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CHAPTER Env-Wq 500 STATE WATER POLLUTION CONTROL REVOLVING LOAN FUND

Statutory Authority: RSA 486:14, I

REVISION NOTE:

Document #8883, effective 5-8-07, readopted with amendments and redesignated former Parts Env-C 501-509, State Water Pollution Control Revolving Loan Fund, as Env-Wq 500 pursuant to a rules reorganization plan for Department rules approved by the Director of the Office of Legislative Services on 9-7-05.

The prior filings for former Env-C 501-509 include the following documents:

- #4609, eff 5-15-89
- #5642, eff 6-23-93
- #6302, INTERIM, eff 8-14-96, EXPIRED 12-12-96
- #6461, eff 2-21-97
- #6998, eff 5-20-99
- #7390, eff 10-28-00

PART Env-Wq 501 PURPOSE AND APPLICABILITY

Env-Wq 501.01 Purpose. The purpose of this chapter is to establish:

- (a) The procedures and criteria applicable to governmental entities that apply for financial assistance from the state water pollution control revolving loan fund (SRF) established pursuant to RSA 486:14; and
- (b) The requirements for completing projects financed under the SRF and repaying such assistance.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 501.02 Applicability. The rules in this chapter shall apply to any governmental entity that borrows or wishes to borrow funds from the SRF.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

PART Env-Wq 502 DEFINITIONS

Env-Wq 502.01 “Administration costs” means expenses associated with managing the revolving loan program. Such costs include engineering and environmental review of proposed projects, state overview inspection, accounting, and disbursement function.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 502.02 “Applicant” means the governmental entity that applies for a loan from the SRF.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wq 502.03 “Capitalization grants” means funds made available to the state by the federal government in accordance with Title VI of the federal Water Quality Act (WQA), 33 U.S.C. §§1381-1387.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 502.04 “Collector sewer” means lateral sewers primarily installed to collect wastewater directly from individual building sewers or private property.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 502.05 “Combined sewer” means a sewer which conveys or serves as a sanitary sewer and a storm sewer.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 502.06 “Commissioner” means the commissioner of the department of environmental services.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 502.07 “Department” means the department of environmental services.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 502.08 “Disbursements” means a transfer of funds from the SRF to a loan recipient.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 502.09 “Eligible projects” means those eligible for participation in the SRF as specified in Env-Wq 505.01.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 502.10 “Environmental review” means an analysis of the potential impact of a proposed project on the human and natural environment.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 502.11 “Excusable delay” means a delay that is beyond the loan recipient’s control in beginning or completing the planning, design, or construction of a project such as, but not limited to, a delay caused by an act of nature or war.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wq 502.12 “Final project cost” means the amount of the actual project expenditures plus any outstanding interest on the loan accrued during project design, planning, or construction.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 502.13 “Fiscal year” means the period beginning July 1 and ending the following June 30.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 502.14 “Governmental entity” means a city, town, district association, county, or other public body created under state law, having jurisdiction over disposal of sewage, industrial waste or other wastes.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 502.15 “Interceptor sewer” means a sewer designed to collect wastewater from collector sewers and transport it to a wastewater treatment plant.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 502.16 “Infiltration/Inflow (I/I)” means water other than wastewater that enters a sewer system.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 502.17 “Intended use plan (IUP)” means a document prepared each year by the department in accordance with 40 CFR §35.3150.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 502.18 “Loan recipient” means the governmental entity that receives a loan from the SRF.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 502.19 “Loan repayment” means the principal and interest payments on loans by loan recipients which must be credited directly to the SRF.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 502.20 “Market rate” means for each period beginning October 1 and ending the following September 30, the 11 G.O. (Government Obligation) Bond Index published the first week of October as provided by the state treasurer.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wq 502.21 “Nonpoint source pollution” means pollution caused by sources that are not regulated as point sources, such as pollution caused by agricultural, silvicultural, and urban runoff.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 502.22 “Original loan agreement” means the initial contract between the state and the loan recipient through which the department agrees to provide funds from the SRF to the loan recipient and the loan recipient promises to repay the funds to the SRF.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 502.23 “Planning” means all necessary engineering reports and studies to determine the feasibility of a pollution abatement project.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 502.24 “Pollution abatement project” means the design, planning, or construction of facilities necessary to prevent water pollution caused by point or non-point sources.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 502.25 “Priority list” means a list of projects expected to receive assistance under the SRF program.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 502.26 “Priority system” means the criteria for ranking projects on the priority list.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 502.27 “Project completion” means the date of substantial completion of the project or the initial scheduled completion date in the loan agreement unless modified per agreement of all parties.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 502.28 “Septage” means “septage” as defined in RSA 485-A:2, IX-a, namely “material removed from septic tanks, cesspools, holding tanks, or other sewage treatment storage units, excluding sewage sludge from public treatment works and industrial waste and any other sludge.”

