

**RULES AND REGULATIONS PERTAINING TO
THE DRINKING WATER STATE REVOLVING FUND**
[R46-12.8-DWSRF]

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DEPARTMENT OF HEALTH

Office of Drinking Water Quality

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Introduction

These *Rules and Regulations Pertaining to the Drinking Water State Revolving Fund (DWSRF)* Program are promulgated pursuant to the authority set forth in Chapter 46-12.8 of the General Laws of Rhode Island, as amended. The purpose of these DWSRF regulations is for creating and implementing a perpetual revolving loan fund as a source of low-cost financial assistance to any governmental unit or privately organized water supplier for the financing of safe drinking water projects.

Pursuant to the provisions of section 42-35-3(c) of the General Laws of Rhode Island, as amended, the following were given consideration in developing these regulations: (1) alternative approaches to the regulations; and (2) duplication or overlap with other state regulations. No alternative approach, duplication or overlap, was identified based on available information. The health, safety and welfare of the citizens of this state overrides any economic impact that may result from these amended regulations. Consequently, these rules are promulgated in the best interest of the health and safety of the public.

These *Rules and Regulations Pertaining to the Drinking Water State Revolving Fund* will only affect those eligible public water systems seeking assistance from the Drinking Water State Revolving Fund Program. The purpose of the Drinking Water State Revolving Fund Program is to provide financial assistance to eligible public water systems for eligible infrastructure improvement projects. These rules and regulations will have no financial impact on any of the state's public water systems or their associated communities.

These rules and regulations shall supersede any other rules and regulations pertaining to the drinking water state revolving fund that were previously promulgated by the Department and filed with the Secretary of State.

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Section 1.0 *Definitions*

Wherever used in these rules and regulations, the following terms shall be construed as follows:

- 1.1 ***“Affordable housing plan”*** means an affordable housing plan that has been approved by the Rhode Island Director of Administration pursuant to section 45-22.2-9 of the Rhode Island General Laws, as amended, and has met the guidelines for the local comprehensive plan as adopted by the State Planning Council.
- 1.2 ***“Agency”*** shall mean the Rhode Island Clean Water Finance Agency.
- 1.3 ***“Approved project”*** shall mean any project or portion thereof of a governmental unit or privately organized water supplier that has been issued a certificate of approval by the Department for assistance through the Agency.
- 1.4 ***“Chief Executive Officer”*** means the mayor in any city, the president of the town council in any town, the executive director of any authority or commission, the president of any association, cooperative, corporation or company, or some other officer or body designated to perform the functions of a chief executive officer under the provisions of a local charter or other law.
- 1.5 ***“Community Comprehensive Plan (CCP)”*** means a plan prepared pursuant to the Rhode Island Comprehensive Planning and Land Use Regulation Act, RIGL Chapter 45-22.2.
- 1.6 ***“Community water system”*** means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.
- 1.7 ***“Cumulative impact”*** means the impact on the environment which results from the incremental impact of project(s) when added to other past, present, and reasonably foreseeable future actions or projects, regardless of which agency or person undertakes such other actions or projects.
- 1.8 ***“Department”*** means the Rhode Island Department of Health.
- 1.9 ***“Director”*** means the Director of the Department of Health or her/his designee.
- 1.10 ***“DWSRF”*** means the Drinking Water State Revolving Fund.
- 1.11 ***“Effects”*** and ***“impacts”***, as used in these regulations are synonymous. Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, and health, whether direct, indirect, or cumulative. The distinctions are:
 - 1.11.1 Direct effects are caused by project(s) and occur at the same time and place.
 - 1.11.2 Indirect effects are also caused by project(s) and may be later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth-inducing effects and other effects related to induced changes in the pattern of

land use, population density or growth rate, and related effects on air, water and other natural systems, including ecosystems.

1.11.3 Cumulative effects are caused by both the direct and indirect effects of the project, plus the effects of other projects which are planned in the planning area.

1.12 **“Environment”** shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment (see the definition of “effects”).

1.13 **“Environmental Assessment (EA)”** means a document that:

1.13.1 serves to:

1.13.1.1 Briefly provide sufficient evidence and analysis of effects of proposed project(s) as a basis for the Department to determine whether to issue a Finding of No Significant Impact (FONSI) or require an Environmental Impact Statement (EIS) to be prepared.

1.13.1.2 Document compliance with state and federal environmental review requirements when no EIS is required.

1.13.1.3 Facilitate preparation of an EIS when one is necessary.

1.13.2 shall include:

1.13.2.1 Brief discussions of the need for the proposed project(s).

1.13.2.2 Brief discussions of alternatives to recommended project(s) which involve unresolved conflicts concerning alternative uses of available resources.

1.13.2.3 Brief discussions of the environmental impacts of the proposed project(s) and alternatives, and outline means to mitigate environmental impacts.

