

**Massachusetts Clean Water Trust**  
**Office of the Treasurer and Receiver - General**  
**Executive Office for Administration and Finance**  
**Department of Environmental Protection**



**Application for Financial Assistance**  
**Clean Water State Revolving Fund**  
**Construction Stage**

January 2023

**Department of Environmental Protection**  
**Bureau of Water Resources**  
**Division of Municipal Services**  
**100 Cambridge Street Suite 900**  
**Boston, Massachusetts 02114**

## **Introduction**

This application package includes the application form, instructions, and other information relative to supporting documentation required to be submitted as part of the Application.

**Please do not submit the instructions with the application.**

Applicants should note that neither the filing of an application nor issuance by the Massachusetts Department of Environmental Protection (MassDEP) of a Project Approval Certificate (PAC) constitutes a binding commitment of the Massachusetts Clean Water Trust (Trust) or MassDEP to make a loan. Binding commitments, subject to the availability of funds, will be issued by the Trust after review of the financial information contained in the application.

**PLEASE NOTE THAT THIS APPLICATION PACKAGE IS SUBJECT TO REVISION. IT DOES, HOWEVER, REFLECT THE MOST CURRENT INFORMATION REQUIRED BY MassDEP AND THE TRUST TO REVIEW AND APPROVE YOUR PROJECT.**

## **General Information**

*Please complete all parts of this application; incomplete or incorrect applications may delay review.*

1. ***Use of This Application*** - This is an application form for financial assistance from the Massachusetts Clean Water Trust's State Revolving Fund (SRF) Loan Program for the construction of water pollution abatement projects. LGUs interested in receiving an SRF loan must complete and return this application. The application consists of:

Section A - Applicant Information, Certification Statement, and Project Information

Section B - Environmental Benefits

Loan Application Checklist

2. ***General Eligibility*** - A project must appear on the project priority list of the final approved Massachusetts Clean Water State Revolving Fund Intended Use Plan and meet the eligibility criteria of the SRF program to be eligible for financial assistance. The Clean Water SRF eligibility criteria can be found at 310 CMR 44.04 and 44.08 (<https://www.mass.gov/regulations/310-CMR-4400-the-clean-water-state-revolving-fund>) and MassDEP's policy on eligible costs can be found here: <https://www.mass.gov/doc/clean-water-srf-eligible-project-costs-0/download>
3. ***Deadlines*** - Please keep in mind three important deadlines. A vote on the local appropriation by the City Council, Town Meeting or Wastewater District must be completed by **June 30, 2023** and should be scheduled as far in advance of that date as possible. A complete application must be submitted by **October 13, 2023**. Construction must commence within 6 months of issuance of the Project Approval Certificate by MassDEP. For projects receiving principal forgiveness, construction contracts must be executed by **June 30, 2024**. ***These deadlines are not applicable to approved emergency funded projects.***
4. ***Submission*** - Please submit a PDF copy of the application (**including the loan application checklist**) via email or ftp site access to:  
[Maria.Pinaud@mass.gov](mailto:Maria.Pinaud@mass.gov)  
cc  
[Robin.McNamara@mass.gov](mailto:Robin.McNamara@mass.gov)  
[Gregory.D.Devine@mass.gov](mailto:Gregory.D.Devine@mass.gov) (for NERO & WERO projects)  
[Michele.Higgins@mass.gov](mailto:Michele.Higgins@mass.gov) (for CERO & SERO projects)

## **INFORMATION FOR SECTION A AND SECTION B**

### **Section A - Applicant Information and Certification**

1. Please see **DEFINITIONS FOR LOAN APPLICATION CHECKLIST** for more information on the Authorized Representative requirements.

In April of 2022 the Office of Management and Budget (OMB) required federal agencies to transition from collecting DUNS numbers to collecting Unique Entity IDs (UEI). UEIs are assigned by the Federal Government and are used to track the flow of federal funds. MassDEP and the Massachusetts Clean Water Trust recommend SRF loan and grant applicants apply for a UEI at their earliest convenience because if applicants do not have an UEI assigned, disbursements may be delayed until one is issued.

The UEI application and FAQ's can be found on the SAM.gov website, linked here:

<https://sam.gov/content/duns-uei>

2. If an individual other than the Authorized Representative will serve as the Applicant's contact person for day-to-day management of the project, provide that person's name, address, e-mail address, and telephone and fax numbers.
3. Provide the name and Federal Employer Identification Number (FEIN) of the engineering firm, contact person, address, e-mail address, and telephone and fax numbers.
4. List the project's SRF ID number and name from the current CWSRF Intended Use Plan or Project Priority List and provide a brief description of the planned project. The description should include, as applicable, information such as the nature and severity of the public health/ environmental problem being addressed, the size and type of wastewater treatment plant(s), the size of pumping station(s), size and length of sanitary sewers and force mains, description of rehabilitation of sewers, type of non-point source abatement project, whether the project is part of a phased project, whether the project is required by enforcement action, and the anticipated outcome of the project.
5. Amount of financial assistance you are requesting (calculated field).
6. The **Certification** must be signed by the authorized representative designated in item 1. ***Please review carefully the 13 conditions with which construction projects financed through the SRF must comply.*** Failure to meet these conditions may preclude MassDEP's approval of the project.

## **INFORMATION FOR SECTION A AND SECTION B**

### **Section A - Project Information**

1. **PROJECT CONTRACT(S) LIST**

Provide the contract number and name, along with the total costs broken down by SRF-eligible and ineligible costs. Eligibility must be consistent with the MassDEP “Policy on Eligible Project Costs.” <https://www.mass.gov/doc/clean-water-srfeligible-project-costs-0/download>

2. **CONTRACT(S) SCHEDULE**

The application must contain a realistic schedule outlining important milestones within the project, including the dates for the submittal of the plans and specifications, bid advertisement, contract award, and contract completion. One copy of the final engineering plans and specifications for each contract should be submitted as soon as possible, but no later than the date the application is submitted. *Plans and specifications must be consistent with the MassDEP “Guidelines for the Preparation of Plans and Specifications,” and a completed copy of the Plans & Specifications Checklist contained in the Guidelines must be included with the submittal.* These documents may be found on the MassDEP web site at <https://www.srfmadep.com/state-revolving-fund-applications-forms/cwdw/pspkg.pdf>. The comments of all other interested parties, such as MassDEP regional offices, are to be incorporated into the documents along with applicant responses to comments. Applicants are encouraged to submit final plans and specifications as early as possible to the same addresses noted in *General Information, Submission*.

3. **SUMMARY OF COSTS**

**Construction Contingency** shall be 10-percent of the estimated pre-bid construction contract costs. The contingency will be reduced to 5-percent of the actual bid amounts.

**Construction Services** include the costs of bidding, general supervision, resident engineering, testing of materials, as-built plans, operations and maintenance manual, and start-up supervision.

**Design** - cost are considered an eligible item for PFAS remediation design. MassDEP may limit the SRF loan for PFAS design projects to 10% of the total estimated cost of the remedy.

**Police** - Traffic Details should be based on a traffic management plan that includes a detailed breakdown of the man-hour requirements to implement. The traffic management plan should be developed in conjunction with the local community’s traffic management officer. MassDEP reserves the right to require that the traffic management plan be certified by the appropriate police official should the estimated needs appear to be excessive. **(Note that costs for police details are considered an administrative cost of the LGU and are not to be included in the bid items of the construction contract.)**

In addition to the above requirements for police details, the LGU is required to comply with 701 CMR 7.00 Use of Road Flaggers and Police Details on Public Works Projects. These regulations identify when road flaggers or police details shall be used and also require the preparation of a construction zone safety plan. The regulations and other guidelines can be found on the MassDOT web site at <https://www.mass.gov/orgs/massachusetts-department-of-transportation>. Both police details and road flaggers are eligible costs within the SRF program.

### **Section B - Environmental Benefits**

**ENVIRONMENTAL BENEFITS**

The General Accountability Office (GAO) and the EPA require reporting of the anticipated environmental benefits of SRF funded projects. Please complete the questions requested in Section B.

## DEFINITIONS FOR LOAN APPLICATION CHECKLIST

### Part I – Applicant Information and Certification

#### 1. AUTHORITY TO FILE

**Local Government Unit or Local Governmental Unit** - Any town, city, district, commission, agency, authority, board or other instrumentality of the commonwealth or of any of its political subdivisions, including any regional local governmental unit defined in M.G.L. c. 29C, which is responsible for the ownership or operation of a water pollution abatement project and/or drinking water project and is authorized by a bond act to finance all or any part of the cost thereof through the issue of bonds.

**Authorized Representative** - List the name, title, complete address, e-mail address, and telephone and fax numbers of the authorized representative. The application must contain a resolution or authorization designating by title the official (Mayor, City or Town Manager, Chairperson of the Board of Sewer Commissioners, Chairperson of the Select Board, etc.) to act as the representative of the applicant to sign for, accept, and take whatever action is necessary relative to the project. In the city form of government, the City Council will generally name the authorized representative. If the community is governed by Town Meeting, then the Town Meeting action will name the appropriate group, such as the Select Board or Board of Public Works. The appropriate governing body will then name the authorized representative. If the authority to file statement names an office, then a certified statement is required specifically identifying the individual currently holding that office. For wastewater districts, provide the requisite authorization of the governing board. In the event the authorized official is replaced while the project is still active, a revised statement naming the new incumbent and the effective date of appointment must be submitted. On occasion an authorized representative may desire to delegate to another person the authority to also act on their behalf in processing paperwork during the implementation of the project. This is accomplished by having the authorized representative submit a letter advising of this delegation.

#### 2. CERTIFYING AUTHORITY TO FILE

Statement must be certified by submitting a separate certifying statement along with a copy of the resolution or authorization designating by title the official (Mayor, City or Town Manager, Chairperson of the Board of Sewer Commissioners, Chairperson of the Select Board, etc.) to act as the representative of the applicant for whatever action is necessary relative to the project. The Certifying Statement shall name the individual currently holding that title. The statement shall be signed by the town or city clerk, and an impression of the entity's official seal affixed. If the entity is not a municipality, a notary may be used.

Suggested forms for the Authority to File and Certifying Statement are included in **Appendix A**.

### 3. LOCAL APPROPRIATION

The applicant must demonstrate that sufficient funds are available to cover the total (both eligible and ineligible) project costs. This is accomplished by means of a vote of Town Meeting, City Council, Wastewater District, or other designated body, as appropriate. Local bond counsel should be consulted for exact language depending on whether the applicant uses general obligation or revenue obligation borrowing.

Important points to remember include:

- Note that the applicant can borrow from the Massachusetts Clean Water Trust in accordance with Chapter 29c, as amended, of the General Laws.
- The resolution must be certified.
- It must denote who can act on behalf of the applicant to file for and accept financing.
- It must specifically state what project or type of project is being authorized, such as treatment plant, pumping station, sewers, etc.

### 4. FISCAL SUSTAINABILITY PLAN CERTIFICATION

The applicant must certify that a Fiscal Sustainability Plan (FSP) meeting the requirement of section 603(d)(1)(E) of the Federal Water Pollution Control Act either has been or will be prepared and implemented. If an FSP has not been prepared at the time of loan application submission, the applicant must submit a detailed schedule for the completion and implementation of the FSP. **The Borrower will not be able to receive a subsidized SRF loan, if the FSP is not completed.** See **Appendix K** for additional information regarding the FSP requirements and certification.

For treatment works proposed for repair, replacement, or expansion, the EPA is now requiring that **Clean Water** borrowers develop and implement a fiscal sustainability plan (FSP) that includes:

- an inventory of critical assets that are a part of the treatment works;
- an evaluation of the condition and performance of inventoried assets or asset groupings;
- a certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan; and
- a plan for maintaining, repairing, and, as necessary, replacing the treatment works and a plan for funding such activities; or
- a certification that the borrower has developed and implemented a plan that meets these requirements.

Except for the third bullet above, these are all components of an asset management plan. The EPA provides information to support the development of asset management plans at:

<https://www.epa.gov/sustainable-water-infrastructure/managing-sustainable-water-utilities>

Several other states (New Mexico and New Jersey among others) have also developed detailed guidance on the development of asset management plans, which is publicly available.

A list of online resources is found here:

<https://www.srfmadeep.com/state-revolving-fund-applications-forms/cwdw/srf2017resourceupdates.pdf>

The development of FSPs is an eligible SRF cost, and borrowers on the current year IUP may request an increase to their project cost to cover the development of the FSP.

5. COST AND EFFECTIVENESS CERTIFICATION

The applicant must certify that the cost and effectiveness of the project has been evaluated in accordance with section 602(b)(13) of the Federal Water Pollution Control Act. This evaluation must be completed before final payment can be made. See **Appendix L** for additional information regarding the Cost and Effectiveness requirements and certification.

EPA requires that **Clean Water** borrowers provide a certification that the borrower:

1. has studied and evaluated the cost and effectiveness of the processes, materials, techniques and technologies for carrying out the proposed project; and
2. has selected, to the maximum extent practicable, a project maximizes the efficient water use, reuse, recapture, and conservation, and energy conservation, taking into account -
  - a) the cost of constructing the project;
  - b) the cost of operating and maintaining the project over the life of the project; and
  - c) the cost of replacing the project.

MassDEP expects that applicants will have evaluated the cost of their project as well as the effectiveness of the solution in the required planning element, such as a Comprehensive Wastewater Management Plan or a Project Evaluation Report. These reports typically evaluate alternatives and compare their various life cycle costs. The only additional work is to evaluate that the project maximizes the potential for efficient water use and energy conservation. This evaluation, if not already complete, can be appended to the planning document.

6. USEFUL LIFE CERTIFICATE

*The applicant must provide the useful Life Certificate for each contract.*

7. ENTERPRISE ACCOUNT CERTIFICATION

*The applicant must provide the Enterprise Account Certification for additional subsidies as noted in the current year Intended Use Plan (see APPENDIX E).*

## **PART II – Project Information**

### **1. PLANS AND SPECIFICATIONS**

Plans and specifications may be submitted prior to submitting the other parts of the application. Early submittal will help expedite MassDEP's review of the project. In any event, plans and specifications must be submitted no later than the application due date, and the loan application is not complete until they have been submitted. Plans and Specifications should be submitted as a PDF file via email or ftp site access.

## **Part III – Supplemental Requirements**

1. **LAND TITLE/EASEMENTS** – The applicant must demonstrate that all required land, easements, or real property have been obtained, bona fide options taken, or condemnation proceedings initiated. An attorney must prepare a document certifying the ownership or easement rights to all property. A sample form is included in **Appendix B**.

2. **INTEGRATED WATER RESOURCE MANAGEMENT PLAN (IWRMP) /COMPREHENSIVE WASTEWATER MANAGEMENT PLAN (CWMP) / PROJECT EVALUATION REPORT (PER)**  
Include a copy of MassDEP's letter approving the IWRMP, CWMP or PER. As provided by 310 CMR 44.09 (<https://www.mass.gov/regulations/310-CMR-4400-the-clean-water-state-revolving-fund>) every SRF project must be the result of an approved IWRMP, CWMP or PER unless otherwise determined by the Department. (A Sewer System Evaluation Survey (SSES) is a type of Project Evaluation Report.)

- 3/4. **WATER RESOURCES AND WASTEWATER PLANNING / LAND USE CERTIFICATIONS -**  
The applicant must demonstrate that the project is consistent with existing state, regional, and local water resource and wastewater planning requirements, including but not limited to:
  - a. River Basin water quality management plans pursuant to the Clean Water Act s.303(e);
  - b. Non-point source management plans pursuant to the Clean Water Act s.319;
  - c. Estuaries management plans pursuant to the Clean Water Act s.320;
  - d. Area Wide Water Quality Management Plans pursuant to the Clean Water Act s. 208;
  - e. Local water resource management plans pursuant to the regulations of the Water Resources Commission;
  - f. Water emergency planning pursuant to M.G.L. c. 21G.

The applicant shall certify that land use regulations, zoning, and other controls in place are consistent with the wastewater system service population projected in the applicant's facilities plan. Said certification shall list or otherwise identify the controls in place upon which it is based. Sample forms are included in **Appendix C**.

5. INTERMUNICIPAL AGREEMENTS – If the project will serve two or more municipalities, or one municipality's project must connect to another's water system, the applicant must submit an executed Inter-municipal Agreement or another legally binding document covering financing, construction, and operation of the proposed treatment works. The requirement may be waived if:
  - a. Evidence of historic relationships for other services between the parties exist; or
  - b. The financial strength of the applicant is adequate to continue the project, even if one of the proposed communities fails to participate.
6. USER CHARGE SYSTEM – The applicant must have a user charge system in place that is adequate and is being enforced. If no user charge system has been put in place, it must be developed and in effect by the time the treatment works are placed in operation.
7. SEWER USE ORDINANCE – The applicant must have a sewer use ordinance in effect that it is adequate and being enforced. If no sewer use ordinance has been put in place, it must be developed and in effect by the time the treatment works are placed in operation. MassDEP has compiled most of the sewer use ordinances in the Commonwealth; therefore, the applicant does not need to submit the ordinance unless requested by MassDEP.
8. FEDERAL/STATE WASTEWATER DISCHARGE PERMIT(s) – Prior to the award of financial assistance, the applicant must obtain all state and/or federal discharge permits and approvals applicable to the proposed project.
9. SITE HEARING – In accordance with M.G.L. c.83, s.6, any proposal to construct a wastewater treatment plant and/or residuals facilities at a site not previously used for those purposes will require a site hearing to be conducted by MassDEP. This procedure does not apply to construction of sewers or pumping stations but may apply if major modifications are proposed at an existing treatment site.
10. CONSTRUCTION PERMITS/ORDER OF CONDITIONS/CERTIFICATES/ LICENSES – If applicable, the following construction permits must be filed and documented in the loan application. For the purposes of awarding financial assistance, the application for the permit(s) is acceptable; however, the final permit(s) must be incorporated into the specifications prior to MassDEP Permission to Advertise:
  - a. U.S. ARMY CORPS OF ENGINEERS (404 Permit) – An Army Corps of Engineers Section 404 Permit is required if a structure is to be located in, or if excavation, discharge of dredged or fill material will be performed in waters of the United States. For projects, this may involve the excavation and backfilling associated with lines crossing a waterway or wetland, outfall pipes, and any fill material (including rip-rap) used for bank stabilization or any fill associated with treatment facilities.

b. MassDEP PERMITS AND APPROVALS

MassDEP DIVISION OF AIR QUALITY (Permit) – Any proposed new or modified source of air contaminants, such as carbon monoxide, hydrocarbons, nitrogen oxides, sulfur dioxide, particulate matter, volatile organic compounds, and any pollutant covered by the National Emission Standards for Hazardous Air Pollutants promulgated by EPA, must be approved. For further guidance on this issue, please contact the Division of Air Quality Control and refer to 310 CMR 7.00 (<https://www.mass.gov/regulations/310-CMR-700-air-pollution-control>).

SLUDGE DISPOSAL APPROVAL – For wastewater treatment projects, include a copy of the approval letter from the MassDEP Residuals Program approving the method of residuals disposal. <https://www.mass.gov/service-details/residuals-biosolids>

WATER QUALITY CERTIFICATE – Any project requiring a federal or state license or permit to conduct activities which may result in a discharge to waters of the United States must be evaluated for compliance with applicable effluent limitations and water quality standards, during the construction and subsequent operation of the proposed facility. State certification must be obtained before a license or permit may be issued. Such activities include NPDES regulated discharges, dredge and fill operations, and the construction of structures in water. For further guidance, please refer to 314 CMR 9.00. <https://www.mass.gov/regulations/314-CMR-9-401-water-quality-certification>

MassDEP WATERWAYS (Chapter 91 Permit) – A Chapter 91 Permit must be obtained for the construction of any structure or the filling of land, the driving of piles, or the making of excavations, in, over, or upon the waters below the high water mark of any tidal areas or in or over any great pond or any river or stream. In addition, a permit is also required if it is proposed to either dredge in the tidal areas or dispose of any dredged material therein. For further guidance on this issue, please refer to 310 CMR 9.00 <https://www.mass.gov/regulations/310-CMR-900-the-massachusetts-waterways-regulation>

- c. LOCAL CONSERVATION COMMISSION (Order of Conditions) – Under Chapter 131 Section 40, the applicant must file a notice of intent with the local conservation commission if construction is to occur within 100 feet of wetlands or floodplains. Note that both natural and man-made coastal dunes are included within the definition of wetlands.
- d. MASSACHUSETTS DEPARTMENT OF TRANSPORTATION (MassDOT) PERMIT – A permit must be obtained from the regional MassDOT office for any project that crosses or does any type of work within the boundaries of a state highway.
- e. MBTA/Railroad LICENSE – A license is required if the project will impact property owned by the MBTA, Amtrak, CSX, Pan Am or similar railroad. The appropriate entity should be contacted for further information.
- f. STATE / FEDERAL ([Crosscutters Memorandum](#)) PERMITS – Depending upon the project, other permits may be required.

- g. MASS DEPARTMENT OF CONSERVATION & RECREATION (DCR) PERMIT – A permit must be obtained from the Agency for any project that crosses or does any type of work within areas managed by DCR.

