AGENCY OF NATURAL RESOURCES
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Environmental Protection Rules:

CHAPTER 2 - MUNICIPAL POLLUTION CONTROL PRIORITY SYSTEM

SUBCHAPTER 100 TABLE OF CONTENTS

Subchapter 100 TABLE OF CONTENTS……..……..…….1

Subchapter 200 PURPOSE, LEGAL AUTHORITY, AND POLICY

Section 210 Purpose and Policy…….……..……1
Section 220 Legal Authorities…….……..……2

Subchapter 300 MUNICIPALITY TO DEMONSTRATE THAT THE POTW OR MSPOWS PROJECT WILL SERVE A DESIGNATED CENTER AND THAT SCATTERED DEVELOPMENT WILL NOT OCCUR

Section 310 Required Demonstrations...…..……3
Section 320 Department to Provide Guidance to Municipalities….……4

Subchapter 400 CRITERIA AND PROCESS FOR PRIORITY LIST DEVELOPMENT AND GRANT AMOUNT DETERMINATIONS

Section 410 Annual Priority List Development……..……...…..4
Section 420 Annual Priority List Amendment and Revision, and Bypass Procedure…….…....…….....6
Section 430 Project Rating System……..…….7
Section 440 Calculation of Grant and Loan Percentage……..14

Subchapter 500 DEFINITIONS……..…….…….....14

Subchapter 600 EFFECTIVE DATE; TRANSITION……...16

Appendix A: TERMS AND CALCULATIONS…….17

SUBCHAPTER 200 PURPOSE, LEGAL AUTHORITY, AND POLICY

Section 210 Purpose and Policy.

(a) The purpose of this Rule is:

(1) to obtain and maintain state water quality standards;

(2) to prioritize water pollution abatement and control facility projects and to determine the grant amount for which a project may be eligible;

(3) to make efficient use of scarce public funds by providing grants and loans to water pollution abatement and control facility projects based upon their priority ranking; and

(4) to ensure there are appropriate controls on Agency of Natural Resources (ANR) funded publicly owned treatment works (POTW) and municipally sponsored privately-owned wastewater system (MSPOWS) projects to: minimize polluted runoff from unplanned land development; and to prevent scattered development and its negative impacts on surface and ground waters, wetlands, air quality, wildlife habitats, natural areas, threatened and endangered species, and land use patterns within the host and adjacent communities.

(b) This Rule establishes the priority system to be used by the ANR Department of Environmental Conservation (the Department) for awarding grants and loans from federal and state funds for water pollution abatement and control facility projects.

(c) To be eligible for a POTW or a MSPOWS project grant or loan from the Agency for the final design or construction of a new wastewater treatment facility, excluding replacement facilities and facilities permitted to discharge solely under the Wastewater and Potable Water Supply Rules and Indirect Discharge Rules, or a sewer line extension, the applicant must demonstrate that the project is designed to serve a designated center only, unless there are significant health and environmental problems located outside of a designated center. If a sewer line serving a designated center must be located partially outside of a designated center in order to abate an existing pollution problem, to connect a treatment plant with a designated center, or to connect one or more designated centers, the municipality must demonstrate that the impacts of growth resulting from the infrastructure can be adequately managed, and will not contribute to scattered development.

Section 220 Legal Authorities.

This Rule is adopted under the authority of and in accordance with the requirements of the provisions of state law described below:

10 V.S.A. Chapter 55 and 24 V.S.A. Chapter 120 authorize grants and loans for water pollution abatement and control facility projects, require the Secretary to adopt by rule criteria to prioritize such projects and to determine the grant amount for which a project may be eligible, and require that water pollution abatement and control facility projects conform with state planning requirements.

3 V.S.A. § 2825(a) requires the Secretary to ensure the effective application of statutory planning policies in the administration of all ANR programs including the award of grants and loans.

3 V.S.A. § 2293 sets out policies for the State's development cabinet and all state agencies that have programs or take actions affecting land use.

3 V.S.A. Chapter 67 and 24 V.S.A. Chapter 117 require state agencies to engage in a continuing planning process to assure that programs and actions affecting land use are consistent with the State's comprehensive planning goals.

10 V.S.A. Chapter 151 sets out state policies for use and development of the State's air, water, wildlife, mineral, and land resources. These policies guide Act 250 proceedings. These policies are also cross-referenced in both 10 V.S.A. Chapter 55 and 24 V.S.A. Chapter 117.

