



Vermont Department of Environmental Conservation

Agency of Natural Resources

Commissioner's Office

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August 21, 2008

Jackie LeClair, Manager, CMU
Municipal Assistance Unit (CMU)
USEPA Region 1
1 Congress Street
Suite 1100
Boston, MA 02114-2023

Re: Revised State Environmental Review Procedures for the DWSRF Loan Program

Dear Ms. LeClair:

Enclosed is the revised State Environmental Review Procedure (SERP) for the DWSRF Loan Program. The revised SERP takes into account comments we received from Stephen Perkins, Director of the Office of Ecosystem Protection, that are outlined in his letter dated August 7, 2008. Consistent with those comments, we revised two sections of the SERP, Section VIIc.I. *Procedural Requirements for Categorical Exclusions* (pages 4 and 5) and Section XV.b. *Publication of Notices of Intent* (page 15).

All suggested changes have been incorporated into the revised SERP, which relate to how we will provide for public notice for our categorical determinations. More specifically, the revisions include provision for posting our categorical determinations on the VTDEC WSD web-site and clarification that we will continue the practice of copying all interested parties on such determinations.

If you have any questions, please contact me at the above phone number or Eric Blatt at (802) 241-3425.

Sincerely,

A handwritten signature in dark ink, appearing to read "Laura Q. Pelosi".

Laura Q. Pelosi
Commissioner, Department of Environmental Conservation

cc: Stephen S. Perkins, Director, Office of Ecosystem Protection, EPA Region 1
David Chin, Environmental Engineer, EPA Region 1
✓ Gary Schultz, Acting Director, Water Supply Division, DEC
Eric Blatt, Section Chief, Engineering & Financial Services, DEC
Larry Fitch, Director, Facilities Engineering Division, DEC

Vermont Department of Environmental Conservation
Environmental Review Procedures for
Projects Funded Through the
Vermont/EPA Drinking Water State Revolving Fund Loan Program
(Adopted June 1997 and Revised June 2008)

I Purpose and Policy

- a. The Drinking Water State Revolving Fund (DWSRF) Interim Final Rule (August 7, 2000) provides the regulatory authority for the development of the DWSRF Program. The DWSRF Interim Final Rule requires an environmental review of all construction projects providing funding assistance through the DWSRF Program. Initially, the DWSRF Program adopted the State Environmental Review Process (SERP) used for the Clean Water State Revolving Fund (CWSRF) with minor changes in terminology and categorical exclusions to make them applicable to drinking water projects. The State of Vermont SERP for the CWSRF was approved in an October 3, 1990 letter from the Environmental Protection Agency (EPA) Regional Administrator. The SERP for the DWSRF Program is hereby revised to incorporate provisions in EPA's Final Rule for *Implementing the National Environmental Policy Act and Assessing the Environmental Effects Abroad of EPA Actions*, dated September 19, 2007. The principal changes to this SERP consist of modifications to the environmental review procedures for projects that qualify for a categorical exclusion. Those procedures are described in Section VII c herein.

II. Definitions

- a. Terminology. All terminology used in this procedure will be consistent with the terms as defined in 40 CFR Part 1508 (the CEQ Regulations). Any qualifications will be provided in the definitions set forth in each section of the procedure.
- b. The term "environmental review" means the process whereby an evaluation is undertaken by the VT DEC to determine whether a proposed project may have a significant impact on the environment and therefore require the preparation of an EIS.
- c. The term "environmental information document" means any written analysis prepared by an applicant or contractor describing the environmental impacts of a proposed project. This document will be of sufficient scope to enable the responsible official to assess the environmental impacts of the proposed project.
- d. The term "loan" means a loan of funds by a written loan agreement from the VT/EPA Revolving Loan Fund (SRF).
- e. "Applicant" means any local authority which has filed an application for loan assistance from the SRF.
- f. "Responsible official" means the Director, VT Water Supply Division, or a designated representative thereof, who is authorized to fulfill the requirements of these procedures.