11. PROTECTION OF WATER SUPPLIES – Any project that includes construction of pipelines for the collection or transmission of wastewater must conform to the policy for Sewer Line/Water Supply Protection found at under Drinking Water Policy 03-1: Review of Sewer Line/Water Supply Protection. <https://www.mass.gov/service-details/drinking-water-policies-and-guidance>
12. CZM CONSISTENCY CERTIFICATE - The issuance of federal permits for activities located within the coastal zone or affecting this zone requires that the applicant obtain a certification that the activities are consistent with the state coastal zone policy. For further guidance on this issue, contact the Office of Coastal Zone Management, <https://www.mass.gov/orgs/massachusetts-office-of-coastal-zone-management>
13. MASSACHUSETTS ENVIRONMENTAL POLICY ACT (MEPA) COMPLIANCE - Prior to the award of financial assistance, an Environmental Notification Form (ENF) must be filed with the MEPA Unit of the Executive Office of Energy and Environmental Affairs (EOEEA) if the project exceeds the review thresholds contained in 301 CMR 11.00 <https://www.mass.gov/regulations/301-CMR-11-mepa-regulations>). After a review period, the Secretary of EOEEA will decide whether an Environmental Impact Report (EIR) is required or not. If not, then the project can proceed, subject to any conditions that MEPA may place on the project. If an EIR is required, it must be completed by the proponent and submitted to the Secretary for an additional public comment period. Once the comment period has expired, the Secretary will render a decision on the final EIR. If it is found acceptable, and once the 60-day legal challenge period expires, the project can then proceed. The application must contain documentation that the requirements of MEPA have been satisfied.
14. FLOOD INSURANCE PARTICIPATION – If the project involves structures within a flood hazard area, the applicant must furnish evidence that it is either participating in the flood insurance program or a letter of intent that it will obtain the required insurance both during construction and for the useful life of the project. Insurable structures are defined as being \$10,000 or more in value and are new or reconstructed surface structures that are walled and roofed, such as a pump station or treatment plant control building. Facilities such as sewers, which are not likely to be damaged by flooding, are not eligible for insurance.
15. MASSACHUSETTS HISTORICAL COMMISSION (Approval) – A construction loan cannot be made until all work required by the Massachusetts Historical Commission (MHC) has been completed and approved by them in accordance with 950 CMR 71.00. The loan may be conditioned, in some instances, to require recovery of archaeological material during construction when a sensitive area will be affected, and no reasonable alternative is available. Documentation that the requirements of MHC have been met must be included with the application.

16. LEGISLATION (IF NEEDED) – There are several instances where special legislation from the Massachusetts General Court could be required prior to the initiation of construction. Examples include:
- a. Construction in dedicated conservation land, including parkland;
  - b. Construction by one community within the municipal boundaries of another;
  - c. Formation of a local governmental unit district.
  - d. Easements for construction in state owned land.
17. PROFESSIONAL SERVICES AGREEMENT – The application must contain draft agreements for all professional services which clearly outline the duties and responsibilities of the applicant and the contractor. The agreement will include, but not be limited to:
- a. Scope of work for the various tasks, including basic, resident, and special construction services.
  - b. Time of Completion.
  - c. For certain water pollution abatement facilities, start-up, and post-construction services.

**For professional services agreements receiving SRF subsidy,  
the following requirements apply:**

- a. MODEL SUBAGREEMENT CLAUSES – The provisions of **Appendix D** are to be made a part of all professional services agreements.
  - b. DETAILED FEE BREAKDOWN – All fees shall be broken out by task (shop drawings, resident services, start-up, etc.), job category (vice president, project engineer, draftsman, etc.), and cost.
  - c. SUBCONTRACTORS - All subcontractors shall be listed with a description of the tasks/ type of the project work they will perform.
  - d. DISADVANTAGED BUSINESS ENTERPRISE – Applicants receiving assistance must make positive efforts to use disadvantaged minority and women owned businesses for professional services. Such efforts should achieve a goal of 4.2% participation for disadvantaged minority business (D/MBE) and 4.5% participation for disadvantaged women owned business (D/WBE) but, at a minimum, should allow these sources the maximum feasible opportunity to compete for sub-agreements to be performed using state trust monies. Sample forms are provided in **Appendix F**.
  - e. CHAPTER 233 - COMPLIANCE STATEMENT ON MA TAXES – A statement must be signed by the consultant engineer(s) for the project that states that the engineer(s) is/are in compliance with Massachusetts tax laws. A sample statement is provided in **Appendix G**.
18. MAP OF PROJECT – Each application must be accompanied by a project map, denoting the water pollution abatement facilities and/or the site plan of the treatment plant. It should delineate:
- a. Jurisdictional Boundaries.
  - b. Existing versus proposed facilities.
19. BASIC DESIGN DATA – A detailed copy of the basic design data for the pollution abatement facilities must be included.

20. FEDERAL FLOOD RISK MANAGEMENT STANDARD (FFRMS) - Executive Order (EO) 14030, Climate-Related Financial Risk reinstates EO 13690. This action reestablishes the Federal Flood Risk Management Standard (FFRMS) to increase the resilience of infrastructure for flooding events caused by climate disasters. The new standard is effective in fiscal year 2022 and beyond for the SRF capitalization grants (including the Bipartisan Infrastructure Law Funding). the FFRMS applies to actions where federal funds are used for new construction, substantial improvement (i.e., projects worth more than 50% of the market value or replacement cost of the facility), or to address substantial damage to structures and facilities.
21. PROVISION FOR O&M PROGRAM – The applicant must clearly demonstrate that it has the capability to properly operate and maintain the water pollution abatement facilities. To this end, an operation and maintenance manual (O&M) must be prepared for all wastewater treatment plants and major pumping stations which describes the equipment, develops staffing requirements, and outlines the procedures necessary to keep the facilities operating in an optimum fashion. A provision for the preparation of an O&M manual should appear in the Professional Services Agreement.
22. DISPLACEMENT OF PERSONS OR BUSINESSES – The application must state whether this project has caused, since January 1, 1971, or will cause, the displacement of any individual, family business, or farm as required by the Uniform Relocation and Real Property Assistance Policies Act of 1970 (PL 91- 646).
23. PLAN OF OPERATION – Prior to the award of financial assistance for water pollution abatement facilities, a preliminary plan of operation must be approved by MassDEP. By the 50% stage of construction, a final plan must be completed and approved. For further guidance on this issue, please contact the appropriate MassDEP program manager.
24. START-UP SERVICES – For facilities, the Professional Services Agreement must provide for start-up services during the first year following the initiation of operation. The extent of the services will vary depending on the size and complexity of the project and on the capabilities of the existing or proposed plant personnel. For further guidance on this issue, please contact the appropriate MassDEP program manager.
25. POST-CONSTRUCTION SERVICES – For facilities, the applicant must notify MassDEP in writing of the actual date of initiation of operation. During the first year following initiation of operations, the applicant will monitor the performance of the facilities. One year after initiation of operations, the applicant shall submit a report to MassDEP outlining whether the project meets performance standards.

## **Part IV - 0% Interest Rate Financing for Certain Nutrient Removal Projects**

Local governmental units seeking a 0% interest rate SRF financing for water pollution abatement projects must establish their eligibility by completing Part IV of the loan application. The loan application must include the following:

1. If the applicant has a MassDEP approved Comprehensive Wastewater Management Plan (CWMP), then the applicant must submit a copy of the MassDEP approval letter with the application. If the applicant does not have a MassDEP approved CWMP evidenced by a MassDEP approval letter, then the applicant must submit a copy of the CWMP with a copy of the certificate for the CWMP issued by the Secretary of the Executive Office of Energy and Environmental Affairs under the Massachusetts Environmental Policy Act (MEPA).
2. A narrative explanation establishing that the project is primarily intended to remediate or prevent nutrient enrichment of surface waters or water supply sources in order to meet a NPDES permit or an EPA-approved Total Maximum Daily Load (TMDL) or to otherwise implement a nutrient management plan approved by MassDEP, including specific reference to the applicant's CWMP or nutrient management plan approved by MassDEP, a copy of any such plan, and a detailed estimate of the project flows and costs primarily intended to remediate or prevent nutrient enrichment and the project flows and costs not associated with remediating or preventing nutrient enrichment.
3. A narrative explanation demonstrating that the applicant has established flow neutral land controls (i.e., lawfully adopted bylaws, ordinances and regulations) as provided in 310 CMR 44.07(2), including reference to the specific land use controls adopted to ensure such flow neutrality, and authenticated copies of such land use controls or sewer use regulations and all pertinent maps and overlays. This requirement applies to all users tributary to the wastewater treatment plant regardless of what community the user may be located within.
4. If the applicant is subject to a regional water resource management plan such as the s.208 Area-Wide Water Quality Management Plan for Cape Cod, then the applicant must submit a copy of such plan and a narrative explanation establishing that the applicant's project is consistent with such plan. The applicant shall submit a letter, certificate or other written determination from the regional planning agency deeming the project consistent with the regional water resources management plan if such a plan exists. If the applicant is not subject to a regional water resources management plan, then the applicant must certify as much.
5. Certification that the applicant is not currently in violation of a MassDEP enforcement order, administrative consent order or unilateral administrative order, enforcement action by the United States Environmental Protection Agency or subject to a state or federal court order due to a violation of a nutrient-related total maximum daily load standard or other nutrient based standard relative to the proposed project.

## Section A

### Applicant Information and Certification Form

(Attach additional pages as necessary)

<b>1. LOCAL GOVERNMENTAL UNIT (LGU) Name:</b>		
Unique Entity ID ( <a href="#">UEI</a> ):	Dept. of Revenue ID No.:	FEIN
Authorized Representative:		Title:
Street/P.O. Box:		
City/Town:	State:	Zip:
Telephone:	Fax:	E-Mail:

<b>2. LGU CONTACT PERSON (if different from item 1)</b>		
Name:	Title:	
Mailing Address (if different from item 1)		
Street/P.O. Box:		
City/Town:	State:	Zip:
Telephone:	Fax:	E-Mail:

<b>3. ENGINEER OR CONSULTANT FIRM</b>		
Firm/Agency:	FEIN	
Contact Person:		
Mailing Address		
Street/P.O. Box:		
City/Town:	State:	Zip:
Telephone:	Fax:	E-Mail:

<b>4. CWSRF PROJECT IDENTIFICATION NUMBER</b>	<b>5. AMOUNT OF ASSISTANCE REQUESTED \$</b>
ID No. from Current Priority List:	
Project Type: Project Description:	

<p>In submitting this Application to MassDEP, the Applicant certifies that it shall comply with the following Project related conditions, and understands that the Applicant's non-compliance with one or more of these conditions may preclude MassDEP's issuance of a Project Approval Certificate or entry into a Project Regulatory Agreement.</p>
<p>(1) The Applicant shall obtain MassDEP's prior written approval to: (a) advertise any Invitation To Bid or Request for Proposals to procure contracts for the Project; and (b) award any contracts for the Project.</p>
<p>(2) The Borrower shall comply with the (a) the Civil Rights Act of 1964, 42 USC s.2000(1) et seq., as amended, Section 13 of the Federal Water Pollution Control Act (FWPCA) of 1972; Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, (b) the Equal Employment Opportunity requirements (Executive Order 11246), and all Executive Orders and regulations promulgated thereunder, and (c) the Affirmative Action and Minority/Women Business Enterprise ("M/WBE") requirements in the Regulations and the federal Disadvantaged Business (DBE) rule. The Borrower shall ensure that any prime contracts or subcontracts for services, construction, goods, or equipment for the Project contain the DM/DWBE utilization goals of 4.2% D/MBE and 4.5% D/WBE.</p>

<p>(3) The Applicant shall at all times provide and maintain competent and adequate resident supervision and inspection of the Project under the direction of a licensed professional engineer. Such resident site engineer shall ensure that the implementation of the Project conforms with the approved plans and specifications, and shall certify to the Applicant and MassDEP at the completion of the Project that the implementation of the Project is in accordance with MassDEP approved final plans and specifications for the Project. The Applicant also agrees to submit an executed copy of the contract for resident site engineering services to MassDEP within sixty (60) days of the date of the contract award. The Applicant understands that no payments for the Project will be processed until such contract has been submitted to MassDEP.</p>	
<p>(4) Prior to receiving final payment for the Project, the Applicant shall certify to MassDEP that the Project has been completed and performed in accordance with the Project Regulatory Agreement.</p>	
<p>(5) The Applicant shall be solely responsible for the implementation and completion of the Project in accordance with MassDEP approved plans and specifications and MassDEP permit(s) issued for the Project, and for the economical and efficient operation and administration of the Project. The Applicant's responsibilities include retaining sufficient operating personnel and conducting operational tests and other needed evaluations to ensure the economical and efficient operation and administration of the Project.</p>	
<p>(6) The Applicant shall establish accounts for the Project, which shall be maintained in accordance with generally accepted government accounting standards.</p>	
<p>(7) The Applicant understands that if MassDEP issues a Project Approval Certificate for this project, such action does not constitute MassDEP's sanction or approval of any changes or deviation from any applicable state regulatory or permit standards, criteria, or conditions, or from the terms or schedules of state enforcement actions or orders applicable to the Project.</p>	
<p>(8) The Applicant shall maintain all Project records for seven years after the issuance of final payment or until any litigation, appeal, claim, or audit that is begun before the end of the seven-year period is completed and resolved, whichever is longer.</p>	
<p>(9) The Applicant agrees to provide any Project information and documentation requested by MassDEP.</p>	
<p>(10) The Applicant shall obtain fee simple title or such other property interest in the Project site, including any easements and rights-of-way, necessary to ensure the undisturbed use and possession of the Project site for the purposes of implementation and operation of the Project for its estimated life.</p>	
<p>(11) Any proposed change in Project-related contracts, which substantially modifies the Project initially proposed, shall be submitted to MassDEP for prior approval.</p>	
<p>(12) The Applicant's implementation of the Project, including the procurement of related contracts, shall comply with all applicable requirements of state and local laws, ordinances, by-laws, rules, and regulations.</p>	
<p>(13) MassDEP representatives shall have access to Project work whenever it is in preparation or progress and shall be provided proper facilities for such Project access and inspection. All the Applicant's construction and other relevant contracts shall contain the above provision.</p>	
<p><b>To the best of my knowledge and belief, data provided in this application is true and correct; the documentation has been duly authorized by the governing body of the applicant. Furthermore, the applicant certifies that it possesses the legal authority to apply for the loan, and to finance and construct the proposed facilities. A resolution, motion, or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application. The same resolution, motion, or similar action is directing and authorizing the person identified below as the authorized representative of the applicant to act in connection with the application and to provide such additional information as may be required.</b></p>	
Name of Representative (Type)	Title
Signature of Representative	Date

**Section A**  
**Project Information**

1. Project contract(s) list				2. Contract(s) Schedule (estimated dates mm/dd/yyyy)			
Contract Number and Name	Total Costs	Eligible Cost	InEligible Cost	Plans and Spec Submittal	Bid Advertisement	Contract Award	Contract Completion

3. Summary of Costs	Total Costs	Eligible Cost	InEligible Cost
Construction Contingency (max. 10% pre-bid; 5% post-bid)			
Construction Services			
Other (specify)			
Police – Traffic Detail			
<b>TOTAL</b>			

Date of Estimate: 6/2/2022

ENR Construction Cost Index: 13,500

## Section B

Environmental Benefits (\*Response required) <https://www.epa.gov/cwsrf>

A. Population Served			ANSWER
1	Population Served by the Project*	Report the number of people estimated to be served by the project upon its completion.	
2	Project Part of a Wastewater Treatment Facility or Collection System)?*	Select <b>Yes</b> if this project is part of a wastewater treatment facility or collection system. "Yes" should also be selected if the project is part of a decentralized collection system.	Yes    No
3	Population Served by System*	Enter the number of people connected to the discrete, permitted facility or system that the CWSRF funded project affects.	

B. Non-CWSRF Federal Funding			ANSWER
1	Do the projects funded under this assistance agreement receive non-CWSRF funding from another federal program*	Select <b>Yes</b> if the projects funded under this assistance agreement will receive non-CWSRF funding from another federal program.	Yes    No
	<i>If Yes:</i> Water Infrastructure Finance and Innovation Act Program Funding (\$)*	Identify the amount of non-SRF project funding that will come from the Water Infrastructure Finance and Innovation Act (WIFIA) program.	\$
	<i>If Yes:</i> USDA Rural Development Water and Environmental Programs (\$)*	Identify the amount of non-SRF project funding that will come from the USDA Rural Development Water and Environmental Programs.	\$
	<i>If Yes:</i> HUD Community Development Block Grants (\$)*	Identify the amount of non-SRF project funding that will come from the HUD Community Development Block Grants (CDBG).	\$
	<i>If Yes:</i> EPA Nonpoint Source Management Grants (\$)*	Identify the amount of non-CWSRF project funding that will come from the EPA Section 319 Nonpoint Source Management Grants.	\$
	<i>If Yes:</i> Other Amount (\$)*	Identify the amount of non-SRF project funding that will come from another federal source not currently listed.	\$

C. Non-CWSRF State Funding			ANSWER
1	Do the projects funded under this assistance agreement receive non-CWSRF funding from another state program?*	Select <b>Yes</b> if the projects will receive non-CWSRF funding from another state program.	Yes    No
	<i>If Yes:</i> DWSRF (\$)*	Identify the amount of project funding that will come from the DWSRF.	\$
	<i>If Yes:</i> Non-SRF State Loan Program (\$)*	Identify the amount of non-SRF project funding that will come from state loan programs.	\$
	<i>If Yes:</i> State Grant Program (\$)*	Identify the amount of non-SRF project funding that will come from state grant programs.	\$
	<i>If Yes:</i> Other Amount(\$)*	Identify the amount of non-SRF project funding that will come from another state source not currently listed.	\$

D. CWSRF Funding by Project Category			PERCENT OF PROJECT
	Secondary Treatment* (%)	This category includes costs necessary to meet the minimum level of treatment that must be maintained by all treatment facilities, except those facilities granted waivers of secondary treatment for marine discharges under section 301(h) of the Clean Water Act. Secondary treatment typically requires a treatment level that produces an effluent quality of 30 mg/l of both 5-day Biochemical Oxygen Demand (BOD5) and total suspended solids (secondary treatment levels required for some lagoon systems may be less stringent). In addition, the secondary treatment must remove 85 percent of BOD5 and total suspended solids from the influent wastewater. <b>Replacement or installation of individual or community septic systems or other decentralized treatment approaches are reported in Category: Individual/Decentralized Sewage Treatment.</b>	
	Advanced Treatment* (%)	This category includes costs necessary to attain a level of treatment that is more stringent than secondary treatment or produce a significant reduction in nonconventional or toxic pollutants present in the wastewater treated by a facility. A facility is considered to have Advanced Wastewater Treatment if its permit includes one or more of the following: Biochemical Oxygen Demand (BOD) less than 20mg/l; Nitrogen Removal; Phosphorous Removal; Ammonia Removal; Metal Removal; Synthetic Organic Removal.	
	Infiltration/inflow Correction* (%)	This category includes costs for correction of sewer system infiltration/inflow problems. Infiltration includes controlling the penetration of water into a sanitary or combined sewer system from the ground through defective pipes or manholes. Inflow includes controlling the penetration of water into the system from drains, storm sewers, and other improper entries.	
	Sewer System Rehabilitation* (%)	This category includes costs for the maintenance, reinforcement, or reconstruction of structurally deteriorating sanitary or combined sewers. The corrective actions must be necessary to maintain the structural integrity of the system.	
	New Collector Sewers* (%)	This category includes costs of new pipes used to collect and carry wastewater from a sanitary or industrial wastewater source to an interceptor sewer that will convey the wastewater to a treatment facility. <b>Construction of a collector sewer to transport wastes to a cluster septic system or other decentralized facility are reported in Category: Individual/Decentralized Sewage Treatment.</b>	
	New Interceptor* (%)	This category includes costs for constructing new interceptor sewers and pumping stations to convey wastewater from collection sewer systems to a treatment facility or to another interceptor sewer. This category includes costs for relief sewers.	
	CSO Correction – Grey Infrastructure* (%)	This category includes measures used to achieve water quality objectives by preventing or controlling periodic discharges of a mixture of storm water and untreated wastewater (combined sewer overflows) that occur when the capacity of a sewer system is exceeded during a wet weather event. This category does not include costs for overflow control allocated to flood control or drainage improvement, or treatment or control of storm water in separate storm and drainage systems.	
	CSO Correction - Green Infrastructure* (%)	This category includes needs and costs to prevent or control the periodic discharges of mixed stormwater and untreated wastewater that occur when the capacity of a sewer system is exceeded during a wet-weather event. This category includes green infrastructure CSO control infrastructure such as upland runoff control techniques. This category does not include needs and costs for overflow control allocated to flood control or drainage improvement, or the treatment or control of stormwater in separate storm systems.	
	Stormwater: Grey Infrastructure* (%)	This category includes costs associated with the planning, design, and construction of conveying stormwater via pipes, inlets, roadside ditches, and other similar mechanisms. This category also includes the costs of activities associated with the planning, design, and construction of treating stormwater with wet ponds, dry ponds, manufactured devices, and other similar means.	
	Stormwater: Green Infrastructure* (%)	This category includes costs associated with the planning, design, and construction of low impact development and green infrastructure, such as bioretention, constructed wetlands, permeable pavement, rain gardens, green roofs, cisterns, rain barrels, vegetated swales, restoration of riparian buffers and flood plains, etc. Note: Projects that used to be reported under the old Urban needs category that meets this definition should be reported here.	
	Nonpoint Source: Ground Water - Unknown Source* (%)	This category covers nonpoint source pollution control activities related to ground water protection such as wellhead and recharge area protection activities. Any activity that can be attributed to a specific cause of ground water pollution, such as leaking storage tanks, soil contamination in a brownfield, or leachate from a sanitary landfill, should be reported to that more specific category. Desalination projects that protect or restore groundwater should be reported under this category.	
	Nonpoint Source: Resource Extraction* (%)	This category covers nonpoint source pollution control activities nonpoint source pollution control activities related to mining and quarrying activities. Examples of BMPs include detention berms and seeding or revegetation.	

