

RESPONSE DOCUMENT FOR THE FFY2005 PRIORITY SYSTEM ADDENDA AND THE FFY2006 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 is a component of the Environmental Infrastructure Financing Program (EIFP) that provides financing for a wide variety of wastewater, stormwater and nonpoint source pollution projects. The requirements for public participation activities also apply to the development and/or major revision(s) of the State's Priority System, Intended Use Plan and Project Priority List.

This response document addresses the comments made during two public participation processes: (1) for the Proposed Addenda to the FFY2005 Priority System document and the FFY2006 Proposal document (held in August 2005) and (2) for the Proposed FFY2006 Project Priority List Update (held in January/February 2006).

Public Participation Process

On July 15, 2005, the New Jersey Department of Environmental Protection (Department) issued a notice regarding the availability of the Proposed Addenda to the FFY2005 Priority System document and the FFY2006 Proposal 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 notice identified various means to obtain complete copies of the proposals and advised the public that a hearing was scheduled for August 3, 2005 and that the public comment period will close on August 15, 2005. The July 15, 2005 public notice satisfies the 30-day requirement for availability of relevant documents for the public's review in accordance with applicable federal rules.

On August 3, 2005 at 10:00 a.m., the 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 Scott Shymon from the 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. Several individuals from the public attended the hearing and provided testimony. 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.

Three comment letters were received regarding the Proposed Addenda to the FFY2005 Priority System document and the FFY2006 Proposal before the close of the comment period (August 15, 2005). The written comments were submitted on behalf of the New Jersey Highlands Council, the Coalition for Affordable Housing and the Environment and the Cooper River Watershed Association.

As part of the Department's FFY2006 Priority System proposal document, the Department indicated that it would be updating the Priority List later in the year to add projects that met the initial deadline for the 2006 Financing Program (October 3, 2005) and subject the updated list to a public participation process. On January 20, 2006, the Department sent a notice opening the comment period for the FFY2006 Priority List Update to the standard mailing list of approximately 1,200 potential applicants and other interested parties inviting public comments and input. The notice announced the availability of the Proposed FFY2006 Priority List Update, identified several methods to obtain a copy and stated that the public comment period would close on February 21, 2006. The January 20, 2006 public notice satisfies the 30-day requirement for availability of relevant documents for the public's review in accordance with applicable federal rules. No comments were received regarding the FFY2006 Priority List Update.

SUMMARY OF PUBLIC ISSUES AND RESPONSES

COMMENT

One commenter recommended that the Priority System be revised so that environmental benefit is better reflected in the project scoring. It was noted that as federal funds decline each year, the State moves towards a funding cycle when the project ranking will be a critical factor in determining funding eligibility. (2)

RESPONSE

The Clean Water Priority System does take into consideration environmental benefits or outcomes that would result from the implementation of the individual projects. The Priority System is based on a combination of factors, including the project type, location of the discharge, impacts on existing water uses and existing water quality. Under the project type category, the ranking system gives highest priority to projects that address discharges of raw, diluted, or inadequately treated sewage to the State's waters during rain events, including projects to abate combined sewer overflows (CSOs) and projects to reduce or eliminate infiltration and inflow (I/I) from sanitary sewer systems that overflow regularly. Discharges from combined sewer systems impair water uses, and can lead to the closing of beaches and shellfish beds. Projects that remediate overflows of sanitary sewage obviously contribute to water quality improvements and result in improvements to the health, safety, aesthetic value, and recreational attributes of the State's waters. Under the water use/water quality category, the Priority System provides highest priority to those discharges that correct a problem that may adversely impact water uses, such as

potable water intakes, swimming areas and recreational fishing activities and in areas where water quality standards are not met. The Department will continue to further evaluate and refine the ranking methodology to insure that those projects that address the State's most serious water quality issues receive the higher point scores.

