

- CLEAN WATER FINANCING -
PRIORITY SYSTEM, INTENDED USE PLAN, PROJECT PRIORITY LIST,
AND RESPONSE DOCUMENT FOR FEDERAL FISCAL YEAR 2004

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Financing Clean Water Projects through the Environmental Infrastructure Financing Program

Priority System, Intended Use Plan, Project Priority List, and Response Document For Federal Fiscal Year 2004 (FFY2004)

OVERVIEW¹

In the Water Quality Act of 1987, which amended the Clean Water Act (CWA), Congress required states to establish a Clean Water State Revolving Fund (CWSRF) program to qualify for federal capitalization grants. The CWSRF provides financial assistance for the construction of projects that protect, maintain and improve water quality. It is a self-perpetuating program, in that loan repayments are used to finance future projects. Established in 1988, New Jersey's CWSRF program is included in the Environmental Infrastructure Financing Program (EIFP). The EIFP is a partnership between the New Jersey Department of Environmental Protection (DEP) and the New Jersey Environmental Infrastructure Trust (Trust) providing low-interest loans for infrastructure projects. The DEP and the Trust also administer New Jersey's Drinking Water SRF (DWSRF) under the Safe Drinking Water Act; its priorities and policies are established in a separate Priority System document. Together, the clean water and drinking water components of the EIFP have awarded approximately \$2.1 billion throughout the State. As of February 10, 2004, 238 of the 441 total projects totaling more than \$1.3 billion have been completed, initiated operations and have been administratively closed out; 203 projects totaling over \$1.0 billion are actively contracting or under construction.

Every year the DEP develops a "Proposed Priority System, Intended Use Plan, and Project Priority List" as required by federal and State law. After the public has had an opportunity to comment on the DEP's proposal, the DEP submits a final "Priority System, Intended Use Plan, Project Priority List, and Response Document" to USEPA for its approval. The Priority System (PS) describes the ranking methodology for the municipal water pollution control projects that are eligible for financial assistance through the EIFP. The ranking system gives higher 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 infiltration and inflow (I/I) from sanitary sewer systems that overflow. CSO abatement projects are expensive and are usually located in financially distressed urban areas, making cost a serious concern. Discharges from combined sewer systems impair water uses, and can lead to the closing of beaches and shellfish beds. Projects to remediate overflows of sanitary sewage contribute to water quality improvements and result in improvements to the health, safety, aesthetic value, and recreational attributes of the State's waters. In 2003, the DEP made the following changes to the ranking methodology: the discharge categories "Inadequate Secondary Treatment" and "Advanced Treatment" were combined into one category, "Treatment Plant Improvements" and all projects in this new category were allocated 150 points. In

¹ Please note that a list of acronyms and "short" names used in this document appears on page 21 of this document.

addition, the ranking points for all projects in the stormwater management/nonpoint source activities category received 50, rather than 25, points.

To advance Governor McGreevey's efforts to bring smart growth to New Jersey, the DEP made two significant changes to the Financing Program. The first change involves modifying the percentage of project costs the DEP and the Trust provide to project sponsors. Normally, project sponsors receive a loan for half of the project costs from the Trust at market rate and a loan for the remaining project costs from the DEP at 0% interest. Under this change, the DEP will provide 75% of the project costs at 0% interest, while the Trust will provide 25% of the project costs at market rate to projects that serve areas suitable for development as identified by DEP in subsequent rulemakings. In addition, CSO abatement and land acquisition projects will also qualify for the 75% DEP/25% Trust Financing Package.

In January of 2003, Governor McGreevey introduced key elements in the State's smart growth initiative. The Governor intended that the DEP provide clear and accurate information and guidance regarding areas in the State in which growth is encouraged (and in which permitting/approval processes would be streamlined and made more predictable), as well as other areas in the State which may support development as long as natural resource impacts are appropriately evaluated and addressed. In response to the DEP's extensive discussions throughout the State regarding this significant environmental initiative, the DEP intends to propose in the near future program-specific regulatory changes (i.e., for various permits and/or approvals) to advance a tiered approach to natural resource protection.

As an interim step, the DEP plans to advance smart growth by providing a higher subsidy through the "75/25" Smart Growth Financing Package to that portion of a project that serves Urban Centers and Complexes as designated by the State Planning Commission. To date, the State Planning Commission has designated Atlantic City, Camden, Elizabeth, Jersey City, New Brunswick, Newark, Paterson and Trenton as Urban Centers and one Urban Complex, the Hudson County Urban Complex, which includes the following municipalities: Bayonne, East Newark, Guttenberg, Harrison, Hoboken, Jersey City, Kearny, North Bergen, Secaucus, Union, Weehawken, and West New York.

As part of this initiative, for those projects that have the potential to facilitate growth or cause significant adverse environmental impacts, the DEP will thoroughly evaluate 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 DEP's funding decisions will take into account the project's growth potential, the location of the project in the State and the project's aggregate impacts as determined through such evaluations.

To address instances where a project does not exclusively serve an urban center/complex, the DEP has determined that the 75/25 funding package will be provided only to that portion of the project that serves an Urban Center/Complex. In addition, the DEP will include projects located in an Urban Center/Complex in the 75/25 funding package provided the project has direct quality of life implications for the Urban Center/Complex. An example of such a project would be odor

controls for sludge management facilities (that serve areas beyond the Urban Center/Complex) located in an Urban Center that would reduce odors generated from the sludge management facilities and improve the air quality in the urban area.

The second change relates to funding for reserve capacity. The DEP and the Trust have adopted amendments to the Financing Program rule that allows the DEP to fully fund its share of reserve capacity costs at 0% interest for projects in growth areas as will be defined in DEP's subsequent tiered rulemaking. In the interim until relevant DEP rules are adopted, the current rule amendments allow the DEP to fully fund its share of reserve capacity costs for projects that serve designated Urban Centers and Complexes.

In addition, some changes have been made to FFY2004 Priority System as they relate to the categories and point assignments for State Planning Commission approvals under the Center Designation/Plan Endorsement Process (see page 8 for more details). Finally, the document includes information on the anticipated increased DEP fees and on the Trust fees in accordance with federal policy (see page 16 for more details).

Collectively, these preliminary initiatives will enhance the DEP's and the Trust's ability to promote smart growth and will also allow the Environmental Infrastructure Financing Program to provide funds to make it a reality. Further changes are likely as the DEP adopts additional regulatory changes to its permitting and approval processes to implement smart growth in order to effectively guide future growth and development in the State.

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Several years ago, the DEP and the Trust expanded the eligible categories for nonpoint source (NPS) pollution abatement measures in an effort to help communities address this type of pollution. Amendments were adopted to the regulations that identified the new eligible areas and specified the requirements for projects to receive financial assistance. The broader categories include funding for landfills (for closure activities and new cell construction), open space land acquisition and conservation, remedial action activities and well sealing. Both landfill closure and new cell construction projects became eligible for financing in 2000. Financing for the other nonpoint source areas commenced in 2001. The DEP and the Trust are continuing to allocate a minimum of \$10 million in program funds to promote financing for stormwater and other NPS management projects.

The Intended Use Plan (IUP) provides information on funds available through the clean water component of the EIFP, including all federal funds allotted to the State under the CWA and available to the CWSRF in FFY2004, and also deobligated construction grant funds, which may be available to the DEP-administered Clean Water Fund (Fund). An interest-free loan from the Fund provides a portion of the individual project's allowable project cost, and a market rate loan from the Trust provides the remaining allowable cost. Allowable project costs are either shared equally between the DEP and the Trust or, for projects eligible for the "Smart Growth Financing Package," at a reduced interest rate applying the "75/25" level of funding. The Trust finances its SRF loan through the issuance of bonds secured with CWSRF funds.

The Priority List identifies projects targeted for financial assistance from the CWSRF in State Fiscal Year 2005 (SFY2005). Other than the items noted above, no significant changes have been made to the FFY2004 PS document from the policies and provisions of the FFY2003 PS.

The "Sewage Infrastructure Improvement Act (SIIA) Grants Program" section discusses the availability of planning and design grants for CSO abatement and for projects that address inter-connections and cross-connections of sanitary and stormwater sewer systems.

The DEP's Priority System for FFY2004 includes two items that deal with the financial relationship between the CWSRF and the DWSRF. First, the DEP continues to extend to the DWSRF the same cross-collateralization coverage process used by the CWSRF that results in AAA ratings for the Trust bonds. Second, the DEP continues to reserve the right to transfer funds between the CWSRF and the DWSRF (up to the amount allowed by the federal Safe Drinking Water Act or other federal legislation) to provide greater flexibility to the Financing Program in addressing clean water or drinking water needs in the State. More details on these relationships can be found in section A of the IUP.

