State of New Jersey

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

Department of Environmental Protection
Division of Water Quality
Municipal Finance and Construction Element
401 E. State Street – P.O. Box 420
Trenton, New Jersey 08625-0420
Tel #609-292-8961 – Fax #609-633-8165

BOB MARTIN
Commissioner

PUBLIC NOTICE
FOR THE PROPOSED FFY2015 PRIORITY SYSTEM, INTENDED USE PLAN AND PROJECT PRIORITY LIST DOCUMENT (CLEAN WATER FINANCING)

September 10, 2014

Dear Interested Party:

The Department of Environmental Protection (Department) has developed the Proposed Federal Fiscal Year 2015 Priority System document for the administration of the Clean Water State Revolving Fund (CWSRF) program. This document also includes information on the Sandy CWSRF program designed to provide financial assistance to facilities impacted by the storm and in need of implementing resiliency measures.

The Priority System document must be approved by the US Environmental Protection Agency (USEPA) for the Department to be awarded its capitalization grants used to finance infrastructure projects. The FFY2015 CWSRF capitalization grant is targeted to be awarded to the Department in September 2015, for use in the State Fiscal Year 2016 Financing Program (July 1, 2015 to June 30, 2016). Projects eligible for assistance include a wide variety of wastewater treatment, combined sewer and stormwater management, as well as, nonpoint source pollution control projects (including open space land acquisition and conservation, landfill closure and construction, remedial action activities and well sealing).

On June 10, 2014, President Obama signed into law the Water Resources Reform and Development Act of 2014 (WRRDA) that introduce new requirements. The major changes that project sponsors should be aware of are as follows:

- **A/E services must be procured under federal procurement rules at 40 U.S.C. 1101 et seq.**

  All architectural and engineering (A/E) contracts **funded by the capitalization grant** that are awarded on or after October 1, 2014 must comply with the procurement processes for A/E services (including feasibility studies, preliminary engineering, design services, surveying, mapping, construction management, legal and accounting services, etc.) as identified in 40 U.S.C. 1101 et. seq.

  The base program has the ability to finance A/E contracts that did not follow federal procurement rules with non-capitalization grant funds (i.e., EIT shares, State match, loan repayments, etc.). However, sponsors of projects seeking Sandy SRF financing should be aware that the program's ability to finance A/E costs associated with contracts that did not meet the federal procurement requirements is limited to the Trust share (representing approximately 25% of the allowable project costs). **Finally, this requirement does not jeopardize the project eligibility and is only an issue associated with the program's ability to reimburse sponsors for soft costs.**

  Project sponsors subject to the requirements must follow the procurement requirements identified below for A/E services:

  - each contract requires discussions with no fewer than three firms;
  - selection is based on established, publicly available criteria, and is offered to the most qualified firm;
  - contract pricing is determined to be fair and reasonable based on the scope, complexity, professional nature, and estimated value of services;
  - negotiation begins with the most highly qualified firms, and in the event that a resolution cannot be achieved, continues in order of qualification; and
  - all firms are required to submit a statement of qualifications and performance data annually as part of contract terms and conditions.

  This requirement applies to new solicitations, significant contractual amendments, and contract renewals initiated on or after the effective date of October 1, 2014.

- **Requires treatment works receiving assistance to develop and implement a fiscal sustainability plan and certify that it has been implemented prior to receiving assistance.**

  WRRDA requires a recipient of a loan for a project that involves the repair, replacement, or expansion of a treatment works to develop and implement a fiscal sustainability plan (FSP) or certify that it has developed and implemented such a plan.

  The statute requires that FSPs include, at a minimum:

  - an inventory of critical assets that are part of the treatment works;
  - an evaluation of the condition and performance of inventoried assets or asset groupings;
  - a certification that the assistance recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan; and

- a plan for maintaining, repairing, and, as necessary, replacing the treatment works and a plan for funding such activities.