24 V.S.A. Chapter 76A sets out state policy regarding funding of infrastructure in designated centers.

SUBCHAPTER 300 MUNICIPALITY TO DEMONSTRATE THAT THE POTW OR MSPOWS PROJECT WILL SERVE A DESIGNATED CENTER AND THAT SCATTERED DEVELOPMENT WILL NOT OCCUR

Section 310 Required Demonstrations.

(a) If the applicant for a grant or loan for the final design or construction of a POTW or MSPOWS project demonstrates that: 1) the project is designed to maintain or upgrade an existing wastewater treatment facility; and 2) there is no planned extension of sewer lines, then no further demonstrations are required and the application shall be considered in accordance with Subchapter 400 of this Rule.

(b) The following requirements apply to an application for a grant or loan for the final design or construction of a POTW or MSPOWS project where the applicant proposes to: 1) establish a new wastewater treatment facility, excluding replacement facilities and facilities permitted to discharge solely under the Wastewater and Potable Water Supply Rules and Indirect Discharge Rules, or 2) extend sewer lines. The applicant shall make the following demonstrations:

(1) The applicant must demonstrate that the municipality has received state approval for one or more designated centers in a duly adopted and approved municipal plan in accordance with the requirements of 24 V.S.A. Chapter 117;

(2) If the applicant proposes to run all or a portion of a sewer line outside of a designated center (for example, a line between a treatment plant and designated center or between two designated centers, or a line to abate an existing public health problem), then the applicant must demonstrate that there are no reasonable project alternatives to locating the sewer line outside a municipally designated center and that the municipality has prepared a strategy designed to ensure that the project will not contribute to scattered development and has adopted all rules, ordinances, and other legally enforceable mechanisms necessary to implement the strategy; and

(3) In the event that new sewer service is proposed for users outside of a designated center, then the applicant must also demonstrate that there are significant health and

environmental problems, which are most cost-effectively addressed by providing sewer service outside the limits of a designated center. Municipalities that have been issued an order to abate pollution by the Agency pursuant to 10 V.S.A. § 1277, do not have to make this demonstration.

Section 320 Department to Provide Guidance to Municipalities.

The Secretary has issued and will update, as needed, a guidance document that includes a detailed explanation of designated centers and examples of local land use planning and regulatory strategies that may be used in making the demonstrations set forth above. Such guidance will offer municipalities a range of options. The guidance will also take into account that there is no single approach applicable to all municipalities. The guidance will recognize that in order to promote compatibility with existing programs and development conditions and to account for differences in the desires of their citizenry, municipalities must have latitude in fashioning their approaches to designating and managing designated centers and to limiting scattered development.

SUBCHAPTER 400 CRITERIA AND PROCESS FOR PRIORITY LIST DEVELOPMENT AND GRANT AMOUNT DETERMINATIONS

Section 410 Annual Priority List Development.

(a) If the Secretary determines, in accordance with subsection (a) of Section 310 of this Rule, that the applicant for a POTW or MSPOWS project grant or loan need not make the demonstrations required in subsection (b) of Section 310; if the Secretary determines that the applicant for a POTW or MSPOWS project has succeeded in making the demonstrations required in subsection (b) of Section 310; or if a project is a water pollution abatement and control facility project other than a POTW or MSPOWS project, then the eligibility and prioritization of the project for funding shall be determined in accordance with the priority system set out in this Subchapter.

(b) Each year, prior to the beginning of the state fiscal year, the Department shall prepare a project priority list. This document shall list all projects potentially fundable from grant programs or the revolving loan program over the next five-year period. In addition, this list shall separately identify those projects expected to be funded in the upcoming fiscal year.

(c) The following concepts will be utilized in the list preparation:

(1) All steps of a project will be identified separately in the list, including Step I and Step II phases.

(2) Sufficient projects will be scheduled to be funded in the upcoming fiscal year to use all of the anticipated state and federal funds in the grants and the revolving loan program.

(3) Projects will be scheduled to receive funds on the first year (fundable) portion of the list, either from grants or loan funds, based on their priority point rating. The projects placed on the fundable portion of the list will remain on the fundable list until the list is amended. The

priority list may be amended annually following January 1st to remove projects on the fundable portion of the list that have not submitted a complete grant or loan application. Those projects may be shifted to the following fiscal year and replaced by the next highest priority rated project that has submitted a complete Step III funding application, together with all requisite attachments and approvals.

