# 06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 592: THE SMALL COMMUNITY WASTEWATER PROGRAM

SUMMARY: The Maine Small Community Program funds sewage treatment facilities for municipalities, quasi-municipalities and unorganized townships with water quality problems in freshwater lakes, streams, and/or salt water; or public health hazards. Funding may also include privately owned sanitary facilities within such communities. The requirements for and extent of such funding by the State are defined in this section.

**1. Definitions.** The terms below have the following meanings.

**A. Applicant.** An "applicant" is a municipality, quasi-municipal organization, or county commissioners acting on behalf of an unorganized township or plantation.

**B. Commercial establishment.** A "commercial establishment" is a building used for purposes of trade or commerce, or used to conduct operations of a non-profit, governmental, or educational organization, or for renting for a total of more than six months in any year.

**C. Individual system.** An "individual system" is a privately owned and operated sanitary treatment facility serving one or more single family dwellings , seasonal dwellings, or commercial establishments.

**D. Municipal system.** A "municipal system" is a municipally or quasi-municipally owned sanitary facility, the operation of which is funded by the collection of user fees or property taxes.

**E. Non-profit organization.** A "non-profit organization" is an organization with non-profit status under the U.S. Internal Revenue Code.

**F. Seasonal dwelling .** A "seasonal dwelling " is a dwelling that is not defined as a "commercial establishment" or "single family dwelling.

**G. Single family dwelling.** A "single family dwelling" is the dwelling that is continuously occupied by the owner for 6 months or more in any calendar year and is the legal residence of the owner for State and Federal income tax purposes.

**2. Funding.** The department uses funds from bond issues for implementation of this program. Grants may be awarded to pay up to 90% of the costs of municipal systems. Grants involving individual systems may be awarded for funding from 25% to 100% of the cost of the project, depending upon the use of the property and the owner's annual income. The maximum construction cost of any project receiving funding through this program is $100,000. An application may include several projects, and may be funded in any one year up to a maximum of $90,000.

**3. Application for funds**

**A.** **Contents of an application.** An application is a written submission from the governing body of the municipality, or from the county commissioners on behalf of an unorganized township or plantation. The application must explain the water pollution problem, the number and type of sanitary systems involved (single family dwellings, seasonal dwellings, commercial establishments, etc.) and the benefit expected to the State from elimination of the pollution sources as well as all other information required by this rule. Use of monies obtained under the Small Community Grants Program is subject to the conditions stated in this chapter .

**B.** **Deadline.** An application may be submitted at any time. Only applications received before January 31 of the year will be eligible for award in the same calendar year except as described in section 3(C) below.

**C. Emergency request.** After the deadline for applications an application may be submitted as an emergency request for award during the same calendar year. An emergency request must demonstrate that the project will eliminate an immediate, severe threat to a public drinking water supply, an open shellfishing area, or to public health and will be considered on a case-by-case basis subject to the availability of funds. An emergency request is subject to all other requirements of the program.

**4. Review of applications**

**A.** **Project priorities.** Applications are prioritized by the severity of the pollution problem caused by the existing condition. Four types of pollution problems are used to prioritize applications, and each application is assigned a priority type based on the predominant category of problems shown in the application. Grants are awarded on the basis of priority type assigned, documentation of specific problems, and the number of requests received during the year.

(1) Public drinking water supply protection projects are designated as priority 1, the highest priority. The project must eliminate a source of contamination to a public surface or subsurface drinking water system as defined by 22 M.R.S.A. §601. This priority type will be assigned to a project when a potential public health hazard exists as a result of the contamination, and the contamination does or will require alternative sources of water or additional water treatment if the project is not carried out.

(2)Shellfishery protection projects are designated as priority 2, the second highest priority. The project must eliminate a source of contamination to a shellfishing area. This priority type will be assigned to a project that will eliminate sources of waste responsible for a shellfish area closure or eliminate sources of pollution in order to maintain an open status, according to the standards of the Department of Marine Resources.

(3) Water protection projects are designated as priority 3, the third highest priority. The project must eliminate a source of inadequately treated sewage to waters of the State. This priority type will be assigned to a project that will eliminate direct discharges of untreated or partially treated wastewater that degrade the quality of waters of the State.

(4) Public nuisance condition elimination projects are designated as priority 4, the fourth highest priority. The project must eliminate a hazard to public health resulting from the improper disposal of sewage. Public nuisance conditions may exist even if there is no discharge of sewage to a waterbody. This priority type will be assigned to a project that eliminates a nuisance or health hazard to the public caused by a malfunctioning or inadequate wastewater treatment and disposal system. A malfunction contained wholly within an owner's property is not normally considered to be a public nuisance.

NOTE: In addition to information furnished in the application, the department may also seek information from the Department of Human Services, the Department of Marine Resources, or other sources in the assignment of projects to specific categories and determination of the relative priority of problems within a category.