- g. The term "record of decision" (ROD) means a document prepared and issued by the VT DEC responsible official on the environmental impact statement which includes an identification of mitigation measures.
- h. The term "planning/design loan" means a loan which is issued for the purpose of preparation of a plan (including environmental review process) and/or preparation of design drawings and specifications for a potential construction project.
- i. The term "project" means a construction project which receives a loan for the purpose of constructing, repairing, or improving a public water system.

III. Applicability

These procedures apply to all construction projects funded wholly or partly from funds within the VT/EPA Drinking Water State Revolving Loan Fund which are derived from the federal capitalization grant, except as provided in Section IV. These procedures may be carried out during the planning/design project which received a loan from the revolving fund.

IV. Overview of the Environmental Review Process

The process for conducting an environmental review of water supply facility improvement projects includes the following steps:

- a. Consultation. The applicant is encouraged to consult with VT DEC early in project formulation or the facilities planning stage to determine whether a project is eligible for a categorical exclusion from the remaining substantive environmental review requirements of these procedures, to determine alternatives to the proposed project for evaluation, to identify potential environmental issues and opportunities for public recreation and open space, and to determine the potential need for partitioning the environmental review process and/or the need for an Environmental Impact Statement (EIS).
- b. Determining categorical exclusion eligibility. At the request of an applicant, VT DEC will determine if a project is eligible for a categorical exclusion as described in Section VII of these procedures.
- c. Documenting environmental information. If the project is determined to be ineligible for a categorical exclusion, or if no request for a categorical exclusion is made, the potential applicant subsequently prepares an Environmental Information Document (EID) for the project. In the event that the proposed action is of a limited nature, but does not qualify for a categorical exclusion, and that an EID has been approved previously by the US EPA or VT DEC for the proposed facilities, the responsible official may determine to what extent updated information may suffice to provide the requisite environmental review of the project.
- d. Assessing environmental impacts. The VT DEC reviews the environmental information document and based upon an assessment of the environmental impacts of the proposed project, the VT DEC:

1. Prepares and issues a Finding of No Significant Impact (FNSI), or
 2. Prepares and issues a Notice of Intent to prepare an original or supplement EIS and Record of Decision (ROD).
- e. Monitoring. The construction and post-construction operation and maintenance of the facilities are monitored to ensure implementation of mitigation measures identified in the FNSI or ROD.

V. Consulting During the Project Planning Process

The responsible official shall initiate the environmental review process early to identify environmental effects, avoid delays, and resolve conflicts. The environmental review process should be integrated throughout the project planning process. Potential applicants should consult with VT DEC early in the project planning process to determine the appropriateness of a categorical exclusion, the scope of an Environmental Assessment, or the appropriateness of the early preparation of an Environmental Impact Statement (EIS). The consultation would be most useful during the evaluation of project alternatives prior to the selection of a preferred alternative to assist in resolving any identified environmental problems.

VI Coordination with Other Environmental Review and Consultation Requirements

Various state and federal laws and executive orders address specific environmental concerns and review procedures. The responsible official shall integrate to the greatest practicable extent those concerns and applicable procedures during implementation of the environmental review process to ensure an interdisciplinary approach to assessing impacts including adherence to other state and federal environmental objectives.

Referenced below are pertinent laws, regulations, or executive orders which should be included in this coordinated effort:

- a. Landmarks, historical, and archaeological sites
 1. Historic Sites Act;
 2. National Historic Preservation Act;
 3. Archaeological and Historic Preservation Act,
 4. Executive Order 11593, "Protection and Enhancement of the Cultural Environment;"
 5. Executive Order 12372, "Intergovernmental Review of Federal Programs;"
- b. Wetlands, floodplains, important farmlands, coastal zones, wild and scenic rivers, fish and wildlife, and endangered species.

