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CHAPTER Env-Dw 1100 DRINKING WATER STATE REVOLVING LOAN FUND PROGRAM

Statutory Authority: RSA 486:14, I(a) & (c)

REVISION NOTE:

Document #8702, effective 8-24-06, readopted with amendments and renumbered former Parts Env-C 510 through Part Env-C 521, the State Drinking Water Revolving Loan Fund Program, under a new subtitle as Chapter Env-Dw 1100. The redesignation from subtitle Env-C to subtitle Env-Dw was done pursuant to a rules reorganization plan for Department rules approved by the Director of the Office of Legislative Services on 9-7-05.

Document #8702 replaces all prior filings for rules formerly in Env-C 510 through Env-C 521. The prior filings for rules in former Env-C 510 through Env-C 521 include the following documents:

#6620, INT, eff. 11-15-97, EXP: 3-15-99; #6697, eff. 2-25-98; #8575, INT, eff. 2-25-06, EXP: 8-24-06

PART Env-Dw 1101 PURPOSE; APPLICABILITY; USE OF STANDARD TERMS

Env-Dw 1101.01 Purpose. The purpose of this chapter is to identify:

(a) The procedures and criteria applicable to public water systems that apply to the state for financial assistance from the drinking water state revolving loan fund (DWSRF) established pursuant to RSA 486:14; and

(b) The requirements for completing projects financed under the DWSRF, complying with DWSRF program loan conditions, and repaying or otherwise returning such assistance.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1101.02 Applicability. The rules in this chapter shall apply to any community water system or non-community non-profit water system that applies to borrow funds from the DWSRF.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1101.03 Standard Terms. Any terms used in this chapter that are subject to Env-Dw 101.03 or that are defined in Env-Dw 103 shall have the meaning established therein.

Source. #10772, eff 1-24-15

PART Env-Dw 1102 CHAPTER-SPECIFIC DEFINITIONS

Env-Dw 1102.01 “Applicant” means an entity that files a pre-application or an application, or both, for loan from the DWSRF.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1102.02 “Application” means the written document(s), with attachments, through which a loan is requested.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1102.03 “Asset maintenance and renewal plan” means a plan developed and implemented by the applicant to maintain and eventually replace water system infrastructure funded in whole or in part by the DWSRF.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1102.04 “Asset management program” means a systematic process of financing, inventorying, assessing, operating, maintaining, upgrading, and replacing assets cost-effectively while maintaining a sustainable level of service that is acceptable to a utility’s customers.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1102.05 “Binding commitment” means a legal obligation by the state to a recipient that defines the terms and the timing for assistance under the DWSRF.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.07)

Env-Dw 1102.06 “Bypass procedure” means the process used to skip over an applicant on the priority list that is not ready to proceed with a project.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.08)

Env-Dw 1102.07 “Capitalization grant” means funds made available to the state by the federal government in accordance with 42 U.S.C. §300j-12.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.09)

Env-Dw 1102.08 “Construction” means the erection, building, acquisition, alteration, remodeling, improvement, or extension of any components of a public water system.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.11)

Env-Dw 1102.09 “Contingency section” means the portion of a priority list consisting of projects that might receive loans due to a bypass procedure or due to additional funds becoming available.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.12)

Env-Dw 1102.10 “Disbursement” means a transfer of funds from the DWSRF to a recipient.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.14)

Env-Dw 1102.11 “Eligible entity” means:

- (a) A state agency, board, or commission or any political subdivision of the state;
- (b) Any legal entity, such as a sole proprietorship, partnership, corporation, association, or non-profit organization, that owns a community water system; or
- (c) A non-profit organization that owns a non-transient, non-community water system.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.16)

Env-Dw 1102.12 “Engineering services” means consultations, investigations, reports, or services for the design of projects within the scope of professional engineering.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.17)

Env-Dw 1102.13 “Excusable delay” means a delay that is beyond the recipient’s control in beginning or completing the planning, design, construction, or implementation 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) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.18)

Env-Dw 1102.14 “Financial assistance” means funds provided from the DWSRF to pay in whole or in part for a department-approved project.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.19)

Env-Dw 1102.15 “Fundable portion” means the portion of a project priority list that identifies projects scheduled for financial assistance within the limits of currently-available funds.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.20)

Env-Dw 1102.16 “Funding year” means the first year that a project is included on the fundable portion of the priority list.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.21)

Env-Dw 1102.17 “Governing body” means the group of individuals that has the authority and responsibility to authorize the applicant to enter into contracts and expend funds.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1102.18 “Green project” means an infrastructure project that:

- (a) Uses natural systems in place of or to supplement existing infrastructure or to protect or supplement water supply sources; or
- (b) Incorporates water or energy efficiency improvements or other environmentally-protective measures.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1102.19 “Initiation of operation” means the date on which the project that was funded in whole or in part using funds from the DWSRF is placed into use for the purposes for which it was planned, designed, and built.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.22)

Env-Dw 1102.20 “Infrastructure” means all structures and all mechanical and electrical equipment that connect a source of water to end users in a public water system or that provide source water protection, including but not limited to all sources, treatment, storage, and distribution facilities and the land necessary therefor.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1102.21 “Infrastructure project” means a project intended to control, improve, or develop a water system’s source of water or its infrastructure, including the requisite planning, land acquisition, design, and construction. The term includes a green project.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.23)

Env-Dw 1102.22 “Intended use plan (IUP)” means a document prepared each year by the department to identify the anticipated uses of the funds in the DWSRF and to describe how those uses support the goals of the DWSRF.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.24)

Env-Dw 1102.23 “Land acquisition” means the purchase of an interest in land, whether in fee or by easement, for infrastructure projects. The term includes associated professional services such as appraisals and title searches.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.25)

Env-Dw 1102.24 “Maintenance” means actions taken to preserve the functional integrity and efficiency of infrastructure. The term includes preventive maintenance, corrective maintenance, and replacement of equipment and other infrastructure components, including but not limited to roofing, signs, and fences.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.26)

Env-Dw 1102.25 “Market rate” means the prevailing bond market rate determined by the department pursuant to Env-Dw 1106.03, upon which the interest rate for new loans is based.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.27)

Env-Dw 1102.26 “Materially or significantly affect project cost or estimated revenues” means a change in estimated costs or revenues of more than 10%.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1102.27 “Materially or significantly affect project design” means a change that would:

- (a) Alter the project’s performance standards;
- (b) Alter the type of water treatment provided by the project;
- (c) Delay or accelerate the project schedule by more than 10%; or
- (d) Alter the design drawings and specifications, or the location, size, capacity, or quality of any major part of the project, such that amended plans and specifications are required under RSA 485:8 or the applicable sections of Env-Dw 400.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1102.28 “Operation and maintenance” means activities required to ensure the safe, dependable, and economical function of a water system.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.30)

Env-Dw 1102.29 “Operation” means control of the processes and equipment that make up the drinking water system. The term includes financial and personnel management, records, laboratory control, process control, safety, and emergency operation planning.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.31)