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wq 502.29 “Sludge” means “sludge” as defined in RSA 485-A:2, XI-a, namely “the solid or semisolid material produced by water and wastewater treatment processes, excluding domestic septage; provided, however, sludge which is disposed of at solid waste facilities permitted by the department is considered solid waste and regulated under RSA 149-M.”

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 502.30 “State” means the state of New Hampshire.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 502.31 “State match” means funds equaling 20 percent of the capitalization grant which the WQA requires the state to deposit into the SRF.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 502.32 “Substantial completion” means that date as certified by the engineer when the construction of the project or a specified part thereof is sufficiently completed, in accordance with the contract documents, so that the project or specified part can be used for the purposes for which it is intended.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 502.33 “Supplemental loan agreement” means the amendment to the original loan agreement executed between the state and the SRF loan recipient stipulating the final project cost and the repayment terms.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 502.34 “Wastewater” means the spent water of a community.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 502.35 “Wastewater facilities” means “wastewater facilities” as defined in RSA 485-A:2, XIX, namely “the structures, equipment, and processes required to collect, convey, and treat domestic and industrial wastes, and dispose of the effluent and sludge.”

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 502.36 “Wastewater treatment plant” means “wastewater treatment plant” as defined in RSA 485-A:2, XVI-a, namely “the treatment facility or group of treatment devices which treats domestic or combined domestic and industrial wastewater through alteration, alone or in combination, of the physical, chemical, or bacteriological quality of the wastewater and which dewater and handles sludge removed from the wastewater.”

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wq 502.37 “Water Quality Act (WQA)” means the federal Clean Water Act of 1972 as amended in 1987, 33 U.S.C. 1251 - 1387.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

PART Env-Wq 503 ESTABLISHMENT OF SRF

Env-Wq 503.01 Loan Fund. As provided in RSA 486:14:

(a) A dedicated state water pollution control revolving loan fund has been established for the purposes of providing low interest loans for the planning, design and construction of pollution abatement projects; and

(b) The SRF shall be administered by the commissioner.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 503.02 Deposits to SRF. Pursuant to RSA 486:14, the state shall deposit in the SRF the following:

(a) Capitalization grants as appropriated by the United States Congress;

(b) The state match as appropriated by the general court, deposited to the SRF on a schedule coinciding with the payment of federal funds into the SRF;

(c) Repayments of principal and interest by loan recipients;

(d) Investment earnings credited to the assets of the SRF, which shall become part of the total assets of the SRF; and

(e) Any other funds as may be appropriated or available in excess of the mandatory state match.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 503.03 Public Records. All records of the department relating to the financial assistance program covered by the rules of this chapter shall be public records available for public inspection by any interested person during normal business hours.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

PART Env-Wq 504 PRIORITY FOR PROVIDING LOAN FUNDS

Env-Wq 504.01 Priority List.

(a) The commissioner shall establish and maintain a priority list of projects eligible to receive loans from the fund.

(b) The priority list shall contain 2 portions as follows:

(1) A fundable portion consisting of those projects ready for construction and anticipated to execute loan agreements from available funds within the coming fiscal year as evidenced by a completed loan pre-application submitted to the department; and



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(2) A planning portion consisting of a list of all government entities that might receive loans from future authorizations of the SRF.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 504.02 Pre-application Procedures. To be placed on the fundable portion of the priority list, the applicant shall provide the following information to the department on a pre-application form obtained from the department:

- (a) The name, location, and description of the project;
- (b) The total estimated cost of the project;
- (c) The anticipated date that the project will start; and
- (d) The name, title and signature of the individual authorized by the applicant to sign the pre-application on behalf of the applicant.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 504.03 Prioritization of Proposed Projects.