Although Congress provided funds to the CWSRF in FFY2003, the receipt of additional federal funding in FFY2004 and beyond is uncertain since the CWA has not yet been reauthorized. Loan repayments and State bond proceeds will still be available to address some wastewater treatment needs but to fully address the overall water quality improvement needs of the State, additional federal funding will be required. Several legislative initiatives to reauthorize the CWA and to provide funding for wastewater projects and other water quality improvements have been proposed. It is not expected that reauthorization of the CWA will necessitate significant changes to the CWSRF and the State's FFY2004 PS document. As such, the DEP issued this document to maintain the financing program schedule. The DEP will provide opportunities for public participation if the reauthorization requires substantial revisions to the program.

Recent amendments to the Trust's enabling legislation authorized the establishment of a short-term financing program. CWSRF and DWSRF loan repayments would be channeled to the Trust for this purpose. The interim loans will provide funds to project sponsors that are eligible for financing in the current fiscal year to cover project costs anticipated to be incurred prior to the award of the permanent long-term loans from the DEP and the Trust, which are typically awarded in November. The Trust, in consultation with the DEP, has adopted amendments to the Trust's rule to make the short-term financing option available to prospective borrowers that receive preaward approval from the DEP and the Trust.

PRIORITY SYSTEM

I. Project Priority List — General Information

Clean water projects must be listed on the Project Priority List in order to be considered eligible for financial assistance under the EIFP. The applicant must also submit all the required application material in a timely manner.

The Priority List identifies the estimated total eligible building costs under the appropriate project category. Except for open space land acquisition projects, the figure under the "Total Eligible Project Cost" includes the estimated total eligible building costs, the related costs for construction services (i.e., administrative, legal, engineering, inspection, one year start-up services, etc.), the allowance for planning and/or design, three percent for the recipient's administrative costs, and a five percent contingency cost. The figure under the "Total State Amount" column represents 100 percent of the estimated total eligible project costs. Justified revised costs submitted by project sponsors in response to the public participation process will be included on the final FFY2004 List.

Any significant revisions to the Priority List during the fiscal year will be subject to a public hearing. The DEP does not, however, consider the following revisions to the Priority List to be significant:

1. Bypassing (i.e., deferring the funding of) a project to a future fiscal year if all requirements (including commitment to and compliance with the project document submittal schedule) of the CWSRF are not satisfied on schedule.
2. Increases or decreases in allowable project costs that may change the fundable range of the Priority List.
3. The addition of a project or projects to the fundable range as a result of their qualifying under the Public Health Hazard (PHH) bypass criteria.
4. The revision of the fundable range of the Priority List as a result of a change in (1) the allocation that New Jersey receives (if any), (2) the State's contribution to the CWSRF, and/or (3) the total amount of monies made available for clean water projects from the EIFP.
5. The revision of the fundable range of the Priority List as a result of ensuring the proper dollar amount is obligated to eligible project categories if limitations are included under the CWA's reauthorization.

II. Ranking Methodology

The DEP ranks all projects on the basis of the total number of ranking points each project receives and places the projects on the Priority List according to their ranking. Projects receive points under five categories. These are: Approved Watershed Plan, Project Discharge Category, Water Use/Water Quality, State Planning Commission (SPC) Approvals, and Population. This year, the DEP is proposing to streamline the SPC categories to better reflect the designations given by the State Planning Commission. With this exception, the categories are consistent with the ranking methodology of the FFY2003 PS document and are discussed in sections A through

E below.

A. Approved Watershed Plan Points

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, a project that is part of a DEP-approved watershed management plan receives 200 ranking points.

B. Project Discharge Category Points

All projects receive ranking points based on the project discharge category. In case of multiple purpose proposals, projects qualify for the discharge category that represents the major scope of the project. If a project has aspects that can be described by more than one category, the project may be broken into separate projects. Tables IA and IB show the project discharge categories and their ranking points.

| Table IA. Ranking Points Related to Project Discharge Category For Wastewater Treatment Facilities | | |
|---|---|---------------|
| Project Discharge Category | Description | Points |
| Combined Sewer Overflow (CSO) | Correction of combined sewer systems and discharge points. Includes elimination, relocation or consolidation of discharge points and construction of facilities or purchase of equipment to remove solids and floatables. | 250 |
| Overflowing Sewers Via Infiltration/Inflow (I/I) Correction | Correction of overloaded conveyance systems that experience intermittent overflows, resulting in discharges of raw or inadequately treated sewage. Projects include rehabilitation, repair, and/or replacement of the conveyance system. Also includes Interconnection/Cross-Connection abatement projects that address documented water quality impairments. | 250 |
| Treatment Plant Improvements | Upgrade of a treatment facility or elimination of an existing facility and connection to an alternative treatment facility to meet applicable treatment levels. Also includes I/I correction within the conveyance system, if cost-effective, to allow the treatment plant to meet applicable treatment levels. | 150 |
| Sludge Treatment/Disposal Facilities | Construction of sludge management facilities such as those for dewatering, land application, composting, and incinerator repair/improvements; includes wastewater and water supply sludges. | 100 |
| Corrective Systems | Construction of facilities to promote wastewater reuse or provide collection and/or conveyance, on-site management, treatment plants, or septage treatment to improve existing wastewater management systems. | 50 |

| | | |
|---|--|----|
| Overloaded Sewers Via Infiltration/Inflow (I/I) Correction | Correction of overloaded conveyance systems that do not experience intermittent overflows as well as correction of Interconnections/Cross-Connections. Includes rehabilitation, repair, or replacement, as appropriate for the system. | 50 |
|---|--|----|

| Table IB. Ranking Points Related to Project Category for Stormwater and Nonpoint Source Pollution Management Facilities | | |
|--|--|---------------|
| Project Category | Description | Points |
| Landfill Closure, Open Space Land Acquisition and Conservation and Well Sealing | Construction of measures to prevent and control pollutants from entering groundwater at non-operating municipal landfill sites and for wells (supply and monitoring). Also included in this category are open space land acquisition and conservation projects that are associated with water quality benefits. | 100 |
| Landfill Construction and Remedial Action Activities | Construction of facilities to collect, convey and/or treat leachate and runoff from new publicly owned landfill cells or from sites that are known to contain contaminated or hazardous materials. | 75 |
| Stormwater Management and other NPS activities | Construction or rehabilitation of stormwater basins, sewer systems and storm drains, extension of outfall pipes, purchase of maintenance equipment (such as street sweepers, beach cleaning equipment, aquatic weed harvesters and skimmer boats). Also included in this category are projects that stabilize streambanks, restore lakes or address runoff from salt storage facilities and the implementation of measures to reduce and/or control runoff from agricultural cropland activities and to address pollution concerns associated with manure runoff and feedlot operations. | 50 |

C. Water Use/Water Quality Points

Points for water uses (present and potential) and for existing water quality conditions are given to projects that will improve discharges that adversely impact surface waters. The assignment of points for “public nuisance” is given to on-site system projects where failures have been identified. Table II below shows the breakdown of the ranking points for water use; in general, the highest values are given for projects that discharge to water bodies with potable, recreational, and fishing uses.

| Table II. Ranking Points Related to Water Use (Existing and Potential) | | | |
|---|-----------|---|---------------|
| Water Use | | Basis/Description | Points |
| Public Potable Water Supply | | Public and nonpublic community surface supply for water companies or municipalities based on NJ Statewide Water Supply Master Plan. | 200 |
| Recreation (“Primary Contact”) | | Waters with bathing areas monitored routinely as public beaches as well as the Delaware River upstream of Trenton. | 125 |
| Fishing | Shellfish | State water bodies that are designated as shellfish growing waters by <i>N.J.A.C. 7:12</i> . | 125 |
| | Trout | State freshwater bodies designated for trout production or maintenance by the NJ Water Quality Standards (<i>N.J.A.C. 7:9B</i>). | 75 |
| | Non-trout | State freshwater classifications not designated trout production or maintenance by <i>N.J.A.C. 7:9B</i> (see Trout description above), including all Delaware River freshwater zones above mile-point 85 as defined by the Delaware River Basin Commission. | 25 |
| Public Nuisance | | Indirect water use impacts; applies to areas with identified on-site wastewater treatment system failures. | 50 |
| Agriculture | | Surface water for agricultural use, such as irrigation and farm ponds, based on DEP diversion permit (permits required for >70 gal/min diversion). | 25 |
| Industry | | Surface water known to be used for industrial use such as cooling. | 25 |

Table III shows the points for not meeting or marginally meeting certain water quality parameters. The points reflect the impact the parameters have on meeting the State’s goal to protect and enhance surface water resources, quality criteria, and designated water uses. The magnitude of the contribution that municipal sewerage facilities have on each of the conditions is reflected in the points awarded under these categories. Dissolved oxygen and fecal coliform have the highest points because of their direct impact on the fishable/swimmable water use, coupled with the fact that municipal treatment facilities are a major cause of contravening water quality standards.

Nutrients reflect the presence of phosphorus/phosphates and nitrates/nitrites in a water body. Nutrients were given lower points because, although they may cause conditions that interfere with many water uses, the resulting conditions will usually not significantly affect the established water use of the site. Points were given to nutrients only if the surface waters involved significantly impact potable water reservoirs, surface water impoundments or lakes, public bathing areas, or shellfish growing waters.

