



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

January 11, 2000

OFFICE OF
WATER

CWSRF 00-4
REVISED

MEMORANDUM

Subject: Policy on Using the CWSRF to Solve Nonpoint Source Problems with Point Source Solutions

From: Bill Kramer, Acting Chief, (4202)
State Revolving Fund Branch *HWK*
Office of Wastewater Management

To: Municipal Program Managers,
Regions I-X

Purpose

This memorandum establishes EPA policy on nonpoint source (NPS) project eligibilities under the Clean Water State Revolving Fund Program (CWSRF), particularly privately owned projects. The attached flow chart provides a decision diagram of the policy. This policy pertains to NPS correction activities included in states' NPS Management Plans and Estuary Comprehensive Conservation and Management Plans (CCMPs), including those using point source technology to solve NPS problems. The policy is based on the concept that the type of problem being solved rather than the type of technology (project) being used to solve the problem determines the eligibility for funding as a NPS/Estuary project. This policy is consistent with eligibilities provided in EPA guidance, "Nonpoint Source Program and Grants Guidance for Fiscal Year 1997 and Future Years."

Background

The CWSRF program was established to replace traditional grant funding of publicly owned treatment works, as well as to expand funding to the correction of additional water quality problems included in NPS management plans [§319 of the Clean Water Act (CWA)] and estuary

CCMPs (§320 of the CWA). As part of the President's Clean Water Action Plan (CWAP), EPA has established national goals to expand the number of states using integrated planning and priority setting systems to make CWSRF funding decisions, as well as to increase the actual number of states funding NPS/Estuary activities with CWSRF funds. As stated in the CWAP, by 2002, it is our goal that at least 25 states will be using integrated priority systems and at least 30 states will be funding NPS activities through their CWSRFs. In order to achieve those goals, EPA has sought to provide states as much flexibility as possible in funding specific NPS projects.

Several states have questioned whether NPS projects will qualify for CWSRF funding if there are traditional point source aspects to the projects. Questions have arisen in three general areas: septic systems, storm water runoff, and best management practices in agriculture. These inquiries from states prompted the following analysis and policy.

The EPA policy and guidance document, "The Clean Water SRF Funding Framework" (Funding Framework), establishes voluntary guidelines for funding traditional CWSRF projects (where the primary purpose is water quality) and sets national policy for states that wish to make use of their CWSRF to fund innovative non-traditional projects. The focus of the Funding Framework is the use of planning and priority setting to establish relative funding priorities among point and NPS/estuary projects and to clarify their water quality benefits. This policy extends the flexibility offered in the Funding Framework by offering states the ability to fund solutions to NPS problems which may contain point source solutions.

Legal Authority & Analysis

The general authority for the CWSRF program is stated in §601(a):

"...a water pollution control revolving fund for providing assistance (1) for construction of treatment works (as defined in section 212 of this Act) which are publicly owned, (2) for implementing a management program under section 319 of this Act, and (3) for developing and implementing a conservation and management plan under section 320 of this Act."

This authority is restated in §603(c), where the uses of the fund are limited to:

"providing financial assistance (1) to any municipality, intermunicipal, interstate, or State agency for construction of publicly owned treatment works (as defined in section 212 of this Act), (2) for the implementation of a management program established under section 319 of this Act, and (3) for development and implementation of a conservation and management plan under section 320 of this Act."

For ease of reference, these three options will be referred to as (1) §212 or treatment works, (2) §319 or NPS projects, and (3) §320 or estuary projects.

The Clean Water Act indicates that a project could be funded through the CWSRF under any or all of the three options that are cited above. In other words, the fact that a project is a “treatment works” does not mean the project could not also be funded under one of the other two categories. The three programs are listed conjunctively, “1, 2 and 3.” This inclusive wording indicates that as long as a project is fundable under any of them, it is fundable. In the case of septic systems, if the project is a bona fide §319 project and the proposed management practices/control technologies are included in a state’s approved §319 management plan, it could be fundable as a §319(b) project by the CWSRF, if the state so chooses. It would not matter that the project might also be a “treatment works” but not fundable as such because it is privately owned.

Policy

Projects developed to address NPS problems included in a state’s approved §319 management plan or §320 CCMP are fundable as CWSRF NPS projects, regardless of the type of controls used to address the NPS pollution. This includes privately owned projects that have point source characteristics which are not otherwise explicitly prohibited by law, regulation or policy.

Requirements and Restrictions

An activity which is statutorily designated as a point source, [e.g., a publicly owned treatment works (POTW), concentrated animal feeding operations (CAFOs), active mining operations] may not receive CWSRF funding as a NPS project. For all other NPS activities, CWSRF funding is available, even if the solution to the problem contains components requiring a discharge permit. The public ownership requirement for replacement of failing septic systems with centralized collection and treatment systems and for new construction of centralized collection and treatment systems remains under this policy. Public ownership is not required for the smaller cluster treatment technologies employed in onsite, decentralized systems where the state determines that the decentralized solution is protective of human health and the environment, and where operation and maintenance is assured.

