

## **RESPONSE DOCUMENT FOR THE FFY2005 PRIORITY LIST UPDATE (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. As part of the Department's FFY2005 Priority System document, the Department indicated that it would be updating the Priority List later in the year to add projects that met the initial deadline for the 2005 Financing Program (October 4, 2004) and subject the updated list to a public participation process.

### **Public Participation Process**

On December 17, 2004, the Department sent a notice opening the comment period for the FFY2005 Priority List Update to the standard mailing list of approximately 1,200 potential applicants and other interested parties inviting public comments and input. The standard mailing list includes municipalities, consulting engineers, environmental commissions, special interest groups, state legislators, county health departments, environmental groups, county planning boards and commissions and other interested parties. The notice announced the availability of the Priority List Update, identified several methods to obtain a copy and stated that the public comment period would close on January 17, 2005. The December 17, 2005 public notice satisfies the 30-day requirement for availability of relevant documents for the public's review in accordance with applicable federal rules.

Three letters were received regarding the FFY2005 Priority List Update. Two were requests to add/modify project-specific information and one letter was from a project sponsor that included several comments regarding the State's policies. While it is more appropriate to raise comments regarding the State's funding policies during the public participation process on the annual Priority System, Intended Use Plan and Project Priority List proposal, the Department has attempted to address the commenter's concerns herein. This Response Document addresses all comments received during the public comment period.

## **SUMMARY OF PUBLIC ISSUES AND RESPONSES**

### **Comment**

The Village of Ridgefield Park suggested that the Department undertake a study of the smaller communities with a view toward establishing a funding package tailored to its unique needs. The commenter also encouraged the Department to continue to seek ways, including possible grant funding for capital projects, to alleviate financial pressures experienced by the smaller communities. The commenter also noted that, as a CSO

community, the availability of grant funds in combination with the low-costs loans would prove helpful in these situations.

#### Response

Over the years, the Department, in conjunction with the NJ Environmental Infrastructure Trust, have continually explored ways to help communities (large and small) in financing their infrastructure needs. As administrators of the Environmental Infrastructure Financing Program, the Department and the Trust have been very innovative in maximizing the cost savings to the participant borrowers. The introduction of the 75/25 Smart Growth Funding Package is just one example of how the Program has worked to use available funding to provide additional savings on to certain borrowers.

While the Department and the Trust recognize that grant funding is desirable, the vast majority of the funds in the Clean Water Financing Program are classified as Clean Water State Revolving Fund (CWSRF) monies. As a condition of continued receipt of federal funding under the Clean Water Act, the State cannot use any of its CWSRF monies to provide grants to eligible projects and, although there are some State monies that are not encumbered by the CWSRF restrictions, the amount of those funds are very limited and their uses are similarly restricted. The Department is exploring the possibility of providing 20% grants for certain Combined Sewer Overflow, Stormwater Management and Sanitary Sewer Overflow projects that are ready to proceed in the current financing cycle.

In addition, in many instances, smaller communities may be the sponsor of a project that is low cost. For projects under \$200,000 in allowable costs, the sponsor can request that the Trust make a direct loan to the borrower for the Trust share of the loan amount. By doing so, the borrower can save additional costs by not having to hire a bond counsel to close on the loans.

#### Comment

The Village of Ridgefield Park also suggested that the Financing Program expand its 75/25 Smart Growth Funding Package to those communities with fully developed land uses and static population.

#### Response

To advance the State's efforts to incorporate Smart Growth objectives into State policies and financing programs, the Department introduced the Smart Growth Funding Package which offers a lower interest rate for that portion of an environmental infrastructure project that serves Urban Centers and Complexes as designated by the State Planning Commission, Transit Villages and Brownfield Redevelopment Areas. In addition, CSO abatement, septic system repair and replacement, and land acquisition projects also qualify for the "75/25" Funding Package. While the Department has considered expanding the universe of projects eligible for the "75/25" Funding Package, the Department has concerns regarding the long-term financial sustainability of the Financing Program. Reductions in the federal contribution to the CWSRF, a significant increase in the dollar amount of projects funded in the last few years, increased interest in the

Program, and other factors have raised concerns about the long-term sustainability of funding for the Financing Program. Given these concerns, the Department believes that it would not be prudent to expand the Smart Growth Financing Package along the lines suggested by the commenter until further analysis is undertaken and there is a better understanding of its long-term effects on the availability of funds for future projects.

#### Comment

The Village of Ridgefield Park recommended that the Department conduct a survey of the need and the financial burden on the program before implementing an expedited approval process for emergency projects.

#### Response

The scope of projects that qualify under this category is limited to those in need of immediate repair and restoration due to the unforeseen failure of the collection, conveyance and/or treatment components of the system. Such emergency projects would not need to be listed individually on an approved Priority List for the Trust to use CWSRF monies for its interim financing program. The anticipation or expectation that the potential exists for a system to fail is not eligible for emergency funding.

In addition, only the actions directly and immediately needed to address the emergency condition(s) are eligible for emergency pre-award approval; components that may be otherwise desirable but not specifically required to correct the emergency condition(s) are not eligible for emergency pre-award approval. Given these restrictions and the pressing environmental need for these projects, the Department strongly believes in prudence of this provision and is confident that financing emergency projects will not have a negative impact on the program and will not unduly tax the Environmental Infrastructure Financing Program.

#### Comment

The Village of Ridgefield Park also suggested that the Department provide notifications of milestone outcomes associated with regional analyses of the practicality of implementing stormwater/nonpoint source management projects on a periodic basis. It was suggested that the notifications include brief descriptions of methodologies, applications and timing of studies.

#### Response

The Department reports on those projects that receive financial assistance through several means, including press releases, Department publications, annual reports and other documents. At this time, given current financial constraints, the development of a process to provide notification of regional analyses of the impacts of stormwater/nonpoint source management projects on the Financing Program is not envisioned. The Department monitors and reports on regional water quality in many ways, including the publication of the 303(d) list that identifies impaired waterbodies in the State and the 305(b) Water Quality Monitoring Report.

## PROJECT SPECIFIC COMMENTS

Bergen County Utilities Authority requested that two projects at its wastewater treatment plant be added to the Project Priority List. The Department has combined these projects into one project and added it the list as S340768-05.

The Town of Kearny sent information to update the listing of its project S340259-03. The scope of this project was modified from a sewer rehabilitation project to a CSO project, which includes separation of storm and sanitary sewers and floatable controls.

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

Village of Ridgefield Park  
Bergen County Utilities Authority  
Town of Kearny