	Nonpoint Source: Brownfields and Superfund Sites* (%)	This category covers nonpoint source pollution control activities related to land that was developed for industrial purposes and then abandoned, which might have residual contamination. All work at brownfields and Superfund sites should be included in this category regardless of the activity. Some typical activities used to address cleanup of brownfields and Superfund sites are ground water monitoring wells, in situ treatment of contaminated soils and ground water, and capping to prevent storm water infiltration.	
	Nonpoint Source: Storage Tanks* (%)	This category covers nonpoint source pollution control activities related to tanks designed to hold gasoline or other petroleum products or chemicals. The tanks may be located above or below ground level. Some typical BMPs are spill containment systems; in situ treatment of contaminated soils and ground water; and upgrade, rehabilitation or removal of petroleum/chemical storage tanks.	
	Nonpoint Source: Sanitary Landfills* (%)	This category covers nonpoint source pollution control activities related to sanitary landfills. Some typical BMPs used to address needs at landfills are leachate collection, onsite treatment, gas collection and control, capping and closure.	
	Nonpoint Source: Hydromodification / Habitat Restoration* (%)	This category covers nonpoint source pollution control activities related to habitat protection and restoration. Examples of projects include shoreline activities (e.g., swales, filter strips), instream activities (e.g., fish ladders), and capital costs associated with the control of invasive vegetative and aquatic species. <b>Any habitat restoration projects involving stormwater management should be reported in Category: Stormwater - Green Infrastructure.</b>	
	Nonpoint Source: Individual / Decentralized Sewage Treatment* (%)	<p>This category covers nonpoint source pollution control activities related to rehabilitating or replacing onsite wastewater treatment systems (OWTS) or clustered (community) systems. It also includes the treatment portion of other decentralized sewage disposal technologies. Costs related to developing and implementing onsite management districts are included (but not the costs of ongoing operations of such districts). Costs could also include the limited collection systems associated with the decentralized system.</p> <p>This category does not include costs associated with changing a service area from decentralized wastewater treatment to a publicly owned centralized treatment system. Costs to construct a publicly owned centralized collection and treatment system should be reported in Secondary Wastewater Treatment, Advanced Wastewater Treatment, or both. Note: Activities related to installing sewers to connect the service area to an existing collection system are reported in Category: New Collector Sewers &amp; Category: New Interceptor.</p>	
	Other: Estuary (§320) Assistance* (%)	Enter assistance provided for the development and implementation of the 28-estuary comprehensive conservation and management plans (CCMP) established under CWA, §320. Only activities unique to §320 are included in this category. All other pollution control activities related to development and implementation of estuary plans that meet the definition of one of the other categories should be reported under those respective categories.	
	Other: Desalination* (%)	Projects include treatment and disposal of brine, desalination of brackish water to augment water supply, aquifer recharge using desalinated sea water, and treatment/reinjection of brackish groundwater.	
PERCENTAGE TOTAL			100%

<b>E. Green Project Reserve (GPR Funding)</b>		
1	Green Infrastructure Amount (\$)*	Report the amount of the project funding that will be classified under the Green infrastructure GPR category. This category includes costs that manage wet weather and maintain and restore natural hydrology by infiltrating, evapotranspiring and harvesting and using stormwater. Examples include installation of rain gardens, green roofs, permeable pavement, constructed wetlands and other practices that mimic natural hydrology to prevent wet weather flows to, from or within the treatment works.
2	Energy Efficiency Amount (\$)*	Report the amount of the project funding that will be classified under the Energy Efficiency GPR category. This category includes the costs associated with the use of improved technologies and practices that result in reduced energy consumption and the production of renewable energy. Examples include lighting, HVAC, process equipment, electronic equipment (SCADA), wind and solar, methane capture and energy conversion equipment, biosolids drying/dewatering and energy conversion equipment, co-digestion, combined heat and power (CHP) systems, hydroelectric systems that harness wastewater flows to, from, or within a treatment works.
3	Water Efficiency Amount (\$)*	Report the amount of the project funding that will be classified under the Water Efficiency GPR category. This category includes the costs associated with projects that reduce the demand for POTW capacity through reduced water consumption. Examples include water meters, plumbing fixture retrofits or replacement, water efficient appliances, water efficient irrigation equipment (e.g., moisture and rain sensing equipment), water audit, water conservation plan, recycling, water reuse and education programs.
4	Environmentally Innovative Amount (\$)*	Report the amount of the project funding that will be classified under the Environmentally Innovative GPR category. This category includes the costs associated with projects that demonstrate new and/or innovative approaches to delivering service and/or managing water resources in a more sustainable way. Examples include integrated water resources management plan, sustainability plan, greenhouse gas inventory mitigation plan, planning activities to prepare for adaptation to the long term effects of climate change and/or extreme weather, LEED certified buildings and decentralized wastewater systems.

<b>F. Project Location(s)</b>		
	Add Project Location*	At least one project location must be added.
	Project Location – Description	Optional description to accompany the latitude/longitude coordinates.
	Project Location: Latitude*	Provide the latitude coordinate(s) for the location of your project. Latitude coordinates must be provided in the decimal format.
	Project Location: Longitude*	Provide the longitude coordinate(s) for the location of your project. Longitude coordinates must be provided in the decimal format.
	Project Location: Radius	Optional: Add a radius to the latitude/longitude coordinates.

G. Estuary Impacts			ANSWER
1	Will the CWSRF Funded Project Benefit a National Estuary Program?*	Select <b>Yes</b> if the CWSRF funded project will benefit a National Estuary Program.	Yes    No
	<i>If Yes</i> , Is the project is located within a NEP watershed?*	Select <b>Yes</b> if the CWSRF funded project is located within a NEP watershed.	Yes    No
	<i>If Yes</i> , Is the project is being funded because it develops, amends, or implements a Section 320 Comprehensive Conservation and Management Plan (CCMP)?*	Select <b>Yes</b> if the CWSRF funded project is being funded because it develops, amends, or implement a Section 320 Comprehensive Conservation and Management Plan (CCMP)	Yes    No

H. Project Improvement/Maintenance of Water Quality and Related Data Fields			ANSWER
1	How does this Project Contribute to the Improvement or Maintenance of the Receiving Waterbody?*	<p>To contribute to water quality “improvement,” a project must reduce pollutant loading to the receiving waterbody. A project that simply sustains the treatment capacity of a facility counts for water quality “maintenance.”</p> <p>Select <b>Improvement</b> when a project reduces pollutant loading to the affected waterbody.</p> <p>Select <b>Maintenance</b> when a project simply sustains the treatment capacity of a facility.</p> <p>Select <b>Not Applicable</b> when the project increases loadings to the affected waterbody.</p> <p>Information can be found in the engineering and/or environmental review documents for a project. Information on pre-project pollutant loadings should be confirmed with the most recent Discharge Monitoring Reports (DMRs).</p>	<p><input type="checkbox"/> Improvement</p> <p><input type="checkbox"/> Maintenance</p> <p><input type="checkbox"/> Not Applicable</p>
2	Does this Project Allow the System to Either Maintain or Achieve Compliance with the Clean Water Act?*	<p>Select <b>Maintain Compliance</b> when the facility/system was already in compliance before the project and has a lower risk of falling out of compliance after the project.</p> <p>Select <b>Achieve Compliance</b> when the facility/system was out of compliance before the project and is expected to be in compliance at project completion.</p> <p>Otherwise select <b>Not Applicable</b></p> <p>Use the engineering and environmental review documents, the Discharge Monitoring Reports, and the permit (most likely a National Permit Discharge Elimination System(NPDES) permit, but also possibly a reuse, recharge, or land discharge permit), along with any administrative, consent, or court orders.</p> <p>Strictly speaking, these options do not give credit to projects that move the facility/system toward compliance but that do not <b>Achieve Compliance</b> at project completion. For example,</p> <p>1). If a project is a significant factor in a system/facility achieving compliance, accomplishing a specific group of items on a consent order, or eliminating CSO's for a large section of the sewer system, select <b>Achieve Compliance</b>.</p> <p>2. If a project simply addresses a few I/I problems that generally affect SSOs, select <b>Not Applicable</b>.</p> <p>3. If a project occurs under the threat of noncompliance – i.e. it allows the system/facility to meet anticipated permit limits – select <b>Achieve Compliance</b> instead of <b>Maintain Compliance</b>.</p>	<p><input type="checkbox"/> Maintain Compliance</p> <p><input type="checkbox"/> Achieve Compliance</p> <p><input type="checkbox"/> Not Applicable</p>

3	What is the Designation of the Waterbody Affected by the Project? (As it Appears on the 303(d) Impaired Waters or State Groundwaters List)* •	Please report the designation of the affected waterbody as it appears on the 303(d) impaired waters list, or on a state groundwaters list. More information regarding the 303(d) impaired waters lists is available at the following EPA website: <a href="https://ofmpub.epa.gov/waters10/attains_index.home">https://ofmpub.epa.gov/waters10/attains_index.home</a>	<input type="checkbox"/> Meeting Standards <input type="checkbox"/> Impaired <input type="checkbox"/> Threatened <input type="checkbox"/> Not Assessed <input type="checkbox"/> Not Applicable
4	Discharge Information (Check all that Apply)*	Select the type(s) of waterbody(ies) that the project affects the discharge to. At least one box must be checked. If this section is not applicable to the project, please choose no change/no discharge. Check this box if the wastewater discharge is seasonal.  <b>Note: Seasonal discharge can be checked along with the other, above choices.</b>	<input type="checkbox"/> Ocean Outfall <input type="checkbox"/> Wetland <input type="checkbox"/> Groundwater <input type="checkbox"/> Other/Reuse <input type="checkbox"/> No Change/No Discharge <input type="checkbox"/> Estuary/Coastal Bay <input type="checkbox"/> Surface Water (Stream, River, Lake) <input type="checkbox"/> Land Application <input type="checkbox"/> Eliminates Discharge <input type="checkbox"/> Seasonal Discharge
5	This Project Addresses the Following: Total Maximum Daily Limit (TMDL) or Watershed Management Plan (Select all that Apply)*	Identify whether the project reduces the pollutants specified in the Total Maximum Daily Limit (TMDL) or watershed management plan for the affected waterbody. The appropriate state environmental agency office(s) can be contacted to find out if the affected waterbody has a TMDL or watershed management plan. Watershed management plan is a general term, so terminology may differ between states. Check the project's engineering and environmental documents to see if it will reduce the pollutants specified in the TMDL or management plan. TMDL information may already be attached to the permit or found in the state's Integrated Report. Projects on impaired waters do not automatically address a TMDL. Information about projected TMDLs may appear on a state schedule.	<input type="checkbox"/> Existing TMDL <input type="checkbox"/> Projected TMDL <input type="checkbox"/> Watershed Management Plan <input type="checkbox"/> Not Applicable

I. Contribution to Protection or Restoration of State Designated Surface Water Uses			ANSWER
1	Identify Which State Designated Surface Water Use this Project Protects and/or Restores*	Identify the Designated Surface Water Uses that this project helps to protect or restore from the list that is provided. If the project maintains or improves water quality, or if it increases effluent loadings but meets its permit, it contributes to protection of the uses you find when matching pollutants. If the project reduces loadings of a pollutant that is impairing a designated use ( <a href="#">303(d) list</a> ), the project contributes to restoration of that use.  Specify as primary those affected uses that drive a large portion of project financing. Often, a primary use will correspond to the largest pollutant reduction. In most cases, one and possibly two uses will qualify as primary. Specify secondary for other uses. If no use qualifies as primary, specify secondary for all applicable uses.	<input type="checkbox"/> Protect or Restore (Primary) <input type="checkbox"/> Protect or Restore (Secondary) <input type="checkbox"/> Water Use Not Applicable? <input type="checkbox"/> Water Use Not Found?

<b>J. Other Uses and Outcomes</b>			<b>ANSWER</b>
1	Does this Project Contribute to Regionalization/Consolidation?*	Identify whether this project supports efforts to consolidate separate wastewater treatment and collection systems.	Yes      No
2	Does this Project Address Nutrient Loadings of Nitrogen and Phosphorous?*	Identify whether the primary purpose of the project is to reduce loadings of Nitrogen and Phosphorous into the waterbodies.	Yes      No
3	Does this Project Contribute to Resiliency and Disaster Preparedness?*	<p>Select Yes if the project helps make communities and/or utilities more resilient to manmade and natural disasters by reducing the risk of physical damage from a disaster or helping maintain operations during a disaster.</p> <p>Also select Yes if the project helps a utility /community recover quickly from a disaster. Examples of these type of projects include building sea walls and levees, elevating equipment, waterproofing, etc.</p>	Yes      No
4	Does this Project Contribute to Public Health/Pathogen Reduction?*	Identify whether this project will positively contribute to public health (e.g., pathogen reduction).	Yes      No

# Clean Water State Revolving Fund Program Loan Application Checklist

## CONSTRUCTION STAGE PROJECTS

Please use this checklist to confirm that all required forms and supplemental information have been included with the application and submit the checklist with your application.

Item	Included (check)	Previously submitted (date)	Not applicable (check)
<b>Part I - Applicant Information and Certification</b>			
1. Authority to File			
2. Certifying Authority to File			
3. Local Appropriation			
4. Fiscal Sustainability Plan Certification (or FSP Schedule)			
5. Cost and Effectiveness Certification (or C&E schedule)			
6. Useful Life Certificate			
7. Enterprise Account Certification			
<b>Part II - Project Information</b>			
1. Plans & Specifications			
<b>Part III - Supplemental Requirements</b>			
1. Land Title/Easements (Legal Opinion)			
2. IWRMP, CWMP or Project Evaluation Report			
3. Water Resources Certifications (310 CMR 44.07)			
4. Land Use Certification (310 CMR 44.07)			
5. Inter-municipal Agreements			
6. User Charge System (310 CMR 44.12(2)(b))			
7. Sewer Use Ordinance (on file with MassDEP)			
8. Federal and/or State Wastewater Discharge Permits			
9. Site Hearing			
<b>10. Construction Permits</b>			
a. US Army Corps of Engineers			
b. MassDEP			
- Air Quality			
- Sludge Disposal Approval			
- Water Quality Certification			
- Waterways			
c. Local Conservation Commission (Order of Conditions)			
d. MassDOT			
e. MBTA/Railroad			
f. Other State/Federal (Crosscutters Memorandum) Permits			
g. DCR			
11. Protection of Water Supplies			
12. Coastal Zone Management Consistency Certificate			
13. MEPA Compliance			
14. Flood Insurance Participation			
15. Historic Preservation			

Item	Included (check)	Previously submitted (date)	Not applicable (check)
16. Legislation (if needed)			
17. Professional Services Agreements			
a. Required Model Sub-Agreement Clauses			
b. Detailed Fee Breakdown			
c. Subcontracts			
d. Disadvantaged Business Enterprise			
e. Chapter 233 - Statement on MA Taxes			
18. Map of Project			
19. Basic Design Data			
20. Federal Flood Risk Management Standard (FFRMS)			
21. Provision for O & M Program			
22. Displacement of Persons or Businesses			
23. Plan of Operation			
24. Start-up Services			
25. Post-Construction Services			
Part IV – 0% Interest Rate Financing for Certain Nutrient Removal Projects (if applicable)			
1. MassDEP CWMP Approval Letter or MEPA Certificate			
2. Project Narrative with Cost Breakdown			
3. Flow Neutral Land Controls			
4. Consistency with Regional Water Resources Plan			
5. Certification of no Nutrient Related Enforcement Orders			

## **Appendix A**

### **Authority to File & Certifying Statement**

**AUTHORITY TO FILE**

Whereas, \_\_\_\_\_, after thorough investigation,

(Applicant)

has determined that the work activity consisting of: \_\_\_\_\_

\_\_\_\_\_  
(describe project)

is both in the public interest and necessary to protect the public health, and that to undertake this activity, it is necessary to apply for assistance; and

Whereas, the Massachusetts Department of Environmental Protection (MassDEP) and the Massachusetts Clean Water Trust (the Trust) of the Commonwealth of Massachusetts, pursuant to Chapter 21 and Chapter 29C of the General Laws of the Commonwealth (Chapter 21 and Chapter 29C) are authorized to provide financial assistance to municipalities for the purpose of funding planning and construction activities relative to Water Pollution Abatement Projects and Drinking Water Projects; and

Whereas, the Applicant has examined the provisions of the Act, Chapter 21 and Chapter 29C, and believes it to be in the public interest to file a loan application.

NOW, THEREFORE, BE IT RESOLVED by \_\_\_\_\_

(Governing Body)

as follows:

1. That \_\_\_\_\_ is hereby authorized on behalf

(Title of Official)

of the Applicant to file applications and execute agreements for grant and/or loan assistance as well as furnishing such information, data and documents pertaining to the applicant for a grant(s) and/or loan(s) as may be required; and otherwise to act as the authorized representative of the Applicant in connection with this application;

2. That the purpose of said loan(s), if awarded, shall be to fund planning activities.

3. That if said award is made the Applicant agrees to pay those costs which constitute the required Applicant's share of the project cost.

**CERTIFYING STATEMENT**

I hereby certify that the \_\_\_\_\_ of

(Name of Governing Body)

the \_\_\_\_\_

(Corporate Name of Local Government Unit)

(hereinafter referred to as the "Applicant"), at a meeting noticed and conducted in accordance with all applicable legal requirements, duly voted to authorize

\_\_\_\_\_  
(Title of Local Government Unit Official)

to act on behalf of the Applicant, as its agent, in filing applications for, executing agreements regarding, and performing any and all other actions necessary to secure for the Applicant such as grant(s) and/or loan(s) for planning or construction of Water Pollution Abatement Projects or Drinking Water Projects as may be made available to the Applicant pursuant to the provisions of the Massachusetts Clean Waters Act (M.G.L. c.21, section 27-33E, inclusive, as amended) and the Water Pollution Abatement Revolving Loan Program (M.G.L. c.29C) for the following project:

\_\_\_\_\_  
(describe project)

I hereby certify that \_\_\_\_\_ is the present incumbent of the

(Name of Person)

position referenced above, and do hereby certify:

1. That the attached resolution is a true and correct copy of the resolution as finally adopted at a meeting of the governing body held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and duly recorded in my office:
2. That said meeting was duly convened and held in all respects in accordance with law and to the extent required by law, due and proper notice of such meeting was given; and a legal quorum was present throughout the meeting, and a legally sufficient number of members of the governing body voted in the proper manner and for the adoption of said resolution; that all other requirements and proceedings under the law incident to the proper adoption or passage of said resolution, including publication, if required, have been duly fulfilled, carried out, and otherwise observed; and that I am authorized to execute this certificate:
3. That if an impression of a seal has been affixed below, it constitutes the official seal of the Applicant and this certificate is hereby executed under such official seal; but if no seal has been affixed, the Applicant does not have an official seal:

IN WITNESS WHEREOF, I have hereunto set my hand this day of \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signature: \_\_\_\_\_ Title: \_\_\_\_\_  
(Certifying Signatory)

Printed name: \_\_\_\_\_

AFFIX SEAL

## **Appendix B**

### **Certificate Of Title To Project Site**

CERTIFICATE OF TITLE TO PROJECT SITE

I, \_\_\_\_\_, Attorney At Law, representing the (City/Town)  
of \_\_\_\_\_, Massachusetts, herein called the Applicant, as title counsel,  
do hereby certify:

1. That I have investigated and ascertained the location of, and am familiar with the legal description of the site or sites being provided by the Applicant for all elements (treatment plant, interceptors, outfalls, pumping stations, force mains, and appurtenances) of the water pollution abatement project for which State Financial Assistance has been offered, identified as CWSRF No. \_\_\_\_\_
2. That I have examined the deed records of the county or counties in which this project is to be located and, in my opinion, the Applicant has a legal and valid fee simple title or other estate or interest in the site of the project, including the necessary easements and rights-of-way as are necessary to undisturbed use and possession for the purposes of construction and operation for the estimated life of the project.
3. That any deeds or documents required to be recorded, in order to protect the title of the owner and the interest of the Applicant, have been duly recorded or filed for record wherever necessary with reference to Contracts \_\_\_\_\_ through \_\_\_\_\_, inclusive.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

## **Appendix C**

# **Water Resource and Wastewater Planning Certification And Land Use Certification**

## WATER RESOURCES AND WASTEWATER PLANNING CERTIFICATION

I, the undersigned, being duly authorized to act on behalf of the Applicant, certify that to the best of my knowledge this project is consistent with current existing state, regional, and local water resource and wastewater planning requirements including but not limited to:

1. River basin water quality management plans pursuant to section 303(e) of the Federal Clean Water Act;
2. nonpoint source management plans pursuant to section 319 of the Federal Clean Water Act;
3. estuaries management plans pursuant to section 320 of the Federal Clean Water Act;
4. Area-Wide Water Quality Management Plans pursuant to section 208 of the federal Clean Water Act;
5. local water resource management plans pursuant to regulations of the Water Resources Commission;
6. water emergency planning pursuant to c.21G of the Massachusetts General Laws;
7. Phase II Storm Water General Permit.

---

Applicant

---

Type Name	Title
-----------	-------

---

Signature	Date
-----------	------

### LAND USE CERTIFICATION

I, the undersigned, being duly authorized to act on behalf of the Applicant, certify that the land use regulations, zoning and other controls identified below are consistent with the wastewater system service populations as projected in the Applicant's wastewater management plan:

---

Applicant

---

Type Name

---

Title

---

Signature

---

Date

## **Appendix D**

### **Model Sub - Agreement Provisions**

## **Professional Services Agreements -Required Provisions**

All contracts between Clean Water State Revolving Fund (CWSRF) borrowers and professional services consultants shall contain the following provisions.