1. Executive Order 11990, "Protection of Wetlands;"
 2. Executive Order 11988, "Floodplain Management;"
 3. Farmland Protection Policy Act;
 4. EPA Policy to Protect Environmentally Significant Agricultural Lands, September 8, 1978;
 5. Coastal Zone Management Act,
 6. Wild and Scenic Rivers Act;
 7. Fish and Wildlife Coordination Act; and
 8. Endangered Species Act.
- c. Air Quality-Clean Air Act, as amended in 1977

VII. Categorical Exclusions

- a. At the request of an applicant, the responsible official shall determine from existing information and documents whether an action is consistent with the categories eligible for exclusion from review identified in VII (b) and not inconsistent with the criteria in VII (d).
- b. Categories of actions eligible for exclusion. For these procedures actions consistent with any of the following categories are eligible for a categorical exclusion:
 1. Repair, replacement, and rehabilitation of existing water supply facilities (treatment, sources, storage, distribution, pumping facilities, buildings, etc.)
 2. Improvements to water supply facilities required to meet current standards that do not increase system capacity beyond that routinely provided by standard engineering practice to serve the current existing population.
 3. New facilities to serve populations of less than 2000 persons to consolidate existing small systems, replace small systems with extensions from a larger system or to replace inadequate individual water supply systems.
 4. Other actions developed in accordance with paragraph (e) of this section.
- c. Procedural Requirements for Categorical Exclusions.
 1. Actions eligible for categorical exclusion (described in paragraph (b) above) require the Responsible Official to document a determination that a categorical exclusion applies. The Responsible Official must post the determination on the VTDEC WSD web-site, copy interested parties, and

make a copy of the determination document available to the public upon request. The documentation must include:

- a. A brief description of the proposed action;
 - b. A statement identifying the categorical exclusion that applies to the action and;
 - c. A statement explaining why no extraordinary circumstances apply to the proposed action.
2. Certain actions eligible for categorical exclusion do not require the Responsible Official to document a determination that a categorical exclusion applies. Included in this provision are actions relating to or conducted completely within a permanent, existing contained facility, such as a laboratory, or other enclosed building, provided that reliable and scientifically-sound methods are used to appropriately dispose of wastes and safeguards exist to prevent hazardous, toxic, and radioactive materials in excess of allowable limits from entering the environment. This category does not include activities related to construction and/or demolition within the facility.

d. Criteria for not granting a categorical exclusion.

1. The full environmental review procedures must be followed if undertaking an action consistent with the categories described in paragraph (b) involves serious local or environmental issues, or meets any of the criteria listed below:
 - a. New water facilities serving populations in excess of 2,000 persons.
 - b. Projects that are significantly greater in scope than normal projects for the area or have significant unusual characteristics.
 - c. The action is known or expected to have a significant negative effect on the quality of the human environment, either individually, cumulatively over time, or in conjunction with other federal, state, local, or private actions.
 - d. The action is known or expected to directly or indirectly affect: (1) cultural resource areas such as archaeological and historic sites, (2) habitats of endangered or threatened species, (3) environmentally important natural resource areas such as floodplains, wetlands, important farmlands, aquifer recharge zones, or (4) other resource areas identified in supplemental guidance issued by the VT DEC; or
 - e. The action is known or expected not to be cost-effective or to cause significant public controversy.
2. Notwithstanding the provisions of paragraph (b) of this section, if any of the above conditions exist, the responsible official shall ensure:

- a. That a categorical exclusion is not granted or, if previously granted, that it is revoked according to paragraph f2(c) of this section;
 - b. That either a FNSI or an EIS and ROD are prepared and issued.
- e. Developing new categories of excluded actions. The responsible official or other interested parties may request that a new category of excluded actions be created, or that an existing category be amended or deleted. The request shall be made in writing to the Director, and shall contain adequate information to support the request. Proposed new categories shall be developed by VT DEC. The following shall be considered in evaluating proposals for new categories:
 1. Actions in the proposed category should seldom result in the effects identified in Paragraph VIII.(d)(1);
 2. Based upon previous environmental reviews, actions consistent with the proposed category have not required the preparation of an EIS; and
 3. Whether information adequate to determine if a potential action is consistent with the proposed category will normally be available when needed.
- f. Proceeding with loan agreements.
 1. After a categorical exclusion on a proposed project has been granted, loan agreements may proceed without being subject to any further environmental review requirements, unless the responsible official determines that the project, or the conditions at the time of the categorical determination was made, have changed significantly since the independent VT DEC review of information submitted by the applicant in support of the exclusion.
 2. For categorical exclusion determinations five or more years old, the responsible official shall re-evaluate the project, environmental conditions and public views, and prior to a loan agreement, either:
 - a. Reaffirm—the original environmental determination and issue a document stating the categorical exclusion applies and the project can proceed without need for any further environmental review;
 - b. Supplement--update the information in the decision document on the categorically excluded project and issue a document stating the categorical exclusion applies and the project can proceed without need for any further environmental review; or
 - c. Reassess--revoke the categorical exclusion and require a complete environmental review to determine the need for an EIS, followed by preparation, issuance, and distribution of a FNSI, or EIS and ROD.