Points for toxics indicate the relative magnitude of ammonia, metals, pesticides, and organic chemicals in the water body. Toxics were also given lower points since in most cases the significant contributions of toxic substances come from industrial sources and are not significantly abated by municipal treatment facilities. While NPS pollution also contributes to toxicity levels, the project types most likely to involve higher levels of toxic contaminants (such as landfills and contaminated sites) receive higher ranking than other NPS management projects in the project type category (see Table IB). In the case of the toxicity of ammonia, municipal facilities are usually the main source, but the most significant impact is associated with streams designated for trout production/maintenance, which already receive a high number of points

under the water use category.

| Table III. Ranking Points Related to Water Quality | | | | |
|---|------------------|--------------------------------------|------------------------|--------------------|
| Water Quality | | Points for Water Quality that | | |
| | | Meet | Marginally Meet | Do Not Meet |
| | | the Water Quality Standard* | | |
| Parameter | Dissolved Oxygen | 0 | 50 | 100 |
| | Fecal Coliform | 0 | 50 | 100 |
| Parameter Category | Nutrients | 0 | 25 | 50 |
| | Toxics | 0 | 25 | 50 |
| *The Water Quality Standard for the applicable parameter or category. | | | | |

D. State Planning Commission Approvals

The DEP seeks to coordinate and enhance the State Planning Commission's (SPC) efforts to encourage smart growth through the implementation of the State Development and Redevelopment Plan. The DEP assigns ranking points to projects that serve municipalities that the SPC has approved under the Center Designation or Plan Endorsement Process. Last year, the DEP significantly increased the number of points awarded under the categories as listed under Table IV. This year, DEP is streamlining the categories under Table IV to match the designations and plan endorsements given by the SPC.

For a project serving more than one municipality, the SPC points were included for ranking purposes if the designated center or the endorsed plan is a significant component of the overall project. For further information regarding the State Development and Redevelopment Plan, contact the NJ Office of Smart Growth, Department of Community Affairs, 101 South Broad Street, 7th floor, PO Box 204, Trenton NJ 08625-0204 or call (609) 292-7156.

| Table IV. Ranking Points Related to State Planning Commission Approvals | |
|--|---------------|
| Community Type | Points |
| Urban Centers and Complexes | 50 |
| Regional Centers | 25 |
| Existing Designated Towns | 15 |
| Existing Villages | 10 |
| Hamlets | 5 |

E. Population Points

Projects are also assigned points based on the population of the project area. One point is given for every million people living in the project area on a year-round basis. Thus, if projects have the same number of ranking points after having received all eligible points, population points

become the tie breaker, with higher priority given to the project serving the higher population.

F. Public Health Hazard (PHH) Projects

In instances where project conditions are determined to constitute a PHH by the Commissioner of the DEP in consultation with the Commissioner of the Department of Health, the project will receive funding priority over other projects on the Priority List. The review procedure involves a survey of the extent of wastewater problems such as: incidences of sewage-borne disease, contaminated wells, and homes or buildings with sewage back up. Details of the PHH procedure are available in the FFY96 PS document and are incorporated in the FFY2004 PS document by reference. Copies of the FFY96 PS document may be requested by calling the Bureau of Program Development and Technical Services at (609) 292-3859.

III. Construction Grants Program Policies

The delegation of authority for the Federal Construction Grants Program from the U.S. Environmental Protection Agency to the New Jersey Department of Environmental Protection expired on June 30, 2000. As of July 1, 2000, USEPA Region II has assumed full responsibility for the program. Any questions on outstanding Federal Construction Grants projects or issues should be directed to Mr. Michael Hajducek, P.E., USEPA Region II, Water Programs Branch, 290 Broadway, New York, New York 10007, (212) 637-3858.

INTENDED USE PLAN

USEPA requires the DEP to develop an Intended Use Plan (IUP) annually to qualify for CWSRF capitalization grants to support the program and the project loans. This IUP provides information on funds available through the EIFP to provide financial assistance for clean water projects in SFY2005 and identifies State policies governing loan awards. It includes information on the following:

1. The list of projects to be used for funding purposes.
2. The long and short-term goals of the state's program.
3. The programmatic activities to be supported with the anticipated funds.
4. The timing and use of such funds.
5. The criteria and method of distribution of the funds.
6. Provisions for interim reporting (as required by the Regional Administrator at the time of a capitalization grant award).

Programmatic requirements imposed by the Water Quality Act of 1987 include 1 through 5 below. It is anticipated that these provisions will be maintained in a subsequent federal reauthorization act or federal policy. If substantial changes in the Act necessitate the DEP's revision of the FFY2004 PS document, additional public participation efforts will be conducted.

1. The schedule of state capitalization grant payments, jointly agreed upon by the Administrator of the EPA and each state, is based upon the state's IUP.

2. States are required to deposit in the CWSRF, from state monies, an amount equal to at least 20 percent of the total amount of all capitalization grants made to the state.
3. The fund created with federal capitalization grants can only be used to provide assistance for (a) the construction of publicly owned treatment works, (b) the implementation of a NPS (nonpoint source) management program, which includes construction of stormwater/NPS management facilities, and (c) the development and implementation of an estuary conservation and management plan. Although CWSRF loans may only be provided for publicly owned systems, if a government unit assumes ownership of a wastewater treatment system previously privately owned, a loan may be provided under the authority of section 603(c) of the federal CWA. A state may also deem the public ownership requirement as being met for small/on-site systems if adequate inspections and operations are ensured through the establishment of a septic management district or use of service easements. Privately owned stormwater/NPS management projects may also qualify for CWSRF loans provided the project is sponsored by the local government unit.
4. Monies in the CWSRF may be used to provide loans at or below market interest rate, for terms not greater than 20 years (after completion of construction). Repayments must begin no later than one year after completion of the project and must be credited to the CWSRF (principal and interest) for Title VI purposes. The recipient of a loan must establish a dedicated source of repayments. The CWA also authorized the use of federal CWSRF monies to refinance local debt obligations, provide guarantees, or purchase insurance.
5. Through FFY94, states were required to reserve the greater of \$100,000 or one percent of their annual allotment for the development and implementation of NPS management programs. This reserve may be re-enacted or otherwise modified for FFY2004 as a result of reauthorization of the CWA or subsequent federal guidance.

A. Financial Relationships between the CWSRF and the DWSRF

Section 302 of the amendments to the federal Safe Drinking Water Act (which established the DWSRF Program) includes authorization for states to transfer up to 33 percent of its DWSRF capitalization grant to the CWSRF or an equivalent amount from the CWSRF to the DWSRF. This transfer is at the Governor's discretion and cannot occur until at least one year after the state has received its first DWSRF capitalization grant. In New Jersey, the first DWSRF capitalization grant was awarded by USEPA on September 18, 1998.

For FFY2004, the DEP reserves the right to transfer CWSRF loan repayments to the DWSRF. While the original Safe Drinking Water Act limited the ability of the state to transfer funds after September 30, 2001, the DEP continues to reserve this option as authorized by federal legislation.

In addition to the potential transfer of funds between the CWSRF and DWSRF, the DEP is continuing its policy to cross-collateralize the DWSRF with the CWSRF. This feature results in significant savings to project sponsors and, in particular, the drinking water project sponsors since there is a large source of revenue available to cover possible loan defaults. Under the EPA-approved procedures associated with cross-collateralization, a temporary transfer of funds

between the two SRFs may occur as may be necessary to cover the default of a loan repayment or other financial obligation. The DEP and the Trust would take steps to collect any obligations resulting from a loan default and reimburse the appropriate drinking water or clean water account.

B. Document Submittal Schedules

All local government units that have a project or projects listed or eligible for listing on the FFY2004 Priority List were required to commit to the following schedule by October 6, 2003 to be considered for FFY2004 funding. The commitment is made in writing to the **Assistant Director, Municipal Finance and Construction Element** (MF&CE) with a copy to the Executive Director, New Jersey Environmental Infrastructure Trust. Prior to the submission of a commitment letter, all applicants were encouraged to attend a pre-planning meeting with the appropriate area within the Municipal Finance and Construction Element.

| 2004 Loan Program | |
|--|-----------------|
| Activity | Deadline |
| Commitment Letter and Planning Documents | October 6, 2003 |
| Design Documents and Loan Application | March 1, 2004 |
| Loan Award | November 2004 |

The planning and design documents for clean water projects must consist of:

1. A complete project report.
2. The environmental assessment report (level 1, level 2 or level 3, as determined by the DEP). For those projects that have the potential to facilitate growth or cause significant adverse environmental impacts, the DEP will thoroughly evaluate 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 DEP's funding decisions will take into account the project's growth potential, the project's location and the project's aggregate impacts as determined through such evaluations.
3. Complete cultural resources survey documentation.
4. Long-term sludge management plan for projects involving a treatment plant upgrade or expansion.
5. Documentation of completed public participation activities.
6. The results of preliminary coordination activities with lead agencies regarding environmental and permit concerns.
7. Proof of a final NJPDES permit or a Discharge Allocation Certificate. Therefore, all final effluent conditions will be known and agreed upon when planning documents are submitted.
8. For Interconnection/Cross-connection projects, the Final Map, and related information, required under *N.J.A.C. 7:22A-4.3* (earlier submittals are encouraged).
9. Plans and specifications for the project, including appropriate environmental

- mitigation/restoration components.
10. For open space land acquisition projects, an evaluation of the land to be acquired, including a water quality basis for the proposed land purchase.