- (1) The owner and the contractor agree that the following provisions apply to the eligible work to be performed under this agreement and that such provisions supersede any conflicting provisions of this agreement.
- (2) The work under this agreement is funded in part by the water pollution abatement fund authorized under MGL Ch. 29C. Neither the Commonwealth of Massachusetts nor the Massachusetts Department of Environmental Protection (MassDEP) nor the Clean Water Trust is a party to this agreement. As used in these clauses, the words "the date of execution of this agreement" means the date of execution of this agreement and any subsequent modification of the terms, compensation or scope of services pertinent to unperformed work.
- (3) The owner's rights and remedies provided in these clauses are in addition to any other rights and remedies provided by law or this agreement.
- (4) The contractor shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by the contractor under this agreement. The contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in his designs, drawings, specifications, reports, and other services.
- (5) The contractor shall perform such professional services as may be necessary to accomplish the work required to be performed under this agreement, in accordance with this agreement and applicable MassDEP requirements in effect on the date of execution of this agreement.
- (6) The owner's or MassDEP's approval of drawings, designs, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve the contractor of responsibility for the technical adequacy of his work. Neither the owner's nor MassDEP's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this agreement or of any cause of action arising out of the performance of this agreement.
- (7) The contractor shall be and shall remain liable, in accordance with applicable law, for all damages to the owner or MassDEP caused by the contractor's negligent performance of any of the services furnished under this agreement, except for errors, omissions or other deficiencies to the extent solely attributable to the owner, owner-furnished data or any third party not controlled by the contractor. The contractor shall not be responsible for any time delays in the project caused by circumstances beyond the contractor's control. Where innovative processes or techniques are recommended by the engineer and are used, the engineer shall be liable only for gross negligence to the extent of such use.
- (8) The services to be performed by the contractor shall include all services required to complete the scope of work as defined and set out in the professional services agreement to which these provisions are attached in accordance with applicable regulations.
- (9) The owner may, at any time, by written order, make changes within the general scope of this agreement in the services or work to be performed. If such changes cause an increase or decrease in the contractor's cost of, or time required for, performance of any services under this agreement, whether or not changed by any order, an equitable adjustment shall be made and this agreement shall be modified in writing accordingly. The contractor must assert any claim for adjustment under this clause in writing within 30 days from the date of receipt by the contractor of the notification of change, unless the owner grants a further period of time before the date of final payment under this agreement.

- (10) No services for which an additional compensation will be charged by the contractor shall be furnished without the written authorization of the owner.
- (11) In the event that there is a modification of MassDEP requirements relating to the services to be performed under this agreement after the date of execution of this agreement, the increased or decreased cost of performance of the services provided for in this agreement shall be reflected in an appropriate modification of this agreement.
- (12) Either party may terminate this agreement, in whole or in part, in writing, if the other party substantially fails to fulfill its obligations under this agreement through no fault of the terminating party. However, no such termination may be effected unless the other party is given (1) not less than ten calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party before termination.
- (13) The owner may terminate this agreement, in whole or in part, in writing, for its convenience, if the termination is for good cause (such as for legal or financial reasons, major changes in the work or program requirements, initiation of a new phase) and the contractor is given (1) not less than ten calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party before termination.
- (14) If the owner terminates for default, an equitable adjustment in the price provided for in this agreement shall be made, but (1) no amount shall be allowed for anticipated profit on services not performed or other work, and (2) any payment due to the contractor at the time of termination may be adjusted to the extent of any additional costs the owner incurs because of the contractor's default. If the contractor terminates for default or if the owner terminates for convenience, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the contractor for services rendered and expenses incurred before the termination, in addition to termination settlement costs the contractor reasonably incurs relating to commitments which had become firm before the termination.
- (15) Upon receipt of a termination action under paragraphs (13) or (14), the contractor shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to the owner all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as the contractor may have accumulated in performing this agreement, whether completed or in process.
- (16) Upon termination under paragraph (13) or (14), the owner may take over the work and prosecute the same to completion by agreement with another party or otherwise. Any work the owner takes over for completion will be completed at the owner's risk, and the owner will hold harmless the contractor from all claims and damages arising out of improper use of the contractor's work.
- (17) If, after termination for failure of the contractor to fulfill contractual obligations, it is determined that the contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the owner. In such event, adjustment of the price provided for in this agreement shall be made as paragraph (14) provides.
- (18) Except as this agreement otherwise provides, all claims, counter-claims, disputes, and other matters in question between the owner and the contractor arising out of or relating to this agreement or the breach of it will be decided by arbitration if the parties hereto mutually agree, or in a court of competent jurisdiction pursuant to the laws of Massachusetts.

- (19) The Contractor shall maintain books, records, documents, and other evidence directly pertinent to performance on eligible work under this agreement in accordance with generally accepted accounting principles and practices consistently applied. The contractor shall also maintain the financial information and data used by the contractor in the preparation or support of the cost submission and a copy of the cost summary submitted to the owner. The Governor, the Secretary of Administration and Finance, MassDEP and State Auditor's Office or any of their duly authorized representatives, shall have access to such books, records, documents, and other evidence for inspection, audit, and copying. The contractor will provide proper facilities for such access and inspection.
- (20) The contractor agrees to include paragraphs (19) - (23) in all his contracts and all subcontracts directly related to project performance that are in excess of \$25,000.
- (21) Audits conducted under this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).
- (22) The contractor agrees to the disclosure of all information and reports resulting from access to records under paragraphs (19) or (20), to any of the agencies referred to in paragraph (19), provided that the contractor is afforded the opportunity for an audit exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report and that the final audit report will include written comments of reasonable length, if any, of the contractor.
- (23) The contractor shall maintain and make available records under paragraph (19) and (20) during performance on eligible work under this agreement and until 7 years from the date of final payment for the project. In addition, those records which relate to any "Dispute", appeal under an assistance agreement, to litigation, to the settlement of claims arising out of such performance, or to costs or items to which an audit exception has been taken, shall be maintained and made available until 3 years after the date of resolution of such appeal, litigation, claim, or exception if such date is later than seven years from the date of final payment.
- (24) (This clause is applicable if the amount of this agreement exceeds \$100,000). If the owner or MassDEP determine that any price, including fee, negotiated in connection with this agreement or any cost reimbursable under this agreement was increased by any sums because the contractor or any subcontractor furnished incomplete or inaccurate cost or pricing data or data not current as certified in his certification of current cost or pricing data, then such price, cost, or fee shall be reduced accordingly and the agreement shall be modified in writing to reflect such reduction.
- (25) Any subcontractors and outside associates or consultants required by the contractor in connection with services under this agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations, or as the owner specifically authorizes in writing during the performance of this agreement. The owner must give prior approval for any substitutions in or additions to such subcontractors, associates, or consultants.
- (26) In connection with the performance of work under this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, sex, sexual orientation, genetic information, military service, age, ancestry or disability, shall not discriminate in the selection or retention of subcontractors, and shall not discriminate in the procurement of materials and rentals of equipment.
- (27) The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty the owner shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

- (28) If it is found, after notice and hearing, by the owner that the contractor, or any of the contractor's agents or representatives, offered or gave gratuities (in form of entertainment, gifts, or otherwise), to any official, employee or agent of the owner, or of the state, in an attempt to secure a contract or favorable treatment in awarding, amending, or making any determination related to the performance of this agreement, the owner may, by written notice to the contractor, terminate the right of the contractor to proceed under this agreement. The owner may also pursue other rights and remedies that the law or this agreement provides. However, the existence of the facts upon which the owner bases such findings shall be in issue and may be reviewed in proceedings under the remedies clause of this agreement.
- (29) In the event this agreement is terminated as provided in paragraph (28), the owner shall be entitled: (1) To pursue the same remedies against the contractor as it could pursue in the event of a breach of the contract by the contractor, and (2) as penalty, in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the owner) which shall be not less than three nor more than ten times the costs the contractor incurs in providing any such gratuities to any such officer or employee.
- (30) MassDEP has the right to use, duplicate, and disclose, in whole or in part, in any manner for any purpose whatsoever, any plans, drawings, designs, specifications, computer programs (which are substantially paid for with Trust funds), technical reports, operating manuals, and other work submitted with an application or which are specified to be delivered under this agreement or which are developed or produced and paid for under this agreement. The owner and MassDEP reserve a royalty free, non-exclusive, and irrevocable license to reproduce, publish, and use such materials, in whole or in part, and to authorize others to do so. The contractor shall include appropriate provisions to achieve the purpose of this condition in all subcontracts expected to produce copyrightable subject data.
- (31) All such subject data furnished by the contractor pursuant to this agreement are instruments of his services in respect of the project. It is understood that the contractor does not represent such subject data to be suitable for reuse on any other project or for any other purpose. If the owner reuses the subject data without the contractor's specific written verification or adaptation, such reuse will be at the sole risk of the owner, without liability to the contractor. Any such verification or adaptation will entitle the contractor to further compensation at rates agreed upon by the owner and the contractor.

## **Appendix E**

### **Additional Subsidy Requirements**

## **Additional Requirements for proponents seeking enhanced SRF subsidies**

### **Additional Subsidy Requirements**

M.G.L. c.29C, §6(h) requires that proponents appearing on the Intended Use Plan for calendar year 2016 and subsequent years, and seeking enhanced subsidies (such as principal forgiveness or loans with an interest rate less than 2%) have established a sewer enterprise fund or water enterprise fund, as applicable, under M.G.L. c.44, §53F1/2. Alternatively, the community may have established a separate restricted account that is the equivalent of such fund. The adoption of an Enterprise or restricted utility account is a prerequisite to receipt of any enhanced SRF subsidy.

Further, M.G.L. c.29C, §6(h) provides that any local government unit which on or after January 1, 2015, transfers or otherwise uses money from its enterprise fund or restricted account for its local governmental operating budget, other than to pay or reimburse valid expenses or obligations related to such fund or restricted account, will not be eligible to seek new commitments for such additional subsidy for period of five years following the date of such transfer or other use.

The requirements are applicable to all applications for Additional Subsidy, including nutrient enrichment management projects, financing discounts for Housing Choice communities, Emergency SRF financing, and Affordability discounts.

*The certification on the following page must be submitted with each loan application for additional subsidy.*

## **Enterprise Account Certification**

I \_\_\_\_\_, \_\_\_\_\_,  
(name) (title/position)

Authorized Representative of (local governmental unit) \_\_\_\_\_  
(local governmental unit)

(the "Applicant") hereby certify that: the Applicant has established a sewer or water enterprise fund under M.G.L. c.44, §53F1/2, or in lieu of the applicable enterprise fund has established a separate restricted account that is the equivalent of such fund; and that since January 1, 2015, Applicant has not transferred or otherwise used money from its enterprise fund or restricted account for its local governmental operating budget, other than to pay or reimburse, valid expenses or obligations related to such fund or restricted account.

Signature \_\_\_\_\_

Date \_\_\_\_\_

## **Appendix F**

### **D/MBE and D/WBE Forms Professional Services Contracts**

**DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION  
FOR  
PROFESSIONAL SERVICES CONTRACTS**

I. Purpose

The purpose of this guidance document is to assist local governmental units (LGUs) and their Prime Consultant in demonstrating compliance with the United States Environmental Protection Agency (EPA) requirements for disadvantaged business enterprise (DBE) participation in professional services contracts.

II. Requirements

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM BACKGROUND

In May 2008 an EPA rule became effective that changed the Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) Program to a Disadvantaged Business Enterprise (DBE) Program.

For firms to qualify under the old MBE/WBE program they needed to be socially disadvantaged and had to be certified by the Supplier Diversity Office (SDO). Under the DBE rule, the firms must be both **socially** and **economically** disadvantaged, **citizens of the United States**, and certified as a DBE either by the state or the federal government. Women and certain minorities are presumed to be socially disadvantaged. The economic disadvantage is measured by the owner's initial and continuing personal net worth of less than \$1,320,000.

Because the Clean Water Act requires the use of MBEs and WBEs, these firms will still be utilized in the State Revolving Fund (SRF) Loan Program, but they must also be certified as DBEs.

SDO will continue to be the certifying agency for the SRF program. SDO certifies firms under the federal Department of Transportation program, which is acceptable for use in the SRF program. An additional form has been added to the DBE package to verify that DBEs are owned or controlled by United States citizens.

The following are the DBE goals.

Disadvantaged MBEs (D/MBE) **4.2%**      Disadvantaged WBEs (D/WBE) **4.5%**

### III. Procedures

1. In cases where the professional services contracts achieve the goal of 4.2% D/MBE and 4.5% D/WBE participation, the LGU and/or its Prime Consultant is required to submit Form EEO-DEP-190E (Schedule of Participation for Professional Services) and Form EEO-DEP-191E (Letter of Intent) to MassDEP. Form EEO-DEP-190E identifies the proposed DBE subcontractors, the type of services to be provided by each subcontractor (e.g., Architecture, preparation of O&M manuals, laboratory analysis, etc.), and the respective dollar value of their participation. Form EEO-DEP-191E must be completed for each M/WBE subcontractor identified on Form EEO-DEP-190E. Each DBE must also sign the Certification of United States Citizenship form to verify that the firm is owned or controlled by a United States citizen.
2. In the event that a professional services contract does not achieve the goal of 4.2% D/MBE and 4.5% D/WBE participation, MassDEP may request that the LGU's Prime Consultant provide additional documentation demonstrating what positive efforts were made to achieve the participation goal. In cases where the LGU's Prime Consultant fails to demonstrate the 4.2% D/MBE and 4.5% D/WBE participation in the professional services contract, the Prime Consultant must submit Form EEO-DEP-490E (Request for Waiver), together with the supporting documentation identified therein, to MassDEP.
3. MassDEP's Project Approval Certificate shall contain a condition requiring the LGU's Prime Consultant to submit all executed consultant contracts, including contracts with D/M/WBE subcontractor(s) if in excess of \$25,000, to MassDEP within sixty (60) days from the date of the award of financial assistance to the LGU by the Clean Water Trust (the Trust).
4. In order for MassDEP to monitor compliance with its above stated D/M/WBE provisions for professional services contracts, any LGU who does not file monthly or bi-monthly Payment Requisitions on Form 3000 (Consultant Engineer's Request and Certification) to document D/M/WBE activity, will be required at a minimum to submit Form EEO-DEP-390E (Quarterly D/M/WBE Activity Report) on a quarterly basis. The Form EEO-DEP-390E is not attached to this package but will be made available to those that need to use it when the Form 3000 reporting is not an option.

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION  
MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF MUNICIPAL SERVICES

**SCHEDULE OF PARTICIPATION FOR PROFESSIONAL SERVICES**

**Project Title:** \_\_\_\_\_ **Project Location:** \_\_\_\_\_

**Disadvantaged Minority Business Enterprise Participation in the SRF Loan Work**

Name & Address of D/MBE	Nature of Participation	Dollar Value of Participation
1.		
2.		
3.		

**Total D/MBE Commitment: \$** \_\_\_\_\_

**Percentage D/MBE Participation =** (Total D/MBE Commitment) / (Total Engineering Cost) =

**%**

**Disadvantaged Women Business Enterprise Participation in the SRF Loan Work**

Name & Address of D/WBE	Nature of Participation	Dollar Value of Participation
1.		
2.		
3.		

**Total D/WBE Commitment: \$** \_\_\_\_\_

**Percentage D/WBE Participation =** (Total D/WBE Commitment) / (Total Engineering Cost) =

**%**

The Prime Consultant agrees to furnish implementation reports as required by the Awarding Authority to indicate the D/MBE(s) and D/WBE(s) which it has used or intends to use. Breach of this commitment constitutes a breach of the contract.

**Name of Prime Consultant:** \_\_\_\_\_

**Date:** \_\_\_\_\_ **By:** \_\_\_\_\_

Signature

NOTE: Participation of a DBE may be counted in only their certified category; the same dollar participation cannot be used in computing the percentage of D/MBE participation and again of D/WBE participation.

## LETTER OF INTENT FOR PROFESSIONAL SERVICES

Project Title: \_\_\_\_\_ Project Location: \_\_\_\_\_

EEO-DEP-191E

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION  
MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF MUNICIPAL SERVICES

**DBE CERTIFICATION OF UNITED STATES CITIZENSHIP**

For the SRF program, under the EPA Disadvantage Business Enterprise (DBE) Rule, a DBE must be owned or controlled by a socially and economically disadvantaged person that is also a **citizen of the United States** (*See* 40 CFR 33.202). “Ownership” is defined at 13 CFR 124.105 and “control” is defined at 13 CFR 124.106.

DBEs are certified for the SRF program through the Supplier Diversity Office using the federal Department of Transportation (DOT) DBE rules. EPA allows the use of DBEs certified under the DOT rules as long as they are also United States citizens. To ensure compliance with the EPA rule, MassDEP must verify United States citizenship through the completion of the following form for each DBE used on the project.

SRF Project Number \_\_\_\_\_

Contract Number \_\_\_\_\_

Contract Title \_\_\_\_\_

DBE Subcontractor \_\_\_\_\_

The undersigned, on behalf of the above named DBE subcontractor, hereby certifies that the DBE firm is either owned or controlled by a person or persons that are citizens of the United States.

\_\_\_\_\_  
Printed Name and Title of DBE Signatory

\_\_\_\_\_  
DBE Signature

\_\_\_\_\_  
Date

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION  
MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF MUNICIPAL SERVICES

**REQUEST FOR WAIVER FOR PROFESSIONAL SERVICES**

**Upon exhausting all known sources and making every possible effort to meet the minimum requirements for DBE participation, the Prime Consultant seeks relief from these requirements by filing this form. Failure to comply with this process shall be cause to reject the eligibility of engineering costs.**

General Information

Project Title: \_\_\_\_\_ Project Location: \_\_\_\_\_

Prime Consultant: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Telephone No. \_\_\_\_\_

Minimum Requirements

The Prime Consultant must show that good faith efforts were undertaken to comply with the percentage goals as specified. The firm seeking relief must show that such efforts were taken appropriately in advance of the time set for approval of the application by submitting the following:

- A. A detailed record of the effort made to contact and negotiate with minority and/or woman owned businesses, including:
1. names, addresses, telephone numbers and contact dates of all such companies contacted;
  2. copies of dated written notice(s) which were sent to DBE potential subcontractors prior to application deadlines;
  3. copies of dated advertisements as appearing in general publications, trade-oriented publications, and applicable minority/women-focused media detailing the opportunities for participation;
  4. a detailed statement as to why each subcontractor contacted (i) was not willing to do the job or (ii) was not qualified to perform the work as solicited; and
  5. in the case(s) where a negotiated price could not be reached the Prime Consultant should detail what efforts were made to reach an agreement on a competitive price.
- B. MassDEP may require the Prime Consultant to produce such additional information as it deems appropriate.

- C. No later than fifteen (15) days after receipt of all required information and documentation, MassDEP shall make a determination, in writing, whether the waiver request is granted and shall provide that determination to the Prime Consultant and Awarding Authority. If the waiver request is denied, the facts upon which a denial is based will be set forth in writing.

Special Note

If at any time, MassDEP determines that one or more of the DBE contractors as submitted by the Prime Consultant on form EEO-DEP-190C is not certified, the bidder shall have 10 working days, following notification to MassDEP, to either find a certified DBE contractor to perform work equal to or greater than that of the uncertified contractor or submit a waiver request.

CERTIFICATION

The undersigned herewith certifies that the above information and appropriate attachments are true and accurate to the best of my knowledge and that I have been authorized to act on behalf of the Prime Consultant in this matter.

---

(authorized original signature)

---

DATE

## **Appendix G**

### **Statement of Tax Compliance**

## STATEMENT OF TAX COMPLIANCE

*Under the laws of the Commonwealth of Massachusetts, Chapter 233; Section 35, Acts of 1983, the LGU Consultant Engineer is required to complete the following:*

I, \_\_\_\_\_, as \_\_\_\_\_ of

(Title)

(Position)

\_\_\_\_\_, whose principal place of business is located at

(Business)

\_\_\_\_\_, do hereby certify that the above named

\_\_\_\_\_ has complied with all laws of the Commonwealth of Massachusetts relating to taxes, in accordance with the provisions of Massachusetts General Laws, Chapter 62C, 49A, as amended.

Signed under the penalties of perjury this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Authorized Signature)

## **Appendix H**

### **Loan Reimbursements**

## Loan Reimbursement Forms

Once a loan has been made with the Trust the community may begin seeking reimbursement for costs incurred on the project. The consultant engineer for the project will fill out the forms, gather the appropriate backup and submit the payment reimbursement request package in PDF form to MassDEP by email at [DMSDEP.General@mass.gov](mailto:DMSDEP.General@mass.gov). MassDEP then forwards a signed Form 1000 form to the Trust. The Trust will then transfer electronically (wire) the funds to the community.

The required forms needed to seek reimbursement are: Form 1000, Form 2000 and Form 3000. The Form 1000 states the following: the approved amount of the loan, the previous requests made by the community and the current requested amount. This form must be signed by the Authorized Representative of the community.

The Form 2000 is known as the contractor's form. This form shows the approved amount of the contractor's contract and M/WBE information. Similar to the Form 1000, the Form 2000 maintains a running balance of the contract. The D/M/WBE information must be updated with each reimbursement request. The Form 2000 requires the signature of the contractor, the consulting engineer and the MassDEP inspector.

The Form 3000 is known as the consultant engineer's form. The Form 3000 is exactly like the Form 2000 and its requirements. The Form 3000 requires the signature of the consulting engineer.

When the community signs a final loan agreement with the Trust either the community or the consulting engineer should contact MassDEP to receive a copy of these forms. Please refer to the [State Revolving Fund Contact list](#) for the Accountant for your [community](#).