VIII. Environmental Review Process

- a. Review of completed project planning/design reports. VT DEC shall review the completed project documents with particular attention to the Environmental Information Document (EID) and its utilization in the development of alternatives and the selection of a preferred alternative. An adequate Environmental Information Document shall be an integral part of any project planning/design report submitted to Vermont DEC. The EID shall be of sufficient scope to enable the responsible official to make determinations on requests for partitioning the environmental review process and for preparing a FNSI.
- b. Environmental assessment. The environmental assessment process shall cover all potentially significant environmental impacts. VT DEC personnel shall assess environmental impacts before the project planning/design report approval if needed for compliance with environmental review requirements. Each of the following subjects, and requirements, shall be included in the EID so that Vermont DEC personnel may objectively identify potentially significant environmental concerns and the potential impacts.
 1. Description of the existing environment. For the water system service area, the existing environmental conditions relevant to the analysis of alternatives, or to determining the environmental impacts of the proposed action, shall be considered.
 2. Description of the future environment without the project. The relevant future environmental conditions shall be described. The no action alternative should be discussed.
 3. Purpose and need. This should include a summary discussion and demonstration of the need, or absence of need, for water supply facilities in the planning area, with particular emphasis on existing public health, water quality, and water quantity problems and their severity and extent.
 4. Documentation. Sources of information used to describe the existing environment and to assess future environmental impacts should be clearly referenced. These sources should include regional, state, and federal agencies with responsibility or interest in the environmental concerns.
 5. Analysis of alternatives. This discussion shall include a comparative analysis of feasible alternatives, including the no action alternative, throughout the study area. The alternatives shall be screened with respect to capital and operating costs; direct, indirect, and cumulative environmental effects; physical, legal, or institutional constraints; and compliance with regulatory requirements. Special attention should be given to: The environmental consequences of long-term, irreversible, and induced impacts; and applicants have satisfactorily demonstrated analysis of potential recreation and open-

space opportunities in the planning of the proposed facilities. The reasons for rejecting any alternatives shall be presented in addition to any significant environmental benefits precluded by rejection of an alternative. The analysis should consider when relevant to the project:

- a. Alternate water sources,
 - b. Appropriate water conservation measures;
 - c. Alternative locations, capacities, and construction phasing of facilities;
 - d. Alternative water treatment techniques, and individual systems;
 - e. Alternative methods for management of sludge and other residual materials;
 - f. Improving treatment through more efficient operation and maintenance;
 - g. Appropriate energy reduction measures; and
 - h. Multiple use including recreation, other open space, and environmental education.
6. Evaluating environmental consequences of proposed action. A full range of relevant impacts of the proposed action shall be discussed, including measures to mitigate adverse impacts, any irreversible or irretrievable commitments of resources to the project and the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity.
7. Minimizing adverse effects of the proposed action.
- a. Structural and nonstructural measures, directly or indirectly related to the project, to mitigate or eliminate adverse effects on the human or natural environments, shall be identified during the environmental review. Among other measures, structural provisions include changes in facility design, size, and location; nonstructural provisions include staging facilities, monitoring and enforcement of environmental regulations, and local commitments to develop and enforce land use regulations.
 - b. The Vermont DEC shall not approve loan assistance for project implementation, if the applicant has not made, or agreed to make, changes in the project, in accordance with determinations made in a FNSI or the ROD for a EIS. The Vermont DEC shall condition a loan or seek other ways to ensure that the applicant will comply with such environmental review determinations

c. FNSI/EIS determination. The responsible official shall apply the criteria under Section XI to the following:

1. A complete project planning/design report;
2. The EA; and
3. Other documentation deemed necessary by the responsible official adequate to make an EIS determination by Vermont DEC. Following an independent environmental review of the project, the responsible official shall document in writing the reasons for his determination to issue a FNSI or to prepare an EIS. The responsible official's determination to issue a FNSI or to prepare an EIS shall constitute final Vermont DEC action.