1.13.2.4 Agencies and persons consulted during the environmental assessment, and responses to substantive comments.

1.14 **“Environmental Impact Statement (EIS)”** means a detailed written statement that identifies significant impacts associated with the preferred alternative project(s). The EIS will address:

1.14.1 The environmental impact(s) of the proposed project(s).

1.14.2 Any detrimental effects on the environment which cannot be avoided should the proposed project(s) be implemented.

1.14.3 Alternatives to the proposed project(s) and the environmental impacts of those alternatives.

- 1.14.4 The relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity.
- 1.14.5 Any irreversible and irretrievable commitments of resources which would be involved in the project(s) if implemented.
- 1.15 “***Finding of No Significant Impact (FONSI)***” means a document prepared by the Department briefly presenting the reasons for determining why project(s) will not have a significant effect on the environment. It shall include the EA and shall note any other environmental documents related to it. The FONSI need not repeat any of the discussion in the EA, but may incorporate it by reference.
- 1.16 “***Local governmental unit***” shall mean any town, city district, commission, agency, authority, board or other political subdivision or instrumentality of the state or of any political subdivision thereof responsible for the ownership or operation of a community water system or a nonprofit noncommunity water system within the state.
- 1.17 “***Mitigation***” means:
- 1.17.1 Avoiding an impact altogether by not implementing a certain project or parts of a project.
- 1.17.2 Minimizing an impact by limiting the degree or magnitude of a project and its implementation.
- 1.17.3 Rectifying an impact by repairing, rehabilitating, or restoring the effected environment.
- 1.17.4 Reducing or eliminating an impact over time by preservation and maintenance operations during the life of the project.
- 1.17.5 Compensating for an impact by replacing or providing substitute resources or environments.
- 1.18 “***National Environmental Policy Act (NEPA)***” means the National Environmental Policy Act of 1969, codified at 42 U.S.C. 4321 *et. seq.*, as amended.
- 1.19 “***Noncommunity water system***” means a public water system that is not a community water system.
- 1.20 “***Public water system***” A system for the provisions to the public for piped water for human consumption, provided such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. The term “public water system” shall include all sources, and facilities involved in collecting, treating, storing, and distributing the water.
- 1.21 “***Privately organized water supplier***” shall mean any community water system or

noncommunity nonprofit water system not owned or operated by a local governmental unit.

- 1.22 **“Record of Decision (ROD)”** means a document prepared by the Department that briefly reviews the significant effects that a project(s) will have on the environment. It shall include the EIS and shall note any other environmental documents related to it. Since the EIS is included, the ROD need not repeat any of the discussion in the EIS, but may incorporate it by reference. The ROD will specify mitigation measures necessary to allow a project to proceed.
- 1.23 **“SDWA or Safe Drinking Water Act”** means the federal Safe Drinking Water Act, P.L. 93-523, as amended.
- 1.24 **“Significantly”**, as used in the Department’s environmental review process, means considering both the context and intensity of impacts, whether beneficial or detrimental.
 - 1.24.1 Context means that the significance of the impacts of a project must be analyzed in several contexts such as: the community as a whole (social, economic); the effected region; the effected interests; and the locality. Significance varies with the setting of the proposed project(s). In the case of a site-specific action, such as siting of a drinking water treatment facility, significance would usually depend upon the effects in the locale rather than in the whole planning area. Conversely, extending distribution lines to a previously undeveloped portion of the planning area would result in effects on many elements of the environment.
 - 1.24.2 Intensity refers to the severity of the impact. The parties responsible for facility planning must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity.
 - 1.24.3 Impacts may be both beneficial and detrimental. A significant effect may exist even if it is believed on balance that the effect will be beneficial.
 - 1.24.4 The degree to which the proposed project(s) affect public health and safety.
 - 1.24.5 Unique characteristics of the geographic area impacted by the project(s) such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
 - 1.24.6 The degree to which the effects of the proposed project(s) on the quality of the environment are likely to be controversial.
 - 1.24.7 The degree to which the possible effects on the environment are uncertain or involve unique or unknown risks.
 - 1.24.8 The degree to which a project may establish a precedent for future projects with similar effects or represents a decision in principle about future consideration.
 - 1.24.9 Whether the project(s) is related to other projects with individually minor but cumulatively major impacts. Significance exists if it is reasonable to anticipate a

cumulative major impact on the environment. Significance cannot be avoided by terming a project temporary or by breaking it down into small component parts.

- 1.24.10 The degree to which the project may detrimentally affect districts, sites, highways, structures or objects listed in or eligible for listing in the National Register of Historic Places, or may cause loss or destruction of significant scientific, cultural, or historic resources.
 - 1.24.11 The degree to which the project may detrimentally affect an endangered or threatened species or its habitat that has been determined to be critical under the federal Endangered Species Act of 1973.
 - 1.24.12 Whether a project threatens a violation of federal, state or local laws or requirements imposed for the protection of the environment.
- 1.25 ***“State Guide Plan”*** shall mean goals, policies, or plan elements for the physical, economic, and social development of the state, adopted by the State Planning Council in accordance with §42-11-10 of the General Laws of Rhode Island, as amended.