Samples of these forms follow this page.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**BUREAU OF WATER RESOURCES**

**PAYMENT REQUISITION**

LOAN NO.: _____ DMS PROJECT NO.: _____	REQUEST NO.: _____ SERVICE DATES: _____ TO _____		
LEGAL NAME AND ADDRESS OF BORROWER: _____ _____ _____ _____			
EXPENDITURE TYPE	APPROVED AMOUNT \$	PREVIOUS REQUESTS \$	THIS REQUEST \$
Construction		\$0.00	\$0.00
Construction Services		\$0.00	\$0.00
Construction Contingency			
Other:		\$0.00	\$0.00
Totals	\$ -	\$ -	\$ -
<b>CERTIFICATION OF THE BORROWER:</b> <i>The Authorized Representative of the Borrower identified below certifies the following:</i> (i) This payment is for Project Costs and the obligations specified herein have not been the basis for a prior requisition that has been paid; (ii) there has been no Default, as defined in the Regulatory Agreement hereunder or no Event of Default as defined in the Loan Agreement, and no event or condition exists which after notice or lapse of time or both, would become a Default under the Regulatory Agreement or an Event of Default under the Loan Agreement exists; and (iii) the payment requested by this requisition is due for work actually performed or materials or property actually supplied prior to the date of of this requisition less retainage.  Signature: _____ Date: _____ Print Name: _____ Title: _____			
(To be completed by the DEP Division of Municipal Services)  Amount Requested: _____ Amount Approved: _____  Signature: _____ Date: _____  Print Name: Maria E. Pinaud Title: Division Director			

## PERIODIC PAYMENT FORM

(Contractor's Request)

**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
BUREAU OF WATER RESOURCES**

**PAYMENT REQUISITION**  
(Consultant Engineer's Request and Certification)

LOAN NO. : 0				DESCRIPTION OF PROJECT:  0			
DMS PROJECT NO. : 0							
CONTRACT No. _____							
LEGAL NAME OF BORROWER: _____ 0				REQUEST No. 0			
CONSULTANT NAME & ADDRESS: _____ _____ _____				PAYMENT PERIOD: _____ From _____ To _____			
				CONTRACT SERVICE DATES: From _____ To _____			
EXPENDITURE TYPE	APPROVED COST	PREVIOUS REQUESTS		THIS REQUEST		CUMMULATIVE REQUESTS	REMAINING BALANCE
	\$	%	\$	\$	%	\$	\$
Construction Services	\$ -	0%	\$ -	\$ -	0%	\$ -	\$ -
D/MBE/WBE Subcontractors							
	\$ -	0%	\$ -	\$ -	0%	\$ -	\$ -
	\$ -	0%	\$ -	\$ -	0%	\$ -	\$ -
Totals	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<small>The Borrower's Consultant Engineer identified herein certifies as follows: 1) the attached invoices and supporting documentation are for project costs for work actually performed or material or property actually supplied prior to the date of this requisition in conformity with the plans and specifications approved by the Department, or in the case of substantial deviations from the approved plans and specifications, the attached documentation demonstrates that all such deviations have been authorized and certified to by the Borrower or its Consultant Engineer in accordance with M.G.L. c 30, ss39I and are project costs.</small>							
<b>BY THE CONSULTING ENGINEER</b>							
<div style="display: flex; justify-content: space-between;"><div style="width: 60%;">Certified by: _____</div><div style="width: 35%;">Date Signed _____</div></div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"><div style="width: 60%;">Type Name and Title: _____ _____</div><div style="width: 35%;">Telephone _____</div></div>							

## **Appendix I**

### **0% Interest Rate Loans for Nutrient Removal Projects**

## **INFORMATION REGARDING ZERO RATE OF INTEREST OF CERTAIN *NUTRIENT MANAGEMENT PROJECTS* FINANCED UNDER THE CLEAN WATER STATE REVOLVING FUND LOANS**

In order to appropriately implement the Clean Water State Revolving Fund program, MassDEP seeks to finance projects that mitigate documented impacts to public health or the environment, and for which proponents have completed comprehensive planning and alternatives analysis. The Massachusetts Legislature has further directed MassDEP, pursuant to M.G.L. c. 29C, § 6, to provide zero percent interest financing to projects that meet the following criteria, as verified by the Department of Environmental Protection (MassDEP), are eligible for zero rate of interest State Revolving Fund (SRF) loans:

- (1) the project is primarily intended to remediate or prevent nutrient enrichment of a surface water body or a source of water supply;
- (2) the applicant is not currently in violation of a MassDEP enforcement order, administrative consent order or unilateral administrative order, enforcement action by the United States Environmental Protection Agency or subject to a state or federal court order due to a violation of a nutrient-related total maximum daily load standard or other nutrient based standard relative to the proposed project.;
- (3) the applicant has a Comprehensive Wastewater Management Plan (CWMP) approved pursuant to regulations adopted by MassDEP;
- (4) the project has been deemed consistent with the regional water resources management plans if one exists;
- (5) the applicant has adopted land use controls, subject to the review and approval of MassDEP in consultation with the Department of Housing and Economic Development and, where applicable, any regional land use regulatory entity, intended to limit wastewater flows to the amount authorized under the land use controls that were in effect on the date the Secretary of the Executive Office of Energy and Environmental Affairs issued a certificate for the CWMP pursuant to the Massachusetts Environmental Policy Act, M.G.L. c. 30, §§ 61-62H, and the MEPA regulations at 301 CMR 11.00.

**Deadlines.** Applicants must demonstrate that they meet the zero percent interest rate program thresholds before their SRF loans are permanently financed. For projects proposed for the CWSRF program for 2014 and after, such applicants must complete Part IV of the Loan Application for submission by October 15<sup>th</sup> of the IUP year.

**Agency review.** Within 60 days of its receipt of a complete SRF Application, MassDEP will consult with DHCD and, if appropriate, the regional land use regulatory entity, to determine whether the applicant has adopted flow neutral land use controls in accordance with this Guidance. MassDEP will send a letter to the applicant within 14 days of such determination stating whether or not the Application establishes the applicant's eligibility for such financing and, if not, setting forth the basis for the determination. MassDEP's final eligibility determination is not subject to further administrative review. It is, therefore, essential that applicants make diligent efforts to fully complete their SRF Application and adequately document the basis for eligibility.

### **Capacity Limitation**

The legislation limits the cost of loans available at 0% to thirty-five percent of the CWSRF IUP capacity in any given year. For example, a \$300 million CWSRF IUP could finance up to \$105 million at 0% interest. If eligible projects in excess of \$105 million were to be proposed, MassDEP will afford the zero percent interest rate to projects in rank order as listed on the IUP. In that instance, highly ranked projects that are eligible would be financed at zero percent, while some lower ranked eligible project, might not. The low ranked projects would receive the standard 2% interest rate.

**MassDEP expects that the thresholds established by the Legislature will limit the number of projects that qualify for the zero percent interest rate loans.**

REGIONAL PLANNING COMMISSION  
CONTACT INFORMATION

Berkshire Regional Planning Commission

1 Fenn Street, Suite 201  
Pittsfield, MA 01201-6629  
Tel.: (413) 442-1521

Cape Cod Commission

3225 Main Street  
Barnstable, MA 02630-1105  
Tel. (508) 362-3828

Central Massachusetts Regional Planning Commission

2 Washington Square – 2d Floor  
Worcester, MA 01604-4016  
Tel. (508) 756-7717

Franklin Regional Council of Governments

12 Olive Street – Suite 2  
Greenfield, MA 01301 Tel. (413) 774-3167

Martha's Vineyard Commission

The Stone Building  
33 New York Avenue  
P.O. Box 1447  
Oak Bluffs MA 02557  
Tel. 508-693-3453

Merrimack Valley Planning Commission

160 Main Street  
Haverhill, MA 01830  
Tel. 978-374-0519

Metropolitan Area Planning Council

60 Temple Place  
Boston, MA 02111-1379  
Tel. (617) 451-2770

Montachusett Regional Planning Commission

1427 Water Street  
Fitchburg, MA 01420-7266  
Tel. (978) 345-7376

Nantucket Planning and Economic Development Commission  
2 Fairgrounds Rd.  
Nantucket, MA 02554  
Tel. (508) 228-7237

Northern Middlesex Council of Governments  
40 Church Street - Unit 200,  
Lowell, MA 01852-2686  
Tel. (978) 454-8021

Old Colony Planning Council  
70 School Street  
Brockton, MA 02301  
Tel. (508) 583-1833

Pioneer Valley Planning Commission  
60 Congress Street  
Springfield MA 01104  
Tel. (413) 781-6045

Southeastern Regional Planning and Economic Development District 88  
Broadway  
Taunton, MA 02780  
Tel. (508) 824-1367

**CLEAN WATER STATE REVOLVING FUND (CWSRF)  
ZERO PERCENT INTEREST RATE LOANS  
FOR NUTRIENT REMOVAL PROJECTS**

Questions and Answers

**1. What CWSRF projects are eligible for a zero percent (0%) interest rate loan?**

The Massachusetts Legislature authorized a 0% interest rate loan for wastewater nutrient removal construction projects, provided that an applicant meets five specific criteria. The criteria and a general explanation are as follows:

- a) The construction project cost to remediate or prevent nutrient enrichment of a surface water body or a source of drinking water supply is greater than fifty percent (50%); The proposed project must specifically address a wastewater nutrient management issue that is identified by an updated National Pollutant Discharge Elimination System (NPDES) permit required by the EPA and MassDEP or: other MassDEP approved evaluative study(ies). The costs for the nutrient improvements must comprise a majority of the cost of the proposed project.

A portion of the proposed project not related to nutrient removal may not be eligible for the 0% interest rate but will be financed at the standard CWSRF 2% interest rate.

- b) The applicant is not currently in violation of a MassDEP enforcement order, administrative consent order or unilateral administrative order, enforcement action by the United States Environmental Protection Agency or subject to a state or federal court order due to a violation of a nutrient-related total maximum daily load standard or other nutrient based standard relative to the proposed project.

- c) The applicant has received written approval for completion of a Comprehensive Wastewater Management Plan (CWMP) by MassDEP and/or the Secretary of EOEEA's issuance of a Certificate of Approval.

The community must have an approved CWMP to qualify for a 0% interest rate loan. The CWMP is the single most important document that establishes the eligibility of the project. The CWMP describes the community's wastewater management strategy by identifying the local wastewater needs areas and anticipated wastewater flow regime, through the enactment of regulations or a zoning bylaw or ordinance. CWMPs also outline non-traditional approaches to wastewater management and allow communities to select proposals that best address local watershed characteristics including Best Management Practices and often outline regional options for the management of wastewater and nutrients.

- d) The project has been deemed consistent with the community's Regional Planning Agency's (RPA) water resources management plan, if one exists;

The Section 208 Cape Cod Area-Wide Water Quality Management Plan is intended to encourage watershed-based planning that recognizes natural rather than political

boundaries. Any project proponent that opts not to follow the recommendations of this regional water resource management plan will be ineligible for the 0% interest rate.

- e) The community has or will adopt land use controls (LUCs), subject to the review and approval of MassDEP, in consultation with the Department of Housing and Economic (Community) Development (DHCD). LUCs are intended to limit wastewater flows to the volumes for specific areas approved in the CWMP and authorized in accordance with local wastewater regulations, zoning bylaws or ordinance.

The development of wastewater service normally has a beneficial impact on public health and the environment; however, there has been some history of indiscriminate growth or sprawl associated with wastewater service. The aforementioned Massachusetts statute was crafted to ensure that 0% interest rate loans do not encourage sprawl. Communities will be required to demonstrate that the approved CWMP determined flow allocations are being followed. It should be noted that the decisions on how flow allocations are made are solely within each community's discretion.

MassDEP regulations 310 CMR 44.09 provides various mechanisms for establishing LUCs. Regional wastewater districts (RWD) will be largely unable to qualify for the 0% interest rate, unless it can be demonstrated that the RWD has the authority to implement LUCs relative to flow neutrality.

## **2. Can the MassDEP provide model by-laws that demonstrate flow-neutrality?**

Yes. MassDEP has approved regulations, zoning by laws and ordinances available that can be used as a model for any community eligible for applying for a 0% interest rate loan.

## **3. Why were nutrient management projects selected for special consideration?**

The Clean Water Act (CWA) has been successful in restoring the nations' waters from unchecked addition of residential and industrial wastes to our waterways. Despite billions of dollars invested in wastewater infrastructure improvements, water quality continues to be impacted by excessive nutrients that can create or enhance algae blooms, increase fish mortality and cause loss of habitat. CWA water quality standards, implemented through the issuance of NPDES permits, requires wastewater treatment improvements to reduce nutrient discharges into the nation's waterways and groundwater.

The Massachusetts Legislature has provided through a state statute a wastewater subsidy for the 0% interest rate to address this need.

## **4. Why aren't all CWSRF loans financed at the 0% interest rate?**

The costs for subsidizing nutrient related wastewater loans from the CWT market rate of 2%, to an additional subsidized 0% interest rate will be absorbed by the Commonwealth of Massachusetts. It is not within Massachusetts' financial ability or plans to provide this additional subsidy to all other CWSRF loans.

**5. Are all nutrient management projects eligible for 0% interest rate loans?**

No. The legislative intent of the statute that provides 0% CWSRF loans for nutrient management projects was that the financing be exclusive, rather than inclusive. Not all nutrient management projects will qualify for 0% interest rate loans. Only those projects that meet the five criteria noted previously will be eligible. MassDEP cannot amend the statute, or re-engineer the legislative intent.

**6. If a wastewater project meets the five statutory criteria, is there a guarantee of receiving a 0% interest rate loan?**

No, there is not. The statute limits 0% interest rate loans to 35% of the IUP dollar total in any given year. If the cost of the qualifying loans for nutrient projects exceeds 35% of the total dollars available in the CWSRF IUP for that given year, then MassDEP will finance projects according to the ranking order on the annual IUP - Priority List.

Some lower ranked, but programmatically eligible proposals may therefore be unable to receive a 0% interest rate loan. These communities will be offered the standard SRF 2% interest rate loan.

**7. Where can I get additional information regarding the zero percent interest loan program?**

Please refer to [State Revolving Fund Contact list](#) for the Program Manager

## APPENDIX J

### BUILD AMERICA, BUY AMERICA ACT (BABA)

### AMERICAN IRON AND STEEL (AIS)

#### ATTACHMENTS

1. **Information Checklist for Waiver Request**
2. **HQ Review Checklist for Waiver Request**
3. **Example Loan Agreement Language**
4. **Sample Construction Contract Language**
5. **Sample Certification 1**  
**Sample Certification 2**

# Appendix I

## Build America, Buy America (BABA) Requirements




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

OFFICE OF WATER

November 3, 2022

### **MEMORANDUM**

**SUBJECT:** Build America, Buy America Act Implementation Procedures for EPA Office of Water Federal Financial Assistance Programs

**FROM:** RadhikaFox  
Assistant Administrator 

**TO:** EPA Regional Water Division Directors, Regions I - X  
EPA Office of Water Office Directors

### **OVERVIEW**

The Biden-Harris Administration recognized the Nation's critical need for infrastructure investment, championing the Bipartisan Infrastructure Law (BIL), which Congress passed on November 15, 2021 (also known as the Infrastructure Investment and Jobs Act (IIJA)). The BIL will provide an unprecedented level of federal investment in water and wastewater infrastructure in communities across America.

In Title IX of the IIJA, Congress passed the Build America, Buy America (BABA) Act, which establishes strong and permanent domestic sourcing requirements across all Federal financial assistance programs for infrastructure. The U.S. Environmental Protection Agency (EPA) Office of Water is honored to help lead the implementation of these provisions and is proud of its near decade of successful implementation of the American Iron and Steel (AIS) provisions for its flagship water infrastructure programs.

This is a transformational opportunity to build a resilient supply chain and manufacturing base for critical products here in the United States that will spur investment in good-paying American manufacturing jobs and businesses. EPA's efforts to implement BABA will help cultivate the domestic manufacturing base for a wide range of products commonly used across the water sector but not currently made domestically. This will take time, and flexibility will be important to ensure that EPA can leverage critical water investments on time and on budget to protect public health and improve water quality.

## IMPLEMENTATION

Recognizing the opportunity and need for BABA implementation guidance, the Made in America Office (MIAO) of the Office of Management and Budget (OMB) published [Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure](#) (OMB Guidance M-22-11) on April 18, 2022. The guidance provides government-wide implementation direction for all Federal financial assistance programs for infrastructure. Despite the extensive guidance developed by MIAO, EPA's Office of Water infrastructure investment programs have received many questions that were not addressed in OMB Guidance M-22-11 or that require further clarification for EPA water infrastructure programs. The following questions and answers serve to supplement OMB Guidance M-22-11 with implementation procedures specific to EPA's relevant water infrastructure programs.

Section 70914(a) of the IIJA states when a Buy America preference under BABA applies: "Not later than... [May 14, 2022], the head of each Federal agency shall ensure that none of the funds made available for a Federal financial assistance program for infrastructure... may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States." Therefore, Federal financial infrastructure investments obligated on or after May 14, 2022, must comply with the BABA requirements. Absent a waiver, all iron, steel, manufactured products, and construction materials permanently incorporated into an infrastructure project subject to the BABA requirements must be produced in the United States. For many of EPA's Office of Water infrastructure investment programs, the vast majority of products permanently incorporated into construction, maintenance, or repair projects must comply with the BABA requirements, with the exception of select construction materials (cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives), which are specifically excepted by the BABA statute.

EPA's Office of Water implements many infrastructure investment programs subject to BABA requirements, including the following:

- Alaska Native Villages and Rural Communities Water Grant Program (ANV) (and any associated Interagency Agreements with the Indian Health Service)
- Clean Water and Drinking Water State Revolving Fund Programs (CW and DWSRF)
- Clean Water and Drinking Water Grants to U.S. Territories and the District of Columbia
- Clean Water Indian and Drinking Water Tribal Infrastructure Grant Set-aside (and any associated Interagency Agreements with the Indian Health Service)
- Coastal Wetlands Planning, Protection and Restoration Act, (CWPPRA) Programs
- Congressionally Directed Spending/Community Project Funding (also known as Community Grants)
- Geographic Programs<sup>1</sup>
- Gulf Hypoxia Program
- National Estuaries Program (CWA Section 320)

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<sup>1</sup> Geographic Programs include: Great Lakes Restoration Initiative, Chesapeake Bay, San Francisco Bay, Puget Sound, Long Island Sound, Gulf of Mexico, South Florida, Lake Champlain, Lake Pontchartrain, Southern New England Estuaries, Columbia River Basin, Pacific Northwest

- 319 Nonpoint Source Management Program Implementation
- Reducing Lead in Drinking Water Grant Program (SDWA §1459B)
- Assistance for Small and Disadvantaged Communities Grants: Small, Underserved, and Disadvantaged Community Grant Program (SUDC), Emerging Contaminants in Small or Disadvantaged Communities (EC-SDC) and Drinking Water Infrastructure Resilience & Sustainability (SDWA §1459A)
- Sewer Overflow and Stormwater Reuse Municipal Grants (OSG)
- USMCA Implementing Legislation (Section 821 and Title IX, USMCA Supplemental Appropriations, 2020)
- U.S.-Mexico Border Water Infrastructure Program
- Voluntary School and Child Care Program Lead Testing and Remediation Grant Program (SDWA 1464(d))
- Water Infrastructure Finance and Innovation Act (WIFIA)

The questions and answers in this document apply to the implementation of BABA requirements for the Office of Water infrastructure programs listed above unless superseded by regulation, statute, or other applicable guidance. For many of the programs listed above which did not have domestic preference requirements prior to BABA, additional implementation details are pending or may be developed after the issuance of these procedures. In addition, EPA notes that more direction will be helpful to inform the determination and definition of domestic content in manufactured goods. Supplemental guidance on these and other issues, from either OMB or EPA, may be forthcoming. These implementation procedures may also apply to additional, unlisted EPA programs which may be required to apply BABA subsequent to publication of this memorandum (e.g., future funding programs which have been authorized, but not yet appropriated).

For more information on the BABA requirements, visit the EPA Office of Water's dedicated website – <https://www.epa.gov/cwsrf/build-america-buy-america-baba> – or contact your funding authority (such as your grants officer, portfolio manager, or state contact). For information on approved waivers, visit <https://www.epa.gov/cwsrf/build-america-buy-america-baba-approved-waivers>. You may also email questions to [BABA-OW@epa.gov](mailto:BABA-OW@epa.gov).

This Implementation Procedures document is organized to provide responses to questions in the following topic areas:

- Section 1: General..... 4
- Section 2: Product Coverage..... 5
- Section 3: Co-funding..... 9
- Section 4: Waivers..... 10
- Section 5: Documenting Compliance..... 12
- Section 6: Programs with American Iron and Steel Requirements..... 16
- Section 7: Program-Specific Issues..... 17
- Appendix 1: Example Build America, Buy America (BABA) Act Construction Contract Language..... 22
- Appendix 2: Example Build America, Buy America (BABA) Act Assistance Agreement Language..... 23

## QUESTIONS AND ANSWERS

### SECTION 1: GENERAL

- Q1.1: Will EPA provide documentation for BABA for bid solicitations and suggested contract language? Will EPA provide suggested language for Assistance Agreements?
  - A1.1: See Appendix 1, which includes suggested language for construction contracts which addresses the BABA requirements. In addition to the language suggested in Appendix 1, EPA also recommends that assistance recipients prepare contract bid solicitation documents with a statement for the consulting engineers and construction firms as follows: “By signing payment application and recommending payment, Contractor certifies they have reviewed documentation for all products and materials submitted for payment, and the certifications are sufficient to demonstrate compliance with Build America, Buy America Act requirements.” In most cases, the assistance recipient’s representatives assume the responsibility for their clients to conduct due diligence on compliance with applicable domestic preference requirements.