(4) The Step I and Step II projects necessary to support the selected Step III projects will be scheduled, as appropriate, in earlier fiscal years.

(5) The list shall contain all information required by state and federal statute and regulation.

(d) The Department shall seek public comment on the proposed project list and intended use plan (IUP) by: (i) emailing municipalities, organizations, and interested individuals, and (ii) conducting a formal public hearing. The notice of the hearing shall be statewide, posted on the Department's website and the Vermont Department of Libraries' notices site with links to this Rule, the draft priority list, and the IUP, and may be viewed by interested persons prior to the hearing. The notice shall be published at least 30 days in advance of the public hearing. The public comment period shall remain open for at least seven days following the end of the public hearing.

(e) The Department shall consider and respond to all comments received through the close of the comment period and, where appropriate, make changes in the proposed list. A summary of public comments and Department responses shall be sent to all municipalities, organizations, and interested persons originally receiving notice of the hearing, and to any other interested persons. The Department will officially adopt the priority list at this time and any necessary documents or information will be sent to the U.S. Environmental Protection Agency.

Section 420 Annual Priority List Amendment and Revision, and Bypass Procedures.

(a) The Department may periodically evaluate the priority list to determine if amendments are necessary to add or delete projects from the fundable list in response to unanticipated project cost increases, project schedule delays, increased or decreased available funds, or other factors. The Department may propose an amendment based upon this evaluation.

(b) Notice of proposed amendments to the priority list shall be sent to all municipalities, organizations, and persons on the mailing list. This notice shall clearly show the proposed changes to the list, along with the reasons for the proposed changes. All parties shall be given a minimum 14-day period from the time the notice is sent to comment on the proposed changes, except when the list includes proposed removal of a project, in which case the period shall be a minimum of 30 days. If two or more municipalities request a public hearing on the proposed change, the Department shall warn and hold such a hearing. Notice of the hearing shall be provided in the same manner as the original public hearing, except that the warning period shall be for a minimum of 14 days. The Department shall consider all public comments received, revise the proposal, if necessary, and adopt the amendment. A copy of the adopted amendment, along with a public responsiveness summary discussing the comments received, shall be sent to

all parties on the mailing list.

(c) The Department may make clerical corrections to the list, remove projects that have received funding, and add Step I or Step II projects to the fundable list to use excess funds without following the public notification procedures outlined in subsection (b) of this section.

(d) The Department may bypass projects from the fundable portion of the priority list without deleting them for the reasons outlined in subsection (a) of this section when readiness to proceed criteria have not been met. Readiness to proceed criteria may include deadlines established by the Secretary for: submittal of the Preliminary Engineering Report, submittal of the Environmental Information Document, voter authorization to incur debt, and other criteria as determined by the Secretary.

Section 430 Project Rating System.

(a) The following project rating system includes criteria, meeting the requirements of 10 V.S.A. § 1628, for purposes of providing the point rating for water pollution abatement and control facility projects and ranking the projects in priority order for receipt of grants or loans, or both. Only water pollution abatement and control facility projects eligible to receive grants or loans, under the requirements of 10 V.S.A. Chapter 55 and 24 V.S.A. Chapter 120, are eligible to receive points under the project rating system.

(b) **Criterion 1 – Eligibility.** A water pollution abatement and control facility project that is eligible to receive grants or loans, under the requirements of 10 V.S.A. Chapter 55 and 24 V.S.A. Chapter 120, shall receive 1 point.

(c) **Criterion 2 – Public Health.** For purposes of this subsection, "public health hazard" means the discharge of pathogens, toxic substances, or a pollutant that may adversely affect human health that has been declared in writing by formal action of the Department of Health or is not in compliance with the Vermont Water Quality Standards (VWQS), a permit, or the provisions of 10 V.S.A. § 1259. For purposes of this subsection, "existing use" means a use that has actually occurred on or after November 28, 1975, in or on waters, regardless of whether or not the use is presently occurring or included in the VWQS. The maximum points that a project may receive under this criterion shall be 25.

(1) Drinking water sources. A project that eliminates, reduces, or controls public health hazards or potential public health hazards in waters that provide an existing use as:

(A) A public water source, as defined in the Water Supply Rule, shall receive 20 points; or

(B) A source of water for a potable water supply, as defined in the Wastewater System and Potable Water Supply Rules, shall receive 10 points.