Section 2.0 ***System Eligibility***

2.1 Community public water systems and nonprofit noncommunity public water systems, both privately organized water suppliers and local governmental units, are eligible to receive assistance from the DWSRF.

2.2 ***Lack of technical, managerial and financial capability***

2.2.1 Public water systems that lack the technical, managerial or financial capability to maintain compliance with the *Rules and Regulations Pertaining to Public Drinking Water* (R46-13-DWQ) are not eligible to receive funding from the DWSRF unless the owner or operator of the system agrees to undertake feasible and appropriate changes in operation or if the use of the financial assistance from the DWSRF will ensure compliance. See Section 8 of these regulations for further discussion on capacity development.

2.3 ***Significant noncompliance***

2.3.1 Public water systems that are in significant noncompliance with the *Rules and Regulations Pertaining to Drinking Water* (R46-13-DWQ), as determined by the Director, are not eligible to receive funding from the DWSRF unless the Director determines that the project will enable the system to return to compliance and the system will maintain an adequate level of technical, managerial and financial capability to maintain compliance.

Section 3.0 ***Project Eligibility***

3.1 ***Compliance with Drinking Water Regulations and Health Standards***

3.1.1 The DWSRF may provide assistance only for expenditures (not including monitoring, operation, and maintenance expenditures) of a type or category which will facilitate compliance with the *Rules and Regulations Pertaining to Public Drinking Water* (R46-13-DWQ).

3.1.2 Projects to address state and/or federal drinking water health standards that have been exceeded or to prevent future violations of these standards are eligible for assistance. This includes projects to extend the water lines of an existing public water system to an area served by contaminated private drinking water wells.

3.1.3 Projects to replace aging infrastructure are also eligible if they are needed to maintain compliance with the *Rules and Regulations Pertaining to Public Drinking Water* (R46-13-DWQ).

3.2 ***Land Acquisition***

3.2.1 Land acquisition is eligible only if it is integral to a project that is needed to meet or maintain compliance with the *Rules and Regulations Pertaining to Public Drinking Water* (R46-13-DWQ). In this instance, land that is integral to a project is only the

land needed to locate eligible treatment or distribution projects. In addition, the acquisition has to be from a willing seller. The purchase of land for source water protection is not eligible.

3.3 ***Restructuring***

3.3.1 Projects to restructure a public water system that is in noncompliance with the *Rules and Regulations Pertaining to Public Drinking Water* (R46-13-DWQ) or a public water system that lacks the technical, managerial or financial capability to maintain compliance with the *Rules and Regulations Pertaining to Public Drinking Water* (R46-13-DWQ) may be eligible for assistance from the DWSRF under the following conditions:

3.3.1.1 Funding may be provided to assist an eligible public water system to consolidate with other public water systems only if the assistance will ensure that the system returns to and maintains compliance with the *Rules and Regulations Pertaining to Public Drinking Water* (R46-13-DWQ).

3.3.1.2 If the system does not have the technical, managerial, and/or financial capability to ensure compliance, or is in significant noncompliance, the system may receive assistance only if (1) the assistance will ensure compliance or (2) the owner or operator of the system agrees to undertake appropriate changes in operations to ensure compliance. These changes include consolidation or management changes that will ensure that the system has the technical, managerial, and financial capability to ensure and maintain compliance with the SDWA and the *Rules and Regulations Pertaining to Public Drinking Water* R46-13-DWQ.

3.4 ***Planning and Design***

3.4.1 Planning, design and other related activities for eligible projects, as determined by the Director in accordance with Sections 3.1, 3.2, and 3.3 of these regulations, are eligible for funding. Planning, design, and other related activities may be handled as a separate project.

3.5 ***Refinancing of existing facilities***

3.5.1 DWSRF funds may buy or refinance debt obligations of municipal, intermunicipal or interstate agencies, for eligible projects where the initial debt was incurred and construction started after July 1, 1993. Projects which are being refinanced must meet all of the requirements of these regulations, including eligibility criteria, compliance with all applicable state and federal laws and regulations, and environmental reviews.

3.6 ***Guarantee or Purchase Insurance for Local Debt Obligations***

3.6.1 DWSRF funds may be used to guarantee or purchase insurance for local debt obligations undertaken to finance projects eligible for assistance. Projects for which DWSRF funds are being used to guarantee or purchase insurance for local debt

obligations must meet all the requirements of these regulations, including eligibility criteria, compliance with all applicable state and federal laws and regulations, and environmental reviews.