**B.** **Priority list.** The project priority list prepared by Commissioner staff is submitted to the board for approval. After approval, each applicant whose project will be funded is notified by the Commissioner, and two copies of an application for state grant that formally allocates the grant funds are then sent to each applicant for signature by authorized officials. An applicant who is not funded in any calendar year must reapply to be considered in the next calendar year.

**C**. **Rescission of unspent grant funds.** Grants which are awarded but not spent during the same calendar year may be rescinded by the department and used for other projects.

**5. Use of grant funds**

**A**. **Eligible costs.** Grant funds may be used to pay for the following work and services:

(1) Design of the treatment and disposal system;

(2) Construction of the treatment and disposal system up to and including connections through the foundation wall, as necessary;

(3) Proper abandonment of existing septic tanks to be replaced as part of the total construction plan;

(4) Inspection of the system by qualified person(s);

(5) Administrative services, advertising costs and telephone bills associated with the project, external plumbing permits, and easement recording fees;

(6) Internal plumbing done to avoid the use of a pump when the cost of a pump would be greater than the cost of the re-plumbing. Claims for such costs must be accompanied by written estimates for both alternatives; and

(7) Other project costs if the scope and cost are approved of in writing by the department.

**B**. **Non-eligible costs.** Grant funds may not be used to pay for the following costs:

(1) Construction expenses incurred by the owner prior to department approval of an application for funding under this chapter ;

(2) Internal plumbing except as specifically allowed in section 5(A)(6);

(3) Easement or land acquisition costs ;

(4) Excessive restoration beyond a reasonable amount necessary to comply with the Maine Subsurface Wastewater Disposal Rules or contract documents ; and

(5) Other unnecessary costs or excessive charges as determined by the department .

**6. Applicant's responsibilities**

**A** **Related laws.** The applicant shall abide by the Maine Subsurface Wastewater Disposal Rules and all other applicable laws.

**B** **Good faith effort by the applicant.** Prior to submission of an application, the applicant shall make a good faith effort to ascertain the existence of all malfunctioning septic systems and direct discharges that are affecting water quality or causing a public nuisance within its jurisdiction. These systems are defined under sections 7(B) and (C) below.

(1) The applicant shall post a public notice about the program at the Municipal Building asking for information from individuals who may qualify for the program.

(2) A Local Plumbing Inspector or Code Enforcement Officer shall inspect all potentially qualifying systems to determine if a malfunction or direct discharge exists.

(3) The applicant shall provide the department with information necessary to determine the grant eligibility of each individual system. A list of eligible systems, arranged in order of severity of the pollution problem, will be developed jointly by the applicant and department. Individual systems will be funded based upon this eligibility list, in order of the most severe to the least severe, until available grant funds are expended. Projects not on the eligible list or lower on the list may be funded at the department's discretion.

**7. Requirements of individual systems for inclusion in program**

**A.** **Individual system requirements.** Individual systems may not be funded by the program unless the following requirements are met:

(1) The applicant has received a state grant from the Small Community Program that includes funding for individually owned systems;

(2) The individual system meets the eligibility criteria of sections 7 (B) and (C) and is included in the list of eligible systems described in section 6(B)(3) of this chapter;

(3) The owner of the individual system meets the income requirements of section 7(E) below and has submitted a statement of financial condition to the applicant; and

(4) The owner of the individual system has submitted to the applicant: (1) a signed agreement and (2) a signed easement form.

(a) Agreement. The applicant shall require a signed agreement between the applicant and the owner for each individual system . This agreement must :

(i) Grant access to the site for design, construction and inspection of the required facilities;

(ii) Require payment of owner's share of project ;

(iii) State that the owner is responsible for the maintenance and repair of the system; and

(iv) Be accompanied by the previous year's federal tax return if one was filed, or a signed statement of financial condition if a tax return was not filed.

(b) Easement form. The applicant shall require a signed easement form to be recorded by the applicant at the Registry of Deeds. This shall be recorded within thirty days after a contract has been signed for construction. This easement grants to the applicant the right of access at all reasonable times to inspect or correct a malfunction should the owner fail to do so, and requires repayment of all or part of the grant to the applicant if the property is sold or transferred within a time period determined by the department. Funds which are repaid because of the transfer of property may either be used by the applicant to construct other projects on the list of eligible systems, or returned to the department.

**B.** **Eligible systems.** In addition to other requirements of this chapter, only the following types of individual systems may be eligible for funding:

(1) A structure that discharges raw or partially treated wastewater through a pipe or open ditch directly into the waters of the State;

(2) A structure that discharges raw or partially treated wastewater through a pipe or open ditch and threatens the public health of the community; or

(3) A structure with an alternative toilet (such as an outhouse, chemical toilet, or electric toilet) and graywater disposal systems that is discharging wastewater to the waters of the state or causing a public health hazard. Only the component of an alternative system that is discharging wastewater is eligible for funding.

