

State of New Jersey
Department of Environmental Protection
Clean Water Financing Program/State Revolving Fund

Proposed Amendments to the FFY2009 Priority System/Intended Use Plan

**Proposed Intended Use Plan for the American Recovery and Reinvestment
Act of 2009 Program**

I. Introduction

The purpose of this proposal is to make changes to the FFY2009 Clean Water Priority System/Intended Use Plan documents and to establish funding policies and the program schedule to administer the Environmental Infrastructure Financing Program in conjunction with the new requirements and additional monies made available to the State's Clean Water SRF Program through the American Recovery and Reinvestment Act of 2009 (ARRA).

Upon finalization, this Intended Use Plan (IUP) will accompany the State of New Jersey's application for a \$160,146,855 capitalization grant for the Clean Water State Revolving Fund (CWSRF) Program under the ARRA.

The federal ARRA funding is intended to accelerate the construction of environmental infrastructure projects, create jobs and stimulate economic activity. In order to supplement the goals of the ARRA at the State level, Governor Corzine has directed the Department of Environmental Protection (Department) to modify the traditional financing structure for the 2009 Program to provide additional incentives for project sponsors to pursue investments in environmental infrastructure projects that can be implemented and are ready to begin construction. As a result of this directive, the traditional financing structure allows all projects (except supplemental loans and land acquisition projects) that are certified in SFY2010 to qualify for an interest-free loan from the Department for up to 75% of the allowable project costs and a market rate loan from the New Jersey Environmental Infrastructure Trust (Trust) for the remaining allowable costs. Under this new structure, the Program will be providing loans to project sponsors at the lowest interest rate in its 22-year history.

In addition to the changes to the traditional financing structure, the following changes are being proposed to the FFY2009 Clean Water Priority System, Intended Use Plan and Project Priority List documents to incorporate ARRA projects and related requirements:

1. New projects have been added to the Clean Water Project Priority List and are eligible for financing in the FFY2009/SFY2010 Financing Program provided the project sponsor submitted a complete loan application on or before March 16, 2009; and
2. Supplemental loans, land acquisition and conduit borrowers/private activity projects are not eligible for ARRA funding. Supplemental loans and land acquisition projects continue to be eligible under the policies of the FFY2009 Priority System/Intended Use Plan proposed in August 2008. Conduit borrowers/private activity projects are eligible for the traditional financing package (as modified above).

In addition to the Environmental Infrastructure Financing Program requirements identified in N.J.A.C. 7:22-3, 4, 5, 9 and 10, the ARRA includes the following provisions that impacted the development of this proposal and identifies additional requirements that apply to recipients of the ARRA funds.

- **Reallocation:** EPA is directed to reallocate SRF monies where projects are not under contract or under construction within 12 months of enactment of the legislation.
- **Loan Subsidization:** Not less than 50% of the capitalization grants each state receives must be used to provide additional subsidization in the form of principal forgiveness, negative interest loans, grants, or any combination of these.
- **Priority to Ready-to-Proceed Projects:** Notwithstanding the priority ranking under the SRFs, priority shall be allocated to projects that are ready to proceed to construction within 12 months of enactment.
- **Green Infrastructure/Water & Energy Efficiency:** At least 20% of the SRF funds must be designated for green infrastructure, water and/or energy efficiency, innovative water quality improvements, decentralized wastewater treatment, stormwater runoff mitigation, and water conservation. States may, however, use less than 20% if they can certify that there are insufficient eligible applications for these types of projects.
- **State Match Requirements:** The overall 20% state match requirement is waived.
- **Certification:** Each funding recipient (Mayor, Executive Director, or other chief executive) must certify that the project has been reviewed and vetted and deemed an appropriate use of taxpayer dollars.
- **Reporting:** Called the Jobs Accountability Act, section 1512 of this Title requires that, on a quarterly basis, funding recipients must report to the appropriate Federal agency: amounts received, projects or activities for which funds are to be used, estimated numbers of jobs created or retained, and information regarding subcontracts and subgrants.
- **Buy American:** American iron, steel and manufactured goods are to be used unless any of three exceptions apply: (1) applying the requirement would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.
- **Davis-Bacon:** Davis-Bacon prevailing wage provisions apply to all contracts which are funded with ARRA monies.

- **Competitive Award Procedures:** Contracts must be awarded using competitive procedures in accordance with the requirements of the Federal Property and Administrative Services Act and the Federal Acquisition Regulation.

In addition, the Department and the Trust have developed a Planning Loan Sub-Program to help project sponsors pay for the planning and design activities to qualify for the ARRA or the traditional 2009 Financing Program. For clean water projects, CWSRF funds will be the primary source of monies for this purpose. The following provisions apply to the Planning Loan Sub-Program:

1. The planning loans shall only be provided by the Trust to eligible borrowers for environmental infrastructure projects that they will own and operate;
2. The planning loans will be interest free for local government units and small water systems and at 2% for all other eligible borrowers;
3. The planning loan amount shall not exceed 50% of the planning and design allowance as calculated pursuant to N.J.A.C. 7:22-5.12 or the actual planning and design costs incurred;
4. An eligible borrower cannot receive more than \$500,000 in planning loans, regardless of the number of projects participating in the ARRA or the 2009 Financing Program; and
5. Loans shall mature on or before the date of issuance by the Trust of its final Trust bond issuance that shall close at any time during SFY2010.

