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## Clean Water State Revolving Fund Notification of Program Changes

To: Municipal Officials, Wastewater Districts, Environmental Consultants and Potential CWSRF Loan Applicants  
From: John N. True, P.E., CWSRF Program Manager, Maine DEP  
Date: March 16, 2015

This letter is being distributed to notify current and potential Clean Water State Revolving Fund (CWSRF) loan applicants, their consultants, and other interested parties of recent law changes to the program, new program requirements for borrowers, and additional program eligibilities. For more information on the CWSRF program please visit:

<http://www.maine.gov/dep/water/grants/srfparag.html>.

### Law Enactment

The House Transportation and Infrastructure Committee proposed H.R. 3080, An Act “To provide for improvements to the rivers and harbors of the United States, to provide for the conservation and development of water and related resources, and for other purposes.” a.k.a. “**Water Resources Reform and Development Act of 2014**” (WRRDA). This bill was passed by the 113<sup>th</sup> Congress, 2<sup>nd</sup> Session and signed into law by the President on June 10, 2014 as Public Law 113-121. The complete text of the law can be found at: <https://www.congress.gov/113/plaws/publ121/PLAW-113publ121.pdf> Although the law focuses mostly on transportation, the Army Corp of Engineers and harbors/ports, it also created the Water Infrastructure Finance and Innovation Act loan program and made amendments to Title VI of the Federal Water Pollution Control Act (FWPCA) that affect the Clean Water State Revolving Fund (CWSRF) loan program.

On January 6, 2015 EPA published the final *Interpretive Guidance for Certain Amendments in the Water Resources Reform and Development Act to Titles I, II, V, and VI of the Federal Water Pollution Control Act*. The Interpretive Guidance can be found at:

<http://www.maine.gov/dep/water/grants/srfparag.html> EPA’s document provides guidance on the amendments that impact the CWSRF program. Based on EPA’s guidance, the Department has formulated State guidance and procedures on the implementation of the program changes that are currently in effect. Although most of the amendments became effective on October 1, 2014, some of them are being phased in through October 1, 2015. What follows is a summary of the changes in program requirements and eligibilities.

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### **New CWSRF Program Requirements in Title VI of the FWPCA**

- 1. Fiscal Sustainability Plan, Section 603(d)(1)(E)** – Starting **October 1, 2014**, a Fiscal Sustainability Plan (FSP) will be required of loan recipients for a project that involves the repair, replacement, or expansion of a treatment works. This requirement does not apply to a loan if, prior to this date, the project was listed on a CWSRF Intended Use Plan or the loan recipient submitted an application for CWSRF funding assistance.

The FSP is basically an asset management plan of the planning area that takes into consideration an evaluation of water and energy conservation efforts of projects. The FSP has four major components:

1. An inventory of the critical assets located in the FSP planning area (The scope of the FSP will be determined by the Department with input from the loan recipient and agreed upon prior to loan commitment. See Requirements and Guidance for a Fiscal Sustainability Plan for additional information);
2. An evaluation and prioritization of the assets;
3. A certification that the loan recipient has evaluated and will be implementing water and energy conservation efforts as part of the FSP; and
4. A plan and schedule for the maintenance, rehabilitation and/or replacement of assets and a plan for funding the activities.

For more details on development of a fiscal sustainability plan please refer to the *Clean Water State Revolving Fund (CWSRF) Requirements and Guidance for a Fiscal Sustainability Plan (FSP)* at: <http://www.maine.gov/dep/water/grants/srfparag.html>

- 2. Architectural/Engineering Services Selection, Section 602(b)(14)** – This requirement applies to loans funded on the 2015 CWSRF Intended Use Plan (IUP) or later. It doesn't apply to all loans, but instead applies to loans totaling an amount equal to the State's capitalization grant. In loans totaling this amount, any A/E selection in these loans must be procured through a Qualification Based Selection (QBS) process as defined in 40 U.S.C 1101 *et seq.* In this process the engineering services are ranked based on qualifications (cost component not allowed) and the borrower then negotiates the fee with the most qualified firm.