IX. Partitioning the Environmental Review Process

- a. Purpose. Under certain circumstances, the building of a component/portion of a water supply system/project may be justified in advance of completing all environmental review requirements for the remainder of the system(s). When there are overriding considerations of cost or impaired program effectiveness, the responsible official may approve a loan for a discrete component of a water supply system/project. The process of partitioning the environmental review for the discrete component shall comply with the criteria and procedures described in paragraph (b) of this section. In addition, all reasonable alternatives for the overall water supply system/project of which the component is a part shall have been previously identified and each part of the environmental review for the remainder of the overall project shall comply with all requirements under Section VIII.
- b. Criteria for partitioning. The project component must:
 1. Immediately remedy a severe public health, water quality, or other environmental problem;
 2. Not foreclose any reasonable alternatives identified for the overall water supply system/project;
 3. Not cause significant adverse direct or indirect environmental impacts including those which cannot be acceptably mitigated without completing the entire water supply system/project of which the component is a part; and
 4. Not be highly controversial.
- c. Request for partitioning. The applicant's request for partitioning must contain the following:

1. A description of the discrete component proposed for construction before completing the environmental review of the entire project;
 2. How the component meets the above criteria;
 3. The environmental information required by Section VIII for the component; and
 4. Any preliminary information that may be important to Vermont DEC in an EA determination for the entire project.
- d. Approval of requests for partitioning. The responsible official shall:
1. Review the request for partitioning against all requirement of this procedure;
 2. If approvable, prepare and issue a FNSI;
 3. Include a loan condition prohibiting the building of additional or different components of the entire project for which the environmental review is not complete.

X. Finding of no Significant Impact (FNSI) Determination

- a. Criteria for producing and distributing a FNSI. If, after completion of the environmental review, Vermont DEC determines that an EIS will not be required, the responsible official shall issue a FNSI. The FNSI will be based on Vermont DEC independent review of the EID and any other environmental information deemed necessary by the responsible official consistent with the requirements of Section VIII. The FNSI shall list mitigation measures necessary to make the recommended alternative environmentally acceptable.
- b. Proceeding with loan agreement.
 1. Once the issued FNSI becomes effective for the project, a loan agreement may proceed without preparation of an additional FNSI, unless the responsible official determines that the project or environmental conditions have changed significantly from that which underwent environmental review.
 2. For an Environmental Assessment/FNSI five or more years old, the responsible official shall re-evaluate the project, environmental conditions, and public views, and, prior to approval of loan agreement, either:
 - a. Reaffirm--issue a public notice reaffirming the original environmental determination to proceed with the project without revising the Environmental Assessment;

- b. Supplement--require an update of the Environmental Assessment, issue and distribute a revised FNSI, or
 - c. Reassess--withdraw the FNSI and publish a notice of intent to produce an Environmental Assessment, followed by the preparation, issuance, and distribution of the Environmental Assessment and ROD.
- c. Revisions to the Project.
 - 1. Statement of Findings. If the project scope of work is revised after FNSI has been issued, but the revision is determined by the VT DEC to be a minor revision, the VT DEC shall issue a Statement of Findings (SOF) documenting the reason for the revision and its impact, if any, on the environment. The SOF shall be distributed to parties who previously indicated interest in the project environmental review process.
 - 2. Amendment. If the project scope of work is revised after a FNSI has been issued, but the revision is determined by the DEC to be significant, the DEC shall issue an amendment to the FNSI with proper public notification as identified in Section XV and shall provide for a public meeting to discuss the amendment.