(2) Swimming and other primary contact recreation. A project that eliminates, reduces, or controls public health hazards or potential public health hazards in waters that provide an existing use for swimming or other primary contact recreation shall receive 10 points.

(3) Combined sewer overflows (CSOs) and sanitary sewer overflows (SSOs). A project that eliminates, treats, reduces, or controls CSOs or SSOs shall receive 10 points.

(4) Failed systems. A project addressing a failed system or systems, as defined under the Wastewater System and Potable Water Supply Rules and Indirect Discharge Rules, shall receive 5 points for the first documented failed system and 1 additional point for each subsequent documented failed system.

(5) Publicly owned treatment works, excluding collection systems. A project that abates a public health hazard caused by a POTW releasing untreated or partially treated sewage to waters, to the ground surface, or into the ground shall receive 5 points.

(6) Threats to the public health identified by the Secretary or the Department of Health. If the Secretary or the Department of Health determines that a project will eliminate, reduce, or control a threat to the public health not addressed by subdivisions (1) through (5) of this subsection, the project shall receive 5 points.

(d) **Criterion 3 – Water Quality.** The maximum points that a project may receive under this criterion shall be 20.

(1) For purposes of this subdivision, an "impaired water" means a water listed on the State 303(d) list of impaired waters, "Part A – Impaired Surface Waters in Need of a TMDL;" a water that has a total maximum daily load (TMDL) approved by the U.S. Environmental Protection Agency and is listed on "Part D – Impaired Surface Waters with Completed and Approved TMDLs;" or a water listed on "Part B – Impaired Surface Waters – No Total Maximum Daily Load Determination Required."

(A) A project that reduces or controls the pollutant in an impaired water for which the water is impaired shall receive 10 points.

(B) A project that reduces or controls a pollutant or pollutants in waters shall receive 5 points.

(2) A project that provides wastewater treatment designed to achieve nutrient or toxics reductions of 25% or greater than what is required by the current discharge permit shall receive 8 points.

(3) A project that meets or exceeds the Water Quality Treatment Standard in the Vermont Stormwater Management Manual through use of a:

(A) Tier 1 practice shall receive 6 points.

(B) Tier 2 practice shall receive 4 points.

(4) A project shall receive 5 points if:

(A) The project addresses a water quality issue or issues identified as high priority in an approved Tactical Basin Plan, or

(B) The project is included in a long-term plan approved by the Secretary or the U.S. Environmental Protection Agency.

(5) A project that protects groundwater by restoring, maintaining, or improving groundwater quality shall receive 5 points.

(e) **Criterion 4 – Refurbishment.** For purposes of this subsection, "refurbish" means to restore or renovate existing infrastructure. The maximum points that a project may receive under this criterion shall be 5.

(1) A project that refurbishes or replaces existing infrastructure at the end of its useful service life shall receive 5 points.

(2) A project that refurbishes or replaces existing infrastructure that has not reached the end of its useful service life and that provides significant performance benefits, increases protection of public health, or increases protection of water quality shall receive 3 points.

(3) A project that extends the useful service life of existing infrastructure through modification or refurbishment by bringing that infrastructure up to modern codes and standards shall receive 1 point.

(f) **Criterion 5 – Environmental Resiliency and Sustainability.** The maximum points that a project may receive under this criterion shall be 5.

(1) Energy efficiency and conservation.

(A) A project that implements recommendations provided by Efficiency Vermont or recommendations provided in an energy audit shall receive 1 point.

(B) A project that includes improvements to electrical energy efficiency shall receive 1 point.

(C) A project that includes improvements to the thermal efficiency of a building, including improvements to the thermal efficiency of the building envelope or improvements to the efficiency of the building's heating systems shall receive 1 point.

(D) A project that includes the co-generation of energy and heat shall receive 1 point.

(E) A project that produces renewable energy, as defined under 30 V.S.A. § 8002, shall receive 1 point.

(2) Flood resiliency.

(A) A project that is identified in a flood hazard mitigation plan shall receive 1 point.

(B) A project that includes horizontal relocation of infrastructure out of:

(i) A flood hazard area shall receive 1 point.

(ii) A river corridor shall receive 1 point.

(iii) The 500-year floodplain shall receive 1 point.

(C) A project that includes vertical relocation of infrastructure out of:

(i) A flood hazard area shall receive 1 point.

(ii) The 500-year floodplain shall receive 1 point.