Projects with unacceptable planning documentation will be bypassed (moved to the next funding period). If the local government unit does not commit to the document submittal schedule, the DEP will interpret this as a decision to not pursue funding in FFY2004/SFY2005 and will result in a "BEYOND 05" designation under the estimated State certification date column on the Priority List.

C. Loan Awards

Loan awards for new projects will be made in FFY2004/SFY2005 for up to 100 percent of the allowable project costs to cover the low bid building costs and other allowable project costs that are identified in the program rules at *N.J.A.C. 7:22-3, 4, and 5*. The loan term will generally be 20 years but can not exceed the useful life of the facility. The initial loan amount will be limited to the certified project cost, which may reflect (1) the estimated allowable project cost based on the project sponsor's loan application or (2) the low bid building cost. The adjustment to provide funding based on the low bid building cost will be made only after all project-related contracts have been awarded.

Adjustments to provide warranted loan increases for differing site conditions will be made only after all allowable project costs have been incurred. Consideration will be given to providing warranted loan increases, subject to: the DEP's and the Trust's approval, legislative approval in the form of an appropriations bill(s) providing such monies, and the availability of funds. Any dollar changes in cost estimates for projects on the Priority List may result in the DEP requesting the municipality to provide a third-party concurrence on the cost change. Should cost underruns occur after a low bid building cost adjustment and the completion of construction, budget line item changes may be approved for allowable cost overruns. In these cases, administrative/legal/fiscal costs will not be subject to the three-percent limit as specified in the rules. A greater amount could be approved should sufficient funds remain and if sufficient justification and documentation for the higher costs are submitted and approved. If a recipient receives DEP approval to reduce the project scope through the elimination of a contract (or portion thereof), the eligible project cost (and therefore the financial assistance amount) will be reduced through the DEP's and the Trust's "deobligation". The amount to be deobligated will be equal to the estimated cost of the scope of work included in the original loan award.

Local government units are required to meet the technical, administrative, and environmental provisions of the rules of the DEP and the Trust (*N.J.A.C. 7:22-3, 4, 5, 8, 9, and 10*). Disbursement and loan repayment provisions must also be consistent with the rules.

Planning and design costs alone are not directly eligible for financial assistance from the EIFP. However, an allowance to assist in defraying planning and design expenses will be included in the financial assistance agreement for the construction of the project, if State funding for planning and design has not otherwise been awarded, such as through the Sewage Infrastructure Improvement Act Grants Program.

Financial assistance will only be awarded to a distinct project segment that will result, in itself, in an operable treatment works (i.e., not relying on award of funds for additional portions of the project). Financial assistance awards will not be made to projects that are under an enforcement action unless a federal or State court-sanctioned order or State administrative order (only accepted in certain cases) specifying a compliance schedule has been established. A copy of the judicial or administrative order will be required at the time of submittal of the project application.

All wastewater treatment projects must be sized in accordance with a cost-effective analysis to accommodate existing needs as well as 20-year reserve capacity. Historically, the recipient's financial assistance from DEP was limited to the cost of the project with a capacity based upon flow records and flows anticipated prior to the date of initiation of operation as established in the Fund loan agreement. In order to advance the State's smart growth initiatives, the DEP and the Trust have recently adopted amendments to the Financing Program rule that allows the DEP to fully fund its share of project costs related to reserve capacity for projects in growth areas as will be defined in DEP's subsequent tiered rulemaking. In the interim until relevant DEP rules are adopted, the rule amendments allow the DEP to fully fund its share of reserve capacity costs for designated Urban Centers and Complexes.

D. Preaward Approvals

Eligible projects can qualify to receive preaward approvals if the requirements of the rules (*N.J.A.C.* 7:22-3.32 and 4.32) are met. This is a significant difference from the federal grants program, since project sponsors may maintain the eligibility of project costs incurred prior to the execution of formal State agreements. However, to maintain the eligibility of such costs, project planning (including the issuance and expiration of an Environmental Assessment prepared by the DEP) and design and contract documents (including issuance of authorization to advertise and award contracts for which reimbursement is sought) must be reviewed and approved by the Municipal Finance and Construction Element. Further, all permits and approvals for the construction of the project must be secured. Note that the receipt of State disbursements for building costs incurred prior to the award of a CWSRF loan from the DEP may not be fully disbursed upon award. As a direct result of federal policy, which classifies these costs as "refinanced," reimbursement for these costs may be limited. States can only draw cash up to 5 percent of its grant amount or in equal amounts over the number of quarters over which the state can receive capitalization grant payments (which will generally be eight quarters).

E. Socially and Economically Disadvantaged (SED) Business Participation

Project sponsors are required to set a goal of awarding at least 10 percent of a project's costs for construction, materials, or services to small business concerns owned and controlled by SED individuals as defined in the Small Business Act (15 *U.S.C.* 637(a) and (d)) and any rules promulgated pursuant thereto. The DEP and the Trust have adopted the SED rules (at *N.J.A.C.* 7:22-9), that identify the SED utilization requirements that project sponsors will have to meet.

F. Stormwater/Nonpoint Source (NPS) Management Projects

Because of the increasing water quality concerns related to stormwater runoff, the DEP and the Trust have expanded the scope of the Financing Program to include construction costs for a wide variety of stormwater/NPS management projects. The EIFP will allocate a minimum of \$10 million in clean water funds to this category in FFY2004. The DEP's general view, after consultation with local and regional planners and stormwater managers, is that expensive structural retrofits should not be implemented before completion of regional analysis and planning. Thus, if the project will impact the capacity, hydrology, or hydraulics of existing stormwater management facilities, systems, or downstream waterbodies, a watershed management plan appropriate to the project's location should be prepared. Watershed management planning, a key component of the watershed approach, assesses the overall needs of an area to ensure that proposed projects will improve/maintain water quality, water quantity and ecosystem health in a cost-effective manner. Watershed management planning differs from the individual project planning which is site-specific and which is a routine requirement of funding under the EIFP. Although the EIFP does not fund watershed management planning, the EIFP does provide an allowance for a project's site-specific planning and design. The allowance is based on a percentage of the building costs. Stormwater/NPS management projects must support efforts to achieve and/or maintain water quality, compatible with designated uses of the water body.

The stormwater/NPS management projects that are eligible for EIFP loans include both new or modifications of stormwater management systems, facilities, basins, or other stormwater/NPS management facilities (including land acquisition to site the eligible facilities).

Stormwater/NPS management projects also include, but are not limited to: installation of packed media filters, replacement of existing storm drains with newer designs that incorporate features to remove solids, floatables, oil and grease, and/or other pollutants; purchase or replacement of equipment to reduce solids and/or floatables, such as netting on outfalls and skimmer boats; purchase of maintenance equipment, such as street sweepers, leaf collection equipment, beach cleaning equipment, and aquatic weed harvesters; rehabilitation of tide gates and existing basins or other stormwater systems, including pump stations; extension and/or stabilization of outfall points; implementation/construction of systems that will result in water quality benefits, such as salt storage structures/runoff control systems, feedlot manure/runoff control systems, and streambank/lake stabilization/restoration projects which are consistent with habitat protection.

In addition to the financing available through the EIFP, the State is making available at least \$6 million in grants to municipalities to foster compliance with the Phase II Stormwater permit requirements.

Landfill Closure and Construction - The Financing Program also includes landfill closure and landfill construction projects under eligible NPS projects. The DEP recognizes that landfills are a major pollution concern and are identified as a nonpoint source of pollution in the State's Stormwater and NPS Program Plan developed under Section 319 of the Clean Water Act. Eligible landfill closure activities include such items as landfill capping systems, leachate collection, storage and treatment systems, side slope seepage prevention and controls, gas

condensate systems and other activities. Financing for landfill construction projects is generally limited to those project elements that prevent, reduce, or control the generation of leachate or are required for the collection, storage and treatment of leachate. Elements of a landfill construction project that may be financed include landfill liner systems, leachate removal or collection systems, and related maintenance equipment, toe-drains and cut-off walls, leachate sampling facilities and equipment, leachate storage facilities (lagoons, tanks, tank covers and aeration systems), leachate evaporation systems, and others. In addition to leachate controls, other eligible elements include barge shelters, containment booms, litter fences, and other means to prevent municipal solid waste from blowing off the landfill site and polluting surface waters. Before any landfill closure or construction project is approved under the Financing Program, the project sponsor must submit and receive all applicable permits and approvals from the DEP's Division of Solid and Hazardous Waste. In FFY2001, the Financing Program added the water quality aspects of open space land acquisition and conservation, remedial action activities and well sealing to the list of eligible NPS projects as described below:

Open Space Land Acquisition and Conservation – Water quality benefits resulting from open space land acquisition and conservation occurs by reducing the encroachment of impervious land cover into environmentally sensitive areas. Buffer areas in and around stream corridors are particularly important to filter pollutants/sediments from surface waters and stormwater runoff. Land acquisition can be through purchase (fee simple) or easement. As a condition of financing, the project sponsor must agree to protect the land from incompatible uses that would adversely impact water quality, such as development of the site and/or other increases in impervious land cover.

