

10-144

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DIVISION OF HEALTH ENGINEERING

Chapter 230:

RULES RELATING TO DRINKING WATER STATE REVOLVING FUND

STATE OF MAINE

RULES RELATING TO DRINKING WATER STATE REVOLVING LOAN FUND

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DIVISION OF HEALTH ENGINEERING

10 STATE HOUSE STATION

AUGUSTA, MAINE 04333-0010

and

MAINE MUNICIPAL BOND BANK

Effective January 28, 1998

Department of Health and Human Services
Bureau of Health
Division of Health Engineering

STATE OF MAINE
RULES RELATING TO DRINKING WATER STATE REVOLVING LOAN FUND

SUMMARY STATEMENT

These rules set forth and explain 1) the uses to which the Drinking Water State Revolving Fund (the Fund) may be put, 2) the prioritization of Projects requesting financial assistance from the Fund, 3) the process for certification of the eligibility of Projects prior to their receiving financial assistance, and 4) the details of the environmental review process for applicants seeking financial assistance from the Fund.

BASIS STATEMENT

These rules are established to allow the Fund to award financial assistance to public water systems for the construction of Projects that will eliminate immediate and potential threats to public health. The Fund is financed in part by a grant from the U.S. Environmental Protection Agency (EPA). EPA guidelines require that recipient states have certain rules in place for the administration of the Fund and for conducting environmental reviews of Projects. Projects receiving monies from the Fund must undergo an environmental review to ensure that they comply with applicable local, state and federal laws relating to the protection and enhancement of the human environment affected by the Project.

AUTHORITY

30-A M.R.S.A. Section 5959

EFFECTIVE DATE

These rules are effective January 28, 1998

Non-Discrimination Notice

In accordance with Title VI of the Civil Rights Act of 1964, as amended by the Civil Rights Restoration Act of 1991 (42 U.S.C. 1981, 2000e et seq.) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 et seq.), Title 11 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), and Title IX of the Education Amendments of 1972, the Maine Department of Health and Human Services does not discriminate on the basis of sex, color, national origin, disability or age in admission or access to or treatment or employment in its programs and activities,

1. Uses of the Safe Drinking Water State Revolving Loan Fund Established by Public Law 1997, Chapter 555

- a. **General.** For purposes of administering the Safe Drinking Water State Revolving Loan Fund established by 30A MRSA Section 6006-B (the Fund) references to “water utility” in 30A MRSA Sections 5953-B and 6006-B shall be taken to mean a public water system as defined in 22 MRSA Section 2601, subsection 8. In addition all references in 30A MRSA Section 6006-B to the federal Safe Drinking Water Act shall be read as references to the federal Safe Drinking Water Act of 1996, 42 USC Sections 300f to 300j-9, as amended.
- b. **Additional uses.** The Fund may be used for one or more of the following purposes, in addition to the purposes listed in 30A MRSA Section 6006-B, subsection 2:
 - I. To make loans to a municipality or an intermunicipal or interstate agency or other eligible participant as specified in the federal Safe Drinking Water Act of 1996, 42 USC Sections 300f to 300j-9, as amended (the Act), to buy or refinance bonds or notes issued after July 1, 1993 for the purpose of financing the construction of any capital improvement or management project described under 30A MRSA Section 5953-B, subsection 1 and certified under 30A MRSA Section 5953-B, subsection 3;
 - II. To pay the costs of the Maine Municipal Bond Bank (the Bank) and the Department of Health and Human Services (DHHS) associated with the administration of the Fund and Projects financed by it, provided that such costs be paid from a separate, dedicated and identifiable administrative account into which not more than four percent (4%), or such greater amount as may be permitted under federal law as part of the Act, of each federal capitalization grant allotment, and other amounts, shall be deposited; and
 - III. To pay costs required, authorized or funded under the Act with regard to the treatment of drinking water or to pay costs authorized or funded by other federal laws or programs that provide money for deposit to the Fund for the purposes of 30A MRSA Section 6006-B.

2. Prioritization of Projects to Receive Financial Assistance from the Fund

- a. **General.** Periodically, and at least annually, DHHS will prepare and certify to the Bank a project priority list of those public water system projects eligible for financial assistance from the Fund. For the purposes of these rules a public water system is defined in 22 MRSA Section 2601, subsection 8.
- b. **Priority factors.** The factors to be considered in developing the priority list shall include, but not be limited to:
 - I. Does the project address serious risk to human health;
 - II. Is the project necessary to ensure compliance with the Safe Drinking Water Act;

- III. Is the project to assist public water systems in need on a per household basis according to State affordability criteria; and
- IV. Does the project meet the above listed factors used in developing the priority list and is the public water system prepared to proceed with the proposed activity.

