as required for prime recipient executive compensation reporting in accordance with Public Law 109-282, the Federal Funding Accountability and Transparency Act of 2006 as amended;

(p) The name and title of the individual authorized by the applicant to sign the application on behalf of the applicant;

(q) 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;

(r) For non-governmental applicants, documentation of the extent of the applicant's existing debt; and

(s) A copy of the applicant's latest annual report or financial statements.

Env-Dw 1106.04 Applicant's Authority to Borrow.

(a) For a governmental applicant, the confirmation required by Env-Dw 1106.01(b) shall consist of proof that the applicant's governing body passed or approved a valid warrant article or resolution, as applicable, that:

(1) Authorizes the applicant to:

- a. Raise, appropriate, and spend the amount of funds to be requested for the identified project;
- b. Apply for funding for the identified project; and
- c. Enter into a binding contract to repay all funds received as a loan;

(2) Designates an individual, by title and name, to be the applicant's authorized representative for purposes of:

- a. Signing and filing the application and furnishing such information, data, and documents pertaining to the application as required; and
- b. If financial assistance is awarded, furnishing such information, data, and documents pertaining to disbursements of the funds;

(3) Identifies, by name and title, each individual who is authorized to sign the original loan agreement and supplemental loan agreement should funds be awarded; and

(4) Binds the applicant to operate and maintain all facilities constructed or modified with the funds received in accordance with all applicable requirements.

(b) For a non-governmental applicant, the confirmation required by Env-Dw 1106.01(b) shall consist of proof that the applicant's governing body passed a valid resolution that:

(1) Authorizes the applicant to:

- a. Apply for funding from the DWSRF for the identified project;
- b. Enter into a binding contract to repay all funds received as a loan; and
- c. Pledge security to the state to ensure such repayment;

(2) Designates an individual, by title and name, to be the applicant's authorized representative for purposes of:

- a. Signing and filing the application and furnishing such information, data, and documents pertaining to the application as required; and
- b. If financial assistance is awarded, furnishing such information, data, and documents pertaining to disbursements of the funds;

(3) Includes any other approval actions required to authorize borrowing of funds;

(4) Identifies, by name and title, each individual who is authorized to sign the initial loan document, allonge, and such promissory notes and security instruments as are required to complete the pledge of security should funds be awarded; and

(5) Binds the applicant to operate and maintain all facilities constructed or modified with the funds received in accordance with all applicable requirements.

(c) A non-governmental applicant shall submit with the proof required by (b), above, copies of:

(1) The applicant's bylaws or articles of incorporation, or both, as applicable; and

(2) The approved minutes of the meeting at which the resolution was approved.

(d) The proof required by (a) or (b), above, shall be in a written document that is certified and sealed by:

(1) The town clerk or equivalent for a governmental entity; or

(2) The board secretary or comparable official for a non-governmental entity.

(e) The applicant may provide the proof required by (a) or (b), above, in the format shown in the appropriate template obtained from the department.

Env-Dw 1106.05 Report of Environmental Review. The information required by Env-Dw 1106.01(c) shall be as follows:

(a) The water system's name, mailing address, and PWS identifier;

(b) The short title for the project;

(c) An introductory paragraph that reads as follows, with the water system's name filled in:

"The \_\_\_\_\_ [PWS Name] \_\_\_\_\_ has applied for funds through the State of New Hampshire Department of Environmental Services Drinking Water State Revolving Loan Fund (DWSRF), in accordance with NH Code Admin. Rules Env-Dw 1100. This document fulfills the requirements of Env-Dw 1106.01(c) relative to providing information on the environmental review required by Env-Dw 1108."

(d) An overview of the applicant's water system and its customers, including the system's source(s), capacity, number of service connections, and approximate population served;

(e) An explanation of the need and justification for the proposed project;

(f) A description of the scope of the proposed project, including estimated costs;

(g) A list of each document that is available for public review that supplements the information provided pursuant to (e)-(g), above;

(h) A summary of potential environmental impacts arising from the proposed project relative to air emissions, noise, surface water, groundwater, wetlands, wildlife, and habitat;

(i) A summary of potential impacts on the community in terms of social and economic aspects, recreation, historic sites, and indirect impacts;

(j) The date the applicant's governing body authorized funding for the project or is expected to authorize such funding;

(k) A statement that the applicant agrees to publish a public notice to initiate a comment period on the report; and

(l) An 8.5-inch by 11-inch copy of a topographic map at a scale that clearly identifies the location of the project and maximum extent of disturbance.

Env-Dw 1106.06 Capacity Assurance Self-Assessment.

- (a) The capacity assurance self-assessment required by Env-Dw 1106.01(d) shall consist of:
  - (1) The name and PWS identifier of the applicant;
  - (2) The name, title, email address, and daytime telephone number including area code of the individual who completed the self-assessment; and
  - (3) Answers to the questions listed in (c)-(e), below, or such other questions as may be required for the department to assess capacity as listed in the applicable IUP.
- (b) The applicant shall:
  - (1) Answer yes, no, not applicable, or don't know to each question; and
  - (2) Provide any supplemental information requested.
- (c) The questions relating to technical capacity shall be whether the applicant:
  - (1) Has record drawings or plans of its distribution system;
  - (2) Has a list of assets such as pumps, wells, tanks, and water mains, and if so whether the list is complete or only partial;
  - (3) Has a sufficient quantity of water to meet peak water demands;
  - (4) Has a means to record daily water volume and to obtain discrete water samples from each source;
  - (5) Conducts water audits to determine the volume of unaccounted-for water;
  - (6) Has had, in the past year, any monitoring or reporting violations at its drinking water system;
  - (7) Has an operations and maintenance manual for its drinking water system; and
  - (8) Flushes the distribution system piping at least annually;
- (d) The questions relating to managerial capacity shall be whether the applicant:
  - (1) Has a current organizational chart identifying system management and operations staff;
  - (2) Has a written master plan or asset management plan for long range planning;
  - (3) Logs or otherwise tracks and addresses customer questions or complaints;
  - (4) Engages in general public education beyond consumer confidence reports;
  - (5) Has explicit rules and standards for customer-driven system modifications;
  - (6) Practices its emergency response plan;
  - (7) Has a system for scheduling routine preventive maintenance; and
  - (8) Obtains any regular or occasional technical assistance from outside sources such as other regulated utilities or organizations specifically dedicated to providing technical assistance.
- (e) The questions relating to financial capacity shall be whether the applicant:
  - (1) Reviews its water rates annually;



- (2) Has a water rate that is greater than one percent of the community's median household income;
- (3) Prepares a written annual budget with water system expenses and revenues;
- (4) Funds a capital reserve account; and
- (5) Currently operates on a break-even basis or better.

(f) The applicant may use a document obtained from the department that is designed to facilitate the submission of the information required by (a), above.