(D) A project involving linear infrastructure crossing a river corridor that locates the infrastructure at such a depth below the stream bed, or area in which the stream bed might be located in the future, so as to avoid the need for channel management activities shall receive 1 point.

(E) A project that receives points under subdivisions (B), (C), or (D) above, which addresses past documented repeated damages, shall receive 1 point.

(F) A project that includes floodproofing designs consistent with "FEMA P-936, Floodproofing for Non-Residential Buildings" (July 2013), or most current addition, shall receive points as follows:

(i) A project with dry floodproofing measures shall receive 1 point.

(ii) A project with wet floodproofing measures shall receive 1 point.

(3) Stormwater infrastructure.

(A) A project that includes green stormwater infrastructure shall receive 1 point. For purposes of this subdivision, "green stormwater infrastructure" means a wide range of multi-functional, natural and semi-natural landscape elements that are located within, around, and between developed areas, that are applicable at all spatial scales, and that are designed to control, collect, or treat stormwater runoff.

(B) A stormwater project required under an approved TMDL implementation plan, including a Flow Restoration Plan, Phosphorus Control Plan, or Water Quality Remediation Plan shall receive 1 point.

(4) A project implementing the recommendation(s) of a U.S. Environmental Protection Agency Creating Resilient Water Utilities plan shall receive 1 point.

(5) Inflow and infiltration. For purposes of this subsection, "inflow" means stormwater that enters a wastewater collection system, or groundwater that is pumped into a wastewater collection system; and "infiltration" means groundwater that enters a wastewater collection system.

(A) A municipality that has performed an inflow and infiltration study involving the project area shall receive 1 point.

(B) A project that removes sources of inflow based upon the recommendations of an inflow and infiltration study shall receive 1 point.

(C) A project that removes sources of infiltration based upon the recommendations of an inflow and infiltration study shall receive 1 point.

(6) Water conservation and efficiency. A project that constructs or repairs an effluent reuse system to reduce or eliminate use of a drinking water supply shall receive 1 point.

(7) A project including an environmentally innovative approach shall receive 1 point. For purposes of this subsection "environmentally innovative approach" means integrated water resource management planning, a Utility Sustainability Plan, a greenhouse gas inventory or mitigation plan, application for or receipt of LEED certification, a community decentralized wastewater system to address failed or substandard onsite wastewater systems, or other environmental innovation as determined by the Secretary.

(g) **Criterion 6 - Regional Benefits.** The maximum points that a project may receive under this criterion shall be 1.

(1) A project that provides septage or sludge processing as a benefit to other communities shall receive 1 point.

(2) A project that is a regional project, as defined in this Rule, shall receive 1 point.

(h) **Criterion 7 – Designated Centers.** A project that serves a designated center shall receive 4 points.

(i) **Criterion 8 – Affordability.** The terms and calculations applicable to this criterion are located in Appendix A of this Rule. The maximum points that a project may receive under this criterion shall be 20.

(1) A project that will result in an annual household user cost for sewer and stormwater that exceeds two percent of the median household income (MHI) as determined using the most recent American Community Survey data for the total service area shall receive 15 points.

(2) A project located in a municipality with a MHI at or less than the statewide average MHI or with an MHI from an income survey performed in the last 5 years that demonstrates an income for a service area that is at or less than the statewide average MHI shall receive 10 points.

(3) A project located in a municipality with an unemployment rate that is unknown, or at or higher than the statewide median unemployment rate shall receive 10 points.

(4) A project located in a municipality with a rolling 10-year population trend that shows a population loss of greater than one percent, shall receive 5 points.

(5) A project in a municipality demonstrating financial hardships not included in this subsection, if accepted by the Secretary, shall receive 5 points.

(j) **Criterion 9 – Project Readiness.** The maximum points that a project may receive under this criterion shall be 12.

(1) A project for which a bond vote:

(A) Has passed authorizing the municipality to borrow sufficient funds for the project shall receive 7 points; or

(B) To borrow sufficient funds for the project has been warned shall receive 5 points.

(2) A project for which the facility plan approval letter has been issued shall receive 5 points.

(3) A project for which the final design approval letter has been issued shall receive 1 point.

(4) A project that has received all environmental permits and approvals from the federal government, the Vermont Agency of Natural Resources, and pursuant to 10 V.S.A. Chapter 151 shall receive 1 point.