All Federal Financial infrastructure assistance agreements subject to BABA must have a clause requiring compliance with the requirements. See Appendix 2 for example assistance agreement language.
- Q1.2: Would federally-financed infrastructure projects outside of the United States need to comply with the BABA requirements?
  - A1.2: No. According to the OMB Guidance (M-22-11), a “project” is defined as “...any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States.” Therefore, the BABA requirements are not implicated for infrastructure projects occurring outside of the United States, such as projects funded through the United States-Mexico-Canada Agreement with infrastructure activities occurring in Mexico or Canada (that is, outside the United States).
  -
- Q1.3: If most of the project is BABA compliant, and a small portion is not, can an assistance recipient self-fund (i.e., paying with non-federal dollars) the non-compliant products?
  - A1.3: Any project that is funded in whole or in part with federal assistance must comply with the BABA requirements, unless the requirements are otherwise waived. All iron, steel, manufactured products, and construction materials used in a project must meet the BABA requirements unless waived. Absent a waiver, there is no “small portion” or product that does not need to satisfy the BABA requirements unless the requirements are waived (or specifically excluded as is the case for cement and cementitious materials; aggregates such as stone, sand, or gravel; aggregate binding agents or additives; or non-permanent products). An assistance recipient may request a waiver or inquire as to whether a broad waiver, such as a *de minimis* waiver, might apply.

- Q1.4: How do international trade agreements affect the implementation of the BABA requirements?
  - A1.4: The BABA requirements apply in a manner consistent with United States obligations under international trade agreements. Typically, these obligations only apply to direct procurement by the entities that are signatories to these trade agreements. In general, assistance recipients are not signatories to such agreements, so these trade agreements have no impact on BABA implementation. In the few instances where such an agreement applies to a municipality, that municipality is responsible for determining its applicability and requirements and communicating with the funding authority (such as EPA and/or a state) on the actions taken to comply with BABA.

## SECTION 2: PRODUCT COVERAGE

- Q2.1: For products made of iron and steel, what is the difference between predominantly and primarily iron and steel?
  - A2.1: EPA considers the terms “predominantly” and “primarily” to be interchangeable, such that a product is considered predominantly (or primarily) iron and steel if it contains greater than 50 percent iron and steel by material cost.
- Q2.2: What is the definition of construction materials (with examples)?
  - A2.2: From OMB Guidance M-22-11: “construction materials” include an article, material, or supply (other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; aggregate binding agents or additives; or non-permanent products) that is or consists primarily of:
    - non-ferrous metals,
    - plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), (including optic glass),
    - lumber, and
    - drywall.

For example, a plate of glass would be a construction material under BABA, but a framed window that incorporates the glass into a frame would be a manufactured product. Another common construction material for water infrastructure projects would be polyvinyl chloride (PVC) pipe and fittings. However, if PVC components are incorporated into a more complex product such as instrumentation and control equipment or a water treatment unit, those items would be manufactured products.

- Q2.3: What are manufactured products (with examples)?
  - A2.3: From OMB Guidance M-22-11: “...all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total

cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation...”

The manufactured products category would cover the majority of potential water infrastructure products, including complex products made up of a variety of material types and components. For water infrastructure projects, common manufactured products would include, but not be limited to, pumps, motors, blowers, aerators, generators, instrumentation and control systems, gauges, meters, measurement equipment, treatment equipment, dewatering equipment, actuators, and many other mechanical and electrical items.

- Q2.4: Which category will valves fall under for BABA? Will it differ from the American Iron and Steel (AIS) requirements?
  - A2.4: For programs that are subject to BABA and AIS (SRF, WIFIA, and Community Project Funding), projects using valves should classify them as iron and steel products under BABA as long as their material cost is made up of more than 50 percent iron and/or steel. Valves with 50 percent or less iron and/or steel by material cost would be considered manufactured products under the BABA requirements.

In accordance with OMB Guidance M-22-11, an article, material, or supply should be classified into only one of the three categories: iron and steel, manufactured products, or construction materials. Under the AIS requirements, all valves made primarily of iron and steel (that is, those with iron and/or steel material cost greater than 50 percent) must comply with the AIS requirements. For BABA, EPA interprets Section IV of OMB Guidance M-22-11 to mean that iron and steel products are those items that are primarily iron and steel, the same as for the AIS requirements.

- Q2.5: Does EPA have a list of products to be classified as “Iron and Steel” under BABA?
  - A2.5: Although this list is not comprehensive, the following products were classified as AIS products if made primarily (more than 50 percent) of iron and/or steel by materials cost (for programs subject to both AIS and BABA, this list would be equivalent for “iron and steel” items or products under either requirement):

Products likely made “primarily” of iron and steel to be classified as <u>Iron and Steel</u> under BABA		
Lined and Unlined Pipe	Lined and Unlined Fittings	Tanks
Flanges	Pipe Clamps and Restraints	Structural Steel
Valves	Hydrants	Pre-Cast, Iron/Steel Reinforced Concrete (of all types, regardless of iron/steel content percentage)
Manhole Covers and other Municipal Castings	Access Hatches	Ballast Screens
Iron or Steel Benches	Bollards	Cast Bases
Cast Iron Hinged Hatches	Cast Iron Riser Rings	Catch Basin Inlets
Cleanout/Monument Boxes	Construction Covers and Frames	Curb and Corner Guards

Products likely made "primarily" of iron and steel to be classified as <u>Iron and Steel</u> under BABA		
Curb Boxes	Curb Openings	Curb Stops
Detectable Warning Plates	Downspout Shoes	Drainage Grates
Drainage Grate Frames and Curb Inlets	Inlets	Junction Boxes
Lampposts	Manhole Rings and Frames	Manhole Risers
Meter Boxes	Service Boxes	Steel Hinged Hatches
Steel Riser Rings	Trash Receptacles	Tree Grates
Tree Guards	Trench Grates	Valve Boxes
Valve Box Covers and Risers	Access Ramps	Aeration Pipes and Fittings (separate from aeration/blowers)
Angles	Backflow Preventers/Double Check Valves	Baffle Curtains
Iron or Steel Bar	Bathroom Stalls	Beam Clamps
Cable Hanging Systems	Clarifier Tanks	Coiled Steel
Column Piping	Concrete Reinforcing Bar, Wire, and Fibers	Condensate Sediment Traps
Corrugated Pipe	Couplings	Decking
Digester Covers	Dome Structures	Door Hardware
Doors	Ductwork	Expansion Joints
Expansion Tanks (diaphragm, surge, and hydropneumatics)	Fasteners	Fencing and Fence Tubing
Fire Escapes	Flanged Pipe	Flap Gates
Framing	Gate Valves	Generic Hanging Brackets
Grating	Ground Testing Boxes	Ground Test Wells
Guardrails	HVAC Registers, Diffusers, and Grilles	Joists
Knife Gates	Ladders	Lifting Hooks, J-bar, Connectors within, and Anchors for Concrete
Lockers	Man Baskets and Material Platforms	Manhole Steps
Mud Valves	Municipal Casting Junctions	Non-mechanical (aka stationary) Louvers and Dampers
Overhead Rolling Doors/ Uplifting Doors (manual open, no motor)	Pipe Connectors	Pipe Hangers
Pipe Pilings (any type of steel piling)	Pipe Spool (pipe, flanges, connectors, etc.)	Pipe Supports
Pitless Adaptors	Pre-fab Steel Buildings/Sheds (simple structure, unfurnished)	Pre-stressed Concrete Cylinder Pipe (PCCP)
Railings	Reduced Pressure Zone (RPZ) Valves	Roofing
Service Saddles	Sheet Piling	Sinks (not part of eyewash systems)
Solenoid Valves	Stairs	Static Mixers
Stationary Screens	Surface Drains	Tapping Sleeves
Telescoping Valves	Tipping Buckets	Trusses
Tubing	Valve Stem Extensions	Valve Stems (excluding handwheels and actuators)
Wall Panels	Wall Sleeves/Floor Sleeves	Welding Rods
Well Casing	Well Screens	Wire
Wire Cloth	Wire Rod	Wire Rope and Cables

Q2.6: Does EPA have a list of products that could be made “primarily” of iron and steel but would be classified as “manufactured products” under BABA?

A2.6: Although this list is not comprehensive, the following products would be considered “manufactured products” under the BABA requirements, even if the item might be composed primarily of iron and steel by materials cost (Note: These items are not subject to the AIS requirements.):

Products likely made “primarily” of iron and steel to be classified as <u>Manufactured Products</u> under BABA		
Actuator Superstructures/ Support Structures	Aeration Nozzles and Injectors	Aerators
Analytical Instrumentation	Analyzers (e.g., ozone, oxygen)	Automated Water Fill Stations
Blowers/Aeration Equipment	Boilers, Boiler Systems	Chemical Feed Systems (e.g., polymer, coagulant, treatment chemicals)
Chemical Injection Quills	Chemical Injectors	Clarifier Mechanisms/Arms
Compressors	Controls and Switches	Conveyors
Cranes	Desiccant Air Dryer Tanks	Dewatering Equipment
Dewatering Roll-offs	Disinfection Systems	Drives (e.g., variable frequency drives)
Electric/Pneumatic/Manual Accessories Used to Operate Valves (such as electric valve actuators)	Electrical Cabinetry and Housings (such as electrical boxes/enclosures)	Electrical Conduit
Electrical Junction Boxes	Electronic Door Locks	Elevator Systems (hydraulic, etc.)
Emergency Life Systems (including eyewash stations, emergency safety showers, fire extinguishers, fire suppression systems including sprinklers /piping/valves, first aid, etc.)	Exhaust Fans	Fall Protection Anchor Points
Fiberglass Tank w/Appurtenances	Filters (and appurtenances, including underdrains, backwash systems)	Flocculators
Fluidized Bed Incinerators	Galvanized Anodes/Cathodic Protection	Gear Reducers
Generators	Geothermal Systems	Grinders
Heat Exchangers	HVAC (excluding ductwork)	HVAC Dampers (if appurtenances to aerators/blowers)
HVAC Louvers (mechanical)	Intake and Exhaust Grates (if appurtenances to aerators/blowers)	Instrumentation
Laboratory Equipment	Ladder Fall Prevention Systems	Ladder Safety Posts
Lighting Fixtures	Lightning and Grounding Rods	Mechanical or Actuated Louvers/Dampers
Membrane Bioreactor Systems	Membrane Filtration Systems	Metal Office Furniture (fixed)
Meters (including flow, wholesale, water, and service connection)	Motorized Doors (unit)	Motorized Mixers
Motorized Screens (such as traveling screens)	Motors	Pelton Wheels
Pipeline Flash Reactors (similar to injectors)	Plate Settlers	Precast Concrete without Iron/Steel Reinforcement

Products likely made “primarily” of iron and steel to be classified as <u>Manufactured Products</u> under BABA		
Furnished Pre-fab Buildings (such as furnished with pumps, mechanics inside)	Presses (including belt presses)	Pressure Gauges
Pump Cans/Barrels and Strainers	Pumps	Mechanical Rakes
Safety Climb Cable	Sampling Stations (unless also act as hydrant)	Scrubbers
Sensors	Sequencing Batch Reactors (SBR)	Steel Shelving (fixed)
Slide and Sluice Gates	Spray Header Units	Steel Cabinets (fixed interior/furniture)
Supervisory Control and Data Acquisition (SCADA) Systems	Tracer Wire	Valve Manual Gears, Actuators, Handles
Voltage Transformer	Water Electrostatic Precipitators (WESP)	Water Heaters
Weir Gates		

- Q2.7: Is asphalt paving a covered product under BABA?
  - A2.7: No. EPA interprets Section 70917(c) of the IIJA to exclude asphalt from BABA requirements. Asphalt paving is a type of concrete composed of an aggregate material mixed with a binder (bitumen). EPA considers asphalt concrete to be excluded by section 70917(c) due to its similarities with cement and cementitious materials.

### SECTION 3: CO-FUNDING

- Q3.1: If projects are co-funded with funding mechanisms that don't require BABA, must the entire project comply with BABA?
  - A3.1: Yes. Any project that is funded in whole or in part with federal assistance must comply with the BABA requirements, unless the requirements are otherwise waived. A “project” consists of all construction necessary to complete the building or work regardless of the number of contracts or assistance agreements involved so long as all the contracts and assistance agreements awarded are closely related in purpose, time, and place. This precludes the intentional splitting of projects into separate and smaller contracts or assistance agreements to avoid BABA's applicability on some portions of a larger project, particularly where the activities are integrally and proximately related to the whole. However, there are many situations in which major construction activities are clearly undertaken in separate phases that are distinct in purpose, time, or place, in which case, separate contracts or assistance agreements would carry separate requirements.

- Q3.2: How will project requirements be determined for co-funded projects subject to potentially different general applicability/programmatic waiver conditions (such as different adjustment period waivers)?
  - A3.2: OMB Guidance M-22-11 addresses cases with project co-funding from separate programs. EPA would apply the guidance's "cognizant" program determination to projects that are co-funded with different general applicability/programmatic waivers. For instance, if a project were co-funded between WIFIA and SRF and the majority of the Federal funding for the project is from WIFIA, then WIFIA would be the "cognizant" program for application and determination of waivers. In that case, any conditions from an applicable WIFIA waiver would apply.

#### SECTION 4: WAIVERS

- Q4.1: Who may apply for a waiver and how do you apply?
  - A4.1: Assistance recipients and their authorized representatives may apply for a project-specific waiver. EPA does not accept waiver requests from suppliers, distributors, or manufacturers unless the assistance recipient endorses and submits the request on its own behalf to the funding authority. In the case where multiple programs are providing federal funds to the project, the assistance recipient should submit the waiver request to the cognizant program, the one providing the greatest amount of federal funds for the project. For information on applying for cost waivers, see questions 4.4 and 4.5. For information on the SRF program roles and responsibilities, see question 7.6.

Project-specific waiver requests should generally include: (1) a brief summary of the project, (2) a description and explanation of the need for the waiver for the product(s) in question, (3) a brief summary of the due diligence conducted in search of domestic alternatives (which could include correspondence between assistance recipient and supplier/distributors), (4) the quantity and materials of the product(s) in question, (5) all engineering specifications and project design considerations relevant to the product(s) in question, (6) the approximate unit cost of items (both foreign and domestic) in addition to an estimated cost of the materials and overall project, (7) the date any products will be needed on site in order to avoid significant project schedule disruptions, and (8) any other pertinent information relevant to EPA's consideration of the waiver (e.g., if relevant for SRF projects: whether the project is designated as an equivalency project, the date the plans and specifications were submitted to the state, the date of construction initiation, expected date of project completion, any special considerations such as local zoning and building ordinances, seismic requirements, or noise or odor control requirements).

In the case of indirect federal assistance, such as the SRF programs, the state authority reviews and conveys the waiver request to EPA. States should submit waiver requests to the appropriate program waiver request inbox. For SRF projects, please use [CWSRFWaiver@epa.gov](mailto:CWSRFWaiver@epa.gov) or [DWSRFWaiver@epa.gov](mailto:DWSRFWaiver@epa.gov).

- Q4.2: Can an assistance recipient request a waiver based on a specification written for a specific brand or model of product (that is, a specification that names a branded item or model)?
  - A4.2: In most cases, performance-based specifications are expected and required for the majority of infrastructure projects funded by EPA's financial assistance programs. In rare cases where "branded" or product-specific sourcing may be included in project specifications, it is suggested that the specifications include the item in question (that is, not simply a catalog page, but also materials of construction, sizing, quantities, and applicable engineering performance design characteristics for the project, etc.) in addition to the standard phrase "or equal." For the purposes of product alternative market research, EPA will evaluate the BABA requirements based on performance-based engineering specifications for the product(s) in question. If the project's specifications do not include performance-based specifications, or at least an "or equal" designation, EPA will base its research on an "or equal" designation using best professional judgment to the extent practicable.
- Q4.3: If a manufactured product is not readily available domestically, will EPA provide short-term "limited availability" product waivers?
  - A4.3: EPA will address the unavailability of domestic products through the waiver process, including potential national short-term waivers for specific products, if appropriate. To the extent practicable and with the intent to maximize domestic market and supply chain development, EPA intends to address issues of broad product unavailability with targeted, time-limited, and conditional waivers, as prescribed in OMB Guidance M-22-11. EPA will follow its robust and thorough product research processes (those put into place for the AIS requirements for the SRF and WIFIA programs and expanded for the new BABA requirements) to identify and determine those products for which proposed national/general applicability waivers may be appropriate.
- Q4.4: What information is needed when applying for a cost waiver under BABA?
  - A4.4: As part of the cost waiver request, the assistance recipient must demonstrate that implementation of the BABA requirements will increase the overall project cost more than 25 percent. Depending on the circumstances of the overall project cost increases, documentation to justify the cost waiver can vary but may include itemized cost estimates or bid tabulations comparing project costs with and without BABA implementation. Assistance recipients should begin assessing the potential cost impacts of the BABA requirements during the design phase of a project.
- Q4.5: Can administrative costs associated with tracking and verification of certifications be considered when determining if the cost of a project increases by 25 percent or more?
  - A4.5: Yes. Section 70914(b)(3) of the IIJA states that a waiver may be provided if the overall cost of the project increases by more than 25 percent due to the "inclusion of iron, steel, manufactured products, or construction materials produced in the United States." EPA interprets this to mean that the "inclusion" of the BABA-covered products could encompass

reasonable administrative costs associated with complying with the BABA requirements, such as staff, contractor, and technological resources to collect and track BABA compliance documentation.

- Q4.6: How can assistance recipients and construction contractors address product delivery delays?
  - A4.6: Assistance recipients should reasonably plan for material procurement to account for known potential supply chain issues or extended lead times and shall notify the funding authority well in advance of the issues so that prompt attention can be given to explore options. Where extended lead times for compliant products are impacting project schedules and may significantly impact construction progress, timely communication with the funding agency is important. For products that are unavailable within a reasonable timeframe to meet the objectives and schedule of a project, EPA may consider a non-availability waiver with adequate justification. An assistance recipient would need to apply for the waiver and contact its funding authority (such as EPA and/or a state) to initiate the waiver process.

#### SECTION 5: DOCUMENTING COMPLIANCE

- Q5.1: Who will be responsible for BABA enforcement?
  - A5.1: Responsibility for BABA implementation applies at all levels, from manufacturers to suppliers and distributors, construction contractors, assistance recipients, and funding authorities.

The manufacturers have responsibility to provide adequate and accurate documentation of the products manufactured. If suppliers and distributors are involved, they are responsible for passing along compliance documentation for products supplied to projects that are subject to the BABA requirements.

The assistance recipient and their representatives are primarily responsible for ensuring the documentation collected for products used on the project is sufficient to document compliance with the BABA requirements.

The funding authority is responsible for providing oversight and guidance as needed to ensure the proper implementation of the requirements. The Uniform Grants Guidance (UGG) (Title 2 of the Code of Federal Regulations (CFR) Part 200) applies to many Federal financial assistance agreements that will include BABA requirements. The general provisions of 2 CFR Part 200 determine the responsible party for the grant funding authority.

For information on SRF program roles and responsibilities, see question 7.6.

At all levels, where fraud, waste, abuse, or any violation of the law is suspected, the Office of Inspector General (OIG) should be contacted immediately. The OIG can be reached at 1-888-546-8740 or [OIG\\_Hotline@epa.gov](mailto:OIG_Hotline@epa.gov). More information can be found at this website: <http://www.epa.gov/oig/hotline.htm>.

- Q5.2: When will the BABA requirements be assessed for compliance? Do assistance recipients need to have waivers for potential non-domestic products before assistance agreements are in place, at the time products are procured or products are incorporated into the project (i.e., used)?
  - A5.2: Compliance is assessed where the domestic product is used (or installed) at the project site. Proper compliance documentation, whether it is a BABA certification letter or a waiver, should accompany a product prior to its “use”, in accordance with Section 70914(a) of IIJA. This may occur prior to assistance agreements being in place but is not necessary. Additionally, communication of BABA requirements through appropriate Terms and Conditions in financial assistance agreements and in project solicitation and contract documents is key in ensuring all parties involved are informed of the requirements for the project before construction is underway.
- Q5.3: How can product compliance with the BABA requirements be demonstrated?
  - A5.3: Assistance recipients and their representatives should ensure that the products delivered to the construction site are accompanied by proper documentation that demonstrate compliance with the law and be made available to the funding authority upon request. The documentation may be received and maintained in hard copy, electronically, or could be embedded in construction management software. The use of a signed certification letter for the project is the most direct and effective form of compliance documentation for ensuring products used on site are BABA-compliant prior to their installation; however, other forms of documentation are also acceptable as long as collectively, the following can be demonstrated:
    - (1) Documentation linked to the project. For example, this can be in the form of the project name, project location, contract number, or project number.
    - (2) Documentation linked to the product used on the project. For example, description of product(s) (simple explanation sufficient to identify the product(s)), or an attached (or electronic link to) purchase order, invoice, or bill of lading.
    - (3) Documentation includes statement attesting that the products supplied to the assistance recipient are compliant with BABA requirement. Reference to the Infrastructure Investment and Jobs Act (“IIJA”) or the Bipartisan Infrastructure Law (BIL) are also acceptable. For iron and steel items under BABA, references to the American Iron and Steel (AIS) requirements are also acceptable and reciprocal with BABA for such items.
    - (4) Documentation that manufacturing occurred in the United States, which could include, for example, the location(s) of manufacturing for each manufacturing step that is being certified. It is acceptable for manufactured products to note a single point of manufacturing, documenting that the final point of manufacturing is in the United States. Note that each BABA category may require different determinations for compliance.
    - (5) Signature of company representative (on company letterhead and signature can be electronic). The signatory of the certifying statement affirms their knowledge of the manufacturing processes for the referenced product(s) and attests that the product meets the BABA requirements.