- (a) If the total of eligible costs of projects submitting pre-applications exceeds the amount available for disbursement, the department shall:
  - (1) Develop a priority system in that fiscal year's Intended Use Plan (IUP) that is consistent with the objectives of the WQA and any applicable requirements in 40 CFR §§3100 - 3170; and
  - (2) Rank the pre-applications according to the priority system.
- (b) If a priority system is developed, projects on that fiscal year's priority list shall be listed in order of priority.
- (c) If 2 or more projects on the same list have equal ranking under the priority system, the project with the greatest existing population served shall receive the higher ranking.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 504.04 Intended Use Plan (IUP).

- (a) For each federal fiscal year, the department shall prepare an IUP that complies with 40 CFR §35.3150 and any applicable guidance issued by the U.S. Environmental Protection Agency (EPA).
- (b) The preliminary IUP shall be subject to public comments and review as specified in Env-Wq 504.05 before being finalized and submitted to EPA.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 504.05 Annual Hearing.

- (a) The commissioner or designee shall hold a public hearing annually to present the preliminary IUP, including a list of the projects expected to receive disbursement from the SRF in the coming fiscal year.

Except as modified by this section, the hearing shall be conducted in accordance with the provisions of Env-C 200 that apply to non-adjudicative proceedings and oral public hearings.

(b) The department shall publish a notice of the hearing in a newspaper of general circulation at least 7 days prior to the date of the hearing.

(c) The department also shall send notice of the hearing by first class mail at least 7 days in advance of the hearing to those governmental entities whose projects are on the list to be presented and to any person who has submitted a written request for such notice.

(d) As a supplement to the procedures specified in Env-C 205.07, any person desiring priority to speak at the hearing shall submit a copy of the testimony to be presented to the commissioner no later than 2 days prior to the scheduled date of the hearing. All persons who wish to testify at the hearing who have submitted written testimony at least 2 days prior to the hearing shall be given priority to speak at the hearing. If sufficient time exists after all persons who submitted testimony have spoken, the commissioner or designee shall allow other persons to testify at the hearing.

(e) Following the hearing, a current year priority list shall be finalized and project assistance granted accordingly. The commissioner shall substitute projects from the planning list for projects on the current list during the course of the fiscal year to ensure timely use of funds. Substitutions shall be in accordance with procedures established in the priority system. Projects for which substitutions are made shall be placed on the next year's priority list for funding, whenever possible.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

#### PART Env-Wq 505 USE OF SRF

Env-Wq 505.01 Types of Financial Assistance from the SRF. The SRF shall be used to provide loans to governmental entities for:

(a) Planning, design and construction of wastewater facilities, the closure of unlined landfills, and appurtenant facilities directly related to the landfill closure;

(b) Implementation of the nonpoint source (NPS) pollution control management program under section 319 of the WQA, such as for landfill capping and closure; and

(c) Development and implementation of an estuary conservation and management plan under section 320 of the WQA.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

#### Env-Wq 505.02 Allowable Wastewater Facilities Construction Costs.

(a) Allowable costs of eligible projects shall consist of all costs directly related to the construction, expansion, or upgrading of the following wastewater facilities:

(1) Wastewater treatment plants with up to a 20 year design life;

(2) Interceptor sewers with up to 50 year design life;

(3) Collector sewers in accordance with section 211 of the WQA, however loans for construction of collector sewers shall be considered only in areas of documented pollution problems due to failed septic systems or direct discharges; and

- (4) Wastewater pumping stations.
- (b) Other allowable costs for eligible projects shall include:
  - (1) I/I correction;
  - (2) Sewer rehabilitation;
  - (3) Treatment or abatement of combined sewer overflows;
  - (4) Purchase of necessary land used for ultimate disposal of residues resulting from wastewater treatment, such as spray irrigation or land application of sludge;
  - (5) Construction engineering, including, but not limited to, resident engineering, operations and maintenance manual preparation, and preparation of record drawings;
  - (6) Loan recipient administration costs directly related to construction of the wastewater facilities that are attributable to additional administrative duties outside of normal duty hours;
  - (7) Septage disposal and treatment facilities; and
  - (8) Interest accrued on the advances from the loan fund for construction.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 505.03 Allowable Planning and Design Costs. Allowable costs of planning and design of eligible projects shall consist of all costs directly related to the planning and design of wastewater facilities as follows:

- (a) Consulting engineering design fees;
  - (b) Subsurface investigations and soil borings;
  - (c) Environmental or archaeological consultants fees where required;
  - (d) Property boundary survey and engineering survey costs;
  - (e) Loan recipient administrative costs to obtain approval of the design of the wastewater facilities;
- and
- (f) Interest accrued on advances from the loan fund.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 505.04 Allowable Costs for NPS Pollution Control Management Programs. Allowable costs of NPS pollution control management programs shall consist of:

- (a) For landfill capping and closure, the following:
  - (1) Pre-closure hydrogeological investigation;
  - (2) Pre-closure engineering investigation;
  - (3) Construction design;

- (4) Closure construction; and
- (5) Construction supervision.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 505.05 Allowable Costs for Estuary Conservation and Management Plans. RESERVED

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

#### PART Env-Wq 506 LOAN PROCEDURES

Env-Wq 506.01 Conditions Arising from Application. By applying for financial assistance, each applicant shall be deemed to agree to the following:

(a) From the time of first application for financial assistance for a project throughout all stages of construction and implementation, and at any other time while any assistance from the SRF to the applicant is outstanding, the applicant shall allow the department to inspect:

- (1) The project and any and all incidental works, areas, facilities, and premises otherwise pertaining to the project for which application is made; and
- (2) Any and all books, accounts, records, contracts or other instruments, documents or other information possessed by the applicant or its contractors, agents, employees, or representatives which relate in any respect to the receipt, deposit, or expenditure of financial assistance funds; and

(b) After project completion, the recipient shall allow the department to conduct periodic site visits.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 506.02 Loan Application. Applicants for loans from the SRF shall provide the following information to the department on or with forms provided by the department:

- (a) The name, mailing address, and telephone number of the applicant;
- (b) The name and title of the authorized representative of the applicant, and the individual's mailing address and daytime telephone number if different from that of the applicant, and if available, the individual's fax number and e-mail address;
- (c) A brief description of the project;
- (d) The estimated total project cost including cost support data;
- (e) The estimated project construction period;
- (f) The term of the loan requested;
- (g) The amount of the loan requested;
- (h) Estimated cash flow requirements;
- (i) The source of loan repayment funds;

(j) For planning, design and construction loans, an engineering report outlining:

- (1) Need;
- (2) Alternatives evaluation;
- (3) Cost-effective analysis including both capital and operations and maintenance costs; and
- (4) Current facilities plan information;

(k) A resolution certified and sealed by the governmental entity and adopted by the governing body of the governmental entity authorizing filing of the application, and identifying the individuals who have been authorized to sign the resolution and related documents on behalf of the governmental entity;

(l) A letter signed by the authorized representative indicating that the application has been submitted to the office of energy and planning for review through the New Hampshire intergovernmental review process;

(m) A letter signed by the authorized representative certifying that the applicant has the financial capability to support both the project loan repayment and continuing operation and maintenance;

(n) Evidence of approval from the governmental entity's governing body to raise, appropriate, and spend the requested loan funds on the proposed project;

(o) Documentation on the extent of the applicant's existing debt; and

(p) Documentation of the population served by, and the associated wastewater volume for, the project and the receiving facility.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 506.03 Department Action on Application.

(a) The department shall determine that the application is complete and all or a portion of the proposed project is eligible for financial assistance from the SRF if:

- (1) All or a portion of the proposed project meets the criteria of Env-Wq 505.01 through Env-Wq 505.05, as applicable; and
- (2) The applicant has submitted all information required by Env-Wq 506.02.

(b) The department shall notify the applicant in writing of its eligibility determination.

(c) If the department determines that the applicant's project is not eligible, the notice sent pursuant to (b), above, shall specify the reason(s) for the determination.

(d) In response to being notified that a project is ineligible, the applicant may modify or supplement any information and request the department to reconsider its decision in light of the new information.

(e) Upon receipt of a request to reconsider in light of new information, the department shall review the information and make a decision in accordance with (a) through (c), above.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 506.04 Original Loan Agreement.

(a) Following acceptance of the application and upon availability of funds, an original loan agreement shall be executed between the state and the applicant on forms provided by the state treasurer and obtained from the department.

