

# **RESPONSE DOCUMENT FOR THE FFY2005 PRIORITY SYSTEM DOCUMENT (CLEAN WATER FINANCING)**

The Clean Water Act and its amendments require the United States Environmental Protection Agency (USEPA) and the states to provide for and encourage public participation in the development and implementation of the federally supported Clean Water State Revolving Fund (CWSRF) Program. In New Jersey, the CWSRF was established within the Environmental Infrastructure Financing Program (EIFP). In accordance with the federal rules, the requirement for public participation also applies to the development and/or major revision(s) of the State's Priority System, Intended Use Plan and Project Priority List.

## **Public Participation Process**

On May 19, 2004, the Department sent a compact disc (CD) containing the final FFY2004 Priority System document and the Proposed FFY2005 Priority System document to the standard mailing list of approximately 1,200 potential applicants and other interested parties to seek public input. The standard mailing list includes municipalities, consulting engineers, environmental commissions, special interest groups, state legislators, county health departments, environmental groups, county planning boards and commissions and other interested parties. The mailing also included a public notice advising that a public hearing has been scheduled for June 9, 2004 and that the public comment period will close on June 21, 2004. The May 19, 2004 public notice satisfies the 30-day requirement for availability of relevant documents for the public's review in accordance with applicable federal rules.

On June 9, 2004 at 10:00 a.m., the New Jersey Department of Environmental Protection (Department) held the public hearing at the Department's main offices located at 401 East State Street in Trenton, New Jersey. The public hearing was chaired by Theresa Fenton, Chief, Bureau of Program Development and Technical Services, Municipal Finance and Construction Element (MF&CE), who presented information relevant to the Clean Water Priority System, Intended Use Plan and Project Priority List proposal. The remaining time was allocated for public comment and questions. No one from the public attended the hearing and no testimony was presented. A transcript of the hearing is available from the transcription services to any interested person or organization upon request. In addition, a copy of the transcript may be reviewed at the MF&CE's offices in Trenton.

Two comment letters were received regarding the Proposed FFY2005 Priority System document during the comment period. One letter was from Cape May County MUA and one letter was from the Coalition for Affordable Housing and the Environment.

## SUMMARY OF PUBLIC ISSUES AND RESPONSES

### COMMENT

One commenter suggested that there be a minimum of 101 ranking points required to receive funding, with the exception of land acquisition projects which should have a minimum of 100 ranking points. The commenter believes that the Priority List is merely a list of applicants and not a priority list because every project on it eventually receives funding regardless of how low on the list it falls. Their analysis shows that 70% of the projects on the list would be eliminated from funding eligibility. In addition, it was suggested that funding for urban areas could be offered at more generous loan terms and possibly even as grants. Another commenter questioned the validity of the priority listing suggesting that many projects are no longer candidates and were inadvertently carried over from previous years.

### RESPONSE

The Department does not believe that funding only those projects that reach a minimum point level would be a beneficial change to the EIFP. It should not be presumed that those projects that do not have at least 101 ranking points (100 for land acquisition projects) are not important projects that do not need financial assistance. For instance, all sewer system rehabilitation projects would fall into the unfunded category. These projects are very important to the integrity of the wastewater treatment system. In many towns, the existing sewers are old and inadequate. In some cases, they leak raw sewage during rain events that cause public health concerns and in other cases they allow extraneous flows (like rainwater and groundwater) into a sewer system that cause operational and permit concerns. In addition to sewer system rehabilitation projects, essentially all landfill closures, landfill construction and stormwater management facilities would also be excluded from participating in the EIFP. These projects are important to protect groundwater resources and control nonpoint source pollution, one of the biggest water quality concerns in the State today. While the program would prefer to fund the highest ranked projects, most of the projects on the Priority List are not in a position to proceed and may not be for many years. The program believes it is better to fund as many infrastructure projects that provide a water quality benefit as soon as possible than holding on to these funds waiting for higher ranked projects to come forward. These projects represent real water quality needs and the cost of rehabilitating these systems is passed on to the users. The EIFP can significantly reduce the impact of the cost increase on the users.

The Project Priority List is intended to be a comprehensive listing of eligible projects that have identified a water quality based need for an environmental infrastructure project in their jurisdiction. The Priority System document is sent to every municipality and county, as well as public sewerage and utility authorities and others in the State at least once a year to provide an opportunity for a sponsor to update or revise the project cost or scope and to solicit requests to add new projects or remove projects from the list. Projects are typically removed from the List by the Department if they have been approved for financing through the EIFP or if the Department has been notified by the local unit that the need for the project no longer exists. Project sponsors are encouraged

to notify the Department if projects on the List have been built or otherwise abandoned for another alternative. Program staff periodically review the List to spot check its validity and consult with sponsors at preplanning meetings to review any project scopes listed under their sponsorship.