3. Certification of Eligibility for Financial Assistance

No financial assistance for a project may be granted under this section until DHHS has certified to the Bank that the project is eligible for immediate financing under 30A MRSA Section 5953-B and is on the priority list identified in Section 2 of these rules.

4. Environmental Review for Non-equivalency Projects

An applicant requesting assistance for a non-equivalency projects (as defined in the Environmental Protection Agency Drinking Water State Revolving Fund Program Guidelines) shall certify that the Project complies with all local and State reviews and permit requirements for construction of the Project. The applicant shall submit copies of all permits or other documents obtained from local, State and federal agencies for the Project. The applicant shall also submit an evaluation of the alternatives considered prior to choosing the Project, a description of the positive and negative impacts of the Project on the environment and a description of the future of the area's environment without the Project. DHHS will review the applicant's submittal to determine whether or not the Project is consistent with applicable State, local and federal environmental regulations. After determining that the Project is consistent with the applicable environmental regulations DHHS will issue a Determination of Environmental Compliance for the non-equivalency Project. Notice of the determination shall be published by the applicant in a newspaper of general circulation in the area to be served. Concurrently, DHHS shall make the documentation submitted by the applicant available to the public and shall distribute the notice of the determination to all known interested parties. In the event the Project is not consistent with the applicable environmental regulations financial assistance will not be given.

- 5. Federal Cross-cutter Authorities shall be met by equivalency projects (as defined in the Environmental Protection Agency Drinking Water State Revolving Fund Guidelines). Applicants shall be responsible for ensuring that all federal and State agencies with responsibility for administration of federal cross-cutting authorities review the Project for consistency with those authorities.

6. Environmental Review for Equivalency Projects

a. General. As required by the Provisions of the Act

DHHS will conduct an interdisciplinary environmental review of equivalency projects proposed for funding through the Fund. This NEPA (National Environmental Protection Act) - like review will ensure that the Project will comply with the applicable local, State and federal laws, relating to the protection, restoration and enhancement of the environment. The review will include provisions for public participation and consideration of the immediate and long-term individual and cumulative effects of the Project. Based upon DHHS staff (the Staff) review and consideration of public comments, including local, State and federal agency comments, DHHS will make a formal determination regarding the potential social and environmental impacts of the proposed Project. If necessary, the determinations of DHHS will include mitigative provisions as a condition to the provision of financial assistance for construction. No financial assistance will be provided until a final environmental determination has been made by DHHS, or a previous determination made by DHHS has been accepted (see subsection (d) (I) of this section). DHHS may concur with an environmental determination that is based on a NEPA or NEPA-like review issued by another State or federal agency.

b. Early review and coordination

During the planning stage for a Project potential applicants to the Fund should obtain guidance from the Staff regarding the scope of the environmental review to be conducted. This will allow for early involvement and consultation with multiple funding and review agencies. Early identification of the agencies with potential environmental issues of concern will allow for concurrent rather than consecutive reviews of the Project and allow the focus of study and review to concentrate on those issues. Early identification of areas of concern will minimize delays due to incorporating measures to eliminate or mitigate the concern. Early coordination will also allow the involved agencies to coordinate public notice and hearing requirements when practicable. Environmental documentation may be generated simultaneously with preliminary engineering reports and/or other planning documents allowing for integrated circulation and review of the documents.

c. Basic Environmental Determinations

There are three basic environmental determinations that will apply to Projects proposed to be implemented with assistance from the Fund. They are: (1) a determination to categorically exclude (CE) a Project from a formal environmental review, (2) a finding of no significant impact (FNSI) based upon a formal environmental review supported by an environmental information document (EID) and, (3) a determination to require the preparation of an environmental impact statement (EIS), after which a determination to provide or not to provide financial assistance will be included in the EIS record of decision (ROD).