Remedial Action Activities - The cleanup of hazardous waste sites and other contaminated sites is critical to preventing further contamination of groundwaters in the State. Spill cleanups, brownfield restoration, and hazardous waste site cleanups at publicly owned facilities are some examples of the activities that are eligible through the Financing Program. Treatment of contaminated groundwater qualifies for financing if the treated water is returned to the environment. Treatment solely to provide a safe drinking water supply is ineligible for CWSRF financing, but may be eligible for DWSRF financing.

Well Sealing - The proper sealing of unused monitoring and water supply wells is also important to protect groundwaters in the State. Municipalities and other public entities can sponsor projects through the Financing Program to properly fill, seal, and abandon wells in accordance with N.J.A.C. 7:9-9.

G. Combined Sewer Overflows (CSOs); Interconnections/Cross-Connections (I/Cs)

In 1988, the New Jersey Legislature passed a bill establishing comprehensive requirements for (1) controlling combined sewer overflows (CSOs) throughout the State, (2) managing stormwater needs in the four coastal counties of Atlantic, Cape May, Monmouth, and Ocean, and (3) establishing a grant program to promote planning and design of necessary facilities. Since CSO facilities are wastewater treatment facilities as defined under section 212 of the CWA, construction of CSO facilities is readily accommodated within the existing CWSRF program.

Although it is expected that a number of the affected municipalities in the coastal counties will pursue planning grants under the I/C aspects of the SIIA funding program (if available), there may be cases in which immediate correction of I/Cs may be appropriate. This type of project is generally included in the I/I Correction category for funding under the EIFP. I/C abatement projects eligible for placement on the Priority List include projects located throughout the State having a need to eliminate or abate an I/C between a sanitary and stormwater sewer system.

H. Short-Term and Long-Term Goals; Miscellaneous Items

The short-term goal of New Jersey's financing program is to provide funding to needed, high-ranked water quality improvement projects. The long-term goal of the program is to establish a sound, self-sufficient, self-perpetuating financing program to assist communities with the financial burden of providing costly wastewater treatment and stormwater/nonpoint source management facilities to meet on-going water quality improvement/maintenance needs of the State.

As provided for in the January 1988 Initial Guidance for State Revolving Funds, a state that has deposited monies in a dedicated revolving fund after March 7, 1985 and prior to receiving a capitalization grant, may credit these monies toward the match, binding commitments, and equivalency requirements. Since some of the projects certified by the DEP receive state-only sources of funding, these state-only projects may qualify under the federal criteria to bank monies to satisfy the CWSRF's match, binding commitment, and equivalency requirements.

In recognition that modifications to the IUP may occur, the DEP may provide updates of the IUP to the USEPA. DEP will submit an Annual Report representing the actual use of the CWSRF funds to the USEPA in accordance with the requirements of the Water Quality Act of 1987 and Agency guidance.

In accordance with the USEPA Policy on Fees Charged on Assistance Provided Under the SRF Programs, states must disclose information regarding the assessment and use of any fees associated with SRF activities that are passed on to the program participants. In New Jersey, each SRF project is financed with two loans, one from the DEP which utilizes federal SRF capitalization grants and one from the NJ Environmental Infrastructure Trust, which utilizes bond proceeds from the Trust bond sale. Each year, the DEP evaluates the need to assess a loan origination fee and/or an annual administrative fee to cover the DEP portion of the program's administrative costs. The amount of the fee (if any) is established in conjunction with the annual budget process for the particular State fiscal year and borrowers are notified in advance of escrow closing as to the estimated cost of the fee that will be charged on their loan to be closed in November.

In the past, adequate resources were available to cover the DEP's costs for administration of the project without levying a fee. Given tight fiscal constraints, the Fiscal Year 2004 Appropriations Act required the DEP to collect an amount not less than \$5 million from the November 2003 borrowers. Rather than require cash payment from the project sponsors, the Trust included the DEP loan origination fee in the borrowers' Trust loan (and secured that portion of the bond issue with non-SRF funds) to cover \$5 million of DEP's costs in administering the Financing Program.

It is anticipated that the Fiscal Year 2005 Appropriations Act will again require the DEP to collect as much as \$5 million from CWSRF and DWSRF project sponsors to cover program administration costs. The amount of the DEP loan origination fee will be proportionally allocated among the participants in the FFY2004/ SFY2005 Program. There is no SRF funding involved in the DEP loan origination fee.

The Trust's loan is issued at the same market interest rate as the Trust obtains from the sale of its bonds. Rather than bonding for all of the eligible closing costs associated with each financing, the Trust charges the borrowers a one-time surcharge of up to 0.4% of the principal Trust loan amount to partially cover the costs associated with that particular year's bond sale. These issuance costs include such activities as: bond counsel, financial advisor, rating agencies, printing and publishing of the Notice of Sale, the Preliminary Official Statement, the Official Statement, and other costs related to the Trust's bond sale. In addition, the Trust charges an annual administrative fee of up to 0.3% of the Trust's bond principal loan amount to cover the balance of the closing cost and the annual operating expenses associated with the operations of the Trust and the on-going costs associated with the Loan Servicer and Trustees. The Trust Annual Fee is not included in the principal amount of the loan. The annual fees collected by the trust are held in an account outside of the SRF. In SFY2005, the Trust anticipates collecting administrative fees associated with the CWSRF and DWSRF programs of approximately \$2.5 million.

| FFY2004 Financing Program Schedule for Clean Water Projects | |
|--|---|
| Date | Action |
| As soon as possible (but before October 6, 2003) | Prospective applicants attend a preplanning meeting with DEP – MF&CE representatives. |
| April 16, 2003 | Public hearing on Proposed FFY2004 PS document. |
| April 22, 2003 | 1. Close of comment period. 2. Public Health Hazard (PHH) bypass requests due. |
| October 6, 2003 | FFY2004 applicants submit commitment letter, all planning documents (i.e., project reports) to DEP, including final NJPDES permit or, in the case of an I/C project, a Final Map. |
| (on or before) January 15, 2004 | DEP/Trust submits list of projects (based on Priority System ranking methodology) to Legislature for forthcoming State Fiscal Year. |
| March 1, 2004 | FFY2004 applicants submit design and complete loan application. |
| April 2004 | Trust conducts Financial Seminars for FFY2004 applicants. |
| (on or before) May 15, 2004 | Financial Plan for State Fiscal Year 2005 submitted by DEP/Trust to Legislature. |
| (on or about) July 1, 2004 | 1. Legislature acts on Financial Plan. 2. DEP/Trust transmit draft loan agreements to qualifying applicants. |
| (on or about) September 15, 2004 | 1. Trust financial transactions completed. 2. Execute DEP/Trust loan agreements in escrow. |
| November 2004 | DEP/Trust loan closing with FFY2004 sponsors. |

SEWAGE INFRASTRUCTURE IMPROVEMENT ACT GRANTS PROGRAM

Introduction

The Sewage Infrastructure Improvement Act (SIIA), *N.J.S.A. 58:25-23*, was passed by the New Jersey State Legislature on August 3, 1988, to address both point and nonpoint source (NPS) pollution. The SIIA set comprehensive requirements applicable to the DEP and the affected municipalities/public entities regarding combined sewer overflow (CSO) abatement and stormwater management. The SIIA also established a fund known as the Municipal Stormwater Management and CSO Abatement Assistance Fund and appropriated \$33.5 million for it. In addition, the DEP may use funds available under the Stormwater Management and CSO Abatement Bond Act of 1989 for SIIA purposes as well. The DEP has adopted rules to implement CSO Planning and Design Grant aspects at *N.J.A.C. 7:22A-6* and I/C Abatement Planning and Design Grant aspects at *N.J.A.C. 7:22A-7*.

The SIIA grant program for planning and design activities is independent of the EIFP, which is strictly a loan program. This discussion and the SIIA application deadlines (February 6, 2004, for the planning and design of CSO construction projects and December 15, 2003, for the planning of I/C construction projects) are included in this document to take advantage of the wide public circulation of the Priority System. While planning and design may be completed through the award of grants under the SIIA, the construction of needed facilities may be financed through loans awarded under the EIFP.