In addition to compliance documentation, assistance recipients or their representatives should also conduct a visual inspection of the product when it arrives to the project site, especially for iron and steel products which are often stamped with the country of origin. (Note: A country of origin stamp alone is not sufficient verification of compliance with BABA and assistance receipts should not rely on it to ensure compliance.)

EPA may develop alternative procedures for demonstrating compliance. Additional project- or program-specific instructions may be developed on a case-by-case basis in order to meet individual circumstances.

- Q5.4: Will EPA provide a form or template for tracking and documenting compliance?
  - A5.4: EPA does not require a specified format for tracking or documenting compliance. Assistance recipients are free to develop any system (from simple to complex software) for tracking items used on the project and the accompanying compliance documentation, e.g., certification letters, applicable waivers, if it helps with implementation and compliance. Elements that may help with keeping track of compliance may include: product description, quantity required/used, product category (i.e., iron and steel, manufactured product, or construction material), status of obtaining certification letter, product cost, and whether the item might qualify as *de minimis*, or qualify under another applicable waiver.
- Q5.5: If a manufacturer claims to comply with the Buy American Act, does it also comply with BABA?
  - A5.5: No. With the exception of the AIS requirements – which EPA interprets to be equivalent to the “iron and steel” requirements under BABA – EPA does not have an interpretation about the comparability of other domestic preference requirements relative to BABA. Any products that are to be certified as compliant with BABA should include a specific reference to the BABA requirements and appropriate attestation from a responsible manufacturing company official. See Question 5.3 for EPA’s recommendations for BABA certification letters.
- Q5.6: How will assistance recipients manage certification letters for hundreds, possibly thousands of products?
  - A5.6: EPA recognizes that the new BABA requirements will cover most products used in typical water and wastewater infrastructure projects, and that the number of items which may require certification at large and/or complex projects may reach several hundred. EPA is concerned about the potential administrative burden that this would place on assistance recipients. EPA recommends that projects with a high number of potentially covered products meet with their funding authority about potential compliance strategies to minimize burden and streamline compliance activity. Assistance recipients should prepare contract bid solicitation documents with a statement for the consulting engineers and construction firms as follows: “By signing payment application and recommending payment, Contractor certifies they have reviewed documentation for all products and materials submitted for payment, and the documentation is sufficient to demonstrate compliance with Build America,

Buy America Act requirements.” In most cases, the assistance recipient’s representatives may assume the responsibility for their clients to conduct due diligence on compliance with applicable domestic preference requirements.

- Q5.7: Who is responsible for documenting the 55 percent content requirement for manufactured products under BABA? What if the final manufacturer cannot trace or verify domestic origin for all components?
  - A5.7: The manufacturer who signs a certification letter is responsible for documenting compliance with any of the three categories of products (iron and steel, manufactured products, or construction materials). For manufactured products, BABA requires that greater than 55 percent of the total cost of all components of the manufactured product be from domestic sources. EPA recommends that the certification letter for manufactured products document whether the item passes the content test in the final product along with a statement attesting to compliance with the BABA requirements for manufactured products.
- Q5.8: How do final product fabricators document compliance when the final step of manufacturing may be simply assembling components?
  - A5.8: It is acceptable, in many cases, especially for highly complex manufactured products that utilize many sub-components, for the final point of assembly to certify without using a “step certification” process. Multiple certifications (i.e., step certifications) or a singular certification can be used for a product, as long as the certifying official is willing to attest to the product’s compliance with BABA requirements at all stages of manufacturing.
- Q5.9: Will Material Test Reports be acceptable in lieu of a BABA certification for iron and steel?
  - A5.9: Material Test Reports (MTRs, commonly referred to as “Mill Certifications” or “Mill Certs”) provide the chemical composition of steel and iron from a mill or foundry. If an MTR accompanies the delivery of steel or iron to a project site with an invoice or bill of lading, EPA will consider it sufficient to demonstrate compliance (equivalent to a certification letter) as long as the MTR includes a manufacturer representative’s signature in addition to the location (city and state) of the mill/foundry. It is common for MTRs to be the first letter in a “step certification” if the product is further fabricated or painted, etc., by another manufacturer.
- Q5.10: Can a manufacturer use a fillable certification letter for products?
  - A5.10: EPA recommends that certifications be signed by representatives of the manufacturing entity. EPA does not oppose manufacturers using forms to internally develop letters within their company, thereby providing signed, non-manipulable certification letters to suppliers, distributors, and/or assistance recipients. A fillable form that can be changed by someone outside of the manufacturer after signature does not demonstrate compliance and may create compliance concerns for the manufacturer or assistance recipient.

- Q5.11: Are product certifications from suppliers and distributors allowed?
  - A5.11: EPA recommends that representatives of product manufacturers certify compliance and discourages suppliers and distributors from creating certification letters. EPA does not rule out the possibility that a third-party certification process, such as a certification by a distributor, may be viable. However, EPA is currently not aware of a system or proposed system that meets the EPA's recommendations for documentation of product certification.
- Q5.12: How long should assistance recipients keep compliance documentation?
  - A5.12: Assistance recipients should apply recordkeeping requirements for the project according to the procedures dictated by the funding authority. For most EPA grant programs, this is prescribed in the UGG at 2 CFR 200.334-200.338; e.g., the SRF programs require a minimum of three years. Other funding programs may require longer documentation retention periods.

#### SECTION 6: PROGRAMS WITH AMERICAN IRON AND STEEL REQUIREMENTS

- Q6.1: Does BABA supersede the American Iron and Steel (AIS) Requirements?
  - A6.1: The BABA requirements for items considered "iron and steel" are equivalent to those for covered iron and steel products under the AIS requirements in the Clean Water Act and the Safe Drinking Water Act. These requirements apply to the CWSRF, DWSRF, WIFIA, and Water infrastructure Community Grants. BABA includes a "Savings Provision" (Section 70917(b)) that states that BABA does not affect existing domestic content procurement preferences for infrastructure projects funded by Federal financial assistance programs that meet the requirements of section 70914. EPA views the AIS requirements as meeting the "iron and steel" product requirements of BABA Section 70914, as they both include the key requirement that items made of iron and steel be wholly manufactured in the United States from the point of melting and/or pouring the iron or steel components through final manufacturing step. Because of the "Savings Provision" of Section 70917, the AIS requirements satisfy the "iron and steel" requirements of BABA. For the programs that have AIS requirements, EPA intends to implement BABA requirements the same way for iron and steel items as it has done for AIS products.
- Q6.2: For iron and steel products, does a manufacturer need to demonstrate compliance from initial melting through the finished product?
  - A6.2: For iron and steel products, the BABA requirements are the same as the existing AIS requirements, in that all of the iron and steel in a covered product (that is, the product is comprised of more than 50 percent iron and steel by material cost) must be melted and poured in the United States and all subsequent manufacturing processes (such as grinding, rolling, bending, reheating, and casting) must occur in the United States.

Q6.3: Will EPA apply the same manufacturing standards for BABA iron and steel products as for the American Iron and Steel (AIS) requirements?

- A6.3: Yes. For AIS, EPA did not require raw materials used in the production of steel or iron to be domestically sourced. For BABA, EPA interprets the requirements to be the same. Hence, like AIS, raw materials in the production of iron and steel subject to BABA requirements would not need to be domestically sourced. The key step for both AIS and BABA domestic iron and/or steel production is the melting/pouring (that is, the location of the furnace), which must be in the United States.
- Q6.4: Will the certification process be similar to the process established for the American Iron and Steel requirements?
  - A6.4: EPA expects the certification process for the BABA requirements to be very similar to that established for the AIS requirements. For iron and steel products, the process should remain the same for AIS and BABA. EPA recommends for manufactured products and for construction materials that certification letters include direct reference to the product/material content requirements under BABA, in addition to an affirmative statement verifying that the product meets the BABA requirements.
- Q6.5: Will duplicate certification letters be required for AIS and BABA for iron/steel products?
  - A6.5: No. Compliance with BABA requirements will be sufficient to demonstrate compliance with AIS requirements for iron and steel products. If a project is subject to BABA, the only demonstration of compliance necessary is with the BABA requirements, of which the iron and steel requirements are equivalent to those of the AIS statutory requirements: the iron or steel in a product made primarily or predominantly of iron and steel (comprising more than 50 percent iron and steel by material cost) must be melted and/or poured in the United States and all subsequent manufacturing processes must occur in the United States.

#### SECTION 7: PROGRAM-SPECIFIC ISSUES

- Q7.1.: How do the BABA requirements apply to Community Grants?
  - A7.1: The Community Project Funding/Congressionally Directed Spending grants for the construction of drinking water, wastewater, and stormwater infrastructure and for water quality protection are subject to the requirements specified in the explanatory statement accompanying the Consolidated Appropriations Act (Explanatory Statement for Division G of P.L. 117-13, the Consolidated Appropriations Act of 2022). The explanatory statement asserts: "Applicable Federal requirements that would apply to a Clean Water State Revolving Fund or Drinking Water State Revolving Fund project grant recipient shall apply to a grantee receiving a CPF grant under this section." Therefore, the federally funded Community Project Funding/Congressionally Directed Spending grants are subject to the same requirements that apply to CWSRF or DWSRF projects, including BABA and AIS requirements. See also A1.2.

- Q7.2: Should SRF projects covered by the BABA SRF Projects Design Planning Adjustment Period Waiver follow the same procedures for demonstrating compliance as outlined for American Iron and Steel requirements?
  - A7.2: Yes. The SRF Design Planning Adjustment Period waiver does not waive the iron and steel requirements under BABA. The SRF programs have existing domestic preference requirements for SRF projects under CWA Section 608 and SDWA Section 1452(a)(4) (AIS requirements) to use iron and steel products that are produced in the United States. Sections 70917(a) and (b) of BIL explain the application of BABA to existing domestic preference requirements. Specifically, the savings provision in Section 70917(b) states that existing domestic preference requirements that meet BABA requirements are not affected by BABA. The statutory AIS requirements were existing at the time BABA became law and satisfy the BABA iron and steel requirements. Therefore, the statutory AIS requirements that have previously applied to SRF-funded projects will continue to do so, and compliance with AIS requirements will satisfy the BABA iron and steel requirements. Demonstration of compliance for iron and steel products will follow the AIS implementation policies for projects subject to the waiver.
- Q7.3: For SRF programs, is BABA considered a federal cross-cutting authority? (i.e., do “equivalency” rules apply?)
  - A7.3: Yes, BABA is considered a federal cross-cutting requirement that applies to SRF assistance equivalent to the federal capitalization grant (i.e., “equivalency” projects). EPA’s SRF regulations at 40 CFR 35.3145 and 35.3575 require states and recipients of SRF funds equivalent to the amount of the federal capitalization grant to comply with federal cross-cutting requirements. Section 70914 of the IIJA, which states when a Buy America preference applies, explains that “none of the funds made available for a Federal financial assistance program for infrastructure...may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.” Therefore, BABA only applies to projects funded in an amount equivalent to the federal capitalization grant and not to those projects receiving funds in excess of the capitalization grant (i.e., “non-equivalency” projects). (Note: The AIS requirements continue to apply for all SRF projects, including non-equivalency projects, and all WIFIA and Community Grant projects, because equivalency does not apply.)
- Q7.4: Do the BABA requirements apply to Drinking Water State Revolving Fund set-asides?
  - A7.4: Due to requirements related to the deposit of funds in the DWSRF program, almost all of the funds used to conduct set-aside activities are Federal dollars. Therefore, Federal cross-cutting requirements must be applied to all set-aside activities. However, in the case of most set-aside activities, the cross-cutting requirements will not be implicated because of the nature of the activities conducted under the set-asides. Because the BABA requirements only apply to infrastructure, and infrastructure typically is not an eligible set-aside expenditure (with one potential exception being loans for incentive-based source water protection

measures under the Local Assistance and Other State Programs Set-Aside), the BABA requirements will not apply to most set-aside activities.

- Q7.5: What if an SRF project is refinanced using Federal financial assistance on or after May 14, 2022?
  - A7.5: If an SRF project began construction, financed from another funding source, prior to May 14, 2022, but is refinanced through an assistance agreement executed on or after that date, BABA requirements will apply to all construction that occurs on or after May 14, 2022, through completion of construction, unless a waiver applies. There is no retroactive application of the BABA requirements where a refinancing occurs for an SRF project that has completed construction prior to May 14, 2022. (Note: If SRF funding is used for the refinancing, the AIS requirements may still apply depending on the timing of construction.)
- Q7.6: What are the roles and responsibilities for SRF programs for BABA implementation?
  - A7.6: Implementation of the BABA requirements for the State Revolving Fund programs will continue the roles and responsibilities from the successful AIS implementation process.

As with AIS, it is both the assistance recipient's and the state's responsibility to ensure compliance with the BABA requirements. The state is the recipient of a federal capitalization grant and must comply with all grant conditions, including a condition requiring adherence to BABA requirements.

Consequently, states are strongly advised to conduct site visits of projects during construction and review documentation demonstrating the assistance recipient's proof of compliance. In EPA's experience, most states conduct periodic site visits and arrange timely meetings with funded projects. Observed best practices typically include a meeting early in the process (sometimes before bid and usually prior to commencing construction) and at least one project site visit during the construction process. Assistance recipients must maintain documentation of compliance with the BABA requirements, as explained in question 5.3. The documents must be kept by the assistance recipient and should be reviewed by the state during project reviews.

The state's role in the waiver process is to review any waiver requests submitted to the state to ensure that all necessary information has been provided by the assistance recipient prior to forwarding the request to EPA. If a state finds the request lacking, the state should work with the assistance recipient to help obtain complete information. Question 4.1 explains the information needed by EPA to expediently review a waiver request.

In order to implement the BABA requirements, EPA has developed an approach for effective and efficient implementation of the waiver process to allow projects to proceed in a timely manner. The framework described below will allow states, on behalf of the assistance recipients, to apply for waivers of the BABA requirements directly to EPA Headquarters. Only waiver requests received and/or endorsed from states will be considered. Pursuant to BABA, EPA has the responsibility to make findings as to the issuance of waivers to the BABA requirements.

### Step-by-step SRF Waiver Process

The waiver process begins with the assistance recipient. To fulfill the BABA requirements, the assistance recipient must in good faith design the project (where applicable) and solicit bids for construction with American-made iron and steel, manufactured goods, and construction materials. It is essential that the assistance recipient include the BABA terms in any request for proposals or solicitations for bids, and in all contracts (see Appendix 2 for sample construction contract language). The assistance recipient may receive a waiver at any point before, during, or after the bid process, if one or more of three statutory conditions is demonstrated to EPA and approved.

To apply for a project-specific waiver, the assistance recipient should email the request in the form of a Word document (.doc) or editable PDF (.pdf) to the funding program. It is strongly recommended that each state identify a person or persons for BABA communications. The state designee(s) will review the application for the waiver and determine whether the necessary information has been included (Note: More information may be provided in the future regarding what information is required to be included in waiver requests). Once the waiver application is complete, the designee will forward the application to [CWSRFWaiver@epa.gov](mailto:CWSRFWaiver@epa.gov) or [DWSRFWaiver@epa.gov](mailto:DWSRFWaiver@epa.gov).

### Evaluation by EPA

After receiving an application for waiver of the BABA requirements and ensuring sufficient information was provided, EPA will publish the request on its website for 15 days and receive public comment. EPA will then determine whether the application properly and adequately documents and justifies the statutory basis cited for the waiver.

In the event that EPA finds that adequate documentation and justification has been submitted, the Administrator may grant a waiver to the assistance recipient. EPA will notify the state designee whether a waiver request has been approved or not approved as soon as such a decision has been made. Granting such a waiver is a four-step process:

1. Research – After receiving an application for a waiver, EPA will perform market research to determine whether the iron, steel, manufactured goods, or construction materials are available domestically.
2. Posting – After research, if no domestic product has been identified, EPA is required to publish the application and all material submitted with the application on EPA's website for 15 days. During that period, the public will have the opportunity to review the request and provide informal comment to EPA. The website can be found at: <https://www.epa.gov/cwsrf/build-america-buy-america-baba-waivers-open-public-comment>.
3. Evaluation – After receiving an application for waiver of the BABA requirements, EPA will determine whether the application properly and adequately documents and justifies the statutory basis cited for the waiver to determine whether or not to grant the waiver.

3. Signature of waiver approval by the Administrator or another agency official with delegated authority – As soon as the waiver is signed and dated, EPA will notify the State SRF program and post the signed waiver on the Agency's website. The assistance recipient should keep a copy of the signed waiver in its project files.

(Note: Additional steps may be required in the future regarding the waiver process depending on additional guidance from OMB)

## APPENDIX 1

### Example Build America, Buy America (BABA) Act Construction Contract Language

ALL CONSTRUCTION CONTRACTS MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE BABA REQUIREMENTS. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN A PROJECT'S CONSTRUCTION CONTRACT. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE OR LOCAL LAW:

The Contractor acknowledges to and for the benefit of the \_\_\_\_\_ ("Owner") and the \_\_\_\_\_ (the "Funding Authority") that it understands the goods and services under this Agreement are being funded with federal monies and have statutory requirements commonly known as "Build America, Buy America;" that requires all of the iron and steel, manufactured products, and construction materials used in the project to be produced in the United States ("Build America, Buy America Requirements") including iron and steel, manufactured products, and construction materials provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Owner and Funding Authority (a) the Contractor has reviewed and understands the Build America, Buy America Requirements, (b) all of the iron and steel, manufactured products, and construction materials used in the project will be and/or have been produced in the United States in a manner that complies with the Build America, Buy America Requirements, unless a waiver of the requirements is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Build America, Buy America Requirements, as may be requested by the Owner or the Funding Authority. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Owner or Funding Authority to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Owner or Funding Authority resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the Funding Authority or any damages owed to the Funding Authority by the Owner). If the Contractor has no direct contractual privity with the Funding Authority, as a lender or awardee to the Owner for the funding of its project, the Owner and the Contractor agree that the Funding Authority is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the Funding Authority.

## APPENDIX 2

### Example Build America, Buy America (BABA) Act Assistance Agreement Language

ALL FEDERAL FINANCIAL INFRASTRUCTURE ASSISTANCE AGREEMENTS MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE BABA REQUIREMENTS. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN AN ASSISTANCE AGREEMENT (E.G., SRF LOAN AGREEMENT). EPA MAKES NO CLAIMS REGARDING THE LEGAL SUFFICIENCY OF THIS CLAUSE WITH RESPECT TO STATE LAW:

Comply with all federal requirements applicable to the assistance received (including those imposed by the Infrastructure Investment and Jobs Act ("IIJA"), Public Law No. 117-58) which the Participant understands includes, but is not limited to, the following requirements: that all of the iron and steel, manufactured products, and construction materials used in the Project are to be produced in the United States ("Build America, Buy America Requirements") unless (i) the Participant has requested and obtained a waiver from the cognizant Agency<sup>[1]</sup> pertaining to the Project or the Project is otherwise covered by a general applicability waiver; or (ii) all of the contributing Agencies have otherwise advised the Participant in writing that the Build America, Buy America Requirements are not applicable to the Project.

Comply with all record keeping and reporting requirements under all applicable legal authorities, including any reports required by the funding authority (such as EPA and/or a state), such as performance indicators of program deliverables, information on costs and project progress. The Participant understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the applicable legal requirements and this Agreement may result in a default hereunder that results in a repayment of the assistance agreement in advance of the maturity of the Bonds, termination and/or repayment of grants, cooperative agreements, direct assistance or other types of financial assistance, and/or other remedial actions.

<sup>[1]</sup> From OMB Guidance M-22-11: To avoid a need for duplicative waiver requests from entities that receive funding for one infrastructure project through multiple Federal agencies, the Federal agency contributing the greatest amount of Federal funds for the project should be considered the "Cognizant Agency for Made in America" and should take responsibility for coordinating with the other Federal awarding agencies. Such coordination will provide uniform waiver criteria and adjudication processes, minimize duplicative efforts among Federal agencies, and reduce burdens on recipients. The Cognizant Agency for Made in America shall be responsible for consulting with the other Federal awarding agencies, publicizing the proposed joint waiver, and submitting the proposed joint waiver for review to MIAO.



# APPENDIX I AMERICAN IRON AND STEEL (AIS) REQUIREMENTS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

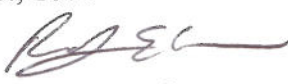
WASHINGTON, D.C. 20460

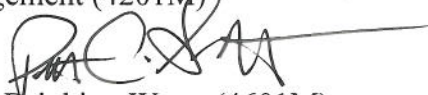
MAR 20 2014

OFFICE OF WATER

## MEMORANDUM

SUBJECT: Implementation of American Iron and Steel provisions of P.L. 113-76, Consolidated Appropriations Act, 2014

FROM: For Andrew D. Sawyers, Director   
Office of Wastewater Management (4201M)

Peter C. Grevatt, Director   
Office of Ground Water and Drinking Water (4601M)

TO: Water Management Division Directors  
Regions I - X

P.L. 113-76, Consolidated Appropriations Act, 2014 (Act), includes an "American Iron and Steel (AIS)" requirement in section 436 that requires Clean Water State Revolving Loan Fund (CWSRF) and Drinking Water State Revolving Loan Fund (DWSRF) assistance recipients to use iron and steel products that are produced in the United States for projects for the construction, alteration, maintenance, or repair of a public water system or treatment works if the project is funded through an assistance agreement executed beginning January 17, 2014 (enactment of the Act), through the end of Federal Fiscal Year 2014.