- I. For the purposes of making an environmental determination, no significant environmental impact means:

- AA. State ambient air quality standards and State emissions standards are met;
- BB. The State classification of nearby, or adjacent, surface water bodies is not affected;
- CC. Ground water quality for the area is not degraded, nor are off-site wells or other protected natural resources at risk due to taking of water from the ground water source;
- DD. The preservation of any site recognized as historic on the National Register of Historic Places and/or the Maine Historic Resource Inventory is not affected;
- EE. Threatened or endangered species, and/or their habitats, are not affected;
- FF. Environmentally sensitive areas such as, but not limited to, wetlands, fragile mountain areas, floodplains, coastal zones, coastal dunes, coastal barrier islands, wild and scenic rivers, and important farmlands, identified by State and Federal environmental authorities, are not affected;
- GG. Local noise levels are not changed; and
- HH. Other parameters which may be designated by DHHS, as required.

When evaluating the above parameters, the criteria and considerations established in Chapter 375 Site Location of Development Regulations of the State of Maine Department of Environmental Protection will be utilized. Guidance for application and definition of terms used in evaluation of social and natural environmental impacts will be taken from the Council on Environmental Quality (CEQ) regulations, guidance and "Question and Answer" documents.

- II. The categorical exclusion (CE) determination applies to categories of Projects that have been shown over time not to entail significant impacts on the quality of the environment:
 - AA. A Project that 1) is expected to have no significant environmental impact, 2) is located such that the Project or the required construction work for the Project will not be in or affect nearby environmentally sensitive areas or resources, and 3) meets any one of the following criteria, as determined by DHHS, may be categorically excluded from formal environmental review requirements:
 - i. The Project is directed solely toward the rehabilitation, minor upgrading and/or minor expansion of existing facilities, toward functional replacement of equipment, toward the construction of related facilities adjoining existing facilities, or toward construction of small structures on existing sites;

- ii. The Project is to replace existing water mains with new mains in the same general location; or
 - iii. The Project is to replace existing water storage facilities with new storage facilities in the same general location; or
 - iv. The Project is to construct distribution or transmission mains in existing developed rights-of-way; or
 - v. The Project is the purchase of land or easements integral to the implementation of a source water protection plan where no land-use changes are anticipated to occur.
- BB. CEs will not be granted for Projects that entail:
- i. A new surface water intake or relocation of an existing surface water intake or a new discharge;
 - ii. The provision of capacity for a population 30 percent or greater than the existing population within a 10 year period;
 - iii. Known or expected impacts to cultural resources, to threatened or endangered species, or to other environmentally sensitive areas, as defined by local, State or federal law; or
 - iv. The construction of facilities that are known or expected not to be cost-effective or are likely to cause significant public controversy.
- CC. DHHS may issue a CE for other categories of Projects for which there is sufficient documentation demonstrating that the Project is not likely to have significant effects on the quality of the environment.
- DD. DHHS shall revoke a CE and require the applicant to prepare and submit an EID if 1) the Project is altered and no longer meets the requirements for a CE or, 2) new evidence shows that serious environmental issues exist or, 3) a local, State, or federal law is being or may be violated.
- III. Applicants whose Projects do not meet the criteria for a CE will be required to prepare an Environmental Information Document (EID). DHHS Staff will review the EID and prepare an environmental assessment (EA) resulting in the issuance of either a FNSI or a public notice that preparation of an EIS by the applicant will be required. DHHS's issuance of a FNSI will be based upon the EA which shall document that the potential environmental impacts will not be significant or that they will be mitigated without extraordinary measures.
- IV. The ROD may only be based upon an EIS that is prepared in conformance with CEQ regulations (CFR 40 Part 1502.10). An EIS will be required when DHHS determines through preparation of the EA that any one of the following conditions exist:

- AA. The Project will significantly affect the pattern and type of land use or growth and distribution of the population;
- BB. The effects of the construction or operation of the project will conflict with local or State laws or rules;
- CC. The Project may have significant adverse impacts upon any one of the following:
 - i. Wetlands;
 - ii. Floodplains;
 - iii. Threatened and endangered species or their habitats; or
 - iv. Cultural resources including parklands, preserves, and other public land or areas of recognized scenic, recreational, agricultural, archeological or historic value.
- DD. The Project may displace population or significantly alter the characteristics of existing residential areas;
- EE. The Project may directly or indirectly (e.g., through induced development) have significant adverse effect, as defined by CEQ Regulations, upon local ambient air quality, local noise levels, surface and ground water quantity or quality, fish, shellfish, wildlife or their natural habitats; or
- FF. The Project may generate significant public controversy.