Env-Dw 1106.07 Bank Information. The bank information required by Env-Dw 1106.01(a)(2) shall be as follows:

- (a) The name of the recipient;
- (b) The project number from the PPL;
- (c) The name, title, daytime telephone and fax numbers including area code, and email address of the individual who will be the contact for billing and notifications of fund transfers;
- (d) The name, title, daytime telephone and fax numbers including area code, and email address of the individual who will be the contact for audits;
- (e) The name, mailing address, and main telephone number including area code of the recipient's financial institution;
- (f) The name, title, daytime telephone and fax numbers including area code, and email address of the recipient's point of contact at the financial institution;
- (g) The recipient's financial institution's ABA routing number for ACH transactions;
- (h) The name on the account and the type of account, for example checking or savings; and
- (i) The account number.

Env-Dw 1106.08 Planning Document. The planning document required by Env-Dw 1106.01(a)(3) shall facilitate review of the proposed project and alternatives thereto from the viewpoints of function, operation, economics, reliability, safety, efficiency, cost-effectiveness, and environmental compatibility, by providing the following:

- (a) Identification of the planning area boundaries and characteristics and the existing needs related to the water system;
- (b) A cost-benefit analysis of feasible water systems or conveyance 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 and operation;
- (c) All information necessary for the design of the proposed project and alternatives;
- (d) The most current estimate of project cost itemized as to major facilities or items including land and easement costs, fees for engineering services, fees for legal services, fees for financial services, contingencies, and interest during construction;
- (e) A statement of the legal, institutional, managerial, and financial capacity to construct, operate, and maintain the water system as specified in Env-Dw 601; and

(f) A statement that the applicant has a program in place for funding the maintenance and eventual replacement of the funded asset, or, if there is no such program in place, a plan for developing an asset maintenance and renewal plan as part of the funded infrastructure project.

Env-Dw 1106.09 Establishment and Verification of Revenue Program.

(a) The applicant shall establish:

- (1) A schedule of user charges that is designed to generate sufficient revenues to cover operation and maintenance expenses as well as any allocable portion of capital improvements; and
- (2) A dedicated source or sources of revenue to repay the loan.

(b) For purposes of (a)(2), above, a revenue source shall be considered dedicated when the recipient passes or adopts an ordinance or other binding resolution committing the source of funds for repayment to the DWSRF.

(c) The applicant's ordinance or other binding resolution dedicating a source of funding for repayment of the loan shall be in effect and binding on the applicant prior to the loan agreement taking effect.

(d) For an applicant that is a governmental entity, the verification required by Env-Dw 1106.01(g) shall be made by:

- (1) Identifying the source of repayment;
- (2) Stating whether or not the applicant has existing debt outside the New Hampshire municipal bond bank and, if so, the amount of the debt and whether the debt is rated and, if the debt is rated, the rating; and
- (3) Certifying that:
  - a. The applicant has the financial capability to support both the project loan repayment and continuing operation and maintenance of its water system; and
  - b. The applicant will conduct and report on a financial audit, including compliance and controls, in any fiscal year that it receives federal funds in excess of the threshold amount set under the federal Single Audit Act in OMB Circular A-133 or successor document; and

(e) For an applicant that is a non-governmental entity, the verification required by Env-Dw 1106.01(g) shall be made by:

- (1) Identifying the source of repayment; and
- (2) Certifying that:
  - a. The applicant has the financial capability to support both the project loan repayment and continuing operation and maintenance of its water system; and
  - b. The applicant will conduct and report on a financial audit, including compliance and controls, in any fiscal year that it receives federal funds in excess of the threshold amount set under the federal Single Audit Act in OMB Circular A-133 or successor document; and

Env-Dw 1106.10 Signatures and Certifications for Final Applications.

(a) The applicant's authorized representative shall sign and date the final application as follows:

- (1) If the applicant uses a paper-based application, the authorized representative shall sign and date the application and print his or her name and title in the location indicated; and

(2) If the applicant uses the web-based application, submitting the application 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 application, whether electronically or on paper, shall constitute certification by the signer that:

(1) The signer has been duly authorized by the applicant to sign the application;

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

(2) The applicant understands that any department determination that the applicant and the applicant's project qualifies for funding from the DWSRF 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 applicant and the signer are subject to the penalties specified in New Hampshire law for falsification in official matters, currently RSA 641.

(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 also shall constitute certification that the signer understands that the submittal of false or misleading information is grounds for debarring the listed engineer from the roster.

#### Env-Dw 1106.11 Final Application Processing.

(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 DWSRF if:

(1) All or a portion of the proposed project is within the scope of eligible projects identified in Env-Dw 1104;

(2) The applicant has submitted all information and documents required by Env-Dw 1106.01; and

(3) The applicant has signed the application as required by Env-Dw 1106.10.

(b) The department shall notify the applicant in writing:

(1) If the application is incomplete; and

(2) 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.

## PART Env-Dw 1107 FINANCIAL ASSISTANCE; PAYMENTS; ACCOUNTING

Env-Dw 1107.01 Types of Assistance and Related Conditions.

(a) Financial assistance shall be in one of the formats authorized by 40 CFR § 3525, an alternate format described in a specific IUP as authorized by a specific capitalization grant, or any other format authorized by EPA, only if:

- (1) The applicant is the legal owner of the water system;
- (2) The water system for which the project is proposed is on the state inventory of water systems;
- (3) The proposed project is listed on the current project priority list; and
- (4) If applicable, the project has approved plans and specifications and a construction approval issued by the department.

(b) Loans shall be made only with the following conditions:

- (1) A loan shall have a term not to exceed the maximum number of years allowed by 40 CFR § 3525 or the applicable capitalization grant;
- (2) Principal and interest payments shall commence within one year of project completion, in accordance with RSA 486:14, III and 40 CFR §35.3525;
- (3) The recipient shall establish a dedicated source of revenue for repayment of the loan in accordance with Env-Dw 1106.06; and
- (4) The recipient shall develop and implement an asset maintenance and renewal plan for any DWSRF-funded infrastructure project.

Env-Dw 1107.02 Original Loan Agreements (OLAs) for Governmental Entities.

(a) Following acceptance of an application from a governmental entity and upon determining that funds are available, the department shall prepare an original loan agreement (OLA) that contains the following provisions:

- (1) The loan amount;
- (2) The interest rate for the loan;
- (3) The length of the repayment term;
- (4) A description of the project;
- (5) 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;
- (6) A requirement for the recipient to develop and adhere to an asset maintenance and renewal plan for the funded improvements; and
- (7) Any other provision(s) required by state or federal law in order for the agreement to be valid.

(b) The department shall transmit the OLA to the recipient for review. If the recipient agrees with the terms, the recipient shall sign and date the OLA and return the signed OLA to the department.

(c) Upon receipt of a signed OLA, the department shall sign the OLA and submit the OLA to the governor and executive council (G&C) for approval.

- (d) If approved by the G&C, then:
  - (1) The OLA shall be effective upon approval by the G&C; and
  - (2) The department shall send a copy of the approved OLA to the recipient.

Env-Dw 1107.03 Initial Loan Documents (ILDs) for Non-Governmental Entities.

(a) Following acceptance of an application from a non-governmental entity and upon determining that funds are available, the department shall send the applicant's financial information to the SRF financial advisor for review.