The Priority System provides that financing will be based on the amount of funding available, the project's rank on the Priority List and the ability of the sponsor to satisfy all applicable planning, design and application requirements in a timely manner. Historically, the EIFP has had sufficient funds available to fund any project ready to proceed primarily because New Jersey's EIFP was structured as a leveraged program whereby the New Jersey Environmental Infrastructure Trust (Trust) issues revenue bonds to match the Department's zero percent loans, making more funding available. The EIFP was set up to have funding available to address the needs in the State. The latest clean water needs survey shows that NJ has needs exceeding \$12.8 billion.

In 2002, the Department and the Trust made modifications allowing infrastructure projects in urban areas, CSO abatement projects and land acquisitions to receive 75% Department/25% Trust funding through the Smart Growth Financing Package. These project loans are made at approximately one quarter the market rate. The introduction of the Smart Growth Financing Package, combined with enhanced outreach efforts has increased participation and interest in the EIFP. In 2004, the dollar amount of loan awards was the second highest in the 18-year history of New Jersey's clean water program.

Finally, while grants are desirable, federal regulations do not recognize grants as an allowable use of CWSRF monies. Most of the available State money in the clean water program has been dedicated to the CWSRF to use as the 20% State Match to the federal capitalization grants. However, there has been an effort to make monies available for infrastructure grants. Notwithstanding difficult budgetary times, for FY2004, the Department is in the process of awarding \$6 million in grants to municipalities and counties to implement the New Jersey Pollutant Discharge Elimination System (NJPDDES) permit requirements associated with municipal separate storm sewer systems. The Governor's proposed FY2005 budget includes an additional \$6 million to continue such grants to municipalities and counties in FY2005. The Department is also pursuing other options to provide additional funding as well, and anticipates availability of additional grant funds for capital projects to be combined with SRF loans (up to 20% grants and 80% SRF loans).

#### COMMENT

One commenter suggested that all projects be reviewed for consistency with the State Plan to enable the Department to assess whether the project promotes the state's smart growth goals. The commenter suggested that projects consistent with the State Plan would appear higher on the Priority List while projects deviating from the State Plan would be rejected and returned to the project's sponsor with comments as to how the project could be changed to adhere to the State Plan. It was suggested that the Department's review analyze the potential effects of the project on affordable housing,

preservation of agricultural lands, urban revitalization, energy-efficient travel options, nonpoint pollution and other key measures related to sprawl.

#### RESPONSE

As a condition of receipt of the federal capitalization grant, the Department established an environmental review process to implement the federal National Environmental Policy Act (NEPA) Program. The State's environmental review process was approved by the USEPA and evaluates projects based on their potential impact to the environment. Included in the evaluation is a consideration of primary and secondary impacts of the project including an evaluation of nonpoint source concerns and those related to sprawl. In addition to the environmental review aspects of the project approval process, projects are also reviewed for compliance with planning and design requirements to protect the use of public funds and to satisfy federal CWSRF requirements.

While the commenter suggested that we consider such things as affordable housing opportunities, preservation of agricultural lands, urban revitalization, energy-efficient travel options, the EIFP has built-in mechanisms (such as the Smart Growth Financing Package and additional priority points) that directly and indirectly impact these issues. The Smart Growth Financing Package at the reduced interest rate, coupled with the beneficial priority ranking, helps direct infrastructure improvements to urban areas where affordable housing, energy-efficient travel options and urban revitalization are prime concerns. In addition, the EIFP helps local units acquire properties that protect and maintain water quality in the project area.

To continue to advance Smart Growth initiatives, the Department is making significant regulatory changes that will strengthen protection of New Jersey's drinking water supplies and other vital natural resources by imposing stricter standards for development in environmentally sensitive areas. The regulatory changes will also streamline and expedite the permitting process and dedicate funding for infrastructure and parks in smart growth areas that are considered appropriate for development.

Please note that the Department has consistently increased the ranking points assigned to projects that have received approvals from the State Planning Commission under the Center Designation Process, with some urban communities receiving an additional 50 ranking points. The Department has been supportive of the State Plan initiatives (that resulted in the introduction of the 75/25 funding for urban areas) and is in the process of meeting with representatives from the Office of State Planning to work on better integrating the EIFP with the State Plan.

#### COMMENT

One commenter suggested that the Priority System explain the relationship between ranking points and the receipt of funding. The narrative accompanying the Priority System never explains why a given project received funding, nor is any explanation provided as to what merit a project must demonstrate to receive funds.