(b) The original loan agreement shall be subject to approval by the governor and executive council.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 506.05 Plans, Specifications, and Engineering Contracts.

(a) Pursuant to RSA 485-A:4, IX, plans and specifications shall be submitted for review and approval in accordance with Env-Wq 700.

(b) No construction project shall be offered for public bid until such approval is granted by the department.

(c) For all projects funded by the SRF program, whether for construction, planning, or design, a contract for professional services shall be in compliance with Env-Wq 600.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 506.06 Construction Contracts.

(a) The loan recipient shall submit a request for authorization to award that includes the following:

- (1) A revised, detailed total project cost estimate, including construction, engineering, and other costs;
- (2) Evidence of advertisement for bids;
- (3) A tabulation of all bids that were received;
- (4) A letter signed by the governmental entity's authorized representative that indicates the contract value and the name of the bidder to whom the contract is planned to be awarded;
- (5) A copy of the bid proposal of the bidder to whom the contract is planned to be awarded;
- (6) Documentation assuring bidder compliance with EPA's Minority and Women's Business Enterprise (MBE/WBE) participation requirements, 40 CFR 31.36(e), including bidding specifications, procurement efforts and reporting accountabilities; and
- (7) Certification that all necessary permits, land acquisitions, and easements have been secured.

(b) The department shall review the summary and approve the loan recipient's acceptance of the lowest competitive bid responsive to the contract documents, plus a 5 percent contingency, and related engineering and administrative costs as indicated in Env-Wq 505.02 and Env-Wq 505.03.

(c) For all construction projects funded by the SRF program, following receipt of approval from the department, a construction contract shall be executed between the loan recipient and the contractor.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 506.07 Changes to Contracts.

(a) Any increases in project cost or scope shall not be funded unless the prior approval of the department was obtained through a written request to the department explaining the extent of the increased costs or scope and reasons for the adjustments.

(b) The department shall approve a request made pursuant to (a), above, if:

(1) The increased cost or scope was not reasonably foreseeable at the time the original project proposal was submitted;

(2) The cost increase results in a total cost no greater than the prevailing rate for the item to which the cost is attributable such as, but not limited to, labor and materials;

(3) The item to which the cost increase is attributable is an eligible cost as specified in Env-Wq 505; and

(4) The fund has sufficient monies available at the time the request is filed to cover the proposed cost increase.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 506.08 Timely Use of Funds.

(a) A recipient shall begin expenditure of funds within 6 months of the execution of loan agreement.

(b) If the recipient fails to comply with (a), above, the department shall request the recipient to show cause why the loan agreement should not be cancelled.

(c) The department's request shall:

(1) Be in writing;

(2) Specify a date by which the recipient must respond to the request, which shall be 20 working days from the date of the notice; and

(3) Inform the recipient that if the recipient wishes to have an adjudicative hearing prior to the loan agreement being cancelled, the response filed pursuant to (2), above, shall so indicate.

(d) If the recipient wishes to have an adjudicative hearing, the following shall apply:

(1) The applicant shall respond in writing to the request sent by the department pursuant to (b), above; and

(2) The applicant's response shall include a request for a hearing.

(e) If a hearing is requested and a settlement is not reached, the hearing shall be conducted in accordance with the provisions of Env-C 200 that apply to adjudicative proceedings.

(f) If the recipient shows that the delay in expending the funds was based on an excusable delay, the department shall not cancel the loan agreement.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 506.09 Disbursements.

- (a) To obtain a disbursement for eligible work and equipment from the awarded funds, the loan recipient shall submit a written disbursement request to the department.
- (b) The written request shall include the following, as applicable to the request:
  - (1) The original and one copy of a completed, signed Request for Disbursement form;
  - (2) A list of the invoices or payment requisitions included with the request, by number and date, separated into the appropriate classifications of funds;
  - (3) Invoices for equipment and materials delivered and properly stored;
  - (4) Invoices from the consultant or engineer;
  - (5) Payment requisitions from the contractor(s), and
  - (6) Invoices for eligible costs not covered under (3) through (5), above.
- (c) The department shall approve the request if it determines that the costs covered by the request are eligible under Env-Wq 505.02 through Env-Wq 505.05, as applicable, and the loan recipient's original or supplemental loan agreement, as applicable.
- (d) Upon approval of the request, the department shall authorize the disbursement to be made from the SRF.
- (e) The loan recipient shall not make disbursement requests more frequently than monthly.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 506.10 Supplemental Loan Agreement.