Env-Dw 1102.30 “Original loan agreement” means the original contract between the department and the recipient through which the department agrees to provide funds from the DWSRF to the recipient and the recipient promises to repay the funds to the DWSRF.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.32)

Env-Dw 1102.31 “Planning” for purposes of an eligible infrastructure project means evaluating alternative solutions to drinking water system problems, selecting the most cost-effective alternative through a systematic screening procedure, and developing an asset maintenance and renewal plan or asset management program.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.33)

Env-Dw 1102.32 “Pledge” means the act or process through which a recipient commits, obligates, and encumbers its real or personal property or its existing or anticipated revenues to the department as security and means for repayment of the financial assistance received by the recipient from the DWSRF.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.35)

Env-Dw 1102.33 “Privately-owned water system” means a public water system not owned by the state or a political subdivision of the state.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1102.34 “Project” means an infrastructure project.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.36)

Env-Dw 1102.35 “Project cost” means the applicant’s total direct and incidental costs of acquiring, constructing, and implementing the project for which assistance is sought.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.37)

Env-Dw 1102.36 “Project priority list” means the list of infrastructure projects for which DWSRF assistance is expected in current and subsequent years. A project priority list has a fundable portion and a contingency section.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.38)

Env-Dw 1102.37 “Project priority points” means the total number of points assigned to a project by using the priority ranking formula established in the applicable intended use plan that has been approved by the U.S. Environmental Protection Agency (EPA).

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.39)

Env-Dw 1102.38 “Recipient” means an applicant to whom funding from the DWSRF is awarded.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.41)

Env-Dw 1102.39 “Repayment” means the recompense of principal, interest, and administrative fee amounts on loans.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.42)

Env-Dw 1102.40 “Replacement” means the installation of new or refurbished equipment, accessories, or appurtenances for existing equipment, accessories, or appurtenances that no longer perform as originally intended.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.43)

Env-Dw 1102.41 “Resident project representative” means an individual who:

- (a) Is qualified by reason of education and experience to inspect infrastructure projects; and
- (b) Reports to a licensed professional engineer.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1102.42 “Scheduled completion date” means the date stated in the original loan agreement on which the project that received DWSRF funds is intended to be placed into use for the purposes for which it was planned, designed, and built.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.44)

Env-Dw 1102.43 “Security” means an applicant’s real or personal property that is pledged by the applicant to the department to ensure repayment to the department.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.46)

Env-Dw 1102.44 “Significant adverse comments” means comments that cause the department to conclude that the recommended action might not be the alternative with the best balance between minimizing environmental impact and maximizing benefit to the water system.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.47)

Env-Dw 1102.45 “Source water protection (SWP)” means protection of the source of drinking water by delineating the area to be protected, acquiring undeveloped land or easements on such land in the protection area, identifying land uses which may threaten its use for water supply, managing or eliminating identified threats, and contingency planning.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.48)

Env-Dw 1102.46 “State” means the state of New Hampshire.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 from Env-Dw 1102.51)

Env-Dw 1102.47 “State match” means funds equaling 20% of the capitalization grant, which the Act requires the state to deposit into the DWSRF.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 from Env-Dw 1102.52)

Env-Dw 1102.48 “Substantial completion” means the date on which the project can function as it was originally designed.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.53)

Env-Dw 1102.49 “Supplemental loan agreement” means an amendment to the original loan agreement executed between the state and the recipient stipulating the final project cost and repayment terms.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.54)

Env-Dw 1102.50 “User charge” means a charge levied on users of a water system for the user’s share of the cost of water system operation and maintenance, plus any allocable portion of capital improvements.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.55)

Env-Dw 1102.51 “Water system” means a public water system as defined by RSA 485:1-a, XV, as reprinted in Appendix B.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1102.56)

#### PART Env-Dw 1103 ESTABLISHMENT OF DWSRF

Env-Dw 1103.01 Authority for Loan Fund. RSA 486:14, I(a) authorizes New Hampshire “to participate in the federally funded state ... drinking water revolving loan funds or grants as may be provided under the ... Safe Drinking Water Act, or related federal legislation as amended from time to time. The loan funds shall be administered by the commissioner of the department of environmental services under rules adopted by the commissioner under the provisions of RSA 541-A.”

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1103.02 Deposits to DWSRF. Pursuant to RSA 486:14, the state shall deposit in the DWSRF 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 DWSRF on a schedule coinciding with the payment of federal funds into the DWSRF;
- (c) Repayments of principal and interest by recipients;
- (d) Investment earnings credited to the assets of the DWSRF, which shall become part of the total assets of the DWSRF; 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) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1103.03 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 in accordance with RSA 91-A.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

#### PART Env-Dw 1104 ELIGIBILITY AND APPLICATION REQUIREMENTS

Env-Dw 1104.01 Eligible Projects and Costs.

(a) The planning, design, and construction of the following infrastructure projects shall be eligible for financial assistance from the DWSRF:

- (1) Source development and source water protection;
- (2) Installation, replacement, rehabilitation, or enhancement of treatment facilities so as to meet MCLs or SMCLs;
- (3) Rehabilitation or replacement of distribution systems and facilities;
- (4) Installation, rehabilitation, or enhancement of storage facilities;
- (5) Meters and meter reading equipment, including meter radios;
- (6) Interconnections between water systems owned by eligible entities; and
- (7) Innovative environmental projects that increase water use efficiency, reduce energy usage, or supplement existing infrastructure.

(b) Eligible land acquisition costs shall be limited to acquisition of an interest in land, whether in fee or by easement, that is needed to complete the eligible project, the value of which shall be calculated based on fair market value as determined by a certified appraisal.

(c) Preparation of an asset management program, including an asset maintenance and renewal plan, shall be eligible for financial assistance from the DWSRF.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1104.02 Additional Eligibility Criteria. In order to be eligible for financial assistance from the DWSRF, infrastructure projects also shall:

- (a) Comply with applicable federal requirements;
- (b) Comply with applicable state design criteria as specified in Env-Dw 400;
- (c) For water supply treatment, distribution, or storage projects, meet eligible design capacity as determined in accordance with the following:
  - (1) The eligible design capacity shall be based on average daily flow and peak flows in accordance with population and per capita flow figures;
  - (2) Eligible design capacity for treatment facilities shall be based on a period of 20 years from the estimated date of initiation of operation; and
  - (3) Eligible design capacity for water distribution mains and intake or raw water mains shall be based on 40 years from the estimated date of initiation of operation; and
- (d) If a distribution system, consist of the common lines of the water system that distribute water directly from source or treatment facilities.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1104.03 Pre-Application Procedures.

(a) If requested by an entity that wants to apply for DWSRF funding, the department shall meet with the entity's representative(s) to provide information, advice, instruction, guidance, and other information to help the entity determine the scope of work needed to describe an eligible project and complete the application process.

(b) Any entity that wants to borrow money from the DWSRF shall file a pre-application by completing and signing a pre-application and submitting it to:

NHDES Drinking Water SRF Program  
29 Hazen Drive  
P.O. Box 95  
Concord, NH 03302-0095

(c) Upon receipt of a pre-application, the department shall review the pre-application to determine whether the pre-application is complete, meaning all information required by Env-Dw 1104.04 has been provided and the form, if submitted on paper, has been signed and dated by an authorized individual.