d. **Other Determinations That DHHS Is Required to Make**

- I. If funding application is made five or more years after an environmental determination has been issued, or a Project has been altered, DHHS will examine the plans and specifications, and related documents, for consistency with the environmental determination. If significant changes are found, DHHS may revoke a CE and require the preparation of an EID and, if appropriate an EIS, or require the preparation of amendments to an EID or, if appropriate, supplements to an EIS. Based upon Staff review of the amended Project and EID, DHHS will:
 - AA. Reaffirm the original environmental determination through the issuance of a public notice or statement of finding;
 - BB. Issue a FNSI for a Project for which a CE has been revoked, or issue a public notice that the preparation of an EIS will be required;
 - CC. Issue an amendment to a FNSI, or revoke a FNSI and issue a public notice that the preparation of an EIS will be required; or
 - DD. Issue a supplement to a ROD, or revoke a ROD that included funding and issue a public notice that financial assistance will not be provided.

- e. **Other Determinations That DHHS May Make**
- I. An applicant may request advance authority to construct part of the proposed Project prior to completion of the necessary environmental review when the part of the Project to be constructed:
 - AA. Immediately remedies a severe public health, water quality or environmental problem;
 - BB. Does not preclude any reasonable alternatives identified for the complete system;
 - CC. Does not cause significant direct or indirect environmental impacts including those which cannot be acceptably mitigated without completing the entire Project; and
 - DD. Is not highly controversial.
 - II. Based upon the review of the information required by subsection (f) of this section, if DHHS finds that the portion of the Project to be constructed meets the requirements of subsection (e)(I) above, DHHS will issue a FNSI so conditioned as to prohibit construction of the remainder of the Project until a complete environmental review of the entire Project has been performed and an environmental determination issued.
- f. Environmental information required by DHHS. A minimum of two copies of all information required in this subsection shall be submitted to DHHS. Information regarding environmentally sensitive areas and important natural resources referred to in these rules is available through various agencies of the State and federal government.
- I. Applicants seeking a CE will provide DHHS with sufficient documentation to demonstrate compliance with the criteria of subsection (c)(II) of this section. At a minimum, this documentation will consist of:
 - AA. A brief, complete description of the proposed Project and its costs;
 - BB. A statement indicating that the Project is cost-effective and that the applicant is financially capable of constructing, operating and maintaining the facilities; and
 - CC. A plan map, or maps, of the proposed Project showing:
 - i. The location of all construction areas,
 - ii. The water service area boundaries, and
 - iii. Any known environmentally sensitive areas, such as, but not limited to, cultural resource sites, endangered or threatened species critical habitats and environmentally important natural resource areas such as, but not limited to, 100-year floodplain

boundary, wetlands, important farmlands, coastal zones or wild and scenic rivers, and fragile mountain areas.

DD. Copies of all permits obtained by the applicant from local, State and federal agencies for the Project.

II. An EID must be submitted by those applicants whose proposed Projects do not meet the criteria for a CE.

AA. In addition to such other information as DHHS may require, the contents of an EID will include:

- i. A description of the Project including population to be served, if appropriate. Population projections will be consistent with studies available from the Regional Planning Commission for the area to be served by the Project;
- ii. The environmental setting of the Project and the future of the environment without the Project;
- iii. The alternatives to the Project including an evaluation of direct and indirect impacts, cost effective analysis and socioeconomic effect of each alternative;
- iv. The potential environmental impacts of the Project, including those which cannot be avoided;
- v. A discussion of the whole range of relevant impacts including measures to mitigate adverse impacts, and commitments of resources to the Project. This would include any specific requirements of grant conditions or drinking water system long-term plans. Such requirements should be identified and referenced;
- vi. A description of public participation activities conducted, issues raised, and changes to the Project which have been or may be made as a result of the public participation process;
- vii. Documentation of coordination with appropriate governmental and regulatory agencies; and
- viii. A plan map or maps as defined in subsection (f)(I)(CC) of this section.

BB. The EID shall be made available for public review and comment for 30 days. The applicant shall advertise the availability of the EID in a newspaper of general circulation in the area to be served. Concurrent with the advertisement, a notice of availability of the EID will be sent to all local, State and federal agencies and to public and private parties who have expressed an interest in the proposed Project. Both the advertisement and the notice shall include the deadline for submitting

comments and for requesting a public hearing. Addresses where copies of the EID can be obtained and where comments will be taken shall also be included.