NJ may consider taking a phased approach such that the initial FSP covers only the funded project and closely associated components. This approach is a positive step towards a comprehensive and cohesive plan that covers the entire treatment works. At a minimum, CWSRF loan recipients must certify that an FSP has been developed and is being implemented.

This provision applies to all new loan applications submitted for the SFY16 Program.

- **Codifies American iron and steel requirement.**
- **Codifies Davis-Bacon requirement.**

WRRDA permanently applies the prevailing wage (Davis-Bacon) provision to any projects for treatment works that are funded by a CWSRF. WRRDA also codifies a provision that had recently been included in EPA's SRF appropriations that requires assistance recipients, absent a waiver, to use iron and steel products that are produced in the United States for projects for the construction, alteration, maintenance, and repair of treatment works. These provisions apply to all CWSRF projects in New Jersey.

- **Beginning in FFY16, assistance recipients must certify that it has studied cost-effectiveness, and has selected a project with the greatest potential for water reuse, water conservation, and energy conservation.**

- **In addition, WRRDA also included provisions that allow for 30-year loans, expands the eligible activities for the CWSRF program, modifies the administrative allowance calculations, formalizes the additional subsidization formula and requires EPA to conduct a study of the allotment formula to determine whether it addresses water quality needs in accordance with the most recent needs survey and any other information EPA considers appropriate and report to Congress on results of the study and recommend changes to the formula.**

USEPA has issued draft guidance to states regarding the amendments to the CWA and plans to have final guidance available by the end of September 2014 at which time the State will re-evaluate the provisions of this Intended Use Plan and determine if changes to this document are warranted. Although changes were enacted to the federal legislation, implementation of some of the provisions in NJ's CWSRF program may otherwise be limited by State law.

FFY15/SFY16 DEP/Trust Financing Program (including the Sandy CWSRF)

The CWSRF can finance a wide variety of wastewater, stormwater and nonpoint source management projects under the traditional Priority System ranking methodology, including sponsors implementing resiliency measures or other improvements to their wastewater or stormwater conveyance or treatment facilities. Financing is generally in the form of a low-interest loan as low as one-quarter the market

rate, with limited opportunities for principal forgiveness.

All local government units that have a project or projects listed or eligible for listing on the FFY2015 Priority List are required to commit to the following schedule by October 10, 2014 to be considered for the SFY2016 Financing Program. The commitment (also known as a Letter-of-Intent) is made through your user account at https://www.h2loans.com/app/ . If you are new to the Financing Program, please contact the NJ Environmental Infrastructure Trust at 609-219-8600 to request a user account. Project sponsors are encouraged to make complete submittals as soon as they can so that project approvals can begin as soon as possible.

CWSRF Program Schedule (FFY15/SFY16)	
Activity	**Deadline**
Commitment Letter (Letter of Intent) and Planning Documents	October 10, 2014
Design Documents and Loan Application	March 6, 2015

To ensure that all projects ranked below the CWSRF fundable range have an opportunity to access to NJEIFP funding, the Department is proposing to grant priority status to approved projects that are ranked below the fundable range in the CWSRF Program based on the date of project approval. As such, there is a strong incentive for applicants to submit necessary application related documents and secure approvals as soon as possible. The Department is committing resources for the timely approval of all applications. Moreover, funding of such projects will be available immediately upon approval through either the Interim Financing Program or the SAIL Financing Program, further ensuring that such projects commence construction as soon as possible.

The Department is expecting to have somewhere in the range of $3M to $6M to provide principal forgiveness loans in the SFY16 Program. The Department is proposing to reserve 50% of the available principal forgiveness funds and provide principal forgiveness loans for Combined Sewer Overflow (CSO) abatement projects utilizing green practices (such as green roofs, blue roofs, rain gardens, porous pavement, and other activities that maintain and restore natural hydrology by infiltrating, evapotranspiring and harvesting and using stormwater) and for integrated water resources planning. The Department is proposing to reserve $500,000 from the CSO reserve for integrated water resource planning. The remaining 50% of the available principal forgiveness funds would be reserved for stormwater and non-point source pollution management projects in the Barnegat Bay Watershed. Due to the significant drop-off in available principal forgiveness funds, the Department and the Trust are considering offering 30-year loans to CSO and Barnegat Bay projects that do not receive any principal forgiveness subject to legislative approval of an amendment to the Trust Act to allow the loan terms to extend for 30 years, or the useful life of the project, whichever is less.