(d) If the pre-application is not complete, the department shall notify the applicant in writing within 10 working days of what is needed to complete the pre-application.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1104.04)

Env-Dw 1104.04 Information and Certification Required for Pre-Application.

(a) The applicant shall provide the following information to the department on a pre-application form attached or linked to the pre-application solicitation announcement issued by the department:

- (1) The water system's name and the town or city in which it is located;
- (2) The water system's PWS identification number;
- (3) The name, title, email address, and daytime telephone number of the individual who can answer questions on behalf of the applicant regarding the project;
- (4) A title for the project;
- (5) A concise description of the proposed project, for example "replace water main on Elm Street" or "upgrade treatment and storage system";
- (6) A concise description of the need for the proposed project, including how it will address public health protection, whether it includes any energy or water efficiency components, and whether any alternatives have been considered;
- (7) An estimate of project costs, including construction costs, a construction contingency, and estimated planning and engineering costs, plus the amount and a description of any other costs;
- (8) The total estimated costs;
- (9) The amount of loan requested and loan term requested;
- (10) The current residential water rate per single family home per year, assuming the use of 67,389 gallons per year;
- (11) If known, the median household income of the population served, which may be based on the results of an income survey done within the prior 3 years or data from the American Community Survey, available at <http://www.census.gov/acs> or from the department's website;
- (12) The date the applicant received governing body approval to borrow funds for the project or the date the applicant anticipates receiving such approval; and
- (13) The anticipated date that the:
  - a. Design will be started;
  - b. Construction contract will be awarded;

c. Project will be completed; and

(14) If the applicant uses a paper-based pre-application form, the name and title of the individual authorized by the applicant to sign the pre-application form on behalf of the applicant.

(b) If the applicant uses the web-based pre-application survey form, submitting the form shall constitute a signature and the certification specified in (d), below.

(c) If the applicant uses a paper-based pre-application form, the individual authorized by the applicant to sign the pre-application form shall sign and date the pre-application form and print his or her name and title.

(d) The submission of the form electronically or the signature affixed pursuant to (c), above, shall constitute certification by the applicant that:

(1) The information provided is true, complete, and not misleading to the knowledge and belief of the applicant; and

(2) The applicant understands that any department determination that the applicant and the applicant's project qualifies for funding from the DWSRF that is based on false, incomplete, or misleading information is subject to modification, up to and including reversal, through an adjudicative proceeding conducted in accordance with applicable provisions of Env-C 200.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1104.05 Department Action on Pre-application.

(a) The department shall determine that the applicant's project is eligible for financial assistance from the DWSRF if:

(1) The pre-application is complete;

(2) The applicant is an eligible entity; and

(3) The proposed project meets the requirements specified in Env-Dw 1104.01 and Env-Dw 1104.02.

(b) The department shall notify the applicant in writing of its determination within 14 days of determining that a pre-application is complete.

(c) If the department determines that the applicant's project is eligible, the department shall place the project on the draft project priority list in accordance with Env-Dw 1105.01 and Env-Dw 1105.02.

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

(e) In response to being notified that a project is not eligible, the applicant may modify or supplement any information and submit a new pre-application to the department.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1104.06 Application Procedures.

(a) An applicant whose project is on the project priority list and who wishes to obtain funding shall submit to the department:

(1) An application package as specified in Env-Dw 1104.08;

- (2) The vendor and bank information specified in Env-Dw 1104.09, unless already on file with the DWSRF program;
- (3) A planning document as specified in Env-Dw 1104.10;
- (4) Verification of a revenue program as specified in Env-Dw 1104.11; and
- (5) For an applicant that is an eligible entity other than a state agency, board, or commission or any political subdivision of the state, a certificate of good standing from the New Hampshire secretary of state's office dated within the financial year in which the application is filed.

(b) To ensure that the application is complete, the applicant shall use the Application Checklist for the Drinking Water State Revolving Fund - Final Application Checklist for Publicly-Owned Water Systems dated January 2015 or the Application Checklist for the Drinking Water State Revolving Fund - Final Application Checklist for Privately-Owned Water Systems dated January 2015, as applicable.

(c) To receive funding, the applicant shall submit the application package and associated information and materials as described in (a), above, within 6 months of the public hearing held pursuant to Env-Dw 1105.02(c).

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1104.07 Conditions Arising from Application. By applying for financial assistance, the applicant shall be deemed to have agreed 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 DWSRF 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, and 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) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1104.08 Application Package. The application package required by Env-Dw 1104.06(a)(1) shall include all information and attachments required by the following forms, obtained from the department:

- (a) DWSRF Form 1: Final Application, dated January 2015;
- (b) DWSRF Form 2: Authority to Borrow, Part 1 and Part 2, dated January 2015;
- (c) DWSRF Form 3: Environmental Review, dated January 2015; and
- (d) DWSRF Form 4: Capacity Assurance Self-Assessment, dated January 2015.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1104.09 Vendor and Bank Information. The vendor and bank information required by Env-Dw 1104.06(a)(2) shall be as follows:

- (a) The information required by DWSRF Form 5: Bank Information, dated January 2015; and
- (b) A state vendor code number obtained pursuant to Adm 600, Plant and Property Management Rules.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1104.10 Planning Document. The planning document required by Env-Dw 1104.06(a)(3) shall facilitate review of the proposed project and alternatives thereto from the viewpoints of function, operation, economics, reliability, safety, efficiency, cost-effectiveness, and environmental compatibility, by providing the following:

- (a) Identification of the planning area boundaries and characteristics and the existing needs related to the water system;
- (b) A cost-benefit analysis of feasible water systems or conveyance alternatives capable of meeting state and federal requirements, which details all monetary costs including the present worth or equivalent annual value of all capital costs and operation;
- (c) All information necessary for the design of the proposed project and alternatives;
- (d) The most current estimate of project cost itemized as to major facilities or items including land and easement costs, fees for engineering services, fees for legal services, fees for financial services, contingencies, and interest during construction;
- (e) A statement of the legal, institutional, managerial, and financial capacity to construct, operate, and maintain the water system as specified in Env-Dw 601; and
- (f) A statement that the applicant has a program in place for funding the maintenance and eventual replacement of the funded asset, or, if there is no such program in place, a plan for developing an asset maintenance and renewal plan as part of the funded infrastructure project.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1104.09)

Env-Dw 1104.11 Establishment and Verification of Revenue Program.

- (a) The applicant shall establish:
  - (1) A schedule of user charges that is designed to generate sufficient revenues to cover operation and maintenance expenses as well as any allocable portion of capital improvements; and
  - (2) A dedicated source or sources of revenue to repay the loan.
- (b) For purposes of (a)(2), above, revenue shall be considered dedicated when the recipient passes or adopts an ordinance or other binding resolution committing a source or sources of funds for repayment.
- (c) The applicant's ordinance or other binding resolution dedicating a source of funding for repayment of the loan shall be in effect and binding on the applicant prior to finalization of the loan agreement.
- (d) The verification required by Env-Dw 1104.06(a)(4) shall be made by completing and executing the following form, as applicable:
  - (1) DWSRF Form 6A: Financial Certification, Publicly-Owned Systems, dated January 2015; or
  - (2) DWSRF Form 6B: Financial Certification, Privately-Owned Systems, dated January 2015.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1104.10)

Env-Dw 1104.12 Application Processing.

