

VERMONT
CLEAN WATER INTENDED USE PLAN
FEDERAL FISCAL YEAR 2016 FUNDS

June 29, 2016

A. Introduction

Vermont sends to the U.S. Environmental Protection Agency (EPA), as part of its annual application for a Clean Water Capitalization Grant under Title VI of the Water Quality Act of 1987 (the Act), a Clean Water Intended Use Plan (CWIUP) to meet the requirements of Section 606(c) of the Act and the Clean Water Capitalization Grant Agreement. The CWIUP serves as the planning document to explain how each fiscal year's appropriation for the Vermont – EPA Clean Water State Revolving Fund (CWSRF) will be used.

B. Short Term Goals and Objectives

- (1) To provide local government with low cost financial assistance.
- (2) To coordinate NPDES permit schedules with anticipated award of CWSRF loans such that projects are brought into preliminary and final planning in time to assure their readiness to proceed to construction when capitalization grant funds become available.
- (3) To develop any rules, guidance or procedures necessary to implement the Vermont - EPA pollution control revolving fund, specifically State-issued guidance for the implementation of Water Resources Reform & Development Act (WRRDA) requirements.
- (4) To coordinate state funded programs for wastewater treatment facilities with activities of the CWSRF.
- (5) To provide effective program management to ensure integrity of the CWSRF.
- (6) To incentivize planning and final design activities through the use of additional subsidy in order to develop a queue of high priority, ready-to-proceed projects.
- (7) To expedite project development, funding and cash draws.
- (8) To address issues raised by US EPA Region One concerning the administration of the CWSRF.

C. Long Term Goals and Objectives

- (1) To provide financial assistance to Vermont municipalities to fund the completion of all known enforceable requirements of the Act.
- (2) To ensure the fund operates in perpetuity and provides continuing financial assistance to Vermont municipalities for future pollution control needs.
- (3) To allocate available State grants, in combination with CWSRF loans to assure the most beneficial use of all available funding for water pollution control projects.

D. State Grant Eligibilities

State grants may be available for certain projects in addition to CWSRF loans. Recent Vermont legislation (Act 103, signed May 12, 2016) authorized substantive changes to Vermont's water pollution control grants program. The legislation replaces three grant categories consisting of CSO abatement, dry weather sewage flow abatement, and sludge & septage improvements with a single, broader category referred to as water pollution abatement and control. This term is statutorily defined to include treatment of stormwater and sewage, groundwater protection and flood resiliency work. The legislation establishes a set of environmental and health based criteria that will be used to determine eligibility and state grant funding up to a maximum of 35%. The legislative changes also broaden eligibility of land acquisition costs. These changes will not take effect until the Municipal Pollution Control Priority System Rule contained in Chapter 2 of the Environmental Protection Rules is amended. By comparison, the existing grant eligibilities are up to 25% for CSO abatement, 35% for dry weather sewage flow abatement, and 50% for sludge & septage improvements.

When sufficient state capital funds cannot be secured to cover total project costs, full project funding may come from other funding sources, such as the CWSRF. Currently, CSO abatement projects qualify for a CWSRF loan in the amount of 50% of the total eligible project cost, and a 25% water pollution control construction grant from state funds. The remaining 25% of project funds may come from local bond issues or in cases where federal subsidies are authorized, may come from a CWSRF loan. Certain sludge and septage treatment and disposal projects presently qualify for a mix of 50% CWSRF loan and 50% state grant on eligible project costs.

E. CWSRF Administration

Although the CWSRF may be used for the refinancing of local debt obligations incurred after March 7, 1985, Vermont does not intend to use the fund in this way until all necessary pollution control projects have been constructed, unless there is compelling public benefit to be secured. The interest rate on CWSRF loans issued to refinance debt has been set at 80% of the average rate on marketable obligations of the state. All other CWSRF loans are currently issued at 0% interest. An administrative fee of up to 2% on construction loans took effect on July 1, 1999. Fee proceeds will be deposited into a dedicated account separate from the CWSRF account, referred to as the administrative account. In the future, if funds held in the administrative account are in excess of

that necessary to fund the state's administration of the CWSRF program, some of those funds may be transferred to the CWSRF account for project funding. An administrative fee income for State FY2017 is projected to be approximately \$2.4 million. Historically, all fees collected were considered to be program income. After October 1, 2014 only fees earned during the grant period from projects directly made available by the capitalization grant (equivalency projects) are program income.