3.7 *Projects not eligible for funding:*

- 3.7.1 The DWSRF cannot provide funding assistance for the following projects and activities:
 - 3.7.1.1 Dams, or rehabilitation of dams;
 - 3.7.1.2 Water rights, except if the water rights are owned by a system that is being purchased through consolidation as part of a capacity development strategy;
 - 3.7.1.3 Reservoirs, except for finished water reservoirs and those reservoirs that are part of the treatment process and are located on the property where the treatment facility is located;
 - 3.7.1.4 Laboratory fees for monitoring;
 - 3.7.1.5 Operation and maintenance expenses;
 - 3.7.1.6 Projects needed mainly for fire protection;
 - 3.7.1.7 Projects for systems that lack adequate technical, managerial and financial capability, as determined by the Director, unless assistance will ensure compliance;
 - 3.7.1.8 Projects for systems in significant noncompliance, unless funding will enable the system to return to compliance;
 - 3.7.1.9 Projects primarily intended to serve future growth. However, assistance may be provided to address population growth expected to occur over the useful life of the project to be funded.

Section 4.0 *Project Priority List*

- 4.1 A project cannot receive funding from the DWSRF Program unless it is on the approved Project Priority List. The chief executive officer of the eligible public water system must submit to the Department an application requesting that the proposed project be placed on the Project Priority List. The application must include:
 - 4.1.1 A description of the project.
 - 4.1.2 A description of the purpose of the project. The explanation of the purpose of the project should be of sufficient detail for the Director to determine the project's eligibility under Section 3 of these regulations and to rank the project pursuant to Section 5 of these regulations.
 - 4.1.3 Average annual residential water bill. The average annual residential water bill is to be based on 70,000 gallons of water per year. Supporting documentation must be provided with the application.
 - 4.1.4 The Median Household Income of the community in which the water service area is

located. The Median Household Income is to be determined from income data in the most recent United States census. If there is reason to believe that the census data is not an accurate representation of the MHI within the area being served, the reason will be documented and the applicant will furnish additional information regarding the MHI. Information will consist of reliable data from local, regional, state or from an income survey conducted by a reliable impartial source. Median Household Incomes for service areas which cross municipal boundaries is the weighted average based on the number of service connections in each community. Supporting documentation must be provided with the application.

4.1.5 The total cost of the project.

4.1.6 Anticipated start and finish dates.

4.2 The information provided pursuant to Section 4.1 of these regulations will be reviewed for accuracy and eligibility and then given a priority ranking score based on the ranking system in Section 5 of these regulations. The eligible projects and their respective information will then be listed in order of priority, highest to lowest, in a Project Priority List. The Project List will show the following information: name of system, project description, population served, priority point score, and dollars to be funded. Utilizing the provisions in these regulations and the amount of available funds, projects that are designated to receive funding for the designated year will be identified in the Project Priority List. The Project Priority List will then be placed in the Intended Use Plan which will go out for public review and comment.

Section 5.0 ***Project Ranking***

- 5.1 The Director shall rank each project according to the project ranking criteria in Appendix 2 of these regulations. The Director shall assign points to each project ranking criterion based upon the most current information available to him/her, including information received prior to and during the public review process. The Director shall annually evaluate the ranking of each project and make changes as deemed necessary.

5.2 ***Tie Breaking Procedure***

- 5.2.1 When two or more projects score equally under the Project Ranking System, the project with the greatest score in Section A (Health Risk and Compliance) of the priority ranking system will receive the higher ranking. If this still results in a tie score, the system with the higher score in Section B (Economic Factors) will be given a higher ranking.

5.3 ***Non-construction projects***

- 5.3.1 Projects to refinance existing debt, guarantee or purchase insurance for local debt obligations, or for other non-construction activities such as planning and designing will be ranked in the same manner as construction projects. The ranking will be based on the original purpose of the project for which funding is being requested.

Section 6.0 ***Project Priority List Revisions***

- 6.1 As necessary, but not less than annually, the Director shall review the Project Priority List for changes in estimated schedules, project costs and/or scope. The Director may propose modifications of the Project Priority List at any time according to these procedures:
- 6.1.1 ***Addition to the list:*** projects can only be added to the list after the solicitation of public comments.
- 6.1.2 ***By-pass provisions:*** a project on the Project Priority List may be by-passed, without soliciting public comments, if it is apparent that the project will not be ready to proceed (i.e. system will not be able to sign a loan agreement) by the end of the federal fiscal year in which funding is designated. The highest ranked unfunded project or projects on the priority list which is(are) ready to proceed will be selected for funding utilizing the moneys freed-up by the by-passed project. By-passed projects will not lose their priority ranking and will be eligible for future DWSRF moneys when the water system is ready to proceed with the project.
- 6.1.3 ***By-pass provisions for small water systems:*** to the extent that projects exist, a minimum of 15% of the moneys available for funding projects each year must go to public water systems that serve a population of less than 10,000 people (small systems). The lowest priority project or projects for water systems that serve 10,000 or more people may be by-passed, without soliciting public comments, in order to achieve this 15% assistance to small systems. As necessary, the highest priority small system projects will be selected to satisfy the minimum 15% level.