- (a) Upon completion of the project, the original loan agreement shall be amended to reflect the actual project expenditures. A supplemental loan agreement shall be executed between the state and the loan recipient on forms provided by the state treasurer.
- (b) The supplemental loan agreement shall contain the following information:
  - (1) The loan interest rate selected by the loan recipient based on the established market rate at the time that the supplemental loan agreement is prepared; and
  - (2) The loan repayment schedule based on the final project cost.
- (c) The supplemental loan agreement shall be subject to approval by the governor and executive council.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 506.11 Repayments.

- (a) The loan recipient shall repay all funds received and interest accrued thereon to the state as stipulated in the supplemental loan agreement.
- (b) Repayments shall:



(1) Not exceed a 20-year repayment period; and

(2) Begin by the earlier of one year following the date of substantial completion of the project or one year following the initial scheduled completion date established in the original loan agreement, unless modified per agreement of all parties.

(c) Should excusable delay be incurred beyond the scheduled completion date, the commissioner shall offer to modify the original loan agreement to account for the delays.

(d) Any modification of the original loan agreement shall be negotiated with and approved by the loan recipient and the state prior to any formal modification of the loan agreement.

(e) Loans may be repaid prior to the date stipulated in the loan agreement with no prepayment penalty.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 506.12 Return of Funds to the Department.

(a) Loans from the SRF shall be used and expended by the recipient solely and exclusively for the payment of authorized and allowable costs and expenses of the project for which the financial assistance was approved.

(b) If the recipient uses any funds provided from the SRF for other than eligible costs on the specific project for which such funds were furnished, the recipient shall return or otherwise repay to the department all such funds.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 506.13 Retainage.

(a) The recipient shall withhold 10 percent of all partial payments as retainage until 50% of the project is complete.

(b) After the project is 50% complete, no additional retainage shall be withheld from any partial payments.

(c) Upon substantial or final completion of the project, the recipient shall reduce the retainage to 2%. The final 2% retainage shall be held during the one-year warranty period and released only after the recipient has accepted the project.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 506.14 Loan Amortization.

(a) Loan repayment shall be made according to a fixed amortization schedule based on:

(1) The final project cost;

(2) The repayment period selected by the loan recipient of 5, 10, 15, or 20 years; and

(3) The established interest rate at the time the supplemental loan agreement is executed.

(b) Loan amortization shall be made on a semi-annual or annual basis with either level debt service, or level payments of principal plus interest according to RSA 33:2, at the option of the loan recipient over the selected repayment period of 5, 10, 15, or 20 years.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

PART Env-Wq 507 LOAN INTEREST RATES

Env-Wq 507.01 Interest Rates Established.

(a) Interest on funds disbursed to a governmental entity prior to the date of substantial completion or the date of scheduled completion, whichever is earliest, shall accrue at the rate of one percent per year up to the date of substantial completion or scheduled completion whichever is earliest.

(b) The interest rate charged on disbursed funds during repayment of the loan shall be:

- (1) If the applicant selects a 5-year repayment period, 25 percent of the market rate minus one percent;
- (2) If the applicant selects a 10-year repayment period, 50 percent of the market rate minus one percent;
- (3) If the applicant selects a 15-year repayment period, 75 percent of the market rate minus one percent; and
- (4) If the applicant selects a 20-year repayment period, 80 percent of the market rate minus one percent.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 507.02 Interest Charges.

(a) Interest on any loan funds disbursed to the loan recipient shall begin to accrue as of the date of each disbursement of such funds by the state.

(b) The loan recipient shall pay interest charges incurred on disbursed funds:

- (1) Semi-annually, prior to the commencement of the loan repayment;
- (2) Prior to the commencement of loan repayment;
- (3) At the time of the first repayment; or
- (4) By adding the charges to the outstanding principal balance.

(c) Interest charges during loan repayment shall be:

- (1) Fixed over the loan repayment period; and
- (2) Established at the time of the execution of the supplemental loan agreement based on the market rate and the loan repayment period selected by the loan recipient.

(d) In addition to interest, the loan recipient shall pay an annual administrative fee in the amount of one percent of the unpaid principal balance on all outstanding loans during the loan repayment period.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 507.03 Adjustments to Interest Rate.