(5) A project for which a municipality has gone beyond the minimum legal requirements, under 24 V.S.A. Chapter 53, for public notice and comment in order to increase public involvement by providing multiple and diverse opportunities for public engagement and participation shall receive 1 point. For purposes of this subsection, opportunities for public engagement and participation may be provided through various means, including social media and online forums, direct mailings, news coverage, and public meetings beyond what is legally required.

(k) **Criterion 10 -- Fiscal Sustainability, Fiscal Integrity, Cost-Effectiveness.** The terms and calculations applicable to this criterion are located in Appendix A of this Rule. The maximum points that a project may receive under this criterion shall be 7.

(1) For purposes of this subdivision, "practicable alternative" means technologically possible, able to be put into practice, and economically viable. A project shall receive 1 point if it has undergone an alternatives analysis evaluating practicable alternatives to address the pollutant or pollutants of concern, and

(A) Is the least cost alternative based upon a Life Cycle Cost Analysis, where Life Cycle Cost Analysis is the sum of the present day total project cost, plus the uniform series present worth (USPW) of the annual operation and maintenance costs, minus any anticipated salvage value, and where the USPW is calculated based on the discount rate published by the federal Office of Management and Budget circular A-94 and the smaller of the loan term or useful service life of the asset; or

(B) Is the least cost alternative based upon a Long Term Cost Effectiveness Analysis, where Long Term Cost Effectiveness Analysis is the Life Cycle Cost Analysis plus the present value of the future Life Cycle Analysis through a subsequent cycle of capital replacement or refurbishment.

(2) A project shall receive 1 point if:

(A) The project receives points under subsection (d)(1) of this section (Criterion 3 – Water Quality),

(B) The project receives points under subdivision (1) of this subsection, and

(C) The project is the most effective at removing the pollutant or pollutants of concern when expressed as the percent by which the project reduces the annual loading rate, or other approvable rate.

(3) A project involving co-funding from another state or federal source shall receive 1 point.

(4) A project that has a fiscal sustainability plan, as defined in 33 U.S.C. § 1383, shall receive 1 point.

(5) If the project is a POTW project and the municipality has a full asset management plan for wastewater, the project shall receive 1 point.

(6) If the project is a stormwater project and the municipality has a full asset management plan for stormwater, the project shall receive 1 point.

(7) If the project is a POTW or MSPOWS project and it uses, or proposes to use as part of the project, water meters to set sewer billing rates for a majority of connections, the project shall receive 1 point.

(8) If the project is a POTW or MSPOWS project and the municipality uses strength-based fees and surcharge fees for high strength commercial or industrial wastewater users, the project shall receive 1 point.

(9) If the project is a POTW project and the municipality has a sewer use ordinance updated or assessed in the last five years, the project shall receive 1 point.

(10) If the project is a stormwater project and the municipality has a stormwater ordinance updated or assessed in the last five years, the project shall receive 1 point.

(m) Computations and Application of Rating. The project priority rating is the total of the points a project receives. The point total establishes the overall priority of the project. Each year, prior to the publication of the proposed list, the rating for each project will be re-evaluated to ensure the points assigned to each project are still valid. Necessary priority point adjustments shall be made at that time. All steps and segments of a project shall have the same priority rating.

(1) Federal Allocation Requirement. If federal law requires that a certain portion of federal dollars be allocated to a certain project type, projects of that type shall receive funding until the federal requirement has been met.

(2) Certain project types shall be placed at the top of the priority list, regardless of project priority rating, as follows:

(A) Projects Addressing Emergencies. A project that must be completed expeditiously to address a situation resulting from equipment or other infrastructure failure or an event outside of human control, such as weather or a natural disaster, affecting or constituting a threat to the environment or the public health, safety, or welfare, as determined by the Secretary, shall be placed at the top of the priority list. If more than one project is a project addressing an emergency, the projects shall be ranked based upon their project priority rating.

(B) Continuing Projects. Projects that are under construction and were partially funded under a prior priority list, shall be placed at the top of the priority list immediately below any projects addressing emergencies. If more than one project is a continuing project, the projects shall be ranked based upon their project priority rating.

(n) Projects with Equal Priority Point Ratings. Projects with equal priority points ratings will, from time to time, be ready to receive project funding within the same fiscal year, and a determination must be made as to which project shall be funded from limited available funds. Where choices must be made between such projects, the Department shall make those determinations in the following manner:

(1) Projects that have received points under subsection (c) of this section (Criterion 2 - Public Health) shall be funded first in descending order starting with those projects that have received the highest total points when all points received under subdivisions (1) through (6) of subsection (c) of this section are added together.