- 6.1.4 ***Emergency projects:*** without soliciting public comments, projects necessary to address an imminent risk to public health, as determined by the Director, will be moved to the top of the priority list, even if the project was not previously on the priority list. A water system would be considered as having an imminent risk if there is either a known waterborne disease outbreak or a threat of disease outbreak by the presence of an acute contaminant in the system; or the total loss of water supply or loss of a major component due to a natural or unforeseen disaster which could not have been prevented by the applicant.

Section 7.0 ***Eligible Costs***

- 7.1 Eligible costs, as applied to any eligible project, means any or all costs, including, but not limited to, amounts for the following: planning, design, acquisition, construction, improvement and rehabilitation of facilities; demolitions and relocations; labor, materials, machinery and equipment; services of architects, engineers, and environmental and financial experts and other consultants; feasibility studies, plans, specifications, surveys; and environmental reviews; interest prior to and during the carrying out of any project and for a reasonable period thereafter; reserves for debt service or other capital expenses; cost of issuance of local governmental obligations or obligations of privately organized water suppliers issued to finance the obligations including, without limitation, fees, charges, and expenses and costs relating to the loan evidence.

Section 8.0 ***Capacity Development***

- 8.1 In order to be eligible for financial assistance under the DWSRF Program, eligible public water systems must demonstrate that they have the technical, financial and managerial capability to maintain compliance with the *Rules and Regulations Pertaining to Public Drinking Water* (R46-13-DWQ) unless the owner or operator of the system agrees to undertake feasible and appropriate changes in operation or if the use of the financial assistance from the DWSRF will ensure compliance.

8.2 ***Technical and Managerial Capacity***

- 8.2.1 The Department's determination of technical and managerial capacity will be based on the water system's ability to maintain substantial compliance with all of the requirements specified in Appendix 3. Assurance of technical and managerial capacity will be based on:

8.2.1.1 Compliance with the *Rules and Regulations Pertaining to Public Drinking Water* (R46-13-DWQ).

8.2.1.2 Compliance with the *Rules and Regulations Pertaining to the Certification of Public Drinking Water Supply Treatment and Public Water Supply Transmission and Distribution Operators* (R23-65-DWQ).

8.2.1.3 Compliance with the *Rules and Regulations Pertaining to Clean Water Infrastructure* (R46-15.6-DWQ).

8.2.1.4 Compliance with the Public Drinking Water Protection Act (R.I.G.L. 46-15.3, et seq).

8.2.1.5 Compliance with the Water Supply Management Act (R.I.G.L. 46-15.4).

8.2.1.6 Correction of all critical deficiencies on the applicant's last sanitary survey.

8.2.1.7 For water systems serving less than 50 million gallons per year, an analysis of necessary and/or planned operational and capital improvements over the next five (5) years.

8.3 ***Financial Capacity***

8.3.1 In order to be eligible for financial assistance from the DWSRF program, eligible public water systems must demonstrate that they have the financial ability to maintain compliance with the *Rules and Regulations Pertaining to Public Drinking Water* (R46-13-DWQ).

Section 9.0 ***Certificate of Approval***

9.1 A Certificate of Approval for a project shall be issued by the Director to a local governmental unit or privately organized water supplier prior to receiving financial assistance from the Agency. The Certificate of Approval shall specify the project or portion thereof eligible for financial assistance, the cost of the project or portion thereof, and other terms, conditions, and limitations with respect to the construction and operation of the project as the Director shall determine.

9.2 All applications for a Certificate of Approval must be submitted to the Department, Office of Drinking Water Quality. All applications for a Certificate of Approval must include:

9.2.1 A summary sheet listing a breakdown of project costs and portions for which financial assistance is being sought.

9.2.1.1 Sufficient evidence to show that the water system has the technical and managerial capabilities to maintain compliance with the *Rules and Regulations Pertaining to Public Drinking Water* R46-13-DWQ (See Appendix 3).

9.2.2 A Categorical Exclusion (CE), Finding of No Significant Impact (FONSI), or a Record of Decision (ROD) indicating that the project has undergone an environmental review in accordance with Section 10 of these regulations.

9.2.3 Certification that the project is consistent with the State Guide Plan. Projects that qualify for categorical exclusions are exempt.

9.2.4 Certification of intent to comply with all applicable provisions of federal and/or state laws (appendix 4).

9.3 Applications for a Certificate of Approval for new water sources and/or the construction or alteration of a public drinking water supply facility, including but not limited to, pumping,

treatment, storage and distribution, which have an impact on drinking water quality, as determined by the Director, shall be required to include all applicable Architectural and Engineering reports and plans for review and approval.

- 9.4 Drinking water projects shall be designed, installed and constructed in accordance with applicable American Water Works Association (AWWA) standards with reference to materials to be used and construction procedures to be followed. In the absence of AWWA standards, Departmental review may be based upon the Recommended Standards for Water Works by Great Lakes Upper Mississippi River Board of State Public Health & Environmental Managers (i.e., the 10 State Standards), National Sanitation Foundation (NSF) Standards 60 and 61, commercial, and other recognized standards utilized by design engineers.
- 9.5 The issuance of a Certificate of Approval shall not be in lieu of, and every approved project shall remain subject to, each and all environmental, technical and regulatory approval requirements as provided in applicable state and federal laws and regulations, including those requirements which are administered by Department.