- (a) The department shall notify the applicant in writing if the application is incomplete.
- (b) The department shall deny the application if it does not meet the requirements of Env-Dw 1104.06.
- (c) The department shall notify the applicant in writing within 60 days of the receipt of a complete application of whether the application is approved or denied.
- (d) If the application is denied, the notice shall specify the reason(s) for the denial.

Source. #10772, eff 1-24-15 (from Env-Dw 1104.11)

PART Env-Dw 1105 PROJECT PRIORITIZATION; INTENDED USE PLANS

Env-Dw 1105.01 Prioritization of Proposed Projects.

(a) The department shall rank each project that is determined to be eligible pursuant to Env-Dw 1104.05 according to the priority ranking formula established in the applicable fiscal year's Intended Use Plan (IUP) based on the following objectives:

- (1) Achieving compliance with the Act;
- (2) Furthering public health protection; and
- (3) Maintaining affordability for the water user.

(b) If 2 or more projects on the list have equal points under the project priority system, the project with the greatest existing population served shall receive the higher ranking.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1105.02 Project Priority List.

(a) The department shall prepare the project priority list by listing the eligible projects in order of their priority as established pursuant to Env-Dw 1105.01, together with the following information for each project on the list:

- (1) The name of the applicant;
- (2) The name and location of the applicant's water system;
- (3) A brief description of the project;
- (4) The population served by the water system;
- (5) Whether the service area qualifies for disadvantaged community status;
- (6) Project priority points; and
- (7) The amount of financial assistance requested.

(b) The department shall allocate the available funds starting with the highest priority project on the list and proceeding down the list until all available funds have been allocated. The projects for which funding is initially available shall comprise the fundable portion of the project priority list. Any projects for which funding is not initially available shall be listed in the contingency section of the project priority list.

(c) Within the limits of available funds, the department shall fund projects over multiple years if project design and all phases of construction cannot be accomplished within the timeframes established in the

IUP under Env-Dw 1105.04. Subsequent portions of such projects shall be listed in the funded portion of the following year's priority list, and in the funded portion for future years, as applicable.

(d) The department shall hold a non-adjudicative public hearing in accordance with Env-C 200 to receive comments on the proposed project priority list and the proposed IUP. The department shall publish a notice of public hearing at least 7 days prior to the date of the hearing in a newspaper of statewide distribution and on its web site. At the public hearing, the department shall provide information about the IUP and the project priority list, including a description of each proposed project.

(e) The project priority list shall become effective and supersede all previous lists upon finalization of the IUP under Env-Dw 1105.04. The project priority list, as updated during the fiscal year pursuant to Env-Dw 1105.03, shall remain in effect until such time as it is superseded by a new list.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1105.03 Management of Project Priority List.

(a) A project on the fundable portion of the project priority list shall be bypassed if the project will not be ready to proceed during the funding year. Projects that have been bypassed shall be placed in the contingency section and funded if the project is ready to proceed when sufficient funds become available.

(b) The department shall review the project priority list not less than monthly and update the list with any necessary changes, such as revised loan award dates, revised estimated construction assistance amounts, and project bypass.

(c) If additional funds become available during the fiscal year, the department shall extend the fundable portion of the priority list to include the highest ranked project in the contingency section of the list.

(d) The department shall remove a project from the project priority list if any of the following is true:

- (1) The project is fully funded from other sources;
- (2) The project is found to be ineligible based on information received by the department subsequent to the placement of the project on the list;
- (3) The applicant informs the department in writing that it does not intend to pursue financial assistance from the DWSRF; or
- (4) The applicant loses its managerial or financial capability to construct and implement the project.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1105.04 Intended Use Plan (IUP).

(a) For each federal fiscal year, the department shall prepare an IUP that complies with 40 CFR §35.3555 and any DWSRF guidance issued by EPA.

(b) The IUP shall include the following items:

- (1) A description of both the short-term and long-term goals and objectives of the DWSRF;
- (2) The project priority list as specified in Env-Dw 1105.02 and the ranking system used to develop the list;
- (3) Assurances for meeting the requirements of 42 U.S.C. §300j-12, including binding commitments by the department that in the aggregate are equal to 120% of that fiscal year's federal capitalization grant allocation, within one year after the receipt of the grant payment;

- (4) A plan for meeting federal grant conditions, including conditions for providing loan subsidies to disadvantaged communities, including affordability criteria to establish what constitutes a disadvantaged community;
- (5) Asset maintenance and renewal plan loan conditions applicable to funded projects; and
- (6) A payment schedule.

(c) The preliminary IUP shall be subject to public comment and review as specified in Env-Dw 1105.02(e) before being submitted to EPA for approval.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

PART Env-Dw 1106 FINANCIAL ASSISTANCE; PAYMENTS; ACCOUNTING

Env-Dw 1106.01 Types of Assistance and Related Conditions.

(a) Financial assistance shall be in one of the following forms:

- (1) An original loan;
- (2) The refinancing or purchase of pre-existing debt obligations;
- (3) The guarantee or purchase of insurance for a local debt obligation; or
- (4) Loan subsidies for disadvantaged communities, as described in 40 CFR §35.3525.

(b) Loans shall be made only with the following conditions:

- (1) Interest shall be at or below the market rate in effect at the time of the loan for a term not to exceed 20 years, except a loan term of up to 30 years shall be allowed for disadvantaged communities provided the loan term does not exceed the expected design life of the project;
- (2) Principal and interest payments shall commence not later than one year after project completion, in accordance with RSA 486:14, III and 40 CFR §35.3525;
- (3) The recipient shall establish a dedicated source of revenue for repayment of the loan in accordance with Env-Dw 1104.09;
- (4) An asset maintenance and renewal plan for the DWSRF-funded infrastructure project is developed and adhered to; and
- (5) The conditions of (e), below, are met.

(c) The refinancing or purchase of pre-existing debt obligations shall be undertaken only with the following conditions:

- (1) Interest shall be at a fixed rate at or below the market rate in effect at the time of the refinancing or purchase;
- (2) Such obligations shall have been incurred and construction shall have started after July 1, 1993; and
- (3) The conditions of (e), below, are met.

(d) The guarantee or purchase of insurance for the applicant's local debt obligation shall be undertaken only if the conditions of (e), below, are met.

(e) The DWSRF shall be used for the purposes listed in (a), above, only if the following conditions are met:

- (1) The applicant is the legal owner of the water system;
- (2) The water system for which the project is proposed is on the state inventory of public water systems;
- (3) The proposed project is listed on the current project priority list; and
- (4) If applicable, the project has approved plans and specifications and a construction approval issued by the department.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1106.02 Original Loan Agreement.