The requirements of 40 U.S.C 1101 *et seq.* are:

- Public announcement of the solicitation (e.g., a Request for Qualifications);
- Evaluation and ranking of the submitted qualifications statements based on established, publicly available criteria (e.g., identified in the solicitation);
  - Evaluation criteria should be based on demonstrated competence and qualification for the type of professional services required (e.g., past performance, specialized experience, and technical competence in the type of work required);
- Discussion with at least three firms to consider anticipated concepts and compare alternative methods for furnishing services;
- Selection of at least three firms considered to be the most highly qualified to provide the services required; and

- Contract negotiation with the most highly qualified firm to determine compensation that is fair and reasonable based on a clear understanding of the project scope, complexity, professional nature, and the estimated value of the services to be rendered;
  - In the event that a contract cannot be negotiated with the most highly qualified firm, negotiation continues in order of qualification.

The law does not require all CWSRF loans to use a QBS process, only a sum of loans totaling an amount equal to the State's capitalization grant amount. (I.e. the State's FY 2015 capitalization grant is \$10.9 million, therefore only \$10.9 million of the est. \$40 million in CWSRF loans for FY 2015 would have to comply with this requirement.) Borrowers that do not want to use the QBS process can still qualify for a CWSRF loan. The exact process for this will be worked out during the development of the 2015 CWSRF IUP, however it is anticipated that loans for a project(s) up to \$1 million would be exempt from this requirement and loans for a project(s) in excess of \$1 million would be required to comply with this provision or take out a second/separate CWSRF loan for the A/E services.

3. **Davis-Bacon Related Act Provision, Section 602(b)(6)** – Davis-Bacon wage rates are currently required for CWSRF funded treatment works projects. This section removes the yearly inclusion of Davis-Bacon from the federal appropriations process and permanently applies the prevailing wage (Davis-Bacon) provision of the FWPCA section 513 to any projects for treatment works (e.g. treatment plant, pumping stations, sewers, etc.) that are funded by the CWSRF. To be eligible for CWSRF funding, all treatment works construction projects must contain a prevailing wage rate and comply with the Davis-Bacon Act requirements.
4. **American Iron and Steel, Section 608** – The use of American iron and steel is currently required for CWSRF funded treatment works projects. This section removes the yearly inclusion of American iron and steel requirement from the federal appropriations process and permanently places the American Iron and Steel (AIS) provision in the FWPCA and requires assistance recipients, absent of a waiver, to use iron and steel products that are produced in the United States in projects for the construction, alteration, maintenance, and repair of treatment works. For more information on the AIS requirements go to: [http://water.epa.gov/grants\\_funding/aisrequirement.cfm](http://water.epa.gov/grants_funding/aisrequirement.cfm)
5. **Cost and Effectiveness Analysis, Section 602(b)(13)** – Starting **October 1, 2015** municipalities and districts must certify to the CWSRF that they have studied and evaluated the cost and effectiveness of the processes, materials, techniques, and technologies for the funded project and that they have selected, to the maximum extent practicable, a project that maximizes the potential for efficient water and energy conservation, taking into consideration capital cost, operation and maintenance, and replacement cost.

This requirement does not apply to a loan if, prior to October 1, 2015, the project was listed on a CWSRF Intended Use Plan or the loan recipient submitted an application for

CWSRF funding assistance. Prior to October 1, 2015, the Department will be finalizing the cost and effectiveness analysis requirements and guidance; and will post them on the CWSRF website.

- 6. Refinanced Projects** – The CWSRF has the ability to refinance certain water quality loans. Generally, these have been U.S.D.A. Rural Development wastewater or landfill closure loans because of the similar environmental review requirements of both programs. The recent amendments to the FWPCA now require prevailing wage rates (Davis-Bacon Act) and American Iron and Steel in treatment works construction contracts funded by the CWSRF. As such, to be eligible for CWSRF refinancing, a treatment works construction project constructed on or after October 30, 2009 the contract documents must have included and the contract must have complied with the Davis-Bacon Act requirements; and also the American Iron and Steel provision requirements if constructed on or after June 10, 2014.