(a) The department shall review the interest rate stipulated in the original loan agreement at the completion of the project prior to setting the final repayment schedule as outlined in the supplemental loan agreement.

(b) If the prevailing market rate is lower than the rate established in the original loan agreement, the loan interest rate shall be adjusted downward from the initial rate based on the market rate on the execution date of the supplemental agreement.

(c) If the prevailing market rate is higher than the rate established in the original loan agreement, the loan interest rate shall be the rate stipulated in the original loan agreement.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

PART Env-Wq 508 RECIPIENT RESPONSIBILITIES

Env-Wq 508.01 Assurances. Prior to receipt of loans, loan recipients shall provide evidence of the following:

- (a) Approved project plans and specifications;
- (b) Agreement to develop user charge system and sewer use ordinances prior to 80% of construction completion in accordance with 40 CFR Part 35;
- (c) Compliance with best practicable waste treatment technology;
- (d) That alternative technologies were considered in project design;
- (e) Evidence that the sewer collection system is not subject to excessive infiltration/inflow (I/I) in accordance with 40 CFR Part 35;
- (f) That innovative and alternative treatment technologies were considered during design;
- (g) That potential recreation and open space opportunities were considered;
- (h) Compliance with MBE/WBE requirements, including bidding specifications, procurement efforts and reporting accountabilities;
- (i) Agreement to maintain project financial accounts as separate accounts and in accordance with generally accepted accounting principals (GAAP);
- (j) Agreement to conduct a financial audit in accordance with GAAP in any fiscal year that loan funds of \$500,000 or greater are disbursed to the loan recipient;
- (k) A letter signed by the authorized representative certifying that the local authorities who will be implementing the project have the necessary legal, financial, institutional, and managerial resources available to insure the construction, operation, and maintenance of the proposed project;

(l) Agreement to provide notice of initiation of operation to the department upon beginning operation of the project; and

(m) Completion of value engineering for projects greater than \$10 million in construction cost.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 508.02 Certification. The loan recipient shall certify in a letter to the department that any facility constructed from funds made available through the SRF meets design specifications and, if a wastewater treatment plant, meets effluent limitations included in its permit one year after the initiation of operation.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 508.03 Inspection. Loan recipients shall contract for or otherwise provide for on-site inspection of the work being funded. The extent of inspection shall be agreed upon by the loan recipient and the department and stipulated in the contract for professional services. The recipient also shall make provision for periodic inspection by department personnel.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

#### PART Env-Wq 509 ENVIRONMENTAL REVIEW

Env-Wq 509.01 Environmental Review Required. Any construction project for which a loan from the SRF is requested shall be reviewed for impacts on the human and natural environment in accordance with this part.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 509.02 General Procedure.

(a) The department shall be the lead entity for coordinating the environmental review process and prepare an environmental review report based on the applicant's proposed project.

(b) The environmental review shall result in one of the following:

- (1) A categorical exclusion (CE);
- (2) A finding of no significant impact (FNSI); or
- (3) A requirement for the applicant to prepare an environmental impact statement (EIS).

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 509.03 Categorical Exclusion (CE) Review.

(a) The department shall review the proposed project to determine whether the project qualifies for a CE.

(b) A CE determination shall be made if the project comprises only:

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- (1) Work on existing facilities where no new disruption of the environment will occur, such as correction of infiltration and inflow, replacement of equipment, or addition of small new structures on site; or
  - (2) Work where only a small disturbance is required, such as for upgrades, and no increase or expansion is planned.
- (c) If the department determines that the project qualifies for a CE, the department shall:
- (1) Prepare a review document describing the basis for its determination; and
  - (2) Forward the document to the applicant to distribute for review and comment in accordance with Env-Wq 509.05.
- (d) At the close of the review and comment period, the department shall make a final determination in accordance with the following:
- (1) If no significant adverse comments are received, the department shall issue a CE as the final action; or
  - (2) If significant adverse comments are received, the department shall prepare an EA in accordance with Env-Wq 509.04.
- (e) The department shall send its final determination in writing to the applicant and to any other person who requested during the public comment period to receive a copy.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 509.04 Environmental Assessment (EA).