(a) Following acceptance of the application and upon availability of funds, a loan agreement shall be executed between the state and the applicant.

(b) The loan agreement shall contain the following provisions:

- (1) The loan amount;
- (2) The interest rate for the loan;
- (3) The term of repayment;
- (4) A description of the project;
- (5) Authorization for representatives of the department and applicable federal agencies to examine any of the loan recipient's records that pertain to transactions relating to the loan agreement, construction contracts, or engineering contracts for the purpose of inspection, audit, and copying during normal business hours; and
- (6) A requirement for the recipient to develop and adhere to an asset maintenance and renewal plan for the funded improvements.

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

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1106.03 Market Rate.

(a) The department's purpose in establishing a market rate shall be to remain competitive in the infrastructure financing marketplace.

(b) The department shall establish the initial market rate on the date of the first public hearing held pursuant to Env-Dw 1105.02(e) in each federal fiscal year, at or below the interest rate established in the 11-Bond Index published the prior week by The Bond Buyer on-line at [www.bondbuyer.com](http://www.bondbuyer.com).

(c) The department shall review the 11-Bond Index not less than monthly.

(d) If at any time the arithmetic average of the 11-Bond Index values published in any 4 consecutive weeks falls below 90% of the market rate in effect at that time, then:

- (1) The department shall adjust the market rate to equal the 11-Bond Index published in the last week of that 4-week period; and
- (2) The new rate shall become effective on Monday of the following week.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1106.04 Interest Rates Established.

(a) The interest rate charged on disbursed funds prior to the scheduled completion date or substantial completion date shall be equal to one percent annually.

(b) The interest rate charged on disbursed funds during repayment of the loan shall be based on the repayment period selected by the applicant and the market rate in effect at the time the loan is made as shown in (c), below, subject to adjustment pursuant to Env-Dw 1106.06.

(c) The interest rate based on the repayment period selected by the applicant shall be as shown in table 1106-1, below:

**Table 1106-1: Interest Rate Based On Repayment Period Selected by Applicant**

<b>Repayment Period Selected</b>	<b>Interest Rate</b>
5 years	25% of market rate
10 years	50% of market rate
15 years	75% of market rate
20 years	80% of market rate
30 years, available to disadvantaged communities only	80% of market rate

(d) The interest rate charged during repayment for projects funded over multiple years as provided in Env-Dw 1105.02(d) shall be the lowest rate in any of the DWSRF original loans or loan amendments for the project, calculated in accordance with (b) and (c), above, or the rate determined under Env-Dw 1106.06, whichever is lower.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1106.03)

Env-Dw 1106.05 Accrual of Interest Charges; Administrative Fee.

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

(b) The applicant shall pay interest charges incurred on disbursed funds in accordance with one of the following, at the election of the applicant:

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

(c) Interest charges during loan repayment shall be fixed over the loan repayment period.

(d) Pursuant to RSA 486:14, I(b), the department shall set aside as an administrative fee a sum equal to 2% of all loan principal balances outstanding each year. For any principal for which the interest rate is less than 2%, the administrative fee shall equal the interest rate.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1106.04)

Env-Dw 1106.06 Adjustment to Stipulated Interest Rate.

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

(b) If the market rate established pursuant to Env-Dw 1106.03 is lower than the market rate used to establish the interest rate in the original loan agreement, the loan interest rate shall be adjusted downward from the initial rate as specified in table 1106-1, using the market rate on the execution date of the supplemental agreement.

(c) If the market rate established pursuant to Env-Dw 1106.03 is higher than the market rate used to establish the interest rate 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) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1106.07 Timely Use of Funds.

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

(b) If a 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; and

(3) Inform the recipient that the recipient may request an adjudicative hearing prior to the loan agreement being cancelled.

(d) If the recipient requests an adjudicative hearing, the hearing shall be conducted in accordance with the provisions of Env-C 200 that apply to such hearings.

(e) 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) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1106.05)

Env-Dw 1106.08 Disbursements.

(a) To obtain a disbursement for eligible work and equipment from the awarded funds, the recipient shall submit a written disbursement request to the department.

(b) The written request shall include the following, as applicable to the request:

(1) Invoices for equipment and materials delivered and properly stored;

(2) Invoices from the consultant or engineer;

(3) Payment requisitions from the contractor(s); and

(4) Invoices for eligible work not covered under (1) through (3), above.

(c) Upon approval of the request, the department shall authorize the disbursement to be made from the DWSRF.

(d) The department shall not make disbursements under any one loan more frequently than monthly.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1106.06)

Env-Dw 1106.09 Repayment.

(a) Subject to (b), below, the recipient shall repay all funds received and interest accrued thereon to the department as stipulated in the supplemental loan agreement.

(b) A disadvantaged community that has received a loan subsidy as provided in 40 CFR 35.3525 shall repay only such funds and interest remaining, if any, after the subsidy is applied.

(c) Repayment shall:

(1) Not exceed a 20-year repayment period, unless a 30-year term is available to, and selected by, the recipient pursuant to Env-Dw 1106.01(b)(1); and

(2) Begin by the earlier of one year following the actual completion of the project or one year following the scheduled project completion as stated in the original loan agreement.

(d) Should excusable delay be incurred beyond the scheduled completion date, the commissioner shall:

(1) Offer to modify the loan agreement to account for the delays; and

(2) If the recipient so requests, negotiate and execute an appropriate modification of the loan agreement.

(e) Any recipient may repay a loan, in whole or in part, prior to the date stipulated in the loan agreement with no prepayment penalty.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1106.07)

Env-Dw 1106.10 Return of Funds to the Department.

(a) Financial assistance from the DWSRF 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 DWSRF 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) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1106.08)

Env-Dw 1106.11 Retainage.

(a) The recipient may withhold a percentage of all partial payments as retainage until the project is complete.

(b) If the recipient intends to withhold a retainage, the recipient shall specify the terms and conditions relating to the retainage in the contract documents submitted pursuant to Env-Dw 1108.03.

Source. #10772, eff 1-24-15 (from Env-Dw 1106.09)

Env-Dw 1106.12 Accounting. Each recipient shall:

(a) Use the accounting, audit, and fiscal procedures required by 40 CFR 35.3550(i) for the project;

(b) Place all funds received from the DWSRF in a project account for the sole purpose of planning, designing, and constructing or implementing the project as approved by the department;

(c) Use all funds received from the DWSRF for the sole purpose of planning, designing, and constructing or implementing the project as approved by the department;

(d) Provide an audit prepared by a certified public accountant or licensed public accountant to the department:

(1) Annually, if the recipient expends more than \$500,000 of federal funds in a federal fiscal year; or

(2) In response to a department request for an audit based on a reasonable suspicion of fraud or misuse of SRF funds;

(e) Maintain insurance coverage on the project in an amount adequate to protect the state's investment;

(f) Comply with any special conditions specified by the department's environmental determination until all financial obligations to the state have been discharged; and

(g) Continually abide by the terms of the financial assistance agreement, the department's rules, and relevant state and federal statutes for operation and maintenance of the facility.

