

State of Vermont
Agency of Natural Resources
Department of Environmental Conservation

Policy:	Treatment Works Definition	Effective Date:	9/15/2017
Applicable To:	Department of Environmental Conservation	Revision Date:	XX/XX/XXXX
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Policy Objective

The purpose of this policy statement is to comply with the EPA Interim Guidelines by providing a policy for consistently determining whether a project meets the definition of a “*treatment works*”. Based on this policy, DEC can determine what state and federal requirements apply to a project. This policy statement will take the place of documentation placed in every project file.

Impacted Departments or Divisions

The Facility Engineering Division (FED) within the Department of Environmental Conservation (DEC).

Governing Documents

1. 1972 Federal Clean Water Act, Section 212
2. *Interpretive Guidance for Certain Amendments in the Water Resources Reform and Development Act to Titles I, II, V, and VI of the Federal Water Pollution Control Act* published by EPA January 2015

Background

With the passage of the Water Resources Reform and Development Act (WRRDA) in June 2014, Congress expanded the Clean Water State Revolving Loan Fund (CWSRF) eligibility and applied the following additional requirements including the following to

those projects defined in the 1972 Federal Clean Water Act as a *Section 212 Treatment Work Project*:

1. The National Environmental Policy Act (NEPA) – requires an environmental review to ensure the constructed project will not have a detrimental environmental impact.
2. The Davis-Bacon Act –establishes prevailing wages consistent with wages defined by the US Department of Labor and Industry.
3. Section 5003 of WRRDA requires the development and implementation of a fiscal sustainability plan that includes an inventory of critical assets that are part of the treatment works, an evaluation of the condition and performance of inventoried assets, a certification that the recipient has evaluated and will be implementing water and energy conservation efforts and a plan for maintaining, repairing and, as necessary, replacing those assets.
4. American Iron and Steel Act (Section 608 of the Federal Water Pollution Control Act) – requires iron and steel products used in the construction of the project to be produced in the United States of America.

Section 212 of the 1972 Federal Clean Water Act defines *treatment works* as:

(A) any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 201 of this act, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and acquisition of the land that will be an integral part of the treatment process (including land use for the storage of treated wastewater in land treatment systems prior to land application) or will be used for ultimate disposal of residues resulting from such treatment and acquisition of other land, and interests in land, that are necessary for construction.

(B) In addition to the definition contained in subparagraph (A) of this paragraph, “treatment works” means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems.

In January 2015, EPA published “Interpretive Guidance for Certain Amendments in the Water Resources Reform and Development Act to Titles I, II, V, and VI of the Federal Water Pollution Control Act.” There was a significant amount of discussion if this definition should now, for the first time, be expanded to include other project types not associated with municipal sewage or industrial wastes; based on a potential re-interpretation of the definition of *treatment works* done by EPA. Ultimately, EPA resolved the issue by stating in this guidance document that, “states should use best professional judgment to determine whether or not a project is a treatment works...In

cases where a project is determined to not be treatment works, states should document the decision in the project file along with the reason for the determination.”

The Vermont Clean Water State Revolving Fund (CWSRF) currently funds various project types including direct discharge and soil-based wastewater treatment facilities and associated collection systems, pollution abatement facilities, stormwater collection and treatment facilities, stormwater best management practices. Therefore, it is critically important that Vermont use its best professional judgment and issue a policy statement to clearly state what project types meet the “treatment works” definition.

Treatment Works Definition

The Section 212 treatment works definition will be limited to centralized wastewater collection and treatment and gray infrastructure components of stormwater projects. All other CWSRF eligible project types, including soils-based decentralized wastewater disposal projects, will not be considered treatment works. The reasons for limiting this definition to only wastewater collection and treatment projects are as follows:

1. Since passage of the 1972 Federal Clean Water Act, the established definition of treatment works includes municipal wastewater treatment systems, including the plant (clarifiers, digesters, sludge drying beds, etc.), any pump stations and all collection lines.
2. Expanding the definition to include projects that treat stormwater runoff separately is a grammatical read of the Clean Water Act that could be interpreted a number of ways. Such interpretation assumes that the practice of “disposing” stormwater necessarily includes combining the runoff with “municipal waste,” On the contrary, most current strategies for managing stormwater include separating combined sewer systems and using best management practices, exclusive of a treatment facility, to abate pollution.
3. Although there was some national discussion among EPA and States during the development of the final WRRDA guidance regarding expanding the definition of treatment works to include many other SRF-eligible project types, no such expansion is included in the final WRRDA guidance.
4. WRRDA lists treatment works, storm water, decentralized wastewater treatment systems and other types of projects as different types of projects now eligible for assistance under section 603(c). If the drafters of the WRRDA had intended to include other projects under “treatment works”, then they would not have listed them as separate categories.
5. Pollution reduction methodologies associated with stormwater, agriculture, and other sectors are purposely referred to as “best management practices” and not “treatment works”.
6. WRRDA requires the development of a Fiscal Sustainability Plan and the application of American Iron and Steel Act and Davis-Bacon prevailing wage

requirements for all “treatment works” projects. Many of the best management practices utilized for stormwater runoff and other non-point source projects do not have infrastructure assets that would necessitate the development of such a fiscal sustainability plan, nor do they need the type of iron and steel products applicable to the American Iron and Steel Act provisions. In addition, in most cases, the types of workers who are hired to construct these projects do not fall in the labor categories defined for Davis-Bacon wages either. Applying these requirements to these types of projects does not meet the intent of WRRDA. All it will result in is a paper exercise, resulting in fewer projects being constructed due to the difficulty in documenting compliance with these requirements.