(2) If projects are still tied after completing subdivision (1) of this subsection, projects that have received points under subsection (d) of this section (Criterion 3 - Water Quality) shall be funded in descending order starting with those projects that have received the highest total points when all points received under subdivisions (1) through (5) of subsection (d) of this section are added together.

(3) If projects are still tied after completing subdivision (2) of this subsection, projects that have received points under subsection (f) of this section (Criterion 5 - Environmental Sustainability) shall be funded in descending order starting with those projects that have received the highest total points when all points received under subdivisions (1) through (7) of subsection (f) of this section are added together.

(4) If projects are still tied after completing subdivision (3) of this subsection, projects with the highest percentage of calculated annual household user cost divided by MHI, as calculated to three significant digits, shall be funded in descending order.

(5) Projects remaining after the above determinations have been made shall be funded based upon the earliest facility plan approval date.

(o) Money available in the funds established under 24 V.S.A. § 4753 shall be first used to finance priority projects which are ready to proceed to construction or that are ready to initiate engineering studies. If unused monies are available in these funds after all projects that are anticipated to be ready to proceed in the current fiscal year have been placed on the priority list, the Department may use these funds for purposes enumerated in 24 V.S.A. § 4757.

Section 440 Calculation of Grant and Loan Percentage.

(a) Grants.

(1) To determine the percent of grant a municipal water pollution abatement and control facility project may be eligible for, the Department shall add:

(A) The points awarded under Criterion 8 (Affordability) up to the maximum, minus 10, and

(B) The points awarded under Criterion 2 (Public Health), Criterion 3 (Water Quality), Criterion 4 (Refurbishment), Criterion 5 (Environmental Resiliency and Sustainability), Criterion 6 (Regional Benefits), and Criterion 7 (Designated Centers) up to the maximum, minus 25.

(2) To qualify for a grant, a project must receive at least 10 points after completion of the calculation under subdivision (1) of this subsection.

(3) The percent of grant a project may be eligible for shall be equal to the value reached after completion of the calculation under subdivision (1) of this subsection up to a maximum of 35 percent.

(b) Loans. The maximum allowable loan is the eligible project cost multiplied by the difference of 100 percent minus the grant percentage, except that grant funds may be substituted with loan funds to the extent grant funds are not available.

(c) Loan Caps. The Secretary may establish on an annual basis a maximum limit per loan.

SUBCHAPTER 500 DEFINITIONS

(a) “Complete grant or loan application” means a grant or loan application, on a form provided by the Department, including all requisite certifications, attachments, assurances, permits, plans, and specifications approved by the Department, and evidence of a valid local bond vote authorizing adequate local funds for the project.

(b) “Designated center” shall have the same meaning as used in 10 V.S.A. § 6001.

(c) "Existing settlement" shall have the same meaning as used in 10 V.S.A. § 6001.

(d) "Scattered development" means any development or subdivision that is either not physically contiguous to an existing settlement or, if contiguous to an existing settlement, is not compatible in terms of size or use. The term includes strip development.

(e) "Strip development" shall have the same meaning as used in 10 V.S.A. § 6001.

(f) "Regional project" means a water pollution abatement and control facility project that geographically distinct municipalities have agreed to jointly develop. The majority of components of the regional project must be eligible for State water pollution abatement and control funds. Before the Department can accept a project as a regional project, an acceptable inter-municipal agreement, entered pursuant to the requirements of Title 24 of the Vermont Statutes, must be signed by the municipalities involved, or the project applicant must be a multi-municipal Fire District, Consolidated Sewer District, or Solid Waste District created under authority of Vermont Statutes.

(g) "Ready to proceed" shall mean the submission to the Department of an approvable grant or loan application.

(h) "POTW or publicly owned treatment works" shall mean all sewage collecting systems, pump stations, and other approved methods of sewage conveyance, all treatment works including storage and disposal systems, and all sludge handling and disposal systems that are owned by a legally constituted municipality in the State of Vermont.

(i) "Privately-owned wastewater system" pursuant to the definition in 24 V.S.A. § 4752(10) means a wastewater conveyance, treatment, and disposal system or elements thereof that is privately owned and that handles primarily domestic type wastes.