Source. #10772, eff 1-24-15 (from Env-Dw 1106.10)

PART Env-Dw 1107 ENVIRONMENTAL REVIEW

Env-Dw 1107.01 Environmental Review Required. Any construction project for which financial assistance from the DWSRF 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) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1107.02 General Procedure.

(a) The department shall be the lead agency 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) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1107.03 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:

(1) Work on existing facilities where no new disruption of the environment will occur, such as correction of leakage, replacement of pipes in existing rights of way, or replacement or addition of equipment or small new structures on an existing site;

(2) Work where only a small disturbance is required to upgrade a facility, such as to install hydrants on existing water mains; or

(3) Acquisition of land for SWP purposes.

(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 New Hampshire office of energy and planning (OEP) for the intergovernmental review process and to the applicant to distribute for review and comment in accordance with Env-Dw 1107.05.

(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-Dw 1107.04.

(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) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1107.04 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) An 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, which shall be the proposed project or an alternative identified in the planning document prepared pursuant to Env-Dw 1104.10 that is:
  - a. Most likely to ensure compliance with the federal and state safe drinking water acts over the projected life of the funded infrastructure; and
  - b. Best meets the criteria specified in 40 CFR Part 35, Subpart L; and
- (5) Mitigation measures required for the recommended action, if any.

(c) The department shall forward the EA to the New Hampshire office of energy and planning for the intergovernmental review process and the applicant to distribute for review and comment in accordance with Env-Dw 1107.05.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1107.05 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 decision to the applicant and to OEP for the intergovernmental review process as coordinated by OEP.

(b) The applicant shall publish a notice in a daily newspaper of general circulation in the project's community and on the applicant's web site, if any, 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 by the department during the public review period.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1107.06 Department Decision.

(a) At the close of the review and comment period for a preliminary CE determination, the department shall make a determination in accordance with Env-Dw 1107.03(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 as follows:
  - a. If the applicant is an agency of the state, the meeting shall be convened as a non-adjudicative proceeding in accordance with the agency's rules;
  - b. If the applicant is a political subdivision of the state, the meeting shall be convened in accordance with RSA 91-A and any other applicable local requirements; and
  - c. If the applicant is other than a state agency or a political subdivision of the state, the meeting shall be convened in accordance with the applicant's by-laws or, if the by-laws do not contain procedures for public hearings, in accordance with the procedures for non-adjudicative hearings as specified in Env-C 200.

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

- (1) The department shall issue a FNSI if the department finds that:
  - a. The comments received do not indicate that the proposed project will actually have a significant adverse impact on the environment;
  - b. The benefit to the environment conferred by the project as proposed outweighs any significant adverse impact on the environment caused by the project as proposed; or

c. Any significant adverse impact on the environment caused by the project as proposed has been or will be addressed through another permit issued by the department, the Army Corps of Engineers, or EPA;

(2) If the department finds that the project will have a significant adverse impact on the environment that could be lessened or eliminated by implementing an alternative proposal, the 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 financial assistance from the DWSRF; 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. §4332, and procedures established at 40 CFR 1502 et seq.; 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) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1107.07 Appeal.

(a) Within 30 days of the date of the written department decision issued pursuant to Env-Dw 1107.06(c), any person aggrieved by the decision may appeal the decision as a permitting decision as specified in RSA 21-O:14.

(b) 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) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1107.08 Duration of Decision. Final environmental determinations 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) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

PART Env-Dw 1108 DESIGN, CONSTRUCTION, AND IMPLEMENTATION PHASES

Env-Dw 1108.01 Consulting Contracts for Expenditures of DWSRF Funds.

(a) For all projects funded from the DWSRF that require consulting services, the contract for such services shall contain the following:

(1) A description of the services to be provided by the consultant, including the due date for any report or plans that will be prepared;

(2) The loan recipient's responsibilities under the contract;

(3) The estimated time of completion of the services covered by the contract;

- (4) Compensation to be paid to the consultant; and
- (5) Termination provisions.

(b) The recipient shall comply with all applicable procedures and incidental legal requirements in awarding the consultant's contract.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1108.02 Engineering Plans and Specifications.

(a) The applicant shall prepare and submit engineering plans and specifications that conform to the applicable design standards specified in Env-Dw 400.

(b) Approval of the plans and specifications shall not relieve the applicant of any liabilities or responsibilities with respect to the design, construction, operation, or performance of the project.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1108.03 Contract Documents.

(a) The recipient shall submit construction contract documents for review and approval by the department.

(b) No construction project shall be offered for public bid until after the department has reviewed the contract documents in accordance with Env-Dw 1108.04.

(c) The construction contract documents submitted by the recipient to the department shall contain the following information:

- (1) Bidding requirements for the construction of the project, including bid advertisement or solicitation for competitive quotations, information for bidders, a bid proposal form that separates eligible construction from ineligible construction, and applicable bid security requirements;
- (2) Agreement and applicable forms for the payment bond, performance bond, notice to proceed, and related forms such as the contractor's affidavit, the contractor's release, the certificate of substantial completion, and the format for change orders;
- (3) For loans greater than \$100,000, general and supplemental conditions for the construction of the project, including provisions requiring the contractor to obtain and maintain the appropriate insurance coverage;
- (4) Applicable federal requirements, including forms;
- (5) Plans and specifications as specified in Env-Dw 1108.02;
- (6) Appendices including boring logs, permits and other details as appropriate;
- (7) Provisions giving authorized representatives of the department access to all construction activities, books, records, and documents for the purpose of inspection, audit, and copying during normal business hours; and
- (8) Such conditions, specifications, and other provisions as are required to comply with state and federal law.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1108.04 Department Review of Contract Documents.

(a) The department shall review the contract documents submitted pursuant to Env-Dw 1108.03 within 30 days of receipt.

(b) The department shall approve the contract documents if they:

- (1) Meet the requirements listed in Env-Dw 1108.03(c);
- (2) Are consistent with all applicable state and federal requirements; and
- (3) Are consistent with the planning document submitted pursuant to Env-Dw 1104.09.

(c) After the contract documents are approved, no changes to the contract documents shall be made unless the recipient obtains prior approval from the department pursuant to Env-Dw 1108.05.

(d) After the contract documents are approved, no increases in project cost or scope shall be made unless the recipient obtains prior approval from the department pursuant to Env-Dw 1108.05.

(e) Approval of the contract documents shall not relieve the applicant of any liabilities or responsibilities with respect to the design, construction, operation, or performance of the project.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1108.05 Changes to Contract Documents and Project Cost or Scope.

(a) After the contract documents have been approved by the department and prior to awarding the contract, the recipient shall not make, allow, or authorize any changes, modifications, or amendments to or departure from the approved plans and specifications that would materially or significantly affect project cost, estimated revenues, or project design without the prior written approval of the department.

(b) A request submitted pursuant to (a), above, shall:

- (1) Identify the specific change(s) for which approval is sought;
- (2) Explain the reasons for the request, including an explanation of the operational or economic consequences of the requested changes not being approved; and
- (3) Explain how the request meets the criteria specified in (d) or (e), below, as applicable.