Section 10.0 *Environmental Review Process*

10.1 *General Process and Background*

10.1.1 This State Environmental Review Process (SERP) addresses compliance with the National Environmental Policy Act (NEPA), a requirement of the Safe Drinking Water Act (SDWA) for all projects funded with the federal portion of the Rhode Island Drinking Water State Revolving Fund (DWSRF) Program. Further, environmental review for natural resources inventories and consistency with the State Guide Plan (SGP) is required for all projects funded by the state portion of the DWSRF Program, except for those that qualify for a categorical exclusion. The Rhode Island Comprehensive Planning and Land Use Regulation Act [RIGL Chapter 45-22.2] requires not only the coordination and consistency between state and local planning programs in the development of the Community Comprehensive Plan (CCP), but also consideration of environmental conditions during planning similar in many respects to NEPA.

10.2 *Public Water System Responsibility*

- 10.2.1 The public water system shall prepare and submit an environmental review as part of the application for a Certificate of Approval.
- 10.2.2 Except where exempted in section 10.3, the public water system shall prepare an Environmental Assessment (EA) for all projects utilizing DWSRF funds. Comments by all agencies with statutory and/or regulatory authority within the planning area (e.g. Statewide Planning, Coastal Resources Management Council, DEM Wetlands, DEM Groundwater, RI Historical Preservation Commission, U.S. Fish & Wildlife, etc.) shall be requested by the public water system as part of the EA process. If the EA does not identify significant impacts from the proposed project(s), the Department will issue a Finding of no Significant Impacts (FONSI). If, as a result of the EA, significant impacts are identified, the public water system must prepare an Environmental Impact

Statement (EIS).

10.2.3 The public water system must hold at least one public meeting/workshop during the preparation of the EA, preferably once the alternatives have been developed and the environmental impacts analyzed. This meeting will explain the plan of study and solicit public opinions and concerns. If the impacts identified with the preferred alternative in the EA are significant, the public water system must issue a public notice stating that an EIS is being initiated and that a scoping meeting will be held. When the preferred alternative is identified, the public water system must hold a public hearing on the draft EA/EIS. The final EA/EIS submitted to the Department for review and approval must include responses to all substantive public comments.

10.2.4 The Department will independently review and evaluate the environmental information provided and issue a CE, FONSI or ROD. Mitigation measures and comments by other agencies shall be incorporated in the EA/EIS and will be reflected in any final determination rendered by the Department.

10.3 ***Categorical Exclusion***

10.3.1 Categories of projects which do not individually or cumulatively have significant effects on the quality of the environment may be exempted from the substantive environmental review requirements of this section. Projects that solely involve the acquisition, construction, reconstruction, renovation, or installation of facilities or structures, for replacement or restoration purposes, with minimal change in use, size, capacity, purpose or location from the original facility, may be eligible for a categorical exclusion. Environmental assessments and/or Environmental Impact Statements will not be required for excluded actions. It must be emphasized that even though a project is excluded from further environmental reviews under this section, it is not excluded from other applicable local, state, and federal environmental laws.

10.3.2 ***General Categories Of Actions Eligible For Exclusions***

Projects consistent with any of the following categories may be eligible for a categorical exclusion:

10.3.2.1 Repairing or replacing existing water mains.

10.3.2.2 Replacing an existing water storage tank with a new tank of similar size and stature at the same location.

10.3.2.3 The installation, replacement or repair of equipment (i.e., treatment, pumps, controls, etc.) within existing buildings.

10.3.2.4 Minor rehabilitation of existing facilities.

10.3.2.5 Other projects which, as determined by the Director, do not individually, cumulatively over time, or in conjunction with other state, federal, local, or private actions have a significant effect on the quality of the environment.

10.3.3 ***General Categories of Actions Not Eligible for Exclusions***

The full environmental review procedures of this section shall be followed if the undertaking of a project consistent with allowable categories in section 10.3.2 of these regulations involves a serious local or environmental issue, or meets any of the following criteria:

10.3.3.1 The project is known or expected to have a significant effect on the environment, either individually, cumulatively over time, or in conjunction with other state, federal, local or private actions;

10.3.3.2 The project is known or expected to directly affect:

10.3.3.2.1 Cultural resource areas such as archaeological and historic sites;

10.3.3.2.2 Endangered or threatened species and their critical habitats;

10.3.3.2.3 Environmentally important natural resource areas such as floodplains, wetlands, important farmlands, and aquifer recharge zones;

10.3.4 Public water systems wishing to obtain a categorical exclusion for a project should submit a written request to the Director. The written request should include a brief description of the proposed project and a brief statement of how the project meets the criteria for a categorical exclusion. The Director shall review the request and determine whether to issue or deny a categorical exclusion for the proposed project. The Director shall notify the public water system of the decision to issue or deny a categorical exclusion as soon as practicable.