The Department agrees with the commenter and recognizes that, as the federal contribution to the State's CWSRF program decline, the Priority System will play more of a role in the eligibility determinations in the future. The Department is concerned that the reductions in federal funding levels will significantly impact the amount available for the Department's share of the EIFP loans.

COMMENT

Two commenters suggested that all projects meet certain prerequisites to be considered eligible for financing including, a requirement that the project sponsor has (1) an up-to-date Wastewater Management Plan (WMP) that addresses non-sewered areas and a current master plan (with the required land use and housing elements), (2) any areas in Planning Areas 4 and 5 removed from future sewer service areas in the project sponsor's WMP and (3) the NJPDES permit amended to reflect the removal of sewer service for Planning Areas 4 and 5. Another comment was made suggesting that the project sponsor have Plan Endorsement under the State Plan to qualify for EIFP funding if a capacity increase is proposed. (2, 5)

RESPONSE

The Department agrees with the need for up-to-date Wastewater Management Plans and to ensure that NJPDES permits are consistent with such plans. However, the Department also recognizes that developing such updated plans and obtaining the required approvals is time-consuming and holding up the funding will adversely impact the financing program's ability to correct water pollution problems. One of the commenters indicated that less than 15% of the WMPs in the State are up-to-date. This would imply the elimination of up to 85% of our prospective borrowers from participating in the EIFP, significantly delaying the construction of urgently needed wastewater management projects. The Department agrees and recognizes the need for updating Wastewater Management Plans and is evaluating various means to expedite the same.

The Department has similar concerns with instituting a requirement that the sponsor must have Plan Endorsement to qualify for the EIFP if capacity is to be increased. The latest list of endorsed plans identifies less than 30 municipalities that have been approved. Many municipalities that do not have endorsed plans would be precluded from participating in the EIFP if this requirement were put in place and many areas with significant water quality concerns may be left unaddressed. A wastewater treatment system may need to increase its capacity to eliminate an inadequate or obsolete treatment facility or to tie-in areas that have failing septic systems (where rehabilitation or replacement is not practical). Requiring Plan Endorsement before loan approval would only delay the implementation of much needed environmental improvements.

While the Department does not support Plan Endorsement as a loan prerequisite, the Department continues to encourage consistency with the State Plan through the Priority System document and has historically awarded additional priority points for approvals from the State Planning Commission under the Center Designation/Plan Endorsement Process.

COMMENT

One commenter suggested that the Smart Growth Financing Package (SGFP) be adjusted from 75% DEP/25% Trust ratio to 99% DEP/1% Trust (essentially an interest-free loan) and that the loan origination fee be waived for municipalities classified as Urban Coordinating Council (UCC) and Urban Aid. In addition, two commenters recommended that the Smart Growth Financing Package be expanded to include (and/or additional priority points awarded for) Urban Coordinating Council and Urban Aid municipalities. (2, 5)

RESPONSE

The Financing Program has limited resources that are becoming increasingly scarce. As stated earlier, the federal contribution to the CWSRF has continued to decline over the years and the projects participating in the Program have increased. The EIFP's structure has allowed us to maximize the use of available funds through the use of the Trust's leveraging ability and institute a Smart Growth Financing Program for certain projects in certain areas of the State. In many cases, municipalities that are classified as UCC or Urban Aid receive the most favorable terms available under the EIFP by qualifying under the Smart Growth Financing Program provisions of the EIFP. Given the fiscal constraints and our projections that we will have limited funds beginning in 2009, the Department and the Trust currently do not support changing the ratio of the DEP and Trust shares, nor the proposal to waive the origination fee, for municipalities classified as UCC and Urban Aid at this time. It should be noted that the origination fee adds less than 0.08% to the interest rate charged on the EIFP loans.