(c) The department shall approve or deny the request within 10 working days of receipt of a request meeting the criteria of (b), above.

(d) The department shall approve one or more changes in the contract documents if the recipient's request demonstrates that the change(s) are:

- (1) Consistent with applicable federal and state requirements; and
- (2) In the best interests of the DWSRF and the public served by the recipient's public water system.

(e) The department shall approve a request for an increase in project cost or scope if the following criteria are met:

- (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) If the recipient is requesting additional DWSRF funds, the item to which the cost increase is attributable is an eligible cost as specified in Env-Dw 1104.01; and

(4) If the recipient is requesting additional DWSRF funds, the DWSRF has sufficient monies available at the time the request is filed to cover the proposed cost increase.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1108.06 Assurances. The department shall not disburse any DWSRF funds for construction until the recipient provides evidence of the following:

- (a) Approved project plans and specifications;
- (b) Compliance with best available technology where applicable for primary and secondary contaminants;
- (c) Compliance with disadvantaged business enterprise requirements as specified in 40 CFR Part 33;
- (d) Agreement to maintain project financial accounts in accordance with Env-Dw 1106.12 and to maintain project accounts as separate accounts;
- (e) Certification that the water system that will be implementing the project has the necessary legal, financial, institutional, and managerial resources available to insure the construction, operation, and maintenance of the proposed water treatment facilities; and
- (f) Agreement to provide notice of initiation of operation to the department upon beginning operation of the project.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1108.04)

Env-Dw 1108.07 Awarding Construction Contracts.

(a) The recipient of financial assistance from the DWSRF for a construction project shall comply with all applicable legal procedures and other legal requirements in advertising for bids and awarding the construction contract.

(b) The text of the construction contract documents shall not vary from the text of the contract documents approved pursuant to Env-Dw 1108.04, unless a change has been approved pursuant to Env-Dw 1108.05.

(c) After receiving and reviewing bids, the recipient shall select the lowest responsive bid or competitive quotation, unless approval is requested and obtained from the department to award the contract to a higher bid or quotation based on objective knowledge that the apparent lowest bid or quotation is not responsible.

(d) The recipient shall request approval from the department to award the construction contract by submitting the following in writing to the department:

- (1) A revised estimate of eligible project costs, including a minimum 5% contingency for construction costs, construction engineering costs, recipient's administrative costs directly related to the project that are attributable to additional administrative duties outside of normal duty hours, and other costs;
- (2) For loans greater than \$100,000, monthly cash flow projections;
- (3) Evidence of solicitation for bids or competitive quotations;

- (4) A tabulation of all bids that were received;
- (5) A letter signed by the loan recipient's authorized representative indicating the contract value and the name of the bidder to whom the contract is planned to be awarded;
- (6) A copy of the bid proposal of the bidder to whom the contract is planned to be awarded;
- (7) Documentation assuring bidder compliance with EPA's disadvantaged business enterprise requirements as specified in 40 CFR Part 33; and
- (8) Certification that all necessary permits, land acquisitions, and easements have been secured.

(d) The department shall approve the award of the construction contract if it determines that all applicable requirements have been met. The applicant shall not award the construction contract until after it has received written approval to do so from the department.

(e) For all construction projects funded by the DWSRF program, following receipt of approval from the department the loan recipient shall execute a construction contract with the selected contractor.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1108.05)

Env-Dw 1108.08 Recipient's Obligations for Inspections During Construction.

(a) During the construction phase of the project, the recipient shall obtain the engineering services necessary to assure completion of the project in accordance with the loan agreement and the approved plans and specifications.

(b) After the construction contract is awarded, the recipient shall provide for inspections of the project by a resident project representative that are sufficient to provide assurance to the recipient and the department that the work is being performed in a satisfactory manner in accordance with the approved plans and specifications, approved alterations, and sound engineering principles and building practices.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1108.06)

Env-Dw 1108.09 Department Inspections During Construction.

(a) The recipient shall allow the department to inspect the project at any time in order to confirm that:

- (1) The materials furnished meet the approved specifications; and
- (2) The project is being built in accordance with the approved plans and specifications and any approved alterations.

(b) In conjunction with project inspections, the department shall:

- (1) Inspect the materials that are visible at the time of the inspection to determine compliance with the approved plans and specifications; and
- (2) Document the manner and progress of the project, conditions relating to the materials furnished, and on the contractor's compliance with the approved plans and specifications for the project.

(c) Inspections by the department shall not release the contractor from any obligation to perform the work in accordance with the requirements of the contract documents, nor shall such inspections release the project engineer from determining compliance with the requirements of the contract documents.

(d) The contractor and recipient shall provide the department with every reasonable accommodation for ascertaining whether the work as performed is in accordance with the requirements and intent of the contract.

(e) The department shall, as soon as practicable, bring to the attention of the recipient and the project engineer any variances from the approved plans and specifications of which it becomes aware through its inspections.

(f) Upon being notified of any such variances, the recipient and the project engineer shall immediately:

- (1) Initiate necessary action to rectify the deficiencies; or
- (2) Provide documentation explaining the reason(s) for the variance and demonstrating that the installation meets the requirements of Env-Dw 400.

(g) If the recipient's project engineer disagrees with the department as to whether material furnished or work performed conforms with the terms of the construction contract, the recipient shall direct the project engineer to reject questionable materials and initiate other action provided for in the construction contract, including suspension where necessary, until all disputed issues are resolved in accordance with the terms of the construction contract.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1108.07)

Env-Dw 1108.10 Testing During Construction.

(a) In addition to normal testing procedures required of the recipient, the department shall require such additional tests of building materials and processes as the department determines to be necessary to demonstrate compliance with the approved plans and specifications and any approved alterations thereto during the building of projects financed in whole or in part by DWSRF funds.

(b) All tests, whether for the department or the project engineer, shall conform to current American Water Works Association standards as specified in Env-Dw 407, American Association of State Highway and Transportation Officials, American Society of Testing and Materials, and the New Hampshire department of transportation published procedures, or similar criteria, as applicable to the specific materials and processes proposed by the recipient to be used in the project.

(c) The department shall specify which tests are applicable based on the specific materials and processes proposed by the recipient to be used in the project. Samples for testing shall be furnished free of cost to the department upon request at the construction site.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1108.11 Limitations on Project Modifications; Requests for Approval.

(a) After construction has commenced, the recipient shall not make, allow, or authorize any changes, modifications, or amendments to, or any departures from, the approved plans and specifications that would materially or significantly affect project cost, estimated revenues, or project design in accordance with Env-Dw 1108.09 without prior written approval from the department.

(b) The recipient shall request such approval by submitting the following information in writing to the department:

- (1) The name of the recipient and the name and location of the recipient's water system;
- (2) The date of the loan agreement;
- (3) A description of the modification(s) for which the recipient is seeking approval;

- (4) The reason why the modification(s) are necessary; and
- (5) The operational and economic consequences to the water system and to public health and the environment of the department not approving the modifications.