- (a) For projects that do not qualify for a CE, the department shall prepare an EA in accordance with this section.
- (b) The EA shall contain the following information:
- (1) The purpose of and need for the proposed project;
  - (2) A list of all environmental concerns raised by the proposed project;
  - (3) A list of alternatives to the proposed project, including a no action alternative;
  - (4) Details of the recommended action, whether the recommended action is the proposed project or an identified alternative; and
  - (5) Mitigation measures required for the recommended action, if any.
- (c) The department shall forward the EA to the applicant to distribute for review and comment in accordance with Env-Wq 509.05.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 509.05 Public Notification and Review Period.

(a) Following the issuance of a preliminary CE determination or EA, as applicable, the department shall send a copy of the draft to the applicant.

(b) The applicant shall publish a notice in a local and statewide newspaper that the preliminary CE determination or EA, as applicable, is open for public comment.

(c) The notice published pursuant to (b), above, shall specify:

(1) Whether the notice is for a preliminary CE determination or an EA;

(2) The name, mailing address, and daytime telephone number of the individual representing the applicant who can answer questions regarding the proposed project;

(3) The name and location of the public place where the preliminary CE determination or EA can be reviewed or the name and daytime telephone number of the individual to contact to obtain a copy of the document;

(4) The name, mailing address, daytime telephone number, and e-mail address of the individual at the department to whom comments should be directed; and

(5) The deadline for submitting comments, which shall be no sooner than 30 days from the last date on which the notice is published.

(d) No formal action shall be taken during the public review period.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 509.06 Department Decision.

(a) At the close of the review and comment period for a preliminary CE determination, the department shall make a final determination in accordance with Env-Wq 509.03(d).

(b) At the close of the review and comment period for an EA, the department shall make a determination in accordance with the following:

(1) If no significant adverse comments are received, the department shall issue a FNSI as the final action; or

(2) If significant adverse comments are received, the department shall direct the applicant to convene a public information meeting in accordance with RSA 91-A and any other applicable local requirements.

(c) Within 60 days of the public information meeting conducted pursuant to (b)(2), above, the department shall assess the comments and make one of the following determinations:

(1) If the department finds either that the comments received do not indicate that the proposed project will actually have a significant adverse impact on the environment, or that the benefit to public health or the environment conferred by the project as proposed outweighs any significant adverse impact caused by the project as proposed, the department shall issue a FNSI;

(2) If the department finds that the project is likely to have a significant adverse impact on the environment that could be lessened or eliminated by implementing an alternative proposal, the

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department shall order the applicant to re-review the proposed project to identify an alternative with less environmental impact;

(3) If the department finds that the project will have a significant adverse impact on the environment that could be lessened or eliminated by modifying the project as proposed to incorporate mitigating procedures, the department shall require mitigating procedures to be implemented as a condition of receiving a loan from the SRF; or

(4) If the department finds that the project will have a significant adverse impact on the environment that cannot be lessened or eliminated by implementing an alternative proposal or by incorporating mitigating procedures, the department shall:

- a. Direct the applicant to initiate an EIS in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. §§4321 - 4370f., and EPA procedures; and
- b. Require the applicant to use a private consultant if the department finds that the applicant does not possess the requisite technical resources to prepare the EIS without the aid of a private consultant.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 509.07 Appeal.

(a) Within 30 days of the date of the written department decision to issue a final CE or FNSI, any person aggrieved by the decision may file a petition for appeal with the New Hampshire Water Council. Such petition shall be filed in accordance with Env-WC 200.

(b) If the 30<sup>th</sup> day falls on a Saturday, Sunday, or state legal holiday, the time period shall extend to 4:00 p.m. on the first state business day following the 30<sup>th</sup> day.

(c) If no petition for appeal is filed within the specified period, the decision shall be final upon the expiration of that period.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

Env-Wq 509.08 Duration of Decision. Final decisions shall be valid for 5 years. If a project is not initiated within that time period, a new environmental review shall be undertaken.

Source. (See Revision Note at chapter heading for Env-Wq 500) #8883, eff 5-8-07

**APPENDIX**

<b>Rule</b>	<b>Specific State or Federal Statute the Rule Implements</b>
Env-Wq 501 - 508	RSA 486:14 ; 33 U.S.C. 1251 - 1387
Env-Wq 509	42 U.S.C. §§4321 - 4370f.