- CC. A public hearing on the EID will be held when the Project is expected to have an effect on the environment, or when five (5) or more persons request a hearing in writing. The applicant shall provide DHHS with a record of the hearing which shall include, a list of people in attendance, identities of commenters and the comments they made, copies of written testimony and the applicant's responses to the comments made. The record of the hearing and the EID shall be submitted to DHHS no later than thirty (30) days after the hearing. Advertisement and notice of the hearing shall be made no less than seventeen (17) days prior to the hearing. In the event the hearing date falls after a previously set comment deadline, comments shall be taken for five (5) days after the hearing. Notice of the public hearing shall be advertised in a newspaper of general circulation in the area to be served and sent to all local, State, and federal agencies and to public and private parties that have expressed an interest in the proposed Project. The applicant may request and DHHS may allow for the hearing to be held in conjunction with another hearing required for the Project.

- III. The format of an EIS will allow for sound analysis by making a clear presentation of all alternatives, including the no action alternative, the proposed alternative, and all rejected alternatives. Both positive and negative environmental, economic and social impacts will be presented for each of the alternatives. Justification for choosing the proposed alternative and rejecting the others will be included. The procedure for developing the EIS is given in subsection (g) of this section.

g. Procedures for Developing the EIS

- I. Upon making the determination that an EIS will be required of a proposed Project, DHHS will publish and distribute a notice of intent to have an EIS prepared.
- II. The EIS shall be prepared consistent with the CEQ regulations (40 CFR Part 1502.10).
- III. The environmental determination will be in the form of a ROD stating one of the following:
- AA. Financial assistance is given to the proposed Project;
- BB. The proposed Project is modified to reduce adverse environmental impacts prior to financial assistance being given, or financial assistance is provided with conditions that mitigative measures be implemented; or
- CC. Financial assistance is not provided for the proposed Project.

h. Public Notice Requirements After an Environmental Determination Has Been Made

After DHHS has issued an environmental determination the applicant shall give public notice as follows:

- I. For Projects receiving a CE determination:
 - AA. Applicants shall publish a notice indicating the determination in a local newspaper of community-wide circulation stating that supporting documentation is available for public inspection.
 - BB. Concurrently, DHHS shall make the documentation available to the public and shall distribute the notice of the determination to all known interested parties.
 - II. For Projects receiving a FNSI determination:
 - AA. DHHS shall allow for public review for at least thirty (30) days prior to the FNSI taking effect by:
 - i. Assisting the applicant with publication of a notice of the determination and a statement of the availability of the supporting EA in a newspaper of general circulation in the area to be served.
 - ii. Making the EA available to the public.
 - iii. Distributing the FNSI and EA to all known interested parties.
 - III. For Projects receiving a ROD after preparation of an EIS:
 - AA. DHHS shall distribute the ROD to all parties who commented on the Draft or Final EIS.
- i. **DHHS Shall Monitor and Enforce Compliance with Grant Conditions.**
- I. The Project will be monitored by DHHS to ensure that any mitigating measures identified in the FNSI or ROD are being met.
 - II. If the applicant/recipient fails to comply with grant conditions any of the following enforcement sanctions may be imposed:
 - AA. Temporarily withhold cash payments pending correction of the deficiency;
 - BB. Deny funding of all or part of the cost of the action not in compliance;
 - CC. Wholly or partly suspend or terminate funding of the Project;
 - DD. Withhold further funding for the Project;
 - EE. Take other measures that may be legally available.

7. Constitutionality Clause

Should any section, paragraph, sentence, clause, or phrase of these rules be declared unconstitutional or invalid for any reason, the remainder of the rules shall not be affected thereby.

8. Advisory Rulings and Adjudicatory Proceedings

Nothing in these rules shall prohibit any public, private or governmental party from seeking administrative or legal relief from the determination of DHHS. Requests for advisory rulings and adjudicatory proceedings shall be made to DHHS as provided in the State of Maine Rules Relating to Drinking Water, 10-144E CMR 231, Section 1-B.

STATUTORY AUTHORITY: 30A M.R.S.A. §5959

EFFECTIVE DATE:

October 22, 1997 – filing 97-362 (EMERGENCY - expires January 20, 1998)

NON-SUBSTANTIVE CORRECTION:

November 10, 1997 - corrected expiration date

EFFECTIVE DATE:

January 28, 1998 – filing 98-38