More information regarding the detailed application procedures for the Planning Loan Sub-Program can be found at <http://www.njeit.org/forms.htm> .

II. CWSRF Program Goals

The State of New Jersey is committed to using the capitalization grant for which it is applying to provide assistance to wastewater, stormwater/nonpoint source and estuary projects which will proceed quickly to construction, creating jobs and furthering the water quality objectives of the Clean Water Act. The State of New Jersey's goal is to enter into binding commitments for projects, which will proceed to construction or award of construction contracts no later than February 17, 2010.

The State of New Jersey recognizes that the goal of the ARRA is to expeditiously fund eligible projects that simultaneously will create jobs, promote economic recovery, and generate long-term benefits from infrastructure investment.

III. Sources and Uses of Funds

The State of New Jersey is applying for a capitalization grant in the amount of \$160,146,855. This represents the amount that the State is eligible to receive under the State's allocation from the supplemental appropriation enacted under the ARRA. Under the provisions of the ARRA, states are not required to provide the 20% match that is normally required for the award of federal SRF monies.

Table 1 summarizes the sources and uses of the ARRA capitalization grant for which the State is

applying:

Table 1
Sources and Uses of ARRA Capitalization Grant

<u>SOURCES</u>	<u>AMOUNT</u>
ARRA Capitalization Grant	\$160,146,855
 <u>USES</u>	
Project assistance loans	\$128,117,484
Green Project Reserve loans	\$ 32,029,371
 TOTAL USES	 \$160,146,855

IV. Criteria and Methods for Distribution of Funds

A. Project List

In August 2008, the Department developed and distributed the Priority System, Intended Use Plan and Project Priority List proposal for the FFY2009/SFY2010 Clean Water Financing Program and solicited input from potential project sponsors and other interested parties. Subsequent to the issuance of the proposal document, the ARRA was introduced in Congress to accelerate the construction of environmental infrastructure projects, create jobs and stimulate economic activity. Under the approved legislation, New Jersey is eligible to receive approximately \$160 million to finance clean water projects.

On December 18, 2008, the Department and the New Jersey Environmental Infrastructure Trust (Trust) issued a “Call for Projects” to begin to solicit interest from project sponsors that would be in a position to enter into loan agreements and begin construction in a timely manner. To encourage project sponsors to participate, the Department and the Trust had considered adjustments to the Financing Program to provide lower cost loans to those projects that are able to proceed quickly, award contracts and begin construction sooner. At that time the Department and the Trust did not anticipate two major changes to the ARRA during its development, including a provision that requires states to use at least 50 percent of the ARRA funds to provide grants, negative interest loans and/or principal forgiveness loans and a reduction (from \$240 million to \$160 million) in the amount that the ARRA would provide to the CWSRF Program in New Jersey.

The State conducted a comprehensive outreach campaign to alert potential borrowers of federal plans to provide economic recovery stimulus funding. In addition to the December 18, 2008 Call for Projects (which was sent to the CWSRF mailing list (1200 local contacts)), emails were distributed, and information was posted on the State’s website and the Trust’s website that identified the initial steps to participate in economic recovery loan application process.

Information was updated as details of the stimulus funding changed and became finalized at the federal level. The State has focused on reaching out to communities with ready to go projects and those that may be eligible for principal forgiveness subsidy assistance. As a result of this effort the CWSRF program has identified over \$1.5 billion in eligible projects that could be

ready to proceed to construction within the time deadlines established by the ARRA. The attached Project Priority List includes a subset of projects eligible for ARRA funding. The following prioritization process will be used to award ARRA monies:

- 1. As projects are approved by the Department, the project sponsor proceeds with advertising and awarding contracts with an option to receive a Trust Interim Loan and with no guarantee of receiving ARRA monies until such time that the Borrower provides a certification that the construction contract has been awarded and they are proceeding with project implementation.**
- 2. The Program will offer ARRA funding to those projects that have completed the above-noted activities in accordance with the program rules first until the ARRA funds are exhausted (or until the green project reserve requirement is satisfied).**

B. Additional Subsidization

The ARRA requires that not less than 50% of assistance provided is in the form of additional subsidies. Legislation to authorize the Department to provide principal forgiveness loans, negative interest loans and/or grants has been developed. It is anticipated that the State Legislature will support this initiative, which would establish authority to for the Department to use the CWSRF to provide the additional subsidization beyond its current limitations. Final passage is anticipated by July 31, 2009.