(b) If the department determines, based on the assessment provided by the SRF financial advisor, that lending money to the applicant would not pose an unreasonable risk of loss due to non-repayment of funds provided to the applicant, the department shall prepare the initial loan documents (ILD) that contain the following provisions:

- (1) The loan amount;
- (2) The interest rate for the loan;
- (3) The length of the repayment term;
- (4) A description of the project;
- (5) 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, or engineering contracts for the purpose of inspection, audit, and copying during normal business hours;
- (6) A requirement for the recipient to develop and adhere to an asset maintenance and renewal plan for the funded improvements;
- (7) Security for the loan; and
- (8) Any other provision(s) required by state or federal law in order for the agreement to be valid.

(c) The department shall send the drafted ILD to the SRF attorney and to the applicant for review and comment.

(d) If the applicant agrees to the terms of the ILD and the SRF attorney does not identify issues that could cause the ILD to not be enforceable, the department shall submit the unsigned ILD to the G&C for approval.

(e) If the G&C approves the ILD, the department and the recipient shall schedule a loan closing for a mutually-acceptable date and time.

(f) The recipient shall bring the following documents to the closing:

- (1) Proof of authority to enter into contracts in New Hampshire, such as a certificate of good standing from the New Hampshire secretary of state's office that is valid on the date of the loan closing;
- (2) If the recipient was formed under the laws of a jurisdiction other than New Hampshire, a certificate of good standing from the state of incorporation or other registration that is valid as of the date of the loan closing; and
- (3) Any additional documents identified by the SRF attorney and identified in the loan closing agenda.

- (g) After the recipient signs the ILD, the department shall:
  - (1) Sign the ILD; and
  - (2) Provide a copy of the signed ILD to the recipient, the SRF financial advisor, and the SRF attorney.
- (h) The ILD shall be effective upon signing by the recipient and the department.

Env-Dw 1107.04 Interest Rates Established.

- (a) The interest rate charged on the outstanding balance of disbursed funds prior to the scheduled completion date or substantial completion date shall be equal to 1.0 % annually.
- (b) The interest rate charged on the outstanding balance of disbursed funds after the date of scheduled completion or substantial completion, whichever is earlier, shall be based on the repayment period selected by the applicant and the interest rate established in the applicable IUP (IUP rate) that is in effect at the time the loan agreement is transmitted to the loan recipient pursuant to Env-Dw 1107.02(b) or Env-Dw 1107.03(c), as applicable, as shown in (c), below.
- (c) Unless otherwise specified in the applicable IUP, and subject to adjustment pursuant to Env-Dw 1107.11, the interest rate based on the repayment period selected by the applicant shall be as shown in table 1107-1, below:

Table 1107-1: Interest Rate Based On Repayment Period Selected by Applicant

<b>Repayment Period Selected</b>	<b>Interest Rate</b>
5 years	25% of IUP rate
10 years	50% of IUP rate
15 years	75% of IUP rate
20 years	80% of IUP rate
More than 20 years, if available under the specific capitalization grant from which the funds are loaned	Calculated as specified in the applicable IUP

Env-Dw 1107.05 Accrual of Interest Charges; Administrative Fee.

- (a) Interest on any loan funds disbursed to the recipient shall begin to accrue on the date of each disbursement of such funds by the state.
- (b) The recipient shall pay interest charges incurred on disbursed funds by choosing to pay:
  - (1) Prior to the commencement of the loan repayment;
  - (2) At the time of the first repayment;
  - (3) By adding the accrued interest to the outstanding principal balance, provided the resulting balance does not exceed the amount of the approved loan; or
  - (4) A combination of (1) through (3), above.
- (c) The interest rate 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. For any loan for which the interest rate is less than 2%, the administrative fee shall equal the interest rate.

Env-Dw 1107.06 Timely Use of Funds.

- (a) A recipient shall begin to expend funds within 6 months of the effective date of the original loan agreement or initial loan documents, as applicable.
- (b) If a recipient fails to comply with (a), above, the department shall request the recipient to show cause why the loan should not be cancelled.
- (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 not less than 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 loan 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 the recipient requests an adjudicative hearing and a settlement is not reached, the hearing shall be conducted in accordance with the provisions of Env-C 200 that apply to such hearings.
- (f) If the recipient shows that the delay in expending the funds was based on an excusable delay, the department shall not cancel the loan.

Env-Dw 1107.07 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 name of the recipient;
  - (2) The name and address of the loan recipient;
  - (3) The project number from the PPL;
  - (4) Loan amount;
  - (5) Disbursement request number;
  - (6) Whether the request is partial or final;
  - (7) Date of the request;
  - (8) The amount of SRF eligible costs for each category;
  - (9) The amount of the previous request for each category;
  - (10) The amounts for the current request for each category;
  - (11) The name, title and signature of the authorized representative;
  - (12) Invoices for equipment and materials delivered and properly stored;

- (13) Invoices for engineering or consulting services;
- (14) Payment requisitions from the contractor(s); and
- (15) Invoices for eligible work not covered under (1) through (3), above.

(c) The department shall approve the request if it determines that the costs covered by the request are eligible under Env-Dw 1104.01 and the recipient's financial assistance agreement.

(d) Upon approval of the request, the department shall authorize the disbursement to be made from the DWSRF, subject to Env-Dw 1107.08.

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

Env-Dw 1107.08 Assurances. The department shall not disburse any DWSRF funds until the recipient provides evidence of the following:

- (a) Approved project plans and specifications, if applicable;
- (b) Compliance with best available technology where applicable for primary and secondary contaminants;
- (c) Compliance with 40 CFR §35.3575;
- (d) Agreement to maintain project financial accounts in accordance with Env-Dw 1107.15 and to maintain project accounts as separate accounts; and
- (e) Agreement to provide notice of initiation of operation to the department upon beginning operation of the project, if applicable.

Env-Dw 1107.09 Supplemental Loan Agreement.

- (a) Upon completion of a project by a governmental recipient, the department shall:
  - (1) Prepare a supplemental loan agreement (SLA) to reflect actual project expenditures and to establish:
    - a. The loan term selected by the recipient and the corresponding interest rate; and
    - b. The loan repayment schedule based on the final project cost; and
  - (2) Transmit the SLA to the recipient, who shall review and sign it.
- (b) Upon receipt of a signed SLA, the department shall sign the SLA and send a copy thereof to the recipient.

Env-Dw 1107.10 Allonge.

- (a) Upon completion of a project by a non-governmental recipient, the department shall:
  - (1) Prepare an allonge to reflect actual project expenditures and to establish:
    - a. The loan term selected by the recipient and the corresponding interest rate; and
    - b. The loan repayment schedule based on the final project cost; and
  - (2) Transmit the allonge to:
    - a. The SRF attorney for review; and



b. The recipient, who shall review and sign it.

(b) Upon receipt of a signed allonge, the department shall sign the allonge and send a copy thereof to the recipient.