COMMENT

One commenter recommended that the Smart Growth Financing Package be expanded (and an additional 10 priority points provided) to projects that involve Transfer of Development Rights (TDR) receiving districts, including TDR receiving zones that meet the criteria of the Highlands Act and other areas identified for redevelopment by the Highlands Council. (6)

RESPONSE

The suggestion has merit and the Department is carefully evaluating it. The Highlands Council anticipates that the first phase of its TDR program will be in place upon adoption of the Regional Master Plan (RMP) in June 2006. The RMP also provides for "Next Steps" needed to further refine and update the RMP into the future. At this stage in the finalization of the FFY2006 Priority System, it is too late for the Department to include changes to support implementation of the RMP and/or TDR process for the FFY2006 Program. The Department will consider amendments in future Priority System packages

as additional information becomes available and the process regarding TDR receiving areas and other areas approved by the Highlands Council become more defined.

COMMENT

One commenter suggested that the Department use “creative financing” to generate other funds to provide grants to UCC and urban aid municipalities to meet their Clean Water Act and Safe Drinking Water Act obligations. (2)

RESPONSE

The CWSRF can only provide loans, loan guarantees or refinance existing debt in accordance with federal law. In some cases, there has been special federal or State legislation and some grant funds have been provided to finance water pollution control improvements. Recently, the State appropriated \$30 million in grants to local units of government for a combination of water quality improvement projects and studies. Many of the recipients of these funds are classified as UCC and Urban Aid municipalities.

COMMENT

One commenter objected to the use of EIFP monies for land acquisition projects in instances where the municipality does not have substantive certification from the Council on Affordable Housing (COAH) or a court approved affordable housing plan (or a judgement of repose). If the parcel is included in a housing plan or equivalent, it should only be approved if the municipality identifies an alternative site before the project is approved. It was also recommended that the EIFP not participate in land acquisition projects if municipalities in Planning Area 1 or 2 have open space inventories exceed 10.5 acres per 1,000 population, a National Recreation and Park Association’s recommendation. (2, 4, 5)

RESPONSE

The Department believes that these issues are best addressed at the local level directly between the municipality and the Council on Affordable Housing. In certain instances, the EIFP provides financing that helps a municipality acquire a parcel to help protect or maintain water quality in the project area. While the Department does not require the municipality to identify an alternative site, the Department requires that the applicant provide a legal opinion in accordance with NJAC 7:22-3.11(d) (14) to reaffirm its legal authority to acquire the property and place the EIFP Deed of Conservation Restriction on said parcel before the EIFP approves the project.

In addition, the Department believes it is prudent to continue to finance open space land acquisitions throughout the State regardless of the Planning Area in which the municipality is located if a water quality benefit would result.

COMMENT

The EIFP should support non-structural runoff controls by issuing a request for proposals, creating a new category of points for such projects, and offering essentially 0% financing for such projects. (2)

RESPONSE

The Department supports non-structural runoff controls where appropriate and recognizes that these systems can help to recharge groundwater supplies and reduce stormwater runoff. The construction of non-structural runoff controls are eligible for financing through the program. However, the Department does not believe that the issuance of a Request for Proposals or the creation of a new category of points for such projects is warranted. As previously noted, the Financing Program has limited resources that are becoming increasingly scarce and the Department needs to be careful in further expanding the enhanced financing. Under the current circumstances, providing 0% financing is not realistic given the continued reductions in federal funding contributions for the CWSRF.

COMMENT

Several commenters were concerned with the use of EIFP funds for remediation projects that involve redevelopment and expressed support for the Department's efforts that limit the amount available annually for landfill closure and site remediation activities that are being implemented through conduit financings. One of the commenters requested information regarding when the limits take effect and recommended that the ceiling be lowered to the \$4-6 million range. (1, 3, 7)

RESPONSE

The Department appreciates the comments made in support of the limitations that the Department has placed on conduit borrowings associated with solid waste/brownfield remediation projects. The Department began the process of establishing the limitations with the issuance of the Proposed Addenda to the FFY2005 Priority System and the FFY2006 Priority System Proposal issued in July 2005. The policies have also been identified in the Trust's Reports to the Legislature. The Proposed FFY2006 Priority System issued in July 2005 maintains the limits established in the FFY2005 Priority System Addenda. The Department established the limits of \$15 million per project and/or \$40 million per year so that conduit borrowings associated with solid waste/brownfield remediation projects do not use an excessive amount of the limited funds available to finance the more traditional, publicly-sponsored projects. While it was suggested that the Department lower the limitation to \$4-6M per project, the Department believes that the current limitations proposed are prudent for the SFY2006 and SFY2007 Programs at this time. The Department will periodically reevaluate the limit based on the amount of program funds available and applications received to determine if additional changes are warranted.