10.3.5 The Director shall revoke a categorical exclusion and shall require a full environmental review if, subsequent to the granting of an exclusion, the Director determines that the proposed project no longer meets the requirements for a categorical exclusion due to changes in the proposed project or determines from new evidence that serious local or environmental issues exist or that federal, state, or local laws are being or may be violated.

10.4 ***Consistency Requirements***

10.4.1 To ensure compliance with state law, the Department will not issue a Certificate of Approval for a DWSRF project unless it is consistent with the local Community Comprehensive Plan (CCP). Projects that qualify for a categorical exclusion will be exempt from the State Guide Plan consistency requirement. Applications for a Certificate of Approval must contain a certification by the Department of Administration's Division of Planning that the project is consistent with the SGP or excerpts from a CCP approved by the State Planning Council.

10.5 ***Department's Public Review Process***

- 10.5.1 Following the Department's decision to issue a CE, FONSI, ROD, or reaffirmation of a previous decision, the Department will invite public comments for thirty (30) days by publishing a notice of the determination made in a paper of statewide circulation and sending notification of such determination to all persons and associations who have advised the Department that they wish to be notified. During the public comment period, any interested party may submit written comments and may request a public hearing. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. Following public notice or public hearing, the final determination will be made by the Director.

Section 11.0 ***Loan Program***

- 11.1 All loan requirements are contained in the Agency's "Loan Policies And Procedures II."

Section 12.0 ***Project Administration and Audit***

- 12.1 The Department shall have the authority to inspect the construction and operation of approved projects for compliance with these regulations.

Section 13.0 ***Rules Governing Practices and Procedures***

- 13.1 All hearings and reviews required under the provisions of Chapters 23-17.6 and 23-4.1 of the General Laws of Rhode Island, as amended, shall be held in accordance with the provisions of the *Rules and Regulations of the Rhode Island Department of Health Regarding Practices and Procedures Before the Department of Health and Access to Public Records of the Department of Health* (R42-35-PP).

Section 14.0 ***Severability***

- 14.1 If any provisions of these rules and regulations or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of the rules and regulations shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections shall not affect the validity of the remainder of these rules and regulations.

Thursday, April 13, 2006
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Appendix 1

DRINKING WATER STATE REVOLVING FUND (DWSRF) PROGRAM

Rhode Island Department of Health

Office of Drinking Water Quality

DWSRF Application for Certificate of Approval

Water System Name: _____

Contact Person: _____ Telephone: _____

A/E Contact: _____ Telephone: _____

Project Title: _____

Application Checklist (To be completed by applicant)

_____ Detailed Project Description

_____ Summary sheet listing a breakdown of project costs and portions for which assistance is being sought.

_____ Capacity Development Worksheet

_____ CE, FONSI, or ROD from the environmental review process.

_____ Certification from the Office of State Planning that the project is consistent with the State Guide Plan. Projects that qualify for categorical exclusions are exempted.

_____ Certification of intent to comply with all applicable provisions of federal and/or state laws.

_____ Certified copy of the resolution of the governing body of the public water system directing the CEO to submit an application for DWSRF assistance.

_____ All applicable Architectural/Engineering reports and plans.

FOR DOH USE ONLY

Application Number: _____ Date Received: _____

Engineering Reviewer Initials: _____ Date: _____

Comments: _____

Based on staff review of the contents of the application package for assistance from the DWSRF, it is my opinion that all requirements for issuing a Certificate of Approval have been met.

Signed: _____, Title: _____

Date: _____

Appendix 2

State Of Rhode Island Drinking Water State Revolving Fund

Project Priority Ranking

Total Project Priority Ranking Score = A + B + C + D + E + F

A. Health Risk and Compliance (*select no more than one from Section A*) **Points**

- 1) Project is to address a Treatment Technique Violation or the exceedence of an MCL, SMCL or a Health Advisory during the 18 months preceding the development of the Project Priority List.
 - a) Microbiological
 - i. Surface Water Treatment Rule
 - (a) Filter Performance Criteria (NTU Compliance) 50
 - (b) CT Disinfection 40
 - ii. Total Coliform Rule
 - (a) Acute MCL Violation (Fecal/E-coli violation) 60
 - (b) Non-Acute MCL Violation (Total Monthly Coliform Violation) 45
 - b) Inorganic Chemicals
 - i. Nitrates 53
 - ii. Lead and Copper 37
 - iii. Other Primary Standards 35
 - c) Organic Chemicals 35
 - d) Radiologicals 33
 - e) Secondary Standards (Aesthetics) 4
- 2) Projects for compliance with future SDWA regulations:
 - a) Enhanced Surface Water Treatment 8
 - b) Ground Water Disinfection 7
 - c) Disinfection By-Products 6
 - d) Arsenic 5
 - e) Radon 5
- 3) Project is to extend the water lines of an existing system to an area where there is a public health threat due to contaminated private drinking water wells. 35
- 4) Projects to upgrade, replace or repair infrastructure which is at risk of causing contamination due to age or design deficiencies.
 - a) Source (excluding reservoirs, dams, dam rehabilitation and water rights) 21
 - b) Treatment 19
 - c) Source-intake structure 16
 - d) Pump Station 14
 - e) Storage 12