Env-Dw 1107.11 Adjustment to Stipulated Interest Rate. If the applicable IUP provides that interest rates are subject to adjustment, then prior to establishing the final repayment schedule in the SLA or allonge, as applicable, the department shall:

(a) Compare the IUP interest rate stipulated in the OLA or ILD, as applicable, with the rate at the time the SLA or Allonge is prepared; and

(b) Adjust the interest rate to be the lower of:

(1) The interest rate stipulated in the OLA or ILD; or

(2) The interest rate at the time the SLA or allonge is prepared.

Env-Dw 1107.12 Loan Repayment.

(a) Subject to (c), below, the recipient shall repay all funds received and interest accrued thereon to the department as stipulated in the SLA or allonge, as applicable.

(b) The department shall deposit all funds that are repaid under this chapter to be credited directly to the DWSRF.

(c) A disadvantaged community that has received a loan subsidy as provided in 40 CFR 35.3525 shall repay only such funds and interest remaining, if any, after the subsidy is applied.

(d) Repayment shall:

(1) Not exceed the loan term established in the SLA or allonge;

(2) For governmental recipients, begin by:

a. For infrastructure projects, the earlier of one year following substantial completion of the project or one year following the scheduled completion date as stated in the OLA; or

b. For source water protection projects, one year following project completion; and

(3) For non-governmental recipients:

a. Commence interest-only payments by 6 months following:

1. For infrastructure projects, the earlier of substantial completion of the project or the scheduled completion date as stated in the ILD; and

2. For SWP projects, project completion; and

b. Commence principal and interest repayments by one year following:

1. For infrastructure projects, the earlier of substantial completion of the project or the scheduled completion date as stated in the ILD; and

2. For SWP projects, project completion; and

(e) The loan shall be amortized on an annual basis for governmental entities and on a monthly basis for non-governmental entities.

(f) Should excusable delay be incurred beyond the scheduled completion date, the department shall:

(1) Offer to modify the SLA or allonge, as applicable, to account for the delays; and

(2) If the recipient so requests, negotiate an appropriate modification of the SLA or allonge, as applicable.

(g) Any recipient may repay a loan, in whole or in part, prior to the date stipulated in the SLA or allonge, as applicable, with no prepayment penalty.

Env-Dw 1107.13 Use of Funds; Return of Funds.

(a) The recipient shall use and expend financial assistance provided from the DWSRF 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 DWSRF 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.

Env-Dw 1107.14 Retainage.

(a) The recipient may withhold a percentage of all partial payments as retainage until the project is complete.

(b) If the recipient intends to withhold a retainage, the recipient shall specify the terms and conditions relating to the retainage in the contract documents submitted pursuant to Env-Dw 1109.03.

Env-Dw 1107.15 Accounting. Each recipient shall:

(a) Use the accounting, audit, and fiscal procedures required by 40 CFR 35.3550(i) for the project;

(b) Place all funds received from the DWSRF in a project account for the sole purpose of planning, designing, and constructing or implementing the project as approved by the department;

(c) Use all funds received from the DWSRF for the sole purpose of planning, designing, and constructing or implementing the project as approved by the department;

(d) Provide an audit prepared by a certified public accountant or licensed public accountant to the department:

(1) Annually, if the recipient expends more than the threshold set under the federal Single Audit Act in OMB Circular A-133 or successor document; or

(2) In response to a department request for an audit based on a reasonable suspicion of fraud or misuse of SRF funds;

(e) Maintain insurance coverage on the project in an amount adequate to protect the state's investment, as determined based on the nature of the project and the amount of funding provided from the DWSRF in consultation with the department;

(f) Comply with any special conditions specified by the department's environmental determination until all financial obligations to the state have been discharged; and

(g) Continually abide by the terms of the financial assistance agreement, the department's rules, and relevant state and federal statutes for operation and maintenance of the facility.

## PART Env-Dw 1108 ENVIRONMENTAL REVIEW

Env-Dw 1108.01 Environmental Review Required. Any construction project for which financial assistance from the DWSRF is requested shall be reviewed for impacts on the human and natural environment in accordance with this part.

Env-Dw 1108.02 General Procedure.

(a) The department shall prepare an environmental review report for the applicant's proposed project based on the information submitted by the applicant pursuant to Env-Dw 1106.05.

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

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

Env-Dw 1108.03 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 leakage, replacement of pipes in existing rights of way, or replacement or addition of equipment or small new structures on the site of an existing facility;
- (2) Work where only a small disturbance is required, such as to install hydrants on existing water mains; or
- (3) Acquisition of land that is needed to complete an eligible project where no infrastructure will be constructed.

(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 including area code 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;
  - c. The name, mailing address, daytime telephone number including area code, 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 calendar days from the date on which the notice is published.

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

- (1) If no significant adverse comments are received, the department shall issue a CE as the final action; or
- (2) If significant adverse comments are received, the department shall prepare an EA in accordance with Env-Dw 1108.04.

(e) The department shall send its final determination in writing to the applicant and to any other person who requested during the public comment period to receive a copy.

Env-Dw 1108.04 Draft Environmental Assessment (EA).

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

(b) The draft 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;
- (4) Details of the recommended action, which shall be the proposed project or an alternative identified in the planning document prepared pursuant to Env-Dw 1106.08 that:
  - a. Is most likely to ensure compliance with the federal and state safe drinking water acts over the projected life of the funded project; and
  - b. Best meets the purposes of 40 CFR Part 35, Subpart L; and
- (5) Mitigation measures required for the recommended action, if any.

(c) The department shall forward the draft EA to the applicant to distribute for review and comment in accordance with Env-Dw 1108.05.

Env-Dw 1108.05 Public Notification and Review Period.

(a) Following the receipt of a draft EA from the department, the applicant shall:

- (1) Prepare a notice that contains the following:
  - a. A link to an on-line copy of the draft EA;
  - b. The name, mailing address, and daytime telephone number including area code of the individual representing the applicant who can answer questions regarding the proposed project;
  - c. The name, mailing address, daytime telephone number including area code, 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 30 calendar days from the last date on which the notice is published; and
- (2) Send an electronic copy of the notice and draft EA to:
  - a. The department;
  - b. The local governing body of the municipality in which the project is proposed to be located, unless the applicant is that municipality; and
  - c. The conservation commission in the municipality in which the project is proposed to be located.

(b) The applicant shall publish the notice for not less than one day in a daily newspaper of general circulation in the project's community and on the applicant's web site, if any.

- (c) The department shall post the notice received from the applicant on its web site, [www.des.nh.gov](http://www.des.nh.gov).
- (d) No formal action shall be taken by the department during the public review period.

Env-Dw 1108.06 Department Decision.

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

- (1) If no significant adverse comments are received, the department shall issue a FNSI as the final action; or
- (2) If significant adverse comments are received, the department shall direct the applicant to convene a public information meeting as follows:
  - a. If the applicant is an agency of the state, the meeting shall be convened as a non-adjudicative proceeding in accordance with the agency's rules;
  - b. If the applicant is a political subdivision of the state, the meeting shall be convened in accordance with RSA 91-A and any other applicable local requirements; and
  - c. If the applicant is other than a state agency or a political subdivision of the state, the meeting shall be convened in accordance with the applicant's by-laws or, if the by-laws do not contain procedures for public hearings, in accordance with the procedures for non-adjudicative hearings as specified in Env-C 200.