In addition to the CSO and Barnegat Bay reserves, the Department is also proposing to reserve up to $5M for equipment purchases in support of the Trust's establishment of an open application process for

certain equipment purchase projects. For the purposes of this reserve, equipment is limited to street sweepers, jet-vac trucks, portable generators and other equipment where construction services (such as the installation of a pad to support a generator) are not needed to effectuate the project.

Although the Department is working to award all of the Sandy CWSRF funds in the SFY15 Program, there is the possibility that the amount of approvable projects in the SFY15 program do not utilize all of the available Sandy CWSRF funds. As such, the Department will continue to accept submittals under the Sandy CWSRF Program, which includes a principal forgiveness component of approximately 19% of the allowable costs. If all of the Sandy CWSRF funds are awarded in SFY15, new submittals will continue to be eligible under the 75% DEP and 25% Trust loan structure.

All applicants are strongly encouraged to attend a pre-application meeting with appropriate staff within the Municipal Finance and Construction Element. To request a pre-application meeting, please contact Gautam Patel, Acting Chief, Bureau of Engineering and Environmental Reviews at **(609) 633-1170**. The Department is continuing to require project sponsors to submit a planning checklist with the planning document submittal so that the submittals are more complete and the reviews can be expedited.

SAIL Loan Program

The Trust-administered Disaster Recovery Emergency Loan Fund (commonly referred to as the Statewide Assistance Infrastructure Loan (SAIL) Program) is designed for project sponsors that are certain that FEMA will provide grant funding for a substantial portion of the overall project costs. SAIL is a short-term bridge loan program to help facilitate the cash flow needs of municipalities and authorities and pay for construction costs related to the repair of infrastructure damaged during Sandy and projects to improve infrastructure resiliency in future disasters.

Projects will be financed on a first-approved, first-funded basis provided the project satisfies the requirements to be classified as a SAIL project under the approved legislation (including listing of the project on the SAIL List submitted to Legislature) and certification for eligibility by the Department and the Trust.

A hearing on the Proposed FFY2015 Priority System document for Clean Water Financing will be held at the offices of the NJ Environmental Infrastructure Trust, 3131 Princeton Pike, Building 4, Suite 216, Lawrenceville, New Jersey, in the large conference room on Tuesday, September 30, 2014. The hearing will commence at 10:00 a.m. and conclude at noon or the end of testimony (whichever is sooner) and will be held in conjunction with the Priority System and Intended Use Plan hearing for the Drinking Water Program. Presentations may be made orally or in writing; if written testimony is prepared, the oral presentation should be limited to a summary of the text. The period for submitting written comments on the proposal will close on October 10, 2014 (all comments must be received by that date). All comments submitted prior to the close of the comment period will be considered in the preparation of the final FFY2015 Priority System and Sandy CWSRF documents.

Written comments should be sent to the following address:

Mail Code 401-03D
Eugene Chebra, P.E., Assistant Director
Municipal Finance and Construction Element
Division of Water Quality
PO Box 420
401 East State Street, 3rd Floor, West Wing
Trenton, New Jersey 08625-0420

The Proposed Priority System document is posted on the Department's web site at http://www.nj.gov/dep/dwq/cwpl.htm. In addition to the complete Priority System, Intended Use Plan and Project Priority List, the web posting includes a project description and project ranking worksheet for each listed project. For questions regarding this notice or to request a copy of the Priority System Proposal, please contact Scott Shymon, Acting Chief, Policy, Program Development, and Administration Section at **(609) 292-3114**.

Sincerely,

Eugene J. Chebra, P.E., Assistant Director
Municipal Finance and Construction Element
Division of Water Quality