#### **New CWSRF Program Loan Term**

- **30 Year Loan Terms, Section 603(d)(1)(A)&(B)** –The maximum loan term has been increased from 20 years to 30 years, or the projected useful life of the project to be financed, whichever is less. Generally, the CWSRF program will consider force mains, and equipment upgrades at wastewater treatment plants and pumping stations to have a useful life of 25 years; and structures and collection system work (concrete structures, sewers, manholes, etc.) to have a useful life of 50 years. The useful life of other projects not covered in the above categories, or containing a combination of categories (i.e. a project that contains pumping station upgrades and collection system work, etc.), will be determined on a case-by-case basis.

#### **New CWSRF Program Eligibilities**

**(Please note: Only the amended sections of the law that affected a change are listed below. Amendments not listed did not affect a change, but simply clarified existing program eligibilities.)**

- 1. Decentralized Systems, Section 603(c)(4)** – The construction, repair, or replacement of public or privately owned decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage are eligible. The change in this area is that the decentralized project can be for construction of a new system and does not have to resolve an existing NPS problem.
- 2. Stormwater Management, Section 603(c)(5)** – Publicly and privately owned, permitted and unpermitted projects that manage, reduce, treat, or recapture stormwater or subsurface drainage water are eligible. The change in this area is that these types of stormwater projects are free of the section 319 program restrictions. Specifically, it allows for the funding of projects required by a Municipal Separate Storm Sewer Systems (MS4) permit, regardless of ownership. It also allows for stormwater projects at Concentrated Animal Feeding Operations (CAFOs). In addition, it allows for the eligible

funding of stormwater pipes designed to manage, but not treat, stormwater (previously there had to be a treatment component for the project to be eligible).

- 3. Water Conservation and Decreased POTW Demand, Section 603(c)(6)** – Projects that reduce the demand for publicly owned treatment works (POTW) capacity through water conservation, efficiency, or reuse are CWSRF eligible regardless of whether the activity takes place at publicly or privately owned properties. Previously only publicly owned projects were eligible. The loan must still be with a public entity, however the public entity could, for example, separate a privately owned roof drain from the sewer as a CWSRF eligible project.
- 4. Watershed Projects Meeting Section 122, Section 603(c)(7)** – Projects that develop and implement a watershed pilot project related to at least one of the six areas identified in section 122 of the FWPCA are eligible: watershed management of wet weather discharges, stormwater best management practices, watershed partnerships, integrated water resource planning, municipality-wide stormwater management planning, or increased resilience of treatment works. Assistance recipients may be public or private entities.
- 5. Energy Consumption Reduction at POTWs, Section 603(c)(8)** – Projects that reduce energy consumption needs for the POTW are eligible. Only public entities are eligible for assistance, however, project activities may take place at public or private properties as long as they reduce energy consumption at the POTW. Planning activities, such as energy audits and optimization studies are also eligible.
- 6. Wastewater, Stormwater, or Subsurface Drainage Water Reuse or Recycling, Section 603(c)(9)** – Projects include the equipment and piping required to reuse or recycle wastewater, stormwater, or subsurface drainage water. Assistance recipients may be public or private entities.
- 7. Assistance to Nonprofit Entity for POTW Technical Assistance, Section 603(c)(11)** – The CWSRF may provide financial assistance to any qualified nonprofit entity to provide assistance to small and medium sized POTWs for training activities, planning, design, and associated preconstruction activities and to assist POTW in achieving compliance with the FWPCA. Ongoing O&M activities are not eligible.
- 8. Acquisition of Land, Section 212(2)(A)** – Previously, only land that was an integral part of the treatment system (i.e. land for spray irrigation, subsurface disposal, etc.) was eligible for CWSRF funding. Amendments to this section expand the eligibility to treatment works that are necessary for construction. This includes surface and subsurface easements, a place to store equipment and material during construction, land needed to locate eligible projects (pumping stations, etc.), and land integral to the treatment process.

**For additional information or questions concerning this letter, please contact John True at (207) 287-7808 or [john.n.true@maine.gov](mailto:john.n.true@maine.gov) .**