(b) Within 60 calendar 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 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 will 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 DWSRF; 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. §4332, and procedures established at 40 CFR 1502; 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.

Env-Dw 1108.07 Appeal.

(a) Within 30 days of the date of the written department decision issued pursuant to Env-Dw 1108.06(c), 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.

Env-Dw 1108.08 Duration of Decision. Final environmental determinations shall be valid for 5 years. If a project is not initiated within that time period, a new environmental review shall be undertaken.

PART Env-Dw 1109 DESIGN, CONSTRUCTION, AND IMPLEMENTATION PHASES

Env-Dw 1109.01 Consulting Contracts for Expenditures of DWSRF Funds.

(a) For all projects funded from the DWSRF that require consulting services, the contract for such services shall contain the following:

- (1) A description of the services to be provided by the consultant, including the due date for any report or plans that will be prepared;
- (2) The 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 consultant; and
- (5) Termination provisions.

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

Env-Dw 1109.02 Plans and Specifications.

(a) For infrastructure projects, the recipient shall submit engineering plans and specifications that conform to the applicable design standards specified in Env-Dw 400.

(b) For projects other than infrastructure projects, the recipient shall submit plans and specifications that are appropriate to the proposed project.

(c) Department approval of the plans and specifications shall not relieve the recipient of any liabilities or responsibilities with respect to the design, construction, operation, or performance of the project.

Env-Dw 1109.03 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 after the department has reviewed the contract documents as specified in Env-Dw 1109.04.

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

- (1) Bidding requirements for the construction of the project that meet the requirements in Env-Dw 1109.05, including bid advertisement or solicitation for competitive quotations, information for bidders, a bid proposal form 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) For loans greater than \$100,000, general and supplemental conditions for the construction of the project, including provisions requiring the contractor to obtain and maintain the appropriate insurance coverage;
- (4) Applicable federal requirements;
- (5) Plans and specifications as specified in Env-Dw 1109.02;
- (6) Appendices including boring logs, permits, and other details as appropriate;
- (7) 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
- (8) Such conditions, specifications, and other provisions as are required to comply with state and federal law.

Env-Dw 1109.04 Department Review of Contract Documents.

- (a) The department shall review the contract documents submitted pursuant to Env-Dw 1109.03 within 30 calendar days of receipt.
- (b) The department shall approve the contract documents if they:
  - (1) Meet the requirements listed in Env-Dw 1109.03(c);
  - (2) Are consistent with all applicable state and federal requirements; and
  - (3) Are consistent with the planning document submitted pursuant to Env-Dw 1106.08.
- (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-Dw 1109.05.
- (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-Dw 1109.05.
- (e) Department approval of the contract documents shall not relieve the recipient of any liabilities or responsibilities with respect to the design, construction, operation, or performance of the project.

Env-Dw 1109.05 Bidding Requirements. Recipients shall comply with the following bidding requirements:

- (a) The bid period shall be not less than 14 calendar days, unless the department has approved a shorter bid period due to an imminent threat to public health or safety;
- (b) The advertisement for bids or competitive quotes shall include the following information:
  - (1) The project name and contract number;
  - (2) The location of work;

- (3) A description of work to be performed;
  - (4) 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;
  - (5) An address and cost information for obtaining plans and specifications; and
  - (6) The addresses where plans and specifications can be examined.
- (c) For projects with estimated construction costs over \$100,000, the advertisement shall also include:
- (1) A requirement for a bid security in the amount of 5% of the bid 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; and
  - (2) A statement that a 100% performance bond and a 100% payment bond will be required.
- (d) The recipient shall reserve the right to:
- (1) Reject any or all bids; and
  - (2) Waive any informalities or minor defects on bids received; and
- (e) 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.

Env-Dw 1109.06 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 each change for which approval is sought;
  - (2) Explain the reason(s) for each change requested, including an explanation of the operational or economic consequences of the requested change(s) 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 that meets the criteria of (b), above.
- (d) For changes other than increases to project cost or scope, the department shall approve each requested change in the contract documents that the recipient demonstrates is:
- (1) Consistent with applicable federal and state requirements; and
  - (2) In the best interests of the DWSRF and the public served by the recipient's public water system.



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

- (1) The increased cost or 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; and
- (3) If the recipient is requesting additional DWSRF funds, then:
  - a. The item to which the cost increase is attributable is an eligible cost as specified in Env-Dw 1104; and
  - b. The DWSRF has sufficient monies available at the time the request is filed to cover the proposed cost increase.

Env-Dw 1109.07 Awarding Construction Contracts.

(a) The recipient of financial assistance from the DWSRF 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-Dw 1109.04, unless a change has been approved pursuant to Env-Dw 1109.06.

(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 in writing to the department:

- (1) A revised estimate of eligible project costs;
- (2) For loans greater than \$100,000, monthly cash flow projections;
- (3) Evidence of solicitation for bids or competitive quotations;
- (4) A tabulation of all bids that were received;
- (5) 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;
- (6) A copy of the bid proposal of the bidder to whom the contract is planned to be awarded;
- (7) Documentation assuring compliance with 40 CFR §35.3575; and
- (8) 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 DWSRF program, following receipt of approval from the department the recipient shall sign a construction contract with the selected contractor.

Env-Dw 1109.08 Recipient's Obligations for Inspections During Construction.

(a) During the construction phase of the project, the recipient shall obtain the engineering or other inspection services necessary to assure completion of the project in accordance with the financial assistance 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.

Env-Dw 1109.09 Department Inspections During Construction.

(a) The recipient shall allow the department 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 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 project 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 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 and the resident project representative shall immediately:

(1) Initiate necessary action to rectify the deficiencies; or

(2) Provide documentation explaining the reason(s) for the discrepancies and demonstrating that the installation meets applicable requirements.

(g) If the recipient's resident project representative 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 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.

Env-Dw 1109.10 Testing During Construction.

(a) In addition to normal testing procedures required of the recipient, the department shall require such additional tests of building materials and processes as the department determines to be necessary to demonstrate compliance with the approved plans and specifications and any approved alterations thereto during the building of projects financed in whole or in part by DWSRF funds.

(b) All tests, whether for the department or the project engineer, shall conform to current American Water Works Association standards as specified in Env-Dw 407, American Association of State Highway and Transportation Officials, American Society of Testing and Materials, and the New Hampshire department of transportation published procedures, or similar criteria, as applicable to the specific materials and processes proposed by the recipient to be used in the project.

(c) The department shall specify which tests are applicable based on the specific materials and processes proposed by the recipient to be used in the project. Samples for testing shall be furnished free of cost to the department upon request at the construction site.

Env-Dw 1109.11 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 in accordance with Env-Dw 1109.08 without prior written approval from the department.

(b) The recipient shall request approval for changes covered by (a), above, 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 system;
- (2) The project number of the final financial assistance agreement;
- (3) For each modification for which the recipient is seeking approval:
  - a. A description of the modification; and
  - b. The reason(s) why the modification is necessary; and
- (4) An explanation of the operational and economic consequences to the water system and to public health and the environment of the department not approving the requested modifications.