This policy balances the flexibility Congress gave the states to address NPS problems, with the statutory requirement for public ownership of centralized municipal treatment works and collection systems. The construction grants program and the CWSRF program have historically provided funding for POTWs under §603(c)(1) with limits on capacity for growth when replacing failed septic systems with centralized collection systems. This restriction does not preclude funding as a NPS project a collector to link a small number of facilities with failed septic systems into an existing POTW, even if privately owned. Examples of 603(c)(1) fundable projects include remediation of CSO and storm water problems. Any point source technology components must comply with state environmental review requirements even if funded under §603(c)(2) or (3).

Under existing CWSRF policy, replacement of failed septic systems requires an

environmental review, even if funded as a NPS project (Q&A III.B.11.6). Under this policy, environmental review requirements continue for discharging septic systems, lagoons and retention ponds, mound systems, and any other point source technology, even if correcting a NPS problem and being funded under §603(c)(2) or (3) authority. In practice, in cases of a homeowner replacing an individual septic system, the state may choose through its own environmental review procedures to provide an exclusion. Additionally, Q&A II.A.27 allows states to “deem the public ownership requirement to be met for small/onsite systems where adequate inspections and operations are assured through the establishment of a management district or use of service easements or agreements.” Both of these Q&As remain in effect under the new policy. This policy extends the provision in II.A.27 to include private facilities, such as a decentralized, small/onsite system and limited collectors, as described above.

Implementation

Implementation of this policy will begin with the issuance of this policy memorandum. Regions will be expected to work with their state partners, and after appropriate public input, make any necessary changes to existing approved CWSRF NPS programs, operating agreements, intended use plans, priority ranking systems, and project funding lists.

Examples of Projects

Ineligible NPS projects include those to address storm water under Phase I and II regulations. The Phase I storm water regulations (§402 of the CWA) cover municipalities of 100,000 population or greater as point sources, which require a NPDES permit for storm water discharges. The Phase II storm water regulations cover communities under 100,000 population that are located in urbanized areas. In both Phases I and II, there are other covered activities statewide, such as construction erosion and sediment control, which could not be funded as a NPS activity. Until storm water permits are issued for communities covered by Phase II, storm water correction may continue to be funded as NPS projects under 603(c)(2) or (3) authority. All non-urbanized communities are eligible to use the CWSRF to fund storm water projects for NPS control unless they are designated for permit coverage and a permit is issued by the permitting authority. Eligible activities could include controls such as riparian buffers, alone or in combination with a retention pond, and land acquisition to protect floodplains and riparian areas. Eligibilities for funding storm water control as NPS projects are consistent with eligibilities as stated in the EPA NPS guidance (1997).

A CAFO (or any private party recipient of CAFO wastes) may not receive NPS funding from the CWSRF for the purpose of transporting, treating, using, etc., of wastes which originate from it. Agricultural NPS runoff controls (with the exception of projects located in CAFOs), such as berms and grass strips alone or in combination with a lagoon could be used to prevent nutrient discharge into a water body, and be funded under §603(c)(2) or (3) as §319 or §320 projects. The fact that the NPS runoff control lagoon might require a permit to discharge would not preclude the project from being funded.

Failing onsite septic systems which are causing NPS problems could be funded with CWSRF loans to individuals. Alternatively, a public or private decentralized system which ties a small group of existing homes directly into a cluster treatment technology, such as a mound system, could be employed to correct an existing NPS problem. Projects to install new septic systems or decentralized treatment systems in areas without existing development are not eligible for CWSRF loans as NPS/estuary projects. An alternative example of how to address the problem of leakage from malfunctioning septic systems employs a less conventional solution. In this case, a pretreatment works built by a private individual to treat septage wastes hauled to the plant by trucks from a community of homes is using point source technology to address a NPS problem. The portion of the pretreatment works in this project used to treat wastes from existing homes would be eligible for a CWSRF loan as a NPS project, despite its private ownership and discharge permit requirement.

As a final example, the remediation of acid drainage from abandoned mines may be funded under §603(c)(2) authority if the cleanup of acid drainage is included in the NPS management plan and the mining operation either was never issued a permit or is abandoned. Cleanup of acid mine drainage may be undertaken at the mine or further downstream. Potential projects include the removal of tailings from stream beds and flood plains, and the restoration of aquatic life or correction of secondary impacts caused by mining activities by means such as discharge diversion, runoff dispersion, sediment control and collection, vegetation and soil stabilization, and the capping of contaminated sources.

States may consult with EPA Regional Offices and Headquarters regarding other types of NPS projects not explicitly addressed in the above examples. As other projects are funded, we encourage before and after monitoring of environmental conditions to enable assessment of environmental benefits and development of case studies for posting on our web site to facilitate replication and further experimentation by other states.

Attachment

cc: CWSRF Coordinators, Regions I-X
CWSRF Staff (HQ)
Veronica Blette, DWSRF
Dov Weitman, OWOW/NPS
Darrell Brown, OWOW/NEP
Pat Hirsch, OGC
Richard Kuhlman, MSD
Charles Sutfin, PD