Sections I and II provide more information on the specific requirements of the SIIA relating to CSOs and stormwater management and explain the interrelationship of the funding programs available under the SIIA and the EIFP.

I. CSO Abatement

The SIIA requires all public entities operating CSO systems in NJ to provide DEP-approved CSO abatement measures. The SIIA funding program authorizes the DEP to give grants to municipalities and other public entities controlling or operating CSOs. The grants provide up to 90 percent of the funds needed to complete planning and design of necessary CSO abatement facilities. In view of the limited funds available for CSOs, CSO abatement projects eligible under the SIIA Grants Program were limited to those which addressed the elimination of dry weather overflows and the reduction of solids and floatables in CSOs during wet weather events.

The DEP annually provides public notice of deadlines for submittal of SIIA planning and design grant applications and has done so since FFY92. The grant application deadline is February 6, 2004, for the planning or design of CSO abatement projects.

II. Stormwater Management

The SIIA requires stormwater mapping and implementation of NPS pollution controls by all municipalities with stormwater sewer systems discharging into the salt waters of Atlantic, Cape May, Monmouth, and Ocean Counties. The maps must identify the locations of the stormwater and sanitary sewer systems, all I/Cs, and indicate whether the cross-connections have received permits from the DEP. The 94 affected municipalities must also periodically monitor water quality at the outfall lines of their stormwater sewers (*N.J.A.C. 7:22A-4*). Because the SIIA requirements for stormwater mapping and NPS pollution control requires a considerable amount of work, the DEP is implementing the program in several phases. The phases and their requirements are Phase I, preliminary maps; Phase II, final maps; and Phase III, NPS pollution correction. Phases I and II are administered by the Division of Watershed Management in the DEP. In addition to these phases, grants for the planning and design of I/C abatement facilities are also available based on the final maps. The I/C planning and design grant aspects of the SIIA are administered by the MF&CE. The deadline for grant applications for I/C planning is December 15, 2003.

In Phase I, which is now complete, municipalities developed inventory and preliminary maps of their stormwater sewer systems; the DEP allocated \$1.045 million for Phase I. The rules requiring the preliminary maps are at *N.J.A.C. 7:22A-1, 2, and 3*. Phase II sets requirements and provides grant funds to municipalities for developing detailed final maps of their stormwater/sanitary sewer systems to locate I/Cs and for monitoring discharges to salt waters. The DEP has signed grant agreements with the eligible municipalities for Phase II final mapping. The rules setting final map and monitoring requirements are at *N.J.A.C. 7:22A-1, 2, and 4*. The final maps must be generated within one year after receiving the grants for them, and the monitoring of discharges to salt water must be completed over a three-year period. Subsequent investigative monitoring activities in conformance with monitoring requirements will enable municipalities to verify and update annually the final maps.

Phase III, a future phase of the program, will involve the implementation of NPS pollution controls where monitoring indicates significant sources of NPS pollution. Municipalities will be required to abate significant NPS pollution which, based on mapping and monitoring efforts, are adversely impacting surface waters. It should be noted that DEP is currently preparing rules to establish guidelines for the preparation of regional stormwater management plans, which is a major step toward implementation of NPS controls needed not only in coastal areas, but throughout the State.

Acronyms and Short Names

| | |
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| CSO | Combined Sewer Overflow |
| CWA | Clean Water Act |
| CWSRF | Clean Water State Revolving Fund |
| DEP | Department of Environmental Protection (New Jersey) |
| DWSRF | Drinking Water State Revolving Fund |
| EIFP | Environmental Infrastructure Financing Program |
| EPA | Environmental Protection Agency (United States) |
| FFY | Federal Fiscal Year |
| Fund | Clean Water Fund |
| I/I | Infiltration/Inflow |
| I/C | Interconnection/Cross-connection |
| IUP | Intended Use Plan |
| List | Project Priority List |
| MF&CE | Municipal Finance and Construction Element |
| NJAC | New Jersey Administrative Code |
| NPS | Nonpoint Source |
| PHH | Public Health Hazard |
| PS | Priority System, Intended Use Plan and Project Priority List |
| SED | Socially and Economically Disadvantaged |
| SIIA | Sewage Infrastructure Improvement Act |
| SFY | State Fiscal Year |
| SPC | State Planning Commission |
| SRF | State Revolving Fund |
| Trust | Environmental Infrastructure Trust |

RESPONSE DOCUMENT FOR THE FFY2004 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. 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.

Significant Provisions of the FFY2004 Priority System Document

To advance the State's efforts to bring smart growth to New Jersey, the Department made two significant changes to the Financing Program that began with the FFY2003/SFY2004 funding cycle. These changes are being continued in the FFY2004/SFY2005 Program. The first change involves modifying the percentage of project costs the Department and the Trust provide to project sponsors. Normally, project sponsors receive a loan for half of the project costs from the Trust at market rate and a loan for the remaining project costs from the Department at 0% interest. Under this change, the Department will provide 75% of the project costs at 0% interest, while the Trust will provide 25% of the project costs at market rate to projects that serve areas suitable for development (i.e., "green light" areas or as otherwise defined) in future rulemaking by the Department. In addition, CSO abatement and land acquisition projects will also qualify for the 75% Department/25% Trust Financing Package. Until these rules are promulgated, the Department plans to advance smart growth by providing a higher subsidy through the "75/25" Smart Growth Financing Package to that portion of a project that serves Urban Centers and Complexes as designated by the State Planning Commission. To date, the State Planning Commission has designated Atlantic City, Camden, Elizabeth, Jersey City, New Brunswick, Newark, Paterson and Trenton as Urban Centers and one Urban Complex, the Hudson County Urban Complex, which includes the following municipalities: Bayonne, East Newark, Guttenberg, Harrison, Hoboken, Jersey City, Kearny, North Bergen, Secaucus, Union, Weehawken, and West New York.

The second change to advance smart growth is related to funding for reserve capacity. The Department and the Trust have adopted amendments to the Financing Program rule that allow the Department to fully fund its share of reserve capacity costs for projects that serve growth areas as will be defined in the Department's subsequent tiered rulemaking. In the interim until relevant Department rules are adopted, the current rule amendments allow the Department to fully fund its share of reserve capacity costs for projects that serve designated Urban Centers and Complexes.

Public Participation Process

On March 13, 2003, the Department sent the Proposed Addendum to the FFY2003 Priority System document and the Proposed FFY2004 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 April 16, 2003 and that the public comment period will close on April 22, 2003. The March 13, 2003 public notice satisfies the 30-day requirement for availability of relevant documents for the public's review in accordance with applicable federal rules.

On April 16, 2003 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 hearing was held in conjunction with the public hearing on the Proposed Addendum to the FFY2003 Priority System Document for Clean Water Financing and the public hearing on the FFY2003/FFY2004 Drinking Water Priority System Proposal. The public hearing was chaired by Scott Shymon, Bureau of Program Development and Technical Services, Municipal Finance and Construction Element (MF&CE), who presented information relevant to the Clean Water and Drinking Water Priority System, Intended Use Plan and Project Priority List proposals. The remaining time was allocated for public comment and questions. 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.

Seven comment letters were received regarding the Proposed Addendum to the FFY2003 (and, thus, the FFY2004) Priority System document. Seven additional letters were received that did not comment on the programmatic changes included in the Proposed Addendum to the FFY2003 Priority System document and are considered comments for the FFY2004 Priority System document. This Response Document addresses all fourteen comment letters that were received during the public comment period. Eleven letters were from existing or potential project sponsors, one letter was from a consulting engineer, one letter was from the Association of New Jersey Environmental Commissions and one letter from Clean Ocean Action. This Response Document addresses all of the comments relative to the Proposed Addendum to the FFY2003 Priority System document and the FFY2004 Proposal.

SUMMARY OF PUBLIC ISSUES AND RESPONSES

COMMENT

Several commenters expressed concerns regarding the proposed changes to the Department's funding policies. They indicated that the changes were objectionable and discriminatory and that they discourage remediation of environmental issues in red and yellow areas on the BIG Map. They recommended that all projects receive the "75% Department /25% Trust" Smart Growth Financing Package (including those projects that were previously funded, but have not been closed out) and that all projects receive the same level of scrutiny in the permit/project approval process.

RESPONSE

In order to advance the Department's and the Governor's desire to promote smart growth, including encouraging growth in urban areas, the Department proposed to provide an enhanced financing package to projects serving urban areas. The Department does not believe that this policy discourages remediation in non-urban areas since the Smart Growth Financing Package does not affect the development of the priority list, nor affect the Department's commitment to provide funding to the projects in accordance with the priority list rank based on water use/quality and public health concerns. Thus, the Department will continue to offer assistance in accordance with the established water quality based impacts and public health priorities. While certainly the 75/25 funding is a financial advantage, the historic 50/50 financing program which will continue to be offered to non-urban communities has significant cost savings and fiscal reporting advantages over local financing.