(c) Prior departmental approval of project change orders shall not be required if applicant's project engineer certifies to the department that such change, modification, amendment, or departure:

- (1) Will not materially or significantly affect project cost, estimated revenues, or project design; and
- (2) Is consistent with the objectives of the project and within the scope of the final financial assistance agreement.

Env-Dw 1109.12 Approval of Project Modifications.

(a) Subject to (b) and (c), below, the department shall approve a request submitted pursuant to Env-Dw 1109.11 if:

- (1) The scope of the project as modified is consistent with the original intent of the financial assistance;
- (2) The project as modified will not cause the water system to be out of compliance with the federal SDWA, 40 CFR Parts 141, 142, and 143, RSA 485, and applicable rules in subtitle Env-Dw; and
- (3) If additional DWSRF funds are requested, then:

- a. The increased cost is approvable under the criteria established in Env-Dw 1109.06(e); and
- b. The fund has sufficient monies available at the time the request is filed to cover the proposed cost increase.

(b) The department shall review the request and notify the recipient and resident project representative 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 inadvertent oversight, and is needed to provide an operable water system 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 DWSRF shall be increased only by a formal amendment in writing with the department, with governor and council approval.

Env-Dw 1109.13 Construction Phase Submittal. During the construction phase of the project, the recipient shall submit any building phase submittals required by the final financial assistance agreement to be submitted for the department's approval.

Env-Dw 1109.14 Final Inspection and Review of Records.

(a) Upon completion of any project for which financial assistance from the DWSRF has been provided, the applicant 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) Confirm that the project has been completed as contemplated in the financial assistance agreement, which shall include conducting a final on-site inspection of the project, if necessary, with the recipient or the recipient's designee; and
- (2) Review the recipient's records relative to funds furnished to the recipient from the DWSRF.

#### PART Env-Dw 1110 WAIVERS

Env-Dw 1110.01 Purpose. The purpose of the rules in this part is to accommodate situations in which strict compliance with all requirements established by this chapter may not be in the best interests of the public or the DWSRF.

Env-Dw 1110.02 Procedures.

(a) Any applicant or recipient who is or would be directly and adversely affected by the strict application of a rule in Env-Dw 1100 may request a waiver thereof from the department.

(b) Each request for a waiver shall be filed in writing by the authorized representative of the applicant or recipient, as applicable.

(c) Each request for a waiver shall include the information specified in Env-Dw 1110.03 and be signed as required by Env-Dw 1110.04.

Env-Dw 1110.03 Content and Format of Requests. The person requesting the waiver shall provide the following information to the department:

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

- (b) The project to which the waiver request relates; and
- (c) For each waiver sought, the following:
  - (1) The number of the specific section of the rules;
  - (2) A complete explanation of why a waiver is being requested, including an explanation of the economic and operational consequences of complying with the rule as written;
  - (3) 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;
  - (4) Whether the need for the waiver is time-limited and, if so, the estimated length of time the waiver will be needed; and
  - (5) A complete explanation of why the applicant believes that having the waiver granted will meet the criteria in Env-Dw 1110.05.

Env-Dw 1110.04 Signature Required.

- (a) The authorized representative of the applicant or recipient that is requesting the waiver shall sign the request.
- (b) The authorized representative's 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;
  - (2) The signer understands that any waiver granted based on false, incomplete, or misleading information is subject to revocation; and
  - (3) The signer is subject to the penalties specified in New Hampshire law for falsification in official matters, currently RSA 641.
- (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 could constitute grounds for debarring the listed engineer from the roster.

Env-Dw 1110.05 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 DWSRF program as 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 and obligations associated with maintaining primacy from the EPA; and
  - (3) Strict adherence to the rule would not be in the best interest of the public, the environment, or the DWSRF.
- (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, RSA 485, the federal SDWA, 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.

Env-Dw 1110.06 Decisions.

(a) The department shall notify the person requesting the waiver of its decision in writing within 30 calendar 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-Dw 1110.05 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 expires.

**APPENDIX A: STATE STATUTES AND FEDERAL REQUIREMENTS IMPLEMENTED**

<b>Rule Section(s)</b>	<b>State Statute(s) Implemented</b>	<b>Federal Requirements Implemented</b>
Env-Dw 1101 – 1106	RSA 486:14, I	42 U.S.C. §§ 300f - 300j-26
Env-Dw 1107	RSA 486:14, I; RSA 486:14, III	42 U.S.C. §§ 300f - 300j-26
Env-Dw 1108 – 1109	RSA 486:14, I	42 U.S.C. §§ 300f - 300j-26
Env-Dw 1110	RSA 541-A:22, IV	

**APPENDIX B: STATUTORY DEFINITIONS**

**RSA 485:1-a**

XIII. “Person” means any individual, partnership, company, public or private corporation, political subdivision or agency of the state, department, agency or instrumentality of the United States, or any other legal entity.

XIV. “Political subdivision” means any municipality, county, district, or any portion or combination of 2 or more thereof.

XV. “Public water system” means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Such term includes (1) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (2) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Any water system which meets all of the following conditions is not a public water system:

- (a) Consists only of distribution and storage facilities (and does not have any collection and treatment facilities);
- (b) Obtains all of its water from, but is not owned or operated by, a public water system; and
- (c) Does not sell water to any person.

## APPENDIX C: REFERENCED FEDERAL PROVISIONS

### **§ 35.3520 Systems, projects, and project-related costs eligible for assistance from the Fund.**

(a) *Eligible systems.* Assistance from the Fund may only be provided to:

(1) Privately-owned and publicly-owned community water systems and non-profit non-community water systems.

(2) Projects that will result in the creation of a community water system in accordance with paragraph (b)(2)(vi) of this section.

(3) Systems referred to in section 1401(4)(B) of the Act for the purposes of point of entry or central treatment under section 1401(4)(B)(i)(III).

(b) *Eligible projects.*

(1) *General.* Projects that address present or prevent future violations of health-based drinking water standards are eligible for assistance. These include projects needed to maintain compliance with existing national primary drinking water regulations for contaminants with acute and chronic health effects. Projects to replace aging infrastructure are eligible for assistance if they are needed to maintain compliance or further the public health protection objectives of the Act.

(2) Only the following project categories are eligible for assistance from the Fund:

(i) *Treatment.* Examples of projects include installation or upgrade of facilities to improve the quality of drinking water to comply with primary or secondary standards and point of entry or central treatment under section 1401(4)(B)(i)(III) of the Act.

(ii) *Transmission and distribution.* Examples of projects include installation or replacement of transmission and distribution pipes to improve water pressure to safe levels or to prevent contamination caused by leaks or breaks in the pipes.

(iii) *Source.* Examples of projects include rehabilitation of wells or development of eligible sources to replace contaminated sources.

(iv) *Storage.* Examples of projects include installation or upgrade of eligible storage facilities, including finished water reservoirs, to prevent microbiological contaminants from entering a public water system.