F. CWSRF Capitalization Grants for Federal Fiscal Year 2016 and Future Years

The federal fiscal year 2016 capitalization grant allotment available to Vermont is \$6,625,000 as authorized by the Act. One hundred thousand dollars is allocated to the federal 604b program leaving \$6,525,000 for use as CWSRF loans and administrative costs. The required match is \$1,305,000 and Vermont is receiving \$972,800 of matching funds from the state FY2017 capital appropriation, with the balance of \$332,200 expected to be appropriated during the spring of 2017 as part of the state FY18 and FY19 biennial capital bill. The Sources and Uses table below assumes the total needed match will be available. Sources of funds and uses are listed below.

Sources

CWSRF Capitalization Grant	6,525,000
State Match Needed	1,305,000
Repayments	9,500,000
Carry-Forward	61,075,830
TOTAL	\$78,405,830

Uses

Anticipated Commitments	78,005,830
Administrative	400,000
TOTAL	\$78,405,830

The State matching funds will be deposited into the CWSRF prior to the quarter when federal funds are requested. The State is also considering depositing all match funds as they become available at the start of each state fiscal year. The schedule for entering into binding commitments and timing of cash draws is contained on the attached grant application form, see Form 424, pg2. The CWSRF program will continue to comply with the Operating Agreement for Implementing and Managing the State Revolving Fund Program between the State of Vermont and U.S. Environmental Protection Agency, Region I.

E. Criteria and Methods for Distribution of Funds

The Vermont General Assembly enacted Act 75 creating 24 V.S.A. Chapter 120 in the 1987 session, which established Vermont's CWSRF and set out certain priority criteria for the purpose of ranking prospective projects. The Municipal Pollution Control Priority System incorporates those criteria in addition to criteria required in federal construction grant regulations 40 CFR

Section 35.915. Chapter 120 was amended in the 2007 session to increase the percentage of the fund which could be used for certain stormwater projects from 10% to 30%.

The Vermont CWSRF initiated operations in fiscal year 1989 and all initial financial assistance activities of the CWSRF have been in the form of loans. Loans will continue to be made in accordance with a project's priority list ranking as noted on the Priority List that is established annually through the Municipal Pollution Control Priority System.

The Pollution Control Project Planning List is intended to show anticipated construction and planning projects for the immediate ten-year period inclusive of state fiscal year 2017. We anticipate a large volume of projects and requests for funds in state fiscal years 2017 to 2026 which the fund will likely support. A cap on the CWSRF loan funds will not likely be needed at this time. Stormwater projects and projects with continuing status receive elevated priority when developing the priority list.

F. Use of Funds for Nonpoint Source Projects

This year, two nonpoint source projects are scheduled to be funded. One project is in the Town of Addison and consists of a new land-based wastewater disposal system to serve an existing small population center and the other is in the Town of Ryegate, consisting of refurbishment of an existing wastewater disposal system.

G. Reallocated Funds

In the event funds are reallocated from the DWSRF to the CWSRF, or additional federal funds are made available beyond the anticipated amount, Vermont will advance these funds to the appropriate projects in accordance with this Intended Use Plan, and the Municipal Pollution Control Priority System.

H. Public Participation

Vermont follows public participation procedures in the development of the annual Pollution Control Priority List (PPL), the CWIUP and in the environmental review process. The CWIUP is typically developed and adopted annually along with the PPL using the same public participation procedure employed for adoption of the PPL. That procedure is outlined in the Municipal Pollution Control Priority System rule. Vermont implements public participation for specific projects through the environmental review for CWSRF funded projects in accordance with the department's Environmental Review Procedures for projects funded through the Vermont/EPA Revolving Loan Program. This procedure was approved by the EPA Regional Administrator in accordance with the August 2, 1989 CWSRF Operating Agreement between the State of Vermont and the U.S. Environmental Protection Agency, Region I. A summary of the public participation for this IUP is included with this application.