## RESPONSE

Historically, the Priority System has not been used as a means to summarize the projects funded in previous years (nor does it justify the Department's funding of those projects). The Priority System is directed at introducing new funding strategies and policies and advising potential project sponsors of the program deadlines for the forthcoming funding cycle. However, there are opportunities in which the environmental merits and basis of need for projects are conveyed to the public.

As indicated in the previous response, each project that receives funding is subject to a comprehensive review process under the program's rules at NJAC 7:22, entitled "Financial Assistance Programs for Environmental Infrastructure Facilities." Each project undergoes an environmental review and an Environmental Decision Document is issued and made available for public review/comment. Among other things, the EDD addresses the need for the project, the alternatives to the chosen option including the no action alternative, the reasons for choosing the selected plan, and any impacts, environmental or cultural, if applicable. All projects that are larger in scope or have the potential to have significant environmental impacts (including secondary growth impacts) are required to undergo a Level 2 environmental review and are required to hold a public hearing and have a 30-day public comment period. The Environmental Decision Document is sent to all interested parties and is available upon request.

In addition, information about the projects that the Program has funded in the past is available upon request from the Trust's Annual Report, the Trust's January Report, the Department press releases (including the *NJ Discharger*) and the CWSRF Annual Report. Also, the narrative book has project specific information to show the water quality problems that the project is intended to address. This book, formerly available as a hard copy, was distributed to the standard mailing list and is available at all Library Information Centers on a compact disc (CD).

## COMMENT

One commenter noted some discrepancies between points scored and the project ranking on the FFY 2005 Proposed Priority List.

## RESPONSE

The Department's data management program that ranks projects (with the highest point score being the top ranked project) erroneously assigned 25 additional points to several projects listed on the Proposed Priority List. The Department has corrected the error and the projects listed on the final list are in correct rank order. The Department apologizes for any confusion resulting from this error.

## COMMENT

One commenter objected to the use of year-round population in determining the population served. The commenter pointed out that tourism represents a major industry in New Jersey, and specifically within the seashore areas where the seasonal population increases significantly during the summer months. Accordingly, wastewater facilities must be sized to accommodate this significant increase in population. The commenter

felt that the present system fails to address the inequity created by the use of year-round population in prioritizing projects.

#### RESPONSE

The Priority List uses the population figures from the New Jersey Department of Labor's census data. With the introduction of State Plan approval points, the population points assigned to projects are almost negligible and are used exclusively as a tie breaking method. In New Jersey, the greatest seasonal population changes occur in the coastal communities. In many cases, wastewater treatment projects located in the coastal areas receive special consideration under the water use point category and receive 150 points for the potential to impact shellfish water and another 150 points for the potential to impact primary contact recreation (bathing) areas. With the additional water use points and the lack of a standard to quantify seasonal population figures, the Department believes that the existing method of assigning population points is equitable.

For clarification, the Department has been more explicit in the PS ranking methodology under Population Points. The PS document now indicates that projects that are sponsored by local units with populations less than one million people are assigned a proportionate point value (i.e., a population of 250,000, would receive an additional 0.25 points to its project score).

#### COMMENT

In consideration of the 200 points awarded under the Priority System for Approved Watershed Management Plans, one commenter requested that the Department provide a list of all currently approved Watershed Management Plans, including the acreage of the watershed involved and to identify any Watershed Management Plans that have been submitted to the Department with approval anticipated during either FFY2004 or FFY2005.

#### RESPONSE

Prudent watershed planning will achieve cost-effective and environmentally sound water quality improvement within the watershed. To provide an incentive for project sponsors to complete watershed planning and to promote implementation of point and nonpoint source management projects, the Priority System was amended several years ago to give projects that are part of a Department-approved watershed management plan an additional 200 ranking points. To date, no projects listed on the Priority List for Clean Water Financing have received the additional 200 points for Department-approved Watershed Management Plans. While efforts have been made by public entities to develop and submit Watershed Management Plans, the process is dynamic and causes many submittals to be updated and re-evaluated as the watershed issues change from area to area. Therefore, no specific listing of those entities that have submitted Watershed Management Plans for consideration by the Department is currently available and it is difficult for the Department to determine if any of the plans submitted will ultimately be approved during FFY2004 or FFY2005. For the final FFY2005 Priority System, the Department will continue to maintain the "Approved Watershed Management Plans" category under the ranking methodology. However, the Department will reconsider this

issue in the development of the FFY2006 Priority System proposal and may propose to remove this category from the ranking methodology at that time or some point in the future.

LIST OF RESPONDENTS TO THE FFY2005 PROPOSED PRIORITY SYSTEM  
DOCUMENT FOR CLEAN WATER FINANCING

Coalition for Affordable Housing and the Environment  
Cape May County Municipal Utilities Authority