Section 436 also sets forth certain circumstances under which EPA may waive the AIS requirement. Furthermore, the Act specifically exempts projects where engineering plans and specifications were approved by a State agency prior to January 17, 2014.

The approach described below explains how EPA will implement the AIS requirement. The first section is in the form of questions and answers that address the types of projects that must comply with the AIS requirement, the types of products covered by the AIS requirement, and compliance. The second section is a step-by-step process for requesting waivers and the circumstances under which waivers may be granted.

## Implementation

The Act states:

Sec. 436. (a)(1) None of the funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States.

(2) In this section, the term “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(b) Subsection (a) shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency (in this section referred to as the “Administrator”) finds that—

(1) applying subsection (a) would be inconsistent with the public interest;

(2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) If the Administrator receives a request for a waiver under this section, the Administrator shall make available to the public on an informal basis a copy of the request and information available to the Administrator concerning the request, and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including on the official public Internet Web site of the Environmental Protection Agency.

(d) This section shall be applied in a manner consistent with United States obligations under international agreements.

(e) The Administrator may retain up to 0.25 percent of the funds appropriated in this Act for the Clean and Drinking Water State Revolving Funds for carrying out

the provisions described in subsection (a)(1) for management and oversight of the requirements of this section.

(f) This section does not apply with respect to a project if a State agency approves the engineering plans and specifications for the project, in that agency's capacity to approve such plans and specifications prior to a project requesting bids, prior to the date of the enactment of this Act.

The following questions and answers provide guidance for implementing and complying with the AIS requirements:

### **Project Coverage**

#### **1) What classes of projects are covered by the AIS requirement?**

All treatment works projects funded by a CWSRF assistance agreement, and all public water system projects funded by a DWSRF assistance agreement, from the date of enactment through the end of Federal Fiscal Year 2014, are covered. The AIS requirements apply to the entirety of the project, no matter when construction begins or ends. Additionally, the AIS requirements apply to all parts of the project, no matter the source of funding.

#### **2) Does the AIS requirement apply to nonpoint source projects or national estuary projects?**

No. Congress did not include an AIS requirement for nonpoint source and national estuary projects unless the project can also be classified as a 'treatment works' as defined by section 212 of the Clean Water Act.

#### **3) Are any projects for the construction, alteration, maintenance, or repair of a public water system or treatment works excluded from the AIS requirement?**

Any project, whether a treatment works project or a public water system project, for which engineering plans and specifications were approved by the responsible state agency prior to January 17, 2014, is excluded from the AIS requirements.

#### **4) What if the project does not have approved engineering plans and specifications but has signed an assistance agreement with a CWSRF or DWSRF program prior to January 17, 2014?**

The AIS requirements do not apply to any project for which an assistance agreement was signed prior to January 17, 2014.

**5) What if the project does not have approved engineering plans and specifications, but bids were advertised prior to January 17, 2014 and an assistance agreement was signed after January 17, 2014?**

If the project does not require approved engineering plans and specifications, the bid advertisement date will count in lieu of the approval date for purposes of the exemption in section 436(f).

**6) What if the assistance agreement that was signed prior to January 17, 2014, only funded a part of the overall project, where the remainder of the project will be funded later with another SRF loan?**

If the original assistance agreement funded any construction of the project, the date of the original assistance agreement counts for purposes of the exemption. If the original assistance agreement was only for planning and design, the date of that assistance agreement will count for purposes of the exemption only if there is a written commitment or expectation on the part of the assistance recipient to fund the remainder of the project with SRF funds.

**7) What if the assistance agreement that was signed prior to January 17, 2014, funded the first phase of a multi-phase project, where the remaining phases will be funded by SRF assistance in the future?**

In such a case, the phases of the project will be considered a single project if all construction necessary to complete the building or work, regardless of the number of contracts or assistance agreements involved, are closely related in purpose, time and place. However, there are many situations in which major construction activities are clearly undertaken in phases that are distinct in purpose, time, or place. In the case of distinct phases, projects with engineering plans and specifications approval or assistance agreements signed prior to January 17, 2014 would be excluded from AIS requirements while those approved/signed on January 17, 2014, or later would be covered by the AIS requirements.

**8) What if a project has split funding from a non-SRF source?**

Many States intend to fund projects with “split” funding, from the SRF program and from State or other programs. Based on the Act language in section 436, which requires that American iron and steel products be used in any project for the construction, alteration, maintenance, or repair of a public water system or treatment works receiving SRF funding between and including January 17, 2014 and September 30, 2014, any project that is funded in whole or in part with such funds must comply with the AIS requirement. A “project” consists of all construction necessary to complete the building or work regardless of the number of contracts or assistance agreements involved so long as all contracts and assistance agreements awarded are closely related in purpose, time and place. This precludes the intentional splitting of SRF projects into separate and smaller contracts or assistance agreements to avoid AIS coverage on some portion of a larger

project, particularly where the activities are integrally and proximately related to the whole. However, there are many situations in which major construction activities are clearly undertaken in separate phases that are distinct in purpose, time, or place, in which case, separate contracts or assistance agreement for SRF and State or other funding would carry separate requirements.

**9) What about refinancing?**

If a project began construction, financed from a non-SRF source, prior to January 17, 2014, but is refinanced through an SRF assistance agreement executed on or after January 17, 2014 and prior to October 1, 2014, AIS requirements will apply to all construction that occurs on or after January 17, 2014, through completion of construction, unless, as is likely, engineering plans and specifications were approved by a responsible state agency prior to January 17, 2014. There is no retroactive application of the AIS requirements where a refinancing occurs for a project that has completed construction prior to January 17, 2014.

**10) Do the AIS requirements apply to any other EPA programs, besides the SRF program, such as the Tribal Set-aside grants or grants to the Territories and DC?**

No, the AIS requirement only applies to funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12)

**Covered Iron and Steel Products**

**11) What is an iron or steel product?**

For purposes of the CWSRF and DWSRF projects that must comply with the AIS requirement, an iron or steel product is one of the following made primarily of iron or steel that is permanently incorporated into the public water system or treatment works:

- Lined or unlined pipes or fittings;
- Manhole Covers;
- Municipal Castings (defined in more detail below);
- Hydrants;
- Tanks;
- Flanges;
- Pipe clamps and restraints;
- Valves;
- Structural steel (defined in more detail below);
- Reinforced precast concrete; and
- Construction materials (defined in more detail below).

**12) What does the term ‘primarily iron or steel’ mean?**

‘Primarily iron or steel’ places constraints on the list of products above. For one of the listed products to be considered subject to the AIS requirements, it must be made of greater than 50% iron or steel, measured by cost. The cost should be based on the material costs.

**13) Can you provide an example of how to perform a cost determination?**

For example, the iron portion of a fire hydrant would likely be the bonnet, body and shoe, and the cost then would include the pouring and casting to create those components. The other material costs would include non-iron and steel internal workings of the fire hydrant (i.e., stem, coupling, valve, seals, etc). However, the assembly of the internal workings into the hydrant body would not be included in this cost calculation. If one of the listed products is not made primarily of iron or steel, United States (US) provenance is not required. An exception to this definition is reinforced precast concrete, which is addressed in a later question.

**14) If a product is composed of more than 50% iron or steel, but is not listed in the above list of items, must the item be produced in the US? Alternatively, must the iron or steel in such a product be produced in the US?**

The answer to both question is no. Only items on the above list must be produced in the US. Additionally, the iron or steel in a non-listed item can be sourced from outside the US.

**15) What is the definition of steel?**

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements. Metallic elements such as chromium, nickel, molybdenum, manganese, and silicon may be added during the melting of steel for the purpose of enhancing properties such as corrosion resistance, hardness, or strength. The definition of steel covers carbon steel, alloy steel, stainless steel, tool steel and other specialty steels.

**16) What does ‘produced in the United States’ mean?**

Production in the United States of the iron or steel products used in the project requires that all manufacturing processes, including application of coatings, must take place in the United States, with the exception of metallurgical processes involving refinement of steel additives. All manufacturing processes includes processes such as melting, refining, forming, rolling, drawing, finishing, fabricating and coating. Further, if a domestic iron and steel product is taken out of the US for any part of the manufacturing process, it becomes foreign source material. However, raw materials such as iron ore, limestone and iron and steel scrap are not covered by the AIS requirement, and the

material(s), if any, being applied as a coating are similarly not covered. Non-iron or steel components of an iron and steel product may come from non-US sources. For example, for products such as valves and hydrants, the individual non-iron and steel components do not have to be of domestic origin.

**17) Are the raw materials used in the production of iron or steel required to come from US sources?**

No. Raw materials, such as iron ore, limestone, scrap iron, and scrap steel, can come from non-US sources.

**18) If an above listed item is primarily made of iron or steel, but is only at the construction site temporarily, must such an item be produced in the US?**

No. Only the above listed products made primarily of iron or steel, permanently incorporated into the project must be produced in the US. For example trench boxes, scaffolding or equipment, which are removed from the project site upon completion of the project, are not required to be made of U.S. Iron or Steel.

**19) What is the definition of ‘municipal castings’?**

Municipal castings are cast iron or steel infrastructure products that are melted and cast. They typically provide access, protection, or housing for components incorporated into utility owned drinking water, storm water, wastewater, and surface infrastructure. They are typically made of grey or ductile iron, or steel. Examples of municipal castings are:

- Access Hatches;
- Ballast Screen;
- Benches (Iron or Steel);
- Bollards;
- Cast Bases;
- Cast Iron Hinged Hatches, Square and Rectangular;
- Cast Iron Riser Rings;
- Catch Basin Inlet;
- Cleanout/Monument Boxes;
- Construction Covers and Frames;
- Curb and Corner Guards;
- Curb Openings;
- Detectable Warning Plates;
- Downspout Shoes (Boot, Inlet);
- Drainage Grates, Frames and Curb Inlets;
- Inlets;
- Junction Boxes;
- Lampposts;
- Manhole Covers, Rings and Frames, Risers;

Meter Boxes;  
Service Boxes;  
Steel Hinged Hatches, Square and Rectangular;  
Steel Riser Rings;  
Trash receptacles;  
Tree Grates;  
Tree Guards;  
Trench Grates; and  
Valve Boxes, Covers and Risers.

## **20) What is ‘structural steel’?**

Structural steel is rolled flanged shapes, having at least one dimension of their cross-section three inches or greater, which are used in the construction of bridges, buildings, ships, railroad rolling stock, and for numerous other constructional purposes. Such shapes are designated as wide-flange shapes, standard I-beams, channels, angles, tees and zeeks. Other shapes include H-piles, sheet piling, tie plates, cross ties, and those for other special purposes.

## **21) What is a ‘construction material’ for purposes of the AIS requirement?**

Construction materials are those articles, materials, or supplies made primarily of iron and steel, that are permanently incorporated into the project, not including mechanical and/or electrical components, equipment and systems. Some of these products may overlap with what is also considered “structural steel”. This includes, but is not limited to, the following products: wire rod, bar, angles, concrete reinforcing bar, wire, wire cloth, wire rope and cables, tubing, framing, joists, trusses, fasteners (i.e., nuts and bolts), welding rods, decking, grating, railings, stairs, access ramps, fire escapes, ladders, wall panels, dome structures, roofing, ductwork, surface drains, cable hanging systems, manhole steps, fencing and fence tubing, guardrails, doors, and stationary screens.

## **22) What is not considered a ‘construction material’ for purposes of the AIS requirement?**

Mechanical and electrical components, equipment and systems are not considered construction materials. Mechanical equipment is typically that which has motorized parts and/or is powered by a motor. Electrical equipment is typically any machine powered by electricity and includes components that are part of the electrical distribution system.

The following examples (including their appurtenances necessary for their intended use and operation) are NOT considered construction materials: pumps, motors, gear reducers, drives (including variable frequency drives (VFDs)), electric/pneumatic/manual accessories used to operate valves (such as electric valve actuators), mixers, gates, motorized screens (such as traveling screens), blowers/aeration equipment, compressors, meters, sensors, controls and switches, supervisory control and

data acquisition (SCADA), membrane bioreactor systems, membrane filtration systems, filters, clarifiers and clarifier mechanisms, rakes, grinders, disinfection systems, presses (including belt presses), conveyors, cranes, HVAC (excluding ductwork), water heaters, heat exchangers, generators, cabinetry and housings (such as electrical boxes/enclosures), lighting fixtures, electrical conduit, emergency life systems, metal office furniture, shelving, laboratory equipment, analytical instrumentation, and dewatering equipment.

**23) If the iron or steel is produced in the US, may other steps in the manufacturing process take place outside of the US, such as assembly?**

No. Production in the US of the iron or steel used in a listed product requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.

**24) What processes must occur in the US to be compliant with the AIS requirement for reinforced precast concrete?**

While reinforced precast concrete may not be at least 50% iron or steel, in this particular case, the reinforcing bar and wire must be produced in the US and meet the same standards as for any other iron or steel product. Additionally, the casting of the concrete product must take place in the US. The cement and other raw materials used in concrete production are not required to be of domestic origin.

If the reinforced concrete is cast at the construction site, the reinforcing bar and wire are considered to be a construction material and must be produced in the US.

**Compliance**

**25) How should an assistance recipient document compliance with the AIS requirement?**

In order to ensure compliance with the AIS requirement, specific AIS contract language must be included in each contract, starting with the assistance agreement, all the way down to the purchase agreements. Sample language for assistance agreements and contracts can be found in Appendix 3 and 4.

EPA recommends the use of a step certification process, similar to one used by the Federal Highway Administration. The step certification process is a method to ensure that producers adhere to the AIS requirement and assistance recipients can verify that products comply with the AIS requirement. The process also establishes accountability and better enables States to take enforcement actions against violators.

Step certification creates a paper trail which documents the location of the manufacturing process involved with the production of steel and iron materials. A step certification is a process under which each handler (supplier, fabricator, manufacturer,

processor, etc) of the iron and steel products certifies that their step in the process was domestically performed. Each time a step in the manufacturing process takes place, the manufacturer delivers its work along with a certification of its origin. A certification can be quite simple. Typically, it includes the name of the manufacturer, the location of the manufacturing facility where the product or process took place (not its headquarters), a description of the product or item being delivered, and a signature by a manufacturer's responsible party. Attached, as Appendix 5, are sample certifications. These certifications should be collected and maintained by assistance recipients.

Alternatively, the final manufacturer that delivers the iron or steel product to the worksite, vendor, or contractor, may provide a certification asserting that all manufacturing processes occurred in the US. While this type of certification may be acceptable, it may not provide the same degree of assurance. Additional documentation may be needed if the certification is lacking important information. Step certification is the best practice.

## **26) How should a State ensure assistance recipients are complying with the AIS requirement?**

In order to ensure compliance with the AIS requirement, States SRF programs must include specific AIS contract language in the assistance agreement. Sample language for assistance agreements can be found in Appendix 3.

States should also, as a best practice, conduct site visits of projects during construction and review documentation demonstrating proof of compliance which the assistance recipient has gathered.

## **27) What happens if a State or EPA finds a non-compliant iron and/or steel product permanently incorporated in the project?**

If a potentially non-compliant product is identified, the State should notify the assistance recipient of the apparent unauthorized use of the non-domestic component, including a proposed corrective action, and should be given the opportunity to reply. If unauthorized use is confirmed, the State can take one or more of the following actions: request a waiver where appropriate; require the removal of the non-domestic item; or withhold payment for all or part of the project. Only EPA can issue waivers to authorize the use of a non-domestic item. EPA may use remedies available to it under the Clean Water Act, the Safe Drinking Water Act, and 40 CFR part 31 grant regulations, in the event of a violation of a grant term and condition.

It is recommended that the State work collaboratively with EPA to determine the appropriate corrective action, especially in cases where the State is the one who identifies the item in noncompliance or there is a disagreement with the assistance recipient.

If fraud, waste, abuse, or any violation of the law is suspected, the Office of Inspector General (OIG) should be contacted immediately. The OIG can be reached at 1-

888-546-8740 or [OIG\\_Hotline@epa.gov](mailto:OIG_Hotline@epa.gov). More information can be found at this website: <https://oig.hhs.gov/fraud/report-fraud/>

## **28) How do international trade agreements affect the implementation of the AIS requirements?**

The AIS provision applies in a manner consistent with United States obligations under international agreements. Typically, these obligations only apply to direct procurement by the entities that are signatories to such agreements. In general, SRF assistance recipients are not signatories to such agreements, so these agreements have no impact on this AIS provision. In the few instances where such an agreement applies to a municipality, that municipality is under the obligation to determine its applicability and requirements and document the actions taken to comply for the State.

### **Waiver Process**

The statute permits EPA to issue waivers for a case or category of cases where EPA finds (1) that applying these requirements would be inconsistent with the public interest; (2) iron and steel products are not produced in the US in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron and steel products produced in the US will increase the cost of the overall project by more than 25 percent.

In order to implement the AIS requirements, EPA has developed an approach to allow for effective and efficient implementation of the waiver process to allow projects to proceed in a timely manner. The framework described below will allow States, on behalf of the assistance recipients, to apply for waivers of the AIS requirement directly to EPA Headquarters. Only waiver requests received from states will be considered. Pursuant to the Act, EPA has the responsibility to make findings as to the issuance of waivers to the AIS requirements.

### **Definitions**

The following terms are critical to the interpretation and implementation of the AIS requirements and apply to the process described in this memorandum:

Reasonably Available Quantity: The quantity of iron or steel products is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.

Satisfactory Quality: The quality of iron or steel products, as specified in the project plans and designs.

Assistance Recipient: A borrower or grantee that receives funding from a State CWSRF or DWSRF program.

## **Step-By-Step Waiver Process**

### Application by Assistance Recipient

Each local entity that receives SRF water infrastructure financial assistance is required by section 436 of the Act to use American made iron and steel products in the construction of its project. However, the recipient may request a waiver. Until a waiver is granted by EPA, the AIS requirement stands, except as noted above with respect to municipalities covered by international agreements.

The waiver process begins with the SRF assistance recipient. In order to fulfill the AIS requirement, the assistance recipient must in good faith design the project (where applicable) and solicit bids for construction with American made iron and steel products. It is essential that the assistance recipient include the AIS terms in any request for proposals or solicitations for bids, and in all contracts (see Appendix 3 for sample construction contract language). The assistance recipient may receive a waiver at any point before, during, or after the bid process, if one or more of three conditions is met:

1. Applying the American Iron and Steel requirements of the Act would be inconsistent with the public interest;
2. Iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
3. Inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

Proper and sufficient documentation must be provided by the assistance recipient. A checklist detailing the types of information required for a waiver to be processed is attached as Appendix 1.

Additionally, it is strongly encouraged that assistance recipients hold pre-bid conferences with potential bidders. A pre-bid conference can help to identify iron and steel products needed to complete the project as described in the plans and specifications that may not be available from domestic sources. It may also identify the need to seek a waiver prior to bid, and can help inform the recipient on compliance options.

In order to apply for a project waiver, the assistance recipient should email the request in the form of a Word document (.doc) to the State SRF program. It is strongly recommended that the State designate a single person for all AIS communications. The State SRF designee will review the application for the waiver and determine whether the necessary information has been included. Once the waiver application is complete, the State designee will forward the application to either of two email addresses. For CWSRF waiver requests, please send the application to: [cwsrfwaiver@epa.gov](mailto:cwsrfwaiver@epa.gov). For DWSRF waiver requests, please send the application to: [dwsrfwaiver@epa.gov](mailto:dwsrfwaiver@epa.gov).

## Evaluation by EPA

After receiving an application for waiver of the AIS requirements, EPA Headquarters will publish the request on its website for 15 days and receive informal comment. EPA Headquarters will then use the checklist in Appendix 2 to determine whether the application properly and adequately documents and justifies the statutory basis cited for the waiver – that it is quantitatively and qualitatively sufficient – and to determine whether or not to grant the waiver.

In the event that EPA finds that adequate documentation and justification has been submitted, the Administrator may grant a waiver to the assistance recipient. EPA will notify the State designee that a waiver request has been approved or denied as soon as such a decision has been made. Granting such a waiver is a three-step process:

1. Posting – After receiving an application for a waiver, EPA is required to publish the application and all material submitted with the application on EPA's website for 15 days. During that period, the public will have the opportunity to review the request and provide informal comment to EPA. The website can be found at: [http://water.epa.gov/grants\\_funding/aisrequirement.cfm](http://water.epa.gov/grants_funding/aisrequirement.cfm)
2. Evaluation – After receiving an application for waiver of the AIS requirements, EPA Headquarters will use the checklist in Appendix 2 to determine whether the application properly and adequately documents and justifies the statutory basis cited for the waiver – that it is quantitatively and qualitatively sufficient – and to determine whether or not to grant the waiver.
3. Signature of waiver approval by the Administrator or another agency official with delegated authority – As soon as the waiver is signed and dated, EPA will notify the State SRF program, and post the signed waiver on our website. The assistance recipient should keep a copy of the signed waiver in its project files.

## Public Interest Waivers

EPA has the authority to issue public interest waivers. Evaluation of a public interest waiver request may be more complicated than that of other waiver requests so they may take more time than other waiver requests for a decision to be made. An example of a public interest waiver that might be issued could be for a community that has standardized on a particular type or manufacturer of a valve because of its performance to meet their specifications. Switching to an alternative valve may require staff to be trained on the new equipment and additional spare parts would need to be purchased and stocked, existing valves may need to be unnecessarily replaced, and portions of the system may need to be redesigned. Therefore, requiring the community to install an alternative valve would be inconsistent with public interest.

EPA also has the authority to issue a public interest waiver that covers categories of products that might apply to all projects.

EPA reserves the right to issue national waivers that may apply to particular classes of assistance recipients, particular classes of projects, or particular