On December 8, 2015, the Department notified municipalities and other interested parties to apply to be included on the Municipal Pollution Control Projects Priority List for State Fiscal Year 2017, and to attend an initial public hearing to be held on April 28, 2016. On March 24, 2016, a draft

priority list and IUP was sent to the same parties with a reminder about the public hearing. The public hearing was well attended and a Public Responsiveness Summary has been prepared to address oral and written comments received by the Department at the public hearing and through the comment period. The Public Responsiveness Summary is included in Section P of this IUP.

I. Annual Report

In accordance with the requirements of Section 606(d) of the Act, Vermont will provide EPA with an Annual Report within 90 days of the end of the state fiscal year. The Annual Report contains information on how the state has met the goals and objectives of the previous fiscal year as stated in the IUP and grant agreement. The Annual Report also reviews how well the existing SRF financial operating policies, alone or in combination with other state financial assistance programs, provides for the long term fiscal health of the fund, assists communities to increase local responsibility for compliance, and carries out other provisions specified in the State Clean Water Strategy. The Annual Report also provides information on loan recipients, loan awards/disbursements, and environmental assessment determinations.

The Annual Report will show that the State has completed the following:

- (1) Reviewed all CWSRF funded section 212 projects in accordance with the approved environmental review procedures (section 602(a));
- (2) Deposited its match on or before the date which each quarterly grant payment was made (section 602(b)(2));
- (3) Made binding commitments to provide assistance equal to 120% of the amount of each grant payment within one year after receiving the grant payment (section 602(b)(3)); and
- (4) Expended all funds in an expeditious and timely manner (section 206(b)(4)).

J. Environmental Benefits Reporting & Other Federal Databases

Environmental benefits will be reported using the “CBR” federal on-line reporting system each time a loan is transacted during the fiscal year. Reporting to FFATA and NIMS will also be completed.

K. Additional Requirements

All projects receiving federal funds will be required to comply with the requirements of the federal Single Audit Act. All projects, regardless of funding source will need to comply with a NEPA like review, DBE reporting, Davis-Bacon, American Iron and Steel, other new WRRDA requirements (see below), and all other applicable federal crosscutters. Funds may be, but are not planned at this time, to be transferred between the CWSRF and the DWSRF.

WRRDA Requirement	Vermont Implementation
A/E services procurement	The CWSRF program has issued guidance, samples, FAQ, and a certification to be used by municipalities in order to comply with the A/E Qualifications Based Services (QBS) requirement. The State will maintain the option for municipalities unable to comply with the A/E requirement through use of second tier (revolving loan funds) for engineering services.
GAAP compliance	Loan agreements are changed to include this requirement
30 Year loan terms or useful life	State statute has been changed to allow the extension of loan terms up to 30 years. The determination of a project qualifying for a term of 30 years is made during FED Design Section review.
Fiscal sustainability plan (FSP)	The CWSRF Program has issued guidance, FSP Table, and a certification form in order to comply with this requirement. The municipality can certify that they have currently have and implement and FSP with the funding application or develop a plan parallel with project construction. If municipality needs to develop an FSP, this requirement will be written into the loan agreement and certification of an FSP must be made prior to final loan disbursement.
Cost and effectiveness, and water/energy efficiency of project	The CWSRF Program has created a certification form and a draft standard operating procedure for the C&E requirement. It is anticipated that it will be addressed as an addendum to the PER. CWSRF intends to partner with the nonprofit organization Efficiency Vermont to offer free energy efficiency evaluations to applicants.
American Iron and Steel	Applies to any treatment works projects in which loans are executed after October 1, 2014

L. Project Funding

Projects Anticipated to Receive Federal Fiscal Year (FFY) 2016 CWSRF available Funds*
(Award of federal fiscal year 2016 Funds are anticipated to be made
during state fiscal year 2017)

Project /Activity	Total Project Cost**	SRF Loan State Match	Federal Share FFY 2016 Funds
See 2017 Priority List Attached	\$7,430,000	\$1,305,000	\$6,125,000
Vermont SMRF Administrative Expense	\$400,000		\$400,000
Total	\$7,830,000	\$1,305,000	\$6,525,000

Detailed project information is included in the attached Municipal Pollution Control Projects Priority List for state fiscal year 2017. The cash draw ratio of state to federal is 1:5, or an 83.33% federal share of the total.