XI Criteria for Initiating Environmental Impact Statements (EIS)

The responsible official shall assure that an EIS will be prepared and issued when it is determined that the project will cause any of the following conditions to exist, or when:

- a. The project may significantly affect the pattern and type of land use (industrial, commercial, agricultural, recreational, residential) or growth and distribution of population;
- b. The effects resulting from any structure or facility constructed or operated may conflict with local, regional, or state land use plans or policies;
- c. The project may have significant adverse effects on wetlands, including indirect and cumulative effects, or any major part of the project may be located in significant wetlands;
- d. The project may significantly affect a habitat identified on the Department of the Interior' or the state's threatened and endangered species lists, or may be located in the habitat,

- e. Implementation of the project may directly cause or induce changes that significantly:
 - 1. Displace population;
 - 2. Alter the character of existing residential areas.
 - 3. Adversely affect a floodplain; or
 - 4. Adversely affect significant amounts of important farmlands or agricultural operations on this land.
- f. The project may directly, indirectly, or cumulative have significant adverse effects on parklands, preserves, other public land, or areas of recognized scenic, recreational, archaeological, or historic value;
- g. The project may directly, or through induced development, have a significant adverse effect upon local ambient air quality, local ambient noise levels, surface water or groundwater quality or quantity, water supply, fish, shellfish, wildlife, and their natural habitats; or
- h. Other conditions. The responsible official shall also consider preparing an EIS if: the project is highly controversial; the project, in conjunction with related federal, state, or local resource projects, produces significant cumulative impacts; or if it is determined that the project may violate federal, state, or local laws or requirements imposed for the protection of the environment.

XII. Environmental Impact Statement (EIS) Preparation

- a. Steps in preparing the EIS. In addition to the other requirements specified in this procedure, the responsible official will conduct the following activities:
 - 1. Notice of intent. If a determination is made that an EIS will be required, the responsible official shall prepare and distribute a notice of intent.
 - 2. Scoping. As soon as possible, after the publication of the notice of intent, the responsible official will convene a meeting of affected federal, state, and local agencies, the applicant and other interested parties to determine the scope of the EIS. As part of the scoping meeting, VT DEC will, as a minimum:
 - a. Determine the significance of issues for and the scope of those significant issues to be analyzed in depth in the EIS;
 - b. Identify potential cooperating agencies and determine the information or analyses that may be needed from cooperating

agencies or other parties;

- c. Discuss the method for EIS preparation and the public participation strategy;
- d. Identify consultation requirements of other environmental laws; and
- e. Determine the relationship between the EIS and the completion of the project planning/design report and any necessary coordination arrangements between the preparers of both documents.

- 3. Identifying and evaluating alternatives. Immediately following the scoping process, the responsible official shall commence the identification and evaluation of all potentially viable alternatives to adequately address the range of issues identified in the scoping process. Additional issues may be addressed, or others eliminated, during this process and the reasons documented as part of the EIS.

- b. Method for preparing EIS. After Vermont DEC determines the need for an EIS, it shall select one of the following methods for its preparation:

- 1. By Vermont DEC contracting directly with a qualified consulting firm;
- 2. By utilizing a third party method whereby the responsible official enters into "third party agreements:" for the applicant to engage and pay for the services of a third party to prepare the EIS. Such agreement shall not be initiated unless both the applicant and the responsible official agree to its creation. A third party agreement will be established prior to the applicant's EID and eliminate the need for the document. In proceeding under the third party agreement, the responsible official shall carry out the following practices:
 - a. In consultation with the applicant, choose the third party contractor and manage that contract;
 - b. Select the consultant based on ability and absence of conflict of interest. Third party contractors will be required to execute a disclosure statement prepared by the responsible official signifying they have no financial or other conflicting interest in the outcome of the project; and
 - c. Specify the information to be developed and supervise the gathering, analysis, and presentation of the information. The responsible official shall have sole authority for approval and modification of the statements, analyses, and conclusion included in the third party EIS.