**C.** **Non-eligible systems.** Individual sanitary systems are not eligible for funding in any of the following situations.

(1) A structure that has been vacant for the twelve (12) months immediately prior to the date when a grant eligibility determination is requested from the State. .

(2) A structure lacking a pressurized water system.

(3) A structure constructed after July 1, 1974, for which a septic system in compliance with the Maine Subsurface Wastewater Disposal Rules was not installed.

(4) A seasonal dwelling converted to year round use that does not meet the requirements set forth in 30-A M.R.S.A. § 4215.

(5) A structure that is otherwise not in compliance with laws of the State or Municipality.

**D.** **Expansion of existing facilities.** A malfunctioning alternative disposal system, consisting of an alternative toilet and graywater disposal system, or one of its components, that is eligible for funding as described in section 7(B)(3) must be replaced with a properly designed alternative disposal system or component thereof. The grant percentage paid for the replacement will be determined as set forth in section 7(E)(1). Alternative systems that are upgraded to conventional systems are funded at one-half of the percentages shown in section 7(E)(1).

**E.** **Financial requirements for individual systems.** The applicant shall require a signed statement of financial condition from the owner(s) of each individual system. For purposes of this chapter, a copy of the owner(s) Federal Income Tax return for the preceding year is a statement of financial condition. If the owner(s) file separate returns, income from their returns will be combined for the purpose of determining eligibility for the program. In cases where a Federal Income Tax form is not filed, the owner must provide alternative documentation to the applicant for review and approval by the department. A statement of financial condition is not required for a building owned by a local government or non-profit organization.

For jointly owned single family and seasonal dwellings, grant percentage is determined by the sum of all the property owners’ taxable income from the previous year.

For commercial properties, grant percentage is determined by the sum of the owners’ gross profit income from the previous year. Taxable income and gross profit will be determined from the specific lines found on the appropriate tax returns.

For structures with multiple uses, the funding percentages will be prorated based on the wastewater flows generated by each use, as shown on the wastewater disposal system design.

**8. Design of treatment system.** The applicant shall secure the services of a qualified individual or consulting firm for the design of the treatment system. A licensed site evaluator may design subsurface treatment systems up to 2,000 gallons per day (gpd) in size. A professional engineer is required to design and prepare contract documents for subsurface wastewater disposal systems in excess of 2,000 gpd and for overboard discharge systems.

**9. Cost quotations, contract awards and state payments**

**A.** **Bidding requirements.** The applicant is required to solicit quotations from area contractors using contract documents approved by the department. Sealed competitive bids are required for all contracts. An advertisement for bids must be published in a local newspaper at least seven (7) days before bids are opened. The systems may be bid as follows:

(1) Separate contracts must be bid for each individual system, and the basis of contract award is a lump sum price for each system; or

 A single contract must be bid for all individual systems. In this case, the basis of contract award is a total lump sum price for construction of all individual systems; or

(2) For municipal systems, the basis of the contract award must be stated in the contract documents.

**B.** **Contract documents.** Contract documents, to include forms such as the following, and must be approved by the department.

(1) Instructions to bidders;

(2) Bid proposal;

(3) Contract agreement;

(4) Contract general conditions;

(5) Construction specifications; and

(6) Construction plans.

**C.** **Award of construction contracts.** The applicant shall award construction contracts to the lowest responsive bidder pursuant to section 9(A) of this chapter and provided that the contractor selected has demonstrated that he or she has the ability to perform the required work and that he or she will comply with all State laws and the requirements of the contract documents. The contract documents may require that bidders be licensed or certified to perform the work.

**D.** **State payments.** Payments for eligible costs up to the limit of funding are remitted to the applicant as they are incurred. A payment request consists of a department approved payment request form detailing the eligible expenses with documentation attached. Copies of design invoices, construction contracts, inspection invoices, advertisement invoices, and change order statements are the usual documentation required for payment; however, the department may require additional documentation in particular cases if necessary to prove the appropriateness of payment.

**10. Inspection of treatment system.** All construction under program grants pursuant to this chapter must be inspected as follows:

**A**. **Engineered subsurface or overboard discharge systems.** For subsurface disposal systems with wastewater flow greater than 2,000 gpd, or overboard discharge systems, the services of an on-site inspector hired by the consulting engineer are required.

**B.** **Non-engineered subsurface systems.** For subsurface disposal systems with wastewater flow less than 2,000 gpd, inspection by the local plumbing inspector or code enforcement officer is required. Additional inspection by a site evaluator, consultant, or department project representative may be required by the contract documents.

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