(c) Prior departmental approval of project change orders shall not be required if applicant's project engineer certifies to the department that such change, modification, amendment, or departure:

- (1) Will not materially or significantly affect project cost, estimated revenues, or project design; and
- (2) Is consistent with the objectives of the project and within the scope of the assistance agreement.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1108.08)

Env-Dw 1108.12 Approval of Project Modifications.

(a) Subject to (b) and (c), below, the department shall approve a request submitted pursuant to Env-Dw 1108.11 if:

- (1) The scope of the project as modified is consistent with the original intent of the financial assistance;
- (2) The project as modified will bring the water system into compliance with the Act, RSA 485, and applicable rules in subtitle Env-Dw; and
- (3) If additional DWSRF funds are requested, the increased cost is approvable under the criteria established in Env-Dw 1108.05(e).

(b) The department shall review the request and notify the recipient and project engineer as soon as practicable considering the scope of the request.

(c) A change of project scope, such as the addition of new construction items, shall not be eligible for additional funding after loan closing unless one of the following conditions are met:

- (1) The change of scope is necessary due to an oversight, and is needed to provide an operable water system and not to replace faulty construction or equipment already funded; or
- (2) The change of scope is necessary due to changes in federal or state requirements.

(d) The amount of funding provided from the DWSRF shall be increased only by a formal amendment in writing with the department, with governor and council approval.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1108.09)

Env-Dw 1108.13 Construction Phase Submittal. During the construction phase of the project, the recipient shall submit:

(a) A notice of completion of construction to the department, upon completion of project construction; and

(b) Any other building phase submittals required by the financial assistance documents to be submitted for the department's approval.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1108.10)

Env-Dw 1108.14 Final Inspection and Audit.

(a) Upon completion of any project for which financial assistance from the DWSRF has been provided, the applicant shall furnish to the department written notification of completion.

(b) Upon receipt of such notification, or upon project completion should notification not be furnished as required, and prior to the department approving the final loan disbursement, the department shall conduct:

- (1) A final on-site inspection of the project with the recipient or the recipient's designee; and
- (2) An audit of any and all financial assistance funds furnished to the recipient.

Source. #10772, eff 1-24-15 (from Env-Dw 1108.12)

Env-Dw 1108.15 Certification. One year after the initiation of operation, the recipient shall certify in a letter to the department that any facility constructed from funds made available through the DWSRF is being operated and maintained so as to meet drinking water quality standards.

Source. #10772, eff 1-24-15 (from Env-Dw 1108.13)

PART Env-Dw 1109 WAIVERS

Env-Dw 1109.01 Purpose. The purpose of the rules in this part is to accommodate situations in which strict compliance with all rules in this chapter may not be in the best interests of the public or the DWSRF.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1109.02 Procedures.

(a) Any person who is or would be directly and adversely affected by the strict application of a rule in Env-Dw 1100 may request a waiver thereof.

(b) Each request for a waiver shall be filed in writing.

(c) Each request for a waiver shall include the information specified in Env-Dw 1109.03 and be signed as required by Env-Dw 1109.04.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1109.03 Content and Format of Requests. The person requesting the waiver shall provide the following information:

(a) The name, mailing address, and daytime telephone number of the requestor;

(b) The project to which the waiver request relates;

(c) The number(s) of the specific section(s) of the rules for which a waiver is sought;

(d) A full explanation of why a waiver is being requested, including an explanation of the economic and operational consequences of complying with the rule as written;

(e) If applicable, a full explanation of the alternate(s) proposed to be substituted for the requirement in the rule, including documentation or data, or both, to support the alternative;

(f) Whether the need for the waiver is time-limited and, if so, the estimated length of time the waiver will be needed; and

(g) A full explanation of why the applicant believes that having the waiver granted will meet the criteria in Env-Dw 1109.05.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1109.04 Signature Required.

- (a) The person(s) requesting the waiver shall sign the request.
- (b) The signature(s) shall constitute certification that:
  - (1) The information provided is true, complete, and not misleading to the knowledge and belief of the signer; and
  - (2) The signer understands that any waiver granted based on false, incomplete, or misleading information shall be subject to revocation.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15

Env-Dw 1109.05 Criteria.

- (a) Subject to (b), below, the department shall grant a waiver if:
  - (1) Granting the waiver, conditional upon implementation of alternatives, if applicable, will result in circumstances that are as protective of the public, the environment, and the integrity of the DWSRF program as the requirements contained in this chapter;
  - (2) Granting the waiver, conditional upon implementation of alternatives, if applicable, will not adversely impact the department's obligations under RSA 486 and obligations associated with maintaining primacy from the EPA; and
  - (3) Strict adherence to the rule would not be in the best interest of the public, the environment, or the SRF.
- (b) No waiver shall be granted if the effect of the waiver would be to waive or modify a state or federal statutory requirement, including but not limited to any requirement of RSA 486, the federal safe drinking water act, 42 U.S.C. §§ 300f - 300j-26, or a capitalization grant, unless:

- (1) Such statute or grant expressly provides that the requirement may be waived or modified; and
- (2) In the case of a federal statute or capitalization grant, EPA does not object to granting the waiver.

Source. (See Revision Note at chapter heading) #8702, eff 8-24-06; ss by #10772, eff 1-24-15 (from Env-Dw 1109.04)

Env-Dw 1109.06 Decisions.

- (a) The department shall notify the person requesting the waiver of the decision in writing within 30 days of receiving a complete request. If the request is denied, the department shall specify the reason(s) for the denial in the notice.
- (b) The department shall include such conditions in a waiver as are necessary to ensure that the criteria specified in Env-Dw 1109.05 are met, including if applicable the implementation of alternatives.
- (c) If the need for a waiver is temporary, the waiver shall specify the date on which it will expire.

Source. #10772, eff 1-24-15 (from Env-Dw 1108.05)

**APPENDIX A: STATE STATUTES AND FEDERAL REQUIREMENTS IMPLEMENTED**

<b>Rule Section(s)</b>	<b>State Statute(s) Implemented</b>	<b>Federal Requirements Implemented</b>
Env-Dw 1101 – 1105	RSA 486:14, I	42 U.S.C. §§ 300f - 300j-26
Env-Dw 1106	RSA 486:14, I; RSA 486:14, III	42 U.S.C. §§ 300f - 300j-26
Env-Dw 1107 – 1108	RSA 486:14, I	42 U.S.C. §§ 300f - 300j-26
Env-Dw 1109	RSA 541-A:22, IV	

**APPENDIX B: STATUTORY DEFINITIONS**

**RSA 485:1-a**

XIV. “Political subdivision” means any municipality, county, district, or any portion or combination of 2 or more thereof.

XV. “Public water system” means a system for the provision to the public of piped water for human consumption, if 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. Such term includes (1) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (2) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Any water system which meets all of the following conditions is not a public water system:

- (a) Consists only of distribution and storage facilities (and does not have any collection and treatment facilities);
- (b) Obtains all of its water from, but is not owned or operated by, a public water system; and
- (c) Does not sell water to any person.