- | | |
|------------------------------------|----|
| f) Transmission/Distribution mains | 10 |
| g) Instrumentation/Controls | 8 |

B. Economic Factors

- | | |
|--------------------------------------------------------------------------------------|----|
| 1) * Percentage of average annual residential water bill to median household income. | |
| a) Greater than 1.5 % | 13 |
| b) 1.25 % to 1.49 % | 10 |
| c) 1.00 % to 1.24 % | 7 |
| d) 0.75 % to 0.99 % | 4 |
| e) 0.50 % to 0.74 % | 2 |
| f) 0.25 % to 0.49 % | 1 |

C. Capacity Development

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|
| 1) Project involves the consolidation of two public water systems, one of which lacks either the proper technical, managerial, or financial capacity to maintain compliance with the Safe Drinking Water Act. The result of the consolidation must ensure compliance with the SDWA. | 5 |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|

D. Special Incentives

- | | |
|-----------------------------------------------------|---|
| 1) No monitoring violations over the last 24 months | 1 |
|-----------------------------------------------------|---|

E. System Type

- | | |
|--------------------------------|---|
| 1) Community | 5 |
| 2) Non-transient non-community | 3 |
| 3) Transient non-community | 1 |

F. Affordable Housing Plan

- | | |
|-------------------------------------------------------------------------------------------------------------------|---|
| 1) The community (city or town) where the water system is located has a state-approved "Affordable Housing Plan." | 5 |
|-------------------------------------------------------------------------------------------------------------------|---|

* The average annual residential water bill is to be based on 70,000 gallons of water per year. The MHI of the community in which the water service area is located will be determined from income data in the most recent United States census. If there is reason to believe that the census data is not an accurate representation of the MHI within the area to be served, the reasons will be documented and the applicant will furnish additional information regarding the MHI. Information will consist of reliable data from local, regional, state or from an income survey conducted by a reliable impartial source.

MHIs for service areas which cross municipal boundaries is the weighted average based on the number of services in each community.

Appendix 3 Capacity Development Worksheet

TECHNICAL AND MANAGERIAL CAPACITY ANALYSIS

1. Water Systems Utilizing Greater than 50 Million Gallons per Year.

	YES	NO
a) Will have an approved Water Supply Management Plan within a year? <i>If no, attach a brief explanation.</i>		
b) Will have an approved Clean Water Infrastructure Plan within a year? If no, attach a brief explanation		
c) Water system is in compliance with all the requirements for operator certification? If no, attach a brief explanation.		
d) All the critical deficiencies identified in your last Sanitary Survey have been corrected? If no, attach a brief explanation.		
e) Water system is in compliance with the <i>Rules and Regulations Pertaining to Public Drinking Water</i> R46-13-DWQ? If no, attach a brief explanation		

2. Water Systems Utilizing Less Than 50 Million Gallons per Year.

	YES	NO
a) Supply and storage capacities are sufficient to meet current peak demands? (Sufficient documentation must be provided).		
b) Supply and storage capacities will be sufficient to meet your projected 5 year demands? (Sufficient documentation must be provided)		
c) A discussion of all necessary and/or planned operational and capital improvements over the next five years has been included with this application? If no, attach a brief explanation		
d) Water system has an operation and maintenance plan? If no, attach a brief explanation		
e) Water system is in compliance with all the requirements for operator certification? If no, attach a brief explanation		
f) If 2(e) is not applicable, water system has an employee/volunteer who has sufficient knowledge and experience to operate and maintain this system in compliance with the SDWA? (If yes, please submit a short summary on the background and related experience of this individual)		
g) Water system is in compliance with the <i>Rules and Regulations Pertaining to Public Drinking Water</i> R46-13-DWQ? If no, attach a brief explanation		

Appendix 4

Drinking Water State Revolving Loan Fund (DWSRF)

Rhode Island Department of Health

Certificate of Approval Process

Requirements for Applicants for All DWSRF Loans

As the Chief Executive Officer of the _____, I hereby certify that this public water system will comply with all applicable statutory and/or regulatory requirements of the Rhode Island General Laws of 1956, as amended, and all applicable federal laws as a condition of the award of a loan from the Rhode Island Drinking Water State Revolving Fund (DWSRF) Program.

This certification is executed on the _____ day of _____, 200 ____

_____, CEO, _____ of _____
(Signature)

Signed and sworn to before me on this _____ day of _____, 200 ____.

Notary Public