(j) "MSPOWS or municipally sponsored privately-owned wastewater system" means a privately owned wastewater system supervised and financed in accordance with 24 V.S.A. § 4763 by a legally constituted municipality in the State of Vermont.

(k) "Grant or loan" shall mean all funds appropriated by the Vermont Legislature to be used by the Department under the Pollution Control Grant program under 10 V.S.A. Chapter 55, or the Water Pollution Control Revolving Loan Fund, 24 V.S.A. Chapter 120; or from appropriations made by the federal government for pollution control grants or loans under the Clean Water Act.

(l) "Replacement facilities" means new facilities taking the place of currently existing facilities, which are to be located on the same or a different site and which will serve the same service area as the currently existing facilities.

(m) "Step" means the major project components and milestones as follows: Step I: Planning which results in a Preliminary Engineering Report and an Environmental Information Document. Step I is concluded by the issuance of the Facility Plan Approval Letter. Step II: Final Design, which results in the creation of final signed, stamped engineering plans, specifications, and

contract documents. Step II is concluded by the issuance of the Final Design Approval Letter. Step III: Construction, which consists of the bidding, construction, and engineering oversight of the project.

(n) "Water pollution abatement and control facility" means such equipment, conveyances, and structural or nonstructural facilities owned or operated by a municipality that are needed for and appurtenant to the prevention, management, treatment, storage, or disposal of stormwater, sewage, or waste, including a wastewater treatment facility, combined sewer separation facilities, an indirect discharge system, a wastewater system, flood resiliency work related to a structural facility, or a groundwater protection project.

(o) "Waters" includes all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs and all bodies of surface waters, artificial or natural, which are contained within, flow through or border upon the state or any portion of it.

SUBCHAPTER 600 EFFECTIVE DATE; TRANSITION

This Rule shall become effective on December 1, 2017 except for Section 440 of the Rule used for determining municipal pollution control grant and loan percentages that shall become effective July 1, 2019.

APPENDIX A: TERMS AND CALCULATIONS

"Full asset management plan" means a plan that includes the following elements: a level of service agreement; an asset inventory and condition assessment; a map; life cycle costing; risk assessment and identification of priority assets; risk and life cycle cost reduction measures; and long term funding strategies.

"Annual Household User Cost" means the sum of annual system debt service, operations and maintenance costs, and short-lived asset set asides, divided by the total Equivalent Residential Units (ERU). "Short-lived asset set asides" (SLASA) means annual allocations of funds for replacement of assets with a useful service life of ten years or less, which may be found in the fiscal sustainability plan, as defined in 33 U.S.C. § 1383, full asset management plan, or short-lived asset table of the preliminary engineering report. Operations and maintenance costs may be determined by the Secretary or may be system specific.

Annual Household User Cost = (Debt Service + O&M + SLASA)/Total ERUs

"Equivalent Residential Units" (ERU) means the actual number of all residential units connected to the system plus the resultant of the total annual gallons used by non-residential connections divided by 76,650.

ERU = (Actual count of all residential units connected to the system) + (total gallons used by non-residential connections based on the 5-year average of the annual flows treated by the wastewater treatment facility)/76,650

The net present value (NPV) is calculated for each technically feasible alternative as the sum of the capital cost (C) plus the present worth of the uniform series of annual O&M (USPW (O&M)) costs minus the single payment present worth of the salvage value (SPPW(S)); or

NPV = C + USPW (O&M) – SPPW (S)

Long term cost effectiveness analysis includes the net present value analysis and the present value of a subsequent future cycle Life Cycle Cost Analysis.

Long Term Cost Effectiveness Analysis = NPV + NPVfuture

Example

	Alternative 1	Alternative 2	Alternative 3
Proposed Construction Cost	$ 1.0M	$1.5M	$2.5M
NPV(O&M)	$1.6 M	$1.0M	$0.5M
Life Cycle Cost Analysis	$2.6 M	$2.5M	$3.0M
Present Value of Future Refurbishment of Proposed Project	$1.0M	$1.5M	$0.5M
NPV(O&M Future)	$1.6M	$1.0M	$0.5M
Future LCCA	$2.6M	$2.5M	$1.0M
Long Term Cost Effectiveness Analysis	$5.2M	$5.0M	$4.0M

In this example Alternative 1 has the least capital cost ($1.0M). Alternative 2 has the least cost life cycle cost analysis ($2.5M). Lastly, Alternative 3 has the least cost long term cost effectiveness analysis ($4.0M).