Vermont CWSRF Payment Schedule FFY 2016 EPA Capitalization Grant			
Payment No.	Quarter	Date	Amount
1	2016-4	7/1/2016-9/30/2016	1,705,000
2	2017-1	10/1/2016-12/31/2016	1,305,000
3	2017-2	1/1/2017-3/31/2017	1,305,000
4	2017-3	4/1/2017-6/30/2017	549,000
5	2018-4	7/1/2017-9/30/2017	1,661,000
Total			\$6,525,000

* See attached Extended Portion of Intended Use Plan Project Funding List

** Costs will change as projects are refined

M. Green Project Reserve

The Vermont requirement for Green Project Reserve (GPR) for federal fiscal year 2016 is 10% of the federal grant, or \$652,500. This year, nine projects applied for an estimated amount of \$8,550,000 in qualifying green project reserve project costs. These projects are identified on the attached priority list. These projects are early in the development phase and engineering and project development staff will work directly with municipalities and their consultants to incorporate green project elements into the project design. It is anticipated that the Vermont CWSRF program will meet the GPR requirement.

N. Additional Subsidy

For the Federal FY2016 IUP, the Clean Water State Revolving Fund (CWSRF) loan program is proposing to apply available loan subsidies to projects for engineering planning and final design activities for sustainable projects. Pursuant to the applicable 2016 federal appropriations act provisions, an amount equal to 10% of the grant must be provided as subsidy, or at least \$652,500. An additional amount equal to 30% of the grant, or \$1,957,500, may also be provided in the form of subsidy in accordance with the 2014 federal WRRDA provisions. This IUP proposes to provide up to 50% subsidy for eligible planning and design costs for a maximum amount of \$250,000 per borrower. Available subsidy will be awarded on a first-come, first-serve basis. In order to be considered for subsidy, the QBS certification, completed and signed funding application, and draft engineering services agreement must be received. Although it is not anticipated that we will have difficulty awarding loans meeting the minimum amount of required subsidy, should it become necessary, additional subsidy will be applied to individual projects in order to meet that minimum amount, again on a first-come, first-serve basis.

In the case that an applicant receives funding from a previous fiscal year and they seek an amendment in the FFY2016 due to an expansion of project scope and budget, or if they wish to progress from the planning stage to final design, the project sponsor would be eligible for additional subsidy. This additional subsidy would still have a maximum amount of \$250,000 per borrower cap but could be additive from previous grant year awards.

In addition, the CWSRF proposes to amend this IUP to create a second avenue to additional subsidy. The second avenue to subsidy would be through affordability criteria qualification utilizing the proposed revised State Affordability Criteria (See “O” State Affordability Criteria). In the case that the applicant qualifies under this criteria, they would be eligible for additional subsidy of 50% of construction project costs, not to exceed a total subsidy award of \$500,000.00 per community.

Additional subsidy allocated under the affordability criteria is on a first-come, first-served basis and is competitive with subsidy allocations with the planning and final design subsidy applicants. Once the maximum amount of additional subsidy has been allocated for either avenue, no more additional subsidy will be offered under the current IUP year and applicants will need to apply in upcoming years. In order to qualify for additional subsidy under the affordability criteria, applicants will need to submit the following:

1. A signed Funding Application
2. QBS certification and attached advertisement
3. Either bond documentation or Letter of Intent to bond by May 2017, and
4. Draft Engineering Services Agreement

In the case that an applicant's bond does not pass, the CWSRF program reserves the right to apply additional subsidy to the next applicant in line.

O. State Affordability Criteria

The Water Resources Reform and Development Act of 2014 (WRRDA) amended sections of the Federal Water Pollution Control Act (FWPCA) that impact the Clean Water State Revolving Fund (CWSRF) loan program administered by Vermont's Department of Environmental Conservation. Section 603(i) was added requiring States to establish affordability criteria to assist in identifying municipalities that would experience a significant hardship raising the revenue necessary to finance a project or activity eligible under the CWSRF program if additional subsidization is not provided. The amendment requires States to establish the affordability criteria not later than September 30, 2015, and after providing notice and an opportunity for public comment. It also requires that the criteria be based on income and unemployment data, population trends, and other data determined relevant by the State, including whether the project or activity is to be carried out in an economically distressed area as described in Section 301 of the Public Works and Economic Development Act of 1965.