The Department is not proposing to expand the 75/25 funding determinations at this time. Any changes that would expand the 75/25 funding program beyond Urban Centers/Complexes in FFY2004 or future years would be contingent upon the adoption of future rulemaking. The Department feels that the proposed financing program enhancements to benefit Urban Centers and Complexes are appropriate initial steps. Over the long term, the decision to provide enhanced financing in areas determined to be most suitable for development as defined in future rulemaking, as well as the significant regulatory changes currently under development for many of the Department's permitting and planning processes, are essential to implement the State's smart growth goals.

In setting up the 75/25 program, the Department considered many options, including the potential to make the 75/25 funding change retroactive to previous borrowers. Several factors that influenced the Department's decision to begin the smart growth initiatives with the FFY2003 financing cycle and not make it retroactive included: the need for legislative changes; the fact that Trust bonds have already been issued to provide the loans made in previous years; the additional administrative costs related to making loan amendments; and other factors. Consideration of these issues resulted in the decision not to make this program enhancement retroactive. It should be noted that the Trust is continuously monitoring the bond market to seek opportunities to reduce the costs to previous borrowers by refinancing existing loans in favorable market conditions. Spurred on by the Governor's executive order, the 75/25 program is being offered to all Financing Program participants that qualify, and will include those seeking supplemental loans.

With respect to the level of review that a project undergoes to obtain a permit/approval to construct an environmental infrastructure project, the extent of adverse environmental impacts (direct and indirect) associated with a project located in urban or significantly developed areas is frequently less than similar projects located in rural or transition areas. While all projects pursuing loans under the Financing Program are subject to environmental review, projects located in, or those that would impact environmentally sensitive areas will be required to thoroughly consider alternatives to address the project need, particularly in instances where the infrastructure is proposed to support growth, and will be required to address water quality/quantity impacts, impacts to riparian corridors, existing pollution control needs and assess the resulting environment to ensure that adverse impacts are avoided or minimized.

COMMENT

Several commenters were concerned with the significant increase proposed for the Department's Loan Origination Fee for the 2003 Financing Program, estimated to be approximately \$4 million more than the fee in SFY2003. They indicated that the fee is excessive and needs further justification. One commenter suggested that the Department fund the administrative costs of the program by the means utilized in the past rather than placing additional burden on the borrowers.

One commenter noted that the increase in the Department's Loan Origination Fee "is understandable under the current economic conditions."

RESPONSE

In the past, the Department's cost of administering the Financing Program has come from a variety of sources, including State appropriations, State bond acts and a portion of the CWSRF capitalization grant that is awarded annually to the Department. These monies covered the Department's administrative expenses, including planning and design review and approvals, payment processing, construction monitoring and other activities. More than 175 projects are currently active in the construction and payment phases and the Financing Program has provided loans to more than 400 projects totaling over \$2.2 billion. The Department is only allowed to use 4% of the CWSRF capitalization grant for administrative costs. The costs of administering a leveraged program, like NJ, which nearly doubles the amount of available funds for loan awards is more costly than the non-leveraged programs, and the 4% federal contribution does not cover the Department's costs. The State has tried for many years to seek amendments to the CWA to allow states to use more than 4% or base the amount on the total SRF loan portfolio (to account for leveraged programs). Unfortunately, no changes have been made to the federal law and there are no other SRF sources available to cover the Department's administrative expenses.

Likewise, in these times of budgetary constraints, State sources that have historically been used are no longer available. In the 2002 financing cycle, participants were required to cover \$1 million of the Department's expenses in SFY2003 to offset a portion of the costs. In the 2003 program, the Department must raise as much as \$5 million for administrative costs from project sponsors and a similar amount could be anticipated to be required in SFY2005. The amount of the Department's loan origination fee will be proportionally allocated among the participants in the FFY2004/ SFY2005 Program. For the FFY2003/SFY2004 Program, the cost of the Department's Loan Origination Fee to the borrowers will be included in their Trust loan as was done in the 2002 Program. This approach, rather than charging the borrowers the entire fee at loan closing, helps to significantly reduce the burden for borrowers to cover this program cost. In addition, the Department is reviewing current program expenditures and investigating ways to streamline project reviews, to optimize staff efficiencies and to otherwise stabilize or reduce the program's administrative costs.

COMMENT

One commenter, representing six environmental organizations, indicated that they strongly support the proposal to modify the Environmental Infrastructure Financing Program to better integrate the Governor's smart growth initiatives and the Blueprint for Intelligent Growth (BIG) Map and applauded the Department for moving forward to improve the funding package for projects that serve urban areas designated by the State Planning Commission. The commenter suggested that no funding should be provided to projects that serve "red light" areas, unless to

correct a threatening public health problem.

RESPONSE

The Department appreciates the comments in support of the proposed changes to the Financing Program in order to encourage growth in currently developed areas, which typically have fewer environmentally sensitive resources and thus, additional development would have less environmental impact. The Department views these proposed changes as an initial effort to better align the Financing Program with the Department's smart growth goals. The Department expects to consider additional measures to strengthen the smart growth potential of the Financing Program in future rule proposals. As part of any future deliberations, the Department will consider how to best balance environmental protection objectives with correcting inadequate infrastructure in the State for our existing population. All of the projects that are approved for financing through the Financing Program must demonstrate a need, based on public health concerns or water quality-related impacts, particularly the projects that are being approved in rural areas. Sizing of the facilities and appropriate alternatives that meet the need and means to mitigate impacts, are thoroughly assessed for aggregate impacts during planning for these projects. As part of its future deliberations on the role of the Financing Program in its smart growth initiatives, the Department will consider how to strengthen such existing requirements of the program as well as how to introduce new regulatory elements to the Financing Program to direct growth to appropriate areas of the State.

In addition, a policy that excludes the financing of environmental infrastructure projects in less developed areas would preclude certain categories of projects from the Financing Program that are environmentally desirable. Project types that do not spur development and improve the project area, such as land acquisition and conservation, septic system repairs/replacement, landfill closures, stormwater management facilities, streambank stabilization and many others should continue to be eligible for assistance. Further, the need to address serious infrastructure problems for existing populations must also be considered in such situations.

COMMENT

One commenter recommended that all centers designated by the State Planning Commission should qualify for the 75/25 Smart Growth Financing Package and that more points should be awarded to projects whose sponsor has been designated as a center by the State Planning Commission.

RESPONSE

In January of 2003, Governor McGreevey introduced key elements in the State's Smart Growth initiative. The Governor intended that the DEP provide clear and accurate information and guidance regarding areas in the State in which growth is encouraged (and in which permitting/approval processes would be streamlined and made more predictable), as well as other areas in the State which may support development as long as natural resource impacts are appropriately evaluated and addressed. In response to the Department's extensive discussions throughout the State regarding this significant environmental initiative, the Department intends to propose program-specific regulatory changes (i.e., for various permits and/or approvals) to advance a tiered approach to natural resource protection.

As an interim step, the Department plans to advance smart growth by providing a higher subsidy to that portion of a project that serves Urban Centers and Complexes as designated by the State Planning Commission. In addition, the Department has adopted amendments to the financing program rule so that the Department will now fully fund its share of reserve capacity costs for designated Urban Centers and Complexes. The Department believes that these policies are appropriate interim steps.

COMMENT

One commenter recommended that infrastructure financing for nonpoint source pollution controls, including non-structural stormwater management and open space land preservation, should represent a higher percentage of the total allocation.

RESPONSE

Historically, the Department has allocated a minimum of \$10 million per year to address stormwater management or nonpoint source pollution control needs to give project sponsors an assurance that some funds will be available annually for this type of project. However, sufficient monies have thus far been available to fund all non-structural stormwater management and open space land acquisition projects that have met program requirements. The Department sees no need to increase the amount of money reserved for stormwater management and nonpoint source pollution control projects at this time, but will continue to monitor the funds available in the Program and consider changes to the amount allocated for these types of projects as warranted.

In addition to the financing available through the Financing Program, the State is making available at least \$6 million in grants to municipalities to foster compliance with the Phase II Stormwater permit requirements.

COMMENT

One commenter suggested that wastewater treatment projects that are intended to enhance and protect the water supplies for Urban Centers and Complexes be given the same incentives as those projects within the immediate jurisdiction of those designated communities.

RESPONSE

The primary purpose of the changes made to the Financing Program were to promote smart growth and to provide financial incentives to projects that serve urban areas particularly as these areas are subject to significant infrastructure and other costs needed to support its high population. In establishing the Smart Growth Financing Package, participation is limited to only those projects that directly serve urban areas. In the commenter's scenario, while the upstream discharge of the sewage treatment plant (STP) may impact the downstream potable water company's water supply for its customers in urban areas, the users of the STP are not located in an urban area and therefore would not qualify for the smart growth financing. However, the wastewater needs would be able to be corrected through the traditional financing program which has significant cost savings and fiscal reporting advantages over local financing. In addition, the Priority System ranking methodology and the practice of funding projects in accordance with rank on the Priority List based on water use/quality and public health concerns remain unchanged.