XIII. Record of Decision (ROD) for the EIS and Identification of Mitigation Measures

- a. Record of Decision. After a final EIS has been issued, the responsible official shall prepare an issue a ROD prior to, or in conjunction with, the approval of the project planning/design report. The ROD shall include identification of mitigation measures derived from the EIS process including loan conditions which are necessary to minimize the adverse impacts of the selected alternative.
- b. Specific mitigation measures. Prior to the approval of the project planning/design report, the responsible official must ensure that effective mitigation measures identified in the ROD will be implemented by the applicant. This should be done by revising the report, initiating other steps to mitigate adverse effects, or including conditions in loans requiring actions to minimize effects. Care should be exercised if a condition is to be imposed in a loan document to assure that the applicant possesses the authority to fulfill the conditions.
- c. Proceeding with loan agreements.
 1. Once the ROD has been prepared on the selected or preferred alternative(s) for the project planning/design report described within the EIS, loan agreements may proceed without preparation of a supplemental EIS unless the responsible official determines that the project or the environmental conditions described within the current EIS have changed significantly from the previous environmental review.

For an EIS five or more years old, the responsible official shall re-evaluate the project, environmental conditions, and public views, and compare them to the information contained within the EIS and, prior to loan agreement, make a determination to either:

 - a. Reaffirm--prepare, issue, and distribute a FNSI affirming the original environmental determination to proceed with the project, and documenting that no additional significant impacts were identified during the re-evaluation which would require supplementing the EIS; or
 - b. Supplement--conduct additional studies and prepare, issue, and distribute a supplemental EIS and document the original or any revised decision in an addendum to the ROD.

XIV. Monitoring for Compliance

- a. General. The responsible official shall ensure adequate monitoring of mitigation measures and other loan conditions identified in the FNSI or ROD

- b. Enforcement. If the applicant fails to comply with loan conditions, the responsible official may consider applying the following sections:

1. Withhold payment;
2. Suspend or terminate the loan agreement for cause;
3. Suspend the applicant as an eligible applicant;
4. Take other appropriate administrative action; or
5. Institute judicial proceedings

XV. Public, Federal Agency, and Other State Agency Involvement

- a. The VT DEC shall make diligent efforts to involve the public in the environmental review process consistent with program statutes, regulations and policies on public participation. The responsible official shall ensure that public notice is provided and shall ensure that public involvement is carried out following state policies and guidelines on public participation.

General. Consistent with state public participation regulations, it is VT DEC policy that certain public participation steps be achieved before the VT DEC completes the environmental review process. As a minimum, for projects not qualifying for a categorical exclusion, potential applicants shall conduct: One public meeting when alternatives have been developed, but before an alternative has been selected, to discuss all alternatives under consideration and the reasons for rejection of others; and

- b. Publication of notices of intent. As soon as practicable after a decision is rendered to issue a FNSI, or to prepare an EIS (but before initiating the process), the responsible official shall send the notice of intent to interested and affected members of the public, and shall publish the notice of intent in a newspaper of general circulation in the community of the project.

The responsible official shall not take administrative action on the project for at least thirty (30) calendar days after release of the FNSI to allow time for public response.

- c. Record of Decision. The responsible official shall disseminate the record of decision to those parties which commented on the draft of final EIS. One copy shall be submitted to EPA.
- d. EIS. The responsible official shall follow, as applicable, procedures identified at 40 CFR, Part 6, Subpart B, for official filing requirements, availability of documents, commenting process, and supplements to the EIS.
- e. Scope. The responsible official may institute additional NEPA-related public participation procedures as are deemed necessary during the environmental

review process.

XVI The Environmental Impact Statement Format

Preparers of an EIS must use plain language and may use appropriate graphics so that decision makers and the public can readily understand them. Statements shall be based upon the analyses and supporting data from the natural and social sciences and the environmental design. The format used for the EIS shall encourage good analysis and clear presentation of alternatives, including the proposed action, and their environmental, economic, and social impacts. The following standard format for an EIS should be used unless the responsible official determines that there is a compelling reason to do otherwise

- a. Cover Sheet;
- b. Executive Summary;
- c. Table of Contents;
- d. Purpose of and need for action;
- e. Alternatives including proposed action;
- f. Affected environment;
- g. Environmental consequences of the alternative;
- h. Coordination (includes list of agencies, organizations, and persons to whom copies of the EIS are sent);
- i. List of preparers;
- j. Index (commensurate with complexity of EIS); and
- k. Appendices.