COMMENT

It was recommended that the Department restrict the use of EIFP funds for projects in Planning Area 5 (PA5) so that development does not occur in environmentally sensitive areas. (3)

RESPONSE

While, the Department does not restrict projects from financing based on the designation

of the Planning Area, the Department has developed an evaluation process through which all projects that include an increase in wastewater capacity (including new collection systems and conveyance systems) must be reviewed. For those projects that have the potential to facilitate growth or cause significant adverse environmental impacts, the Department thoroughly evaluates the planning submitted by the project sponsor which may include but not be limited to the water quality/quantity impacts, location in the State, impacts to riparian corridors, the existing pollution control needs, assessment of the resulting environment, detailed assessment of proposed alternatives and cost-effectiveness of the proposal. The Department's funding decisions take into account the project's growth potential, the project's location and the project's aggregate impacts as determined through such evaluations. Through such reviews and evaluations before funding the project, the Department insures that the need for the construction of the project is well justified and that the implementation of the project conforms to environmental standards.

COMMENT

Four commenters recommended that the Department exclude Transit Villages and Brownfield Development Areas (BDAs) that are in areas inappropriate for development from participation in the Smart Growth Financing Program. One of the commenters indicated that Transit Villages should only be eligible for the Smart Growth Financing Package if the third round COAH obligations are met on-site. (1, 2, 4, 7)

RESPONSE

The Department is closely monitoring the designation processes for Transit Villages and Brownfield Development Areas. The addition of Transit Villages and BDAs were some of the most recent changes made to the Smart Growth Financing Package. To date, the Financing Program has not provided the Smart Growth Financing Package to a Transit Village project or a BDA. Based on the applications received for the SFY2007 Financing Program, no Transit Villages have applied and only BDAs in Planning Areas 1 and 2 are pursuing financing in the SFY2007 Program. The Department will more thoroughly evaluate the Transit Village and BDA processes and will make the appropriate policy adjustments, as and if needed, for future Priority System documents so that the Program does not inadvertently provide financing that encourages growth in areas inappropriate for development. As stated earlier, the Department is concerned that if EIFP financing were conditioned on the appropriate affordable housing approval, prospective EIFP loanees would be adversely impacted and the construction of projects to provide much needed wastewater management services may be unduly impacted.

COMMENT

One commenter expressed concern regarding the approval process developed by the Department to address emergency situations that may occur in the treatment of wastewater or the supply of safe drinking water. It was recommended that a one-eighth page advertisement be placed in local newspapers and that the Department provide a three day waiting period to fully inform the public before any remedial actions are taken. (2)

RESPONSE

On July 15, 2005, the Department issued a generic Environmental Decision Document for Environmental Emergency Response projects that identified the limited types of projects that can qualify as emergencies. On January 3, 2006, the Department and the Trust adopted amendments to the rules at N.J.A.C. 7:22 regarding the approval of emergency projects. Together, the generic EDD and the rule changes, were implemented so that the EIFP can now approve and finance improvements made by qualifying project sponsors to address the failure of one or more components of its wastewater treatment system. Only certain project types that are well defined, limited in scope and unlikely to have significant adverse environmental impact qualify for the emergency criteria. While the Department traditionally has afforded the public an opportunity to comment on a project in advance of EIFP approval, the Department believes that, in these limited cases, the need to address the structural or mechanical failure and the urgent need to avoid adverse environmental consequences outweighs the need for additional notification suggested by the commenter. Since the scope of these projects is anticipated to be very limited and given the emergent need to fix the problem, the Department does not agree that a three-day comment period is needed. Such a requirement would unreasonably delay the implementation of the needed corrective action.