Methodology:

There are three ways to qualify for subsidy under Vermont's affordability criteria. First, compare the community's Median Household Income (MHI) to the State Average Median Household Income (SAMHI). If the applicant's community MHI is equal to or less than the SAMHI, the project qualifies as a hardship municipality, and is eligible for subsidy.

At the discretion of an applicant municipality, an income survey can be performed in lieu of the census data to establish the MHI. MHI shall be based on recommendations of an independent contractor hired by the municipality and approved by the Secretary. The determination of the Secretary shall be final.

Second, if the applicant's community's MHI divided by the SAMHI is between 101% and 120%, the project qualifies for subsidy if the communities' population data from the most recent two census surveys shows a population decline of 5% or more (i.e. 2010 Population divided by 2000 Population = 95% or lower).

Third, if the applicant community's MHI divided by the SAMHI is between 101% and 120%, the project qualifies for subsidy if the communities' unemployment number is higher than the State's unemployment number.

P. Responsiveness Summary

On November 15, 2016, the Facilities and Engineering Division released the Draft amended Federal Fiscal Year 2016 Intended Use Plan (IUP) and the Draft CWSRF Affordability Criteria for public review and comment. On December 1, 2016, a public comment session was held, that was attended by numerous stakeholders, including consulting engineers, municipal representatives, state employees, and nonprofit partners, including Vermont Rural Water. Listed below are the comments received during the public comment period and public hearing, including replies, as appropriate:

- 1) Vermont Rural Water noted that the wording on the Affordability Criteria may suggest that to qualify for subsidy, a community needs to have MHI below the State MHI and have either high unemployment or declining population, per the formula, and that some wordsmithing may be required to make clear that there are in fact three ways to qualify for subsidy under the proposed Affordability Criteria.
REPLY: The language was modified to make clear that there are three ways to qualify for subsidy under the new Affordability policy.
- 2) The City of Rutland provided written comments on the draft Affordability policy, suggesting the proposed Affordability criteria should only be given to communities whose MHI is 90% of SAMHI, and that the State should provide more guidance now on when Additional Subsidy will be offered. **REPLY: The Vermont CWSRF currently has a surplus of funds and is purposely broadening eligibility based of our affordability criteria. The amount of additional subsidy per year is only around \$2 million. As demand of the CWSRF increases over time, the affordability criteria can be revised for stricter eligibilities. In the current environment, however, expanding these eligibilities allow for present day utilization of funds.**
- 3) The City of Rutland: Population trends should be used to adjust the Total Equivalent Users factor in the formula. **REPLY: The current proposed affordability criteria does not consider bonded indebtedness. As previously noted, the consideration of user rates and total hardship that the project will place on the municipality will be likely considerations in the future when the nature of these funds are more competitive.**
- 4) The City of Rutland: Rutland has maintained a relatively low unemployment rate but this is largely because of population decline and not the result of employment growth. Unemployment should be considered only within the context of population trends. **REPLY: This criteria doesn't look at employment growth. Population decline would be considered independent from unemployment factors as a method of qualifying under this affordability criteria. One doesn't depend upon the other.**
- 5) The City of Rutland: The study period for calculating rate payer burden is arbitrarily set. **REPLY: This criteria does not currently propose to incorporate rate payer information into affordability consideration.**

- 6) The City of Rutland: The long-standing 2% of MHI limit should be adjusted to reflect local circumstances. **REPLY: This criteria does not include a 2% MHI limit.**
- 7) The City of Rutland: Under “Allocation of Additional Subsidy” your notice states: *“Subsidy can be based on the above referenced affordability criteria and/or by project type to implement a process, material, technique, or technology to address water-efficiency goals, energy-efficiency goals, for mitigation of stormwater runoff, or to encourage sustainable project planning, design, and construction.”* This language provides little guidance. **REPLY: This is not the State’s language, this is an excerpt from WRRDA regarding how to allocate subsidy. This purposely leaves a great deal of flexibility with each state to allocate subsidy as their individual needs. Currently, the fund offers subsidy for planning and final design efforts statewide, regardless of affordability status. The current amendment proposes subsidy only for construction projects. There are currently State Pollution Control Grants that are offered on a project-specific basis and one of those project types is, in fact, CSOs. With the upcoming Intended Use Plan (IUP) implementation, there will be the opportunity for further public comment about how to allocate additional subsidy for future grant years.**