C. Green Infrastructure

The ARRA requires that, to the extent there are sufficient eligible project applications, not less than 20% of the funds provided for projects must be used for water or energy efficiency, green infrastructure, or other environmentally innovative activities. The Project Priority List includes several projects including, energy reduction activities, wind turbines, wastewater reuse, solar/ photovoltaic panels and other qualifying green activities. New Jersey has received sufficient applications to obligate at least \$32,029,371 for projects or portions of projects that meet the green infrastructure objectives of the ARRA. A sampling of the projects that New Jersey may use to satisfy the green project reserve (GPR) requirement are listed in Appendix 3. The GPR list totals \$53.7M in allowable project costs. If the projects identified in Appendix 3 do not proceed to construction or otherwise accept ARRA funding, the Department reserves the right to continue using the Green Project Reserve to finance other lower-ranked projects on the Priority List that have qualifying green components to ensure that the 20% requirement is satisfied.

D. Preference for Expeditious Activities

The ARRA requires priority be given to projects that will be ready to proceed to actual construction within 12 months of the date of enactment. Projects will only be eligible for ARRA funds if the project sponsor certifies that they have awarded the construction contract and/or are under construction. The Program has been developed in such a way that only those projects that have submitted a complete application and are ready to proceed can qualify for ARRA monies.

E. Avoidance of Reallotment/Relationship to Traditional Program

In order to meet the requirements and deadlines of the ARRA for the expeditious and timely commitment and expenditure of funds, the State of New Jersey will regularly review the data reported to EPA on the progress of assistance recipients under the deadlines specified in this IUP to identify any issues with the timeliness of this progress. If such issues are identified, the State of New Jersey intends to work with EPA to resolve such issues. The State will include conditions in its assistance agreements to ensure that assistant recipients make timely progress with respect to entering into contracts and/or construction.

The State understands that the U.S. Environmental Protection Agency may deobligate grant funds from States that fail to meet requirements on use of ARRA funds. However, if the State is eligible for additional funds made available by a reallocation of ARRA funds, the State will provide EPA with a list of projects from its project priority list that are immediately prepared to proceed to construction.

F. Loan Terms and Fees

Qualifying Projects for the ARRA Program will receive the following Financing Package:

ARRA Loan (Principal Forgiveness) - 50% of the allowable project costs

ARRA Loan (0% interest) - 25% of the allowable project costs

Trust Loan (Market Rate) - 25% of the allowable project costs

Sponsors do not have the option of accepting portions of or otherwise segmenting the package described above.

No project sponsor can receive more than \$7.5M in ARRA monies (a \$10M cap on allowable ARRA project costs). For those project sponsors limited by the “cap”, we will recommend (but not require) that they reduce the scope/costs of the overall project so that the portion financed with ARRA funds is more compatible with the funding cap. As a result, those projects funded with ARRA money and impacted by the cap will receive a blend of ARRA and financing through the traditional Financing Program. The “cap” is intended to increase the number of projects that can be financed through the ARRA Program so that the limited available funds can be leveraged to promote more economic development and job creation in New Jersey.

By providing funding through the aforementioned formula, the State demonstrates that at least 50% of the available funding for projects will be provided via principal forgiveness loans and insures that the State is in compliance with the provisions of the ARRA.

The Department intends to continue to assess a 2% fee for projects that participate in the Environmental Infrastructure Financing Program, including projects that qualify and receive ARRA funding. In addition, please note that the Department has opted not to reserve 4% of the amount available to the State through the ARRA Program for administrative costs. The Department has chosen to reserve the option to take an amount equal to 4% of the ARRA funding from future capitalization grant awards.

V. Public Review and Comment

In compliance with the requirement in CWA sec. 606(c) to provide for public review and comment, the State of New Jersey has posted this Priority System/Intended Use Plan proposal at <http://www.nj.gov/dep/dwq/cwpl.htm> on May 5, 2009. The State also provided notice of the availability of this IUP to the public by announcements on the DEP and Trust web sites and a mailing to the standard mailing list of potential project sponsors and other interested parties.

The public hearing regarding Drinking Water and Clean Water Priority System/Intended Use Plan Proposal the will be held on May 18, 2009 in the Public Hearing Room on the First Floor of the DEP Building located at 401 East State Street, Trenton, New Jersey. The hearing will commence at 10:00 a.m., and conclude at 1:00 p.m., or the end of testimony, whichever is earlier. All comments submitted in accordance with the deadline will be considered in the preparation of the final FFY2009 Priority System/Intended Use Plan documents and for the ARRA Program.

Written comments on the Clean Water proposal should be submitted by June 1, 2009 to:

NJ Department of Environmental Protection
Stanley V. Cach, Jr., Assistant Director
Municipal Finance and Construction Element
P.O. Box 425
Trenton, NJ, 08625-0425

VI. Assurances

The Department agrees to comply with the Federal program requirements as outlined in the Operating Agreement between EPA and the State of New Jersey dated April 19, 1989.

VII. Appendices

Appendix A – Revised FFY2009/SFY2010 Program Schedule

Appendix B – FFY2009/ARRA Clean Water IUP Project Priority List

Appendix C – Anticipated Use of Green Project Reserve

Appendix D – Proposed FFY2009/ARRA Project Priority List (Comprehensive List)

Appendix E – Project Ranking Worksheets and Project Descriptions