COMMENT

One commenter recommended that the Priority System ranking methodology assign more points for Stormwater Management and other Nonpoint Source (NPS) pollution activities under the Project Type Category, particularly in light of the Department's recent rule proposals that will require additional controls for municipal separate storm sewer systems. The commenter recommended that the points for Stormwater Management and other NPS activities be increased from 50 to 150, a level commensurate with Treatment Plant Improvements.

RESPONSE

The Department does not support increasing points for stormwater/NPS management projects to 150 points, a level commensurate with Treatment Plant Improvements, at this time. Prior to FFY2004, projects categorized as stormwater management and other NPS activities received 25 points under the ranking methodology and were routinely the lowest ranked projects on the Priority List. In view of the fact that the Department was in the process of developing and implementing rules that would increase the burden on municipal owners/operators of separate storm sewer systems, the Department decided to double the points for stormwater management projects and other NPS activities in the Proposed FFY2004 Priority System document. The point increase to 50 points made in the Proposed FFY2004 Priority System document for projects in the stormwater/NPS pollution management category results in these projects now being blended universally with other clean water projects on the Priority List. They are no longer ranked as the lowest priority. Sponsors of these projects should be encouraged about their funding opportunities because, in addition to the \$10 million annually set-aside for these project types, the Financing Program has historically had sufficient funds available to finance projects regardless of their rank on the Priority List provided the sponsor satisfies all programmatic requirements in a timely manner.

The State is making available at least \$6 million in grants to municipalities to foster compliance with the Phase II Stormwater permit requirements using sources of State monies outside of the Financing Program.

COMMENT

One commenter expressed concern that the Priority System should only promote wastewater reuse once formal standards have been finalized by the Department.

RESPONSE

The Department has included wastewater reuse under the description in the "Corrective Systems" Category of the ranking methodology to, among other things, highlight to project sponsors that wastewater reuse is encouraged by the Department and that it is an eligible project type. That said, while wastewater reuse projects can readily be placed and ranked on the Clean Water Priority List, project sponsors must still comply with all of the applicable program requirements, including a cost-effectiveness analysis of alternatives and must still receive all of the applicable Department approvals and permits before the Department would be in a position to certify the project for funding. The Department agrees that proper standards must be in place to ensure that no adverse water quality impacts will result from wastewater reuse projects before they are approved for funding.

COMMENT

One commenter suggested that the Priority System failed to recognize the value of coastal waters and that a new category, entitled “Coastal Habitat” be created under the Water Use Category of the ranking methodology.

RESPONSE

The Priority System has historically recognized and continues to recognize the value of the State’s coastal waters and the importance of the species that are supported by the coastal habitats.

The Water Use Category of the ranking methodology already has two categories from which all coastal wastewater treatment projects involving a direct discharge to the ocean receive a benefit. They are the Recreation (Primary Contact) and Shellfish categories. These projects receive 125 points under each of these Water Use categories. When these points are coupled with the other points available through the ranking methodology, such as Treatment Plant Improvements, these projects find themselves among the highest-ranked projects in the State. The Department does not believe that a new category under Water Use is necessary to otherwise take into account Coastal Habitats. Similarly, the Department believes that the existing Priority System ranking methodology addresses environmental issues fairly between coastal waterbodies and inland waterbodies (such as stream, river, lakes, etc.).

COMMENT

One commenter recommended that, in addition to fecal coliform, the bacterial pathogen enterococci be included as a parameter to the Water Quality Category of the ranking system to further recognize the value of the coastal waters and to encourage compliance with permit requirements among the owners/operators of treatment plants that discharge to the ocean. In addition, the commenter recommended that the Department give higher priority to projects that reduce toxins from entering the environment and adopt a two-tiered approach to recognize the differences between non-bioaccumulative toxics and bioaccumulative toxics.

RESPONSE

The use of fecal coliform under the Priority System ranking methodology is consistent with the way in which the Department currently assesses and lists impaired waterbodies in the State. The Department does not prepare separate 304(b) listings for enterococci, nor are treatment plants typically required to monitor or are regulated for this pathogen. Therefore, the Department believes that continuing to use fecal coliform to assign water quality points under the Priority System should be retained. With respect to the recommendation that higher priority be given to projects that reduce toxins, and to further consider a bioaccumulative/non-bioaccumulative ranking methodology, the Department does not believe that changes to the current ranking methodology are warranted at this time. The great majority of toxics are dealt with at pretreatment facilities, and such industrial facilities projects are not eligible for financing under the Clean Water SRF program. In addition, the water quality of the receiving waterbody forms the basis of whether or not points will be assigned under the ranking methodology, not whether the proposed project will address the specific impairment. Notwithstanding this decision, consideration will be given to this and other possible changes to the overall methodology for future Priority Systems.

PROJECT SPECIFIC COMMENTS

Many governmental organizations have requested minor revisions to their respective projects' estimated costs and/or minor revisions to the project scopes. These changes have been made and are reflected in the FFY2004 Priority List and project descriptions.

- Rockaway Valley Regional Sewerage Authority requested information regarding the project ranking methodology for two of their projects (340821-04, STP Improvements, Ranked #44 on the Proposed FFY2004 Priority List and 340821-03, Sludge Management, Ranked #97 on the Proposed FFY2004 Priority List).

Project No. 340821-03 receives 100 points under the Project Discharge Category as a project that addresses sludge treatment/disposal for the project area. It does not qualify for water use/water quality points since the project does not involve a surface water discharge. The project gets additional points for population of the service area, for a total of 100.12063 points.

Project No. 340821-04 receives 150 points under the Project Discharge Category as a project that addresses a need for treatment plant improvements. In addition, the project receives points for potable water supply since a water supply intake is downstream of the discharge, points for non-trout fishing and points for industrial use. The project does not receive any points for failure of the receiving waters to meet existing water quality standards. Together with population points, the project receives a total of 400.12063 points. Any water quality information that the project sponsor may have to support changes to the project's rank should be submitted to the Department for consideration and modification of the point score.

The following new projects have been added to the FFY2004 Priority List:

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|-------------------------|-----------|
| Barnegat Township | 340620-05 |
| East Brunswick Township | 343050-01 |
| Hawthorne Borough | 340881-03 |
| North Hudson SA | 340952-03 |
| Ocean County UA | 340372-25 |
| Roxbury Township | 340381-06 |

The following projects have been removed from the list because they were certified for funding in the FFY2003/FFY2004 funding cycle:

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|-----------------------|-----------|
| Barrington Borough | 340305-01 |
| Berkeley Township SA | 340969-03 |
| Burlington County BCF | 342007-03 |
| Camden City | 340641-02 |
| Camden County MUA | 340640-08 |
| Chesterfield Township | 340944-01 |
| Harrison Township | 340362-02 |
| Lambertville SA | 340882-05 |
| Linden Roselle SA | 340299-06 |
| Millville City | 340921-05 |
| Montville Township | 343030-03 |

| | |
|--------------------------|-----------|
| New Brunswick City | 340437-11 |
| NJ Water SA/Lebanon Twp. | 340048-01 |
| Old Bridge MUA | 340945-01 |
| Paterson City | 340926-01 |
| Perth Amboy City | 340435-06 |
| Rahway Valley SA | 340547-07 |
| Rahway Valley SA | 340547-09 |
| Readington Township | 343034-02 |
| Runnemede SA | 340363-02 |
| Runnemede SA | 340363-03 |
| West Paterson Borough | 340778-03 |

AGENCY-INITIATED CHANGES

As adopted under the final FFY2003 Priority System document, the Department has determined that certain clarifications to the smart growth financing package are necessary and appropriate. To address instances where a project does not exclusively serve an Urban Center/Complex, the Department has determined that the 75/25 funding package will be provided to only that portion of the project that serves an urban center/ complex and the project's financing would be less than 75/25, but more than 50/50. In addition, the Department will include projects located in an Urban Center/Complex in the 75/25 funding package provided the project has direct quality of life implications for the Urban Center/Complex. An example of such a project would be odor controls for sludge management facilities (that serve areas beyond the Urban Center/Complex) located in an urban center that would reduce odors generated from the sludge management facilities and improve the air quality in the urban area. These clarifications have been included in the Final FFY2004 Priority System document.

**LIST OF RESPONDENTS TO THE FFY2004 PROPOSED PRIORITY SYSTEM
DOCUMENT FOR CLEAN WATER FINANCING**

Association of New Jersey Environmental Commissions
Barnegat Township
Clean Ocean Action
East Brunswick Township
Hawthorne Borough
Lee T. Purcell Associates
Musconetcong Sewerage Authority
North Hudson Sewerage Authority
Ocean County Utilities Authority
Pompton Lakes Borough Municipal Utilities Authority
Rockaway Valley Regional Sewerage Authority
Roxbury Township
Wanaque Valley Regional Sewerage Authority
Wharton Borough