COMMENT

One commenter recommended that an engineering performance requirement be established for I/I projects and that if the project fails to meet a certain threshold of removal, a remediation plan be developed to further reduce I/I prior to allowing expansion of the facility. (2)

RESPONSE

The Department and the Trust have adopted rules addressing I/I performance criteria consistent with those initially established by USEPA under the administration of the federal Construction Grants Program more than 20 years ago. Full details of the performance criteria can be found at N.J.A.C. 7:22-3.35 and 4.35. In summary, an infiltration/inflow analysis is required for sanitary sewer rehabilitation projects as part of the Project Report/Facilities Plan. The applicant shall demonstrate to the Department's satisfaction that each sewer system discharging into the wastewater treatment facility is not or will not be subject to excessive infiltration/inflow. The general criteria for infiltration and inflow is as follows:

- (1) Infiltration - If the rainfall induced peak inflow rate results or will result in chronic operational problems or system surcharging during storm events or the rainfall induced total flow rate exceeds 275 gallons per capita per day during storm events, the applicant shall perform a sewer system evaluation survey including a cost effectiveness analysis to determine the quantity of excessive inflow and shall propose a rehabilitation program to eliminate the excessive inflow.
- (2) Inflow - If the flow rate at the existing wastewater treatment facility is less than 120 gallons per capita per day during periods of high groundwater, the applicant shall design the project including sufficient capacity to transport and treat any existing infiltration. If the applicant demonstrates that its sewer system is subject to excessive infiltration of 120 gallons per capita per day or more during periods of high groundwater, the applicant shall

perform a sewer system evaluation survey including a cost effectiveness analysis and shall propose a rehabilitation program to eliminate the excessive infiltration. If, upon the completion of the project, the project failed to remove the excessive quantities of I/I, the recipient is required to notify the Department and the Trust and take appropriate corrective actions to meet performance standards. See N.J.A.C. 7:22-3.30 and 4.30.

COMMENT

One commenter recommended that funding be made available for the creation of Wastewater Management Plans. (1)

RESPONSE

The EIFP cannot directly finance the development or update of Wastewater Management Plans. The EIFP is set up such that project sponsors cannot get financing for planning and design activities until the project is ready to be constructed. Once a project is certified and a loan agreement awarded, the sponsors can offset some of their planning and design expenditures through an allowance table (see N.J.A.C. 7:22-5.12) or receive reimbursement based on the actual planning and design costs. Vouchers would be required to serve as a basis for allowability if the actual cost reimbursement option is selected.

COMMENT

One commenter recommended that more points be awarded to sponsors who have received approvals under the State Plan. (1)

RESPONSE

The Priority System provides up to 50 additional points for sponsors that have been approved by the State Planning Commission (SPC) under the Center Designation/Plan Endorsement Process. In addition, points are awarded for projects involving designated Transit Villages and Brownfield Development Areas. In many cases, the points awarded for SPC approvals can significantly improve a project's rank and move it ahead of similarly classified clean water projects. There are, however, limits on the amount of weighting that a state's Priority System can provide for non-water quality based criteria.

LIST OF RESPONDENTS TO THE PROPOSED ADDENDA TO THE FFY2005 PRIORITY SYSTEM DOCUMENT AND THE FFY2006 PROPOSED PRIORITY SYSTEM DOCUMENT FOR CLEAN WATER FINANCING

1. Association of New Jersey Environmental Commissions
2. Coalition for Affordable Housing and the Environment
3. Cooper River Watershed Association
4. New Jersey Conservation Foundation
5. New Jersey Future
6. New Jersey Highlands Council
7. New Jersey Sierra Club