XVII. Executive Summary

The executive summary shall describe in sufficient detail (10-15 pages) the critical facets of the EIS so that the reader can become familiar with the proposed project or action and its net effects. The executive summary shall focus on:

- a. The existing problem;
- b. A brief description of each alternative evaluated (including the preferred and no action alternatives) along with a listing of the environmental impacts, possible mitigation measures relating to each alternative, and any areas of

controversy (including issues raised by governmental agencies and the public); and

- c. Any major conclusions. A comprehensive summary may be prepared in instances where the EIS is unusually long in nature. The comprehensive summary may be circulated in lieu of the EIS; however, both documents shall be distributed to any federal, state, and local agencies who have EIS review responsibilities and also shall be made available to other interested parties upon request

XVIII Body of the EIS

- a. Purpose and need. The EIS shall clearly specify the underlying purpose and need to which VT DEC is responding.
- b. Alternatives including the proposed actions. In addition to alternatives indicated in 40 CFR 1502.14, the EIS shall discuss:
 - 1. Alternatives considered by the applicant. This section shall include a balanced description of each alternative considered by the applicant. These discussions shall include size and location of facilities, land requirements, operation and maintenance requirements, auxiliary structures such as pipelines and construction schedules. The alternative of no action shall be discussed and the applicant's preferred alternative(s) shall be identified. For alternatives which were eliminated from detailed study, a brief discussion of the reasons for their having been eliminated shall be included.
 - 2. Alternatives available to VT DEC. VT DEC alternatives to be discussed shall include:
 - a. Taking an action; or
 - b. Taking an action on a modified or alternative project, including an action not considered by the applicant; and
 - c. Denying the action.
 - 3. Identifying preferred alternative. In the final EIS, the responsible official shall signify the preferred alternative.
- c. Affected environment and environmental consequences of the alternatives. The affected environment on which the evaluation of each alternative shall be based includes, for example, hydrology, geology, air quality, noise, biology, socioeconomic, energy, land use, and archeology and historic subject. The discussion shall be structured so as to present the total impacts of each alternative for easy comparison among all alternatives by the reader. The effects of a "no action" alternative should be included to facilitate reader

comparison of the beneficial and adverse impacts of other alternatives to the applicant doing nothing. A description of the environmental setting shall be included in the "no action" alternative for the purpose of providing needed background information. The amount of details in describing the affected environment shall be commensurate with the complexity of the situation and the importance of the anticipated impacts.

d. Coordination. The EIS shall include.

1. The objections and suggestions made by local, state, and federal agencies before and during the EIS review process must be given full consideration, along with the issues of public concern expressed by individual citizens and interested environmental groups. The EIS must include discussions of any such comments concerning our actions, and the author of each comments should be identified. If a comment has resulted in a change in the project of the EIS, the impact statement should explain the reason
2. Public participation through public hearings or scoping meetings shall also be included. If a public hearing has been held prior to the publication of the EIS, a summary of the transcript should be included in this section. For the public hearing which shall be held after the publication of the draft EIS, the date, time, place, and purpose shall be included here.
3. In the final EIS, a summary of the coordination process and VT DEC responses to comments on the draft EIS shall be included.

XIX. Incorporation by Reference

Material may be incorporated by reference as provided by 40 CFR 1502.21. In addition such material shall be organized to the extent possible into a Supplemental Information Document and be made available for review upon request. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the period allowed for comment.

XX. List of Preparers

When the EIS is prepared by contract, either under direct contract to VT DEC or through an applicant's or grantee's contractor, the responsible official must independently evaluate the EIS prior to its approval and taken responsibility for its scope and contents. The VT DEC officials who undertake this evaluation shall also be described under the list of preparers.

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