(v) *Consolidation.* Eligible projects are those needed to consolidate water supplies where, for example, a supply has become contaminated or a system is unable to maintain compliance for technical, financial, or managerial reasons.

(vi) *Creation of new systems.* Eligible projects are those that, upon completion, will create a community water system to address existing public health problems with serious risks caused by unsafe drinking water provided by individual wells or surface water sources. Eligible projects are also those that create a new regional community water system by consolidating existing systems that have technical, financial, or managerial difficulties. Projects to address existing public health problems associated with individual wells or surface water sources must be limited in scope to the specific geographic area affected by contamination. Projects that create new regional community water systems by consolidating existing systems must be limited in scope to the service area of the systems being consolidated. A project must be a cost-effective solution to addressing the problem. A State must ensure that the applicant has given sufficient public notice to potentially affected parties and has considered alternative solutions to addressing the problem. Capacity to serve future population growth cannot be a substantial portion of a project.

(c) *Eligible project-related costs.* In addition to costs needed for the project itself, the following project-related costs are eligible for assistance from the Fund:

(1) Costs for planning and design and associated pre-project costs. A State that makes a loan for only planning and design is not required to provide assistance for completion of the project.

(2) Costs for the acquisition of land only if needed for the purposes of locating eligible project components. The land must be acquired from a willing seller.

(3) Costs for restructuring systems that are in significant noncompliance with any national primary drinking water regulation or variance or that lack the technical, financial, and managerial capability to ensure

compliance with the requirements of the Act, unless the systems are ineligible under paragraph (d)(2) or (d)(3) of this section.

(d) *Ineligible systems.* Assistance from the Fund may not be provided to:

- (1) Federally-owned public water systems and for-profit non-community water systems.
- (2) Systems that lack the technical, financial, and managerial capability to ensure compliance with the requirements of the Act, unless the assistance will ensure compliance and the owners or operators of the systems agree to undertake feasible and appropriate changes in operations to ensure compliance over the long-term.
- (3) Systems that are in significant noncompliance with any national primary drinking water regulation or variance, unless:
  - (i) The purpose of the assistance is to address the cause of the significant noncompliance and will ensure that the systems return to compliance; or
  - (ii) The purpose of the assistance is unrelated to the cause of the significant noncompliance and the systems are on enforcement schedules (for maximum contaminant level and treatment technique violations) or have compliance plans (for monitoring and reporting violations) to return to compliance.

(e) *Ineligible projects.* The following projects are ineligible for assistance from the Fund:

- (1) Dams or rehabilitation of dams.
- (2) Water rights, except if the water rights are owned by a system that is being purchased through consolidation as part of a capacity development strategy.
- (3) Reservoirs or rehabilitation of reservoirs, except for finished water reservoirs and those reservoirs that are part of the treatment process and are on the property where the treatment facility is located.
- (4) Projects needed primarily for fire protection.
- (5) Projects needed primarily to serve future population growth. Projects must be sized only to accommodate a reasonable amount of population growth expected to occur over the useful life of the facility.
- (6) Projects that have received assistance from the national set-aside for Indian Tribes and Alaska Native Villages under section 1452(i) of the Act.

(f) *Ineligible project-related costs.* The following project-related costs are ineligible for assistance from the Fund:

- (1) Laboratory fees for routine compliance monitoring.
- (2) Operation and maintenance expenses.

#### **40 CFR §35.3525 Authorized types of assistance from the Fund.**

A State may only provide the following types of assistance from the Fund:

(a) *Loans.* (1) A State may make loans at or below the market interest rate, including zero interest rate loans. Loans may be awarded only if:

(i) An assistance recipient begins annual repayment of principal and interest no later than one year after project completion. A project is completed when operations are initiated or are capable of being initiated.

(ii) A recipient completes loan repayment no later than 20 years after project completion except as provided in paragraph (b)(3) of this section.

(iii) A recipient establishes a dedicated source of revenue for repayment of the loan which is consistent with local ordinances and State laws or, for privately-owned systems, a recipient demonstrates that there is adequate security to assure repayment of the loan.

(2) A State may include eligible project reimbursement costs within loans if:

(i) A system received approval, authorization to proceed, or any similar action by a State prior to initiation of project construction and the construction costs were incurred after such State action; and

(ii) The project met all of the requirements of this subpart and was on the State's fundable list, developed using a priority system approved by EPA. A project on the comprehensive list which is funded when a project on the fundable list is bypassed using the State's bypass procedures in accordance with §



35.3555(c)(2)(ii) may be eligible for reimbursement of costs incurred after the system has been informed that it will receive funding.

(3) A State may include eligible planning and design and other associated pre-project costs within loans regardless of when the costs were incurred.

(4) All payments of principal and interest on each loan must be credited to the Fund.

(5) Of the total amount available for assistance from the Fund each year, a State must make at least 15 percent available solely for providing loan assistance to small systems, to the extent such funds can be obligated for eligible projects. A State that provides assistance in an amount that is greater than 15 percent of the available funds in one year may credit the excess toward the 15 percent requirement in future years.

(6) A State may provide incremental assistance for a project (e.g., for a particularly large, expensive project) over a period of years.

(b) *Assistance to disadvantaged communities.* (1) A State may provide loan subsidies (e.g., loans which include principal forgiveness, negative interest rate loans) to benefit communities meeting the State's definition of "disadvantaged" or which the State expects to become "disadvantaged" as a result of the project. Loan subsidies in the form of reduced interest rate loans that are at or above zero percent do not fall under the 30 percent allowance described in paragraph (b)(2) of this section.

(2) A State may take an amount equal to no more than 30 percent of the amount of a particular fiscal year's capitalization grant to provide loan subsidies to disadvantaged communities. If a State does not take the entire 30 percent allowance associated with a particular fiscal year's capitalization grant, it cannot reserve the authority to take the remaining balance of the allowance from future capitalization grants. In addition, a State must:

(i) Indicate in the Intended Use Plan (IUP) the amount of the allowance it is taking for loan subsidies;

(ii) Commit capitalization grant and required State match dollars taken for loan subsidies in accordance with the binding commitment requirements in § 35.3550(e); and

(iii) Commit any other dollars (e.g., principal and interest repayments, investment earnings) taken for loan subsidies to projects over the same time period during which binding commitments are made for the capitalization grant from which the allowance was taken.

(3) A State may extend the term for a loan to a disadvantaged community, provided that a recipient completes loan repayment no later than 30 years after project completion and the term of the loan does not exceed the expected design life of the project.

(c) *Refinance or purchase of local debt obligations*—(1) General. A State may buy or refinance local debt obligations of municipal, intermunicipal, or interstate agencies where the debt obligation was incurred and the project was initiated after July 1, 1993. Projects must have met the eligibility requirements under section 1452 of the Act and this subpart to be eligible for refinancing. Privately-owned systems are not eligible for refinancing.

(2) Multi-purpose debt. If the original debt for a project was in the form of a multi-purpose bond incurred for purposes in addition to eligible purposes under section 1452 of the Act and this subpart, a State may provide refinancing only for the eligible portion of the debt, not the entire debt.

(3) Refinancing and State match. If a State has credited repayments of loans made under a pre-existing State loan program as part of its State match, the State cannot also refinance the projects under the DWSRF program. If the State has already counted certain projects toward its State match which it now wants to refinance, the State must provide replacement funds for the amounts previously credited as match.

(d) *Purchase insurance or guarantee for local debt obligations.* A State may provide assistance by purchasing insurance or guaranteeing a local debt obligation to improve credit market access or to reduce interest rates. Assistance of this type is limited to local debt obligations that are undertaken to finance projects eligible for assistance under section 1452 of the Act and this subpart.

(e) *Revenue or security for Fund debt obligations (leveraging).* A State may use Fund assets as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State in order to increase the total amount of funds available for providing assistance. The net proceeds of the sale of the bonds must be deposited into the Fund and must be used for providing loans and other assistance to finance projects eligible under section 1452 of the Act and this subpart.

### § 35.3555 Intended Use Plan (IUP).

(a) *General.* A State must prepare an annual IUP which describes how it intends to use DWSRF program funds to support the overall goals of the DWSRF program and contains the information outlined in paragraph (c) of this section. In those years in which a State submits a capitalization grant application, EPA must receive an IUP prior to the award of the capitalization grant. A State must prepare an annual IUP as long as the Fund or set-aside accounts remain in operation. The IUP must conform to the fiscal year adopted by the State for the DWSRF program (e.g., the State's fiscal year or the Federal fiscal year).

(b) *Public review requirements.* A State must seek meaningful public review and comment during the development of the IUP. A State must include a description of the public review process and an explanation of how it responded to major comments and concerns. If a State prepares separate IUPs (one for Fund monies and one for set-aside monies), the State must seek public review and comment during the development of each IUP.

(c) *Content.* Information in the IUP must be provided in a format and manner that is consistent with the needs of the RA.

(1) Priority system. The IUP must include a priority system for ranking individual projects for funding that provides sufficient detail for the public and EPA to readily understand the criteria used for ranking. The priority system must provide, to the maximum extent practicable, that priority for the use of funds will be given to projects that: address the most serious risk to human health; are necessary to ensure compliance with the requirements of the Act (including requirements for filtration); and assist systems most in need, on a per household basis, according to State affordability criteria. A State that does not adhere to the three criteria must demonstrate why it is unable to do so.

(2) Priority lists of projects. All projects, with the exception of projects funded on an emergency basis, must be ranked using a State's priority system and go through a public review process prior to receiving assistance.

(i) The IUP must contain a fundable list of projects that are expected to receive assistance from available funds designated for use in the current IUP and a comprehensive list of projects that are expected to receive assistance in the future. The fundable list of projects must include: the name of the public water system; the priority assigned to the project; a description of the project; the expected terms of financial assistance based on the best information available at the time the IUP is developed; and the population of the system's service area at the time of the loan application. The comprehensive list must include, at a minimum, the priority assigned to each project and, to the extent known, the expected funding schedule for each project. A State may combine the fundable and comprehensive lists into one list, provided that projects which are expected to receive assistance from available funds designated for use in the current IUP are identified.

(ii) The IUP may include procedures which would allow a State to bypass projects on the fundable list. The procedures must clearly identify the conditions which would allow a project to be bypassed and the method for identifying which projects would receive funding. If a bypass occurs, a State must fund the highest ranked project on the comprehensive list that is ready to proceed. If a State elects to bypass a project for reasons other than readiness to proceed, the State must explain why the project was bypassed in the Biennial Report and during the annual review. To the maximum extent practicable, a State must work with bypassed projects to ensure that they will be prepared to receive funding in future years.

(iii) The IUP may allow for the funding of projects which require immediate attention to protect public health on an emergency basis, provided that a State defines what conditions constitute an emergency and identifies the projects in the Biennial Report and during the annual review.

(iv) The IUP must demonstrate how a State will meet the requirement of providing loan assistance to small systems as described in § 35.3525(a)(5). A State that is unable to comply with this requirement must describe the steps it is taking to ensure that a sufficient number of projects are identified to meet this requirement in future years.

(3) Distribution of funds. The IUP must describe the criteria and methods that a State will use to distribute all funds including:

(i) The process and rationale for distribution of funds between the Fund and set-aside accounts;

(ii) The process for selection of systems to receive assistance;

(iii) The rationale for providing different types of assistance and terms, including the method used to determine the market rate and the interest rate;

(iv) The types, rates, and uses of fees assessed on assistance recipients; and

(v) A description of the financial planning process undertaken for the Fund and the impact of funding decisions on the long-term financial health of the Fund.

(4) Financial status. The IUP must describe the sources and uses of DWSRF program funds including: the total dollar amount in the Fund; the total dollar amount available for loans, including loans to small systems; the amount of loan subsidies that may be made available to disadvantaged communities from the 30 percent allowance in § 35.3525(b)(2); the total dollar amount in set-aside accounts, including the amount of funds or authority reserved; and the total dollar amount in fee accounts.

(5) Short- and long-term goals. The IUP must describe the short-term and long-term goals it has developed to support the overall goals of the DWSRF program of ensuring public health protection, complying with the Act, ensuring affordable drinking water, and maintaining the long-term financial health of the Fund.

(6) Set-aside activities. (i) The IUP must identify the amount of funds a State is electing to use for set-aside activities. A State must also describe how it intends to use these funds, provide a general schedule for their use, and describe the expected accomplishments that will result from their use.

(ii) For loans made in accordance with the local assistance and other State programs set-aside under § 35.3535(e)(1)(i) and (e)(1)(ii), the IUP must, at a minimum, describe the process by which recipients will be selected and how funds will be distributed among them.

(7) Disadvantaged community assistance. The IUP must describe how a State's disadvantaged community program will operate including:

(i) The State's definition of what constitutes a disadvantaged community;

(ii) A description of affordability criteria used to determine the amount of disadvantaged assistance;

(iii) The amount and type of loan subsidies that may be made available to disadvantaged communities from the 30 percent allowance in § 35.3525(b)(2); and

(iv) To the maximum extent practicable, an identification of projects that will receive disadvantaged assistance and the respective amounts.

(8) Transfer process. If a State decides to transfer funds between the DWSRF program and CWSRF program, the IUPs for the DWSRF program and the CWSRF program must describe the process including:

(i) The total amount and type of funds being transferred during the period covered by the IUP;

(ii) The total amount of authority being reserved for future transfer, including the authority reserved from previous years; and

(iii) The impact of the transfer on the amount of funds available to finance projects and set-asides and the long-term impact on the Fund.

(9) Cross-collateralization process. If a State decides to cross-collateralize Fund assets of the DWSRF program and CWSRF program, the IUPs for the DWSRF program and the CWSRF program must describe the process including:

(i) The type of monies which will be used as security;

(ii) How monies will be used in the event of a default; and

(iii) Whether or not monies used for a default in the other program will be repaid, and if they will not be repaid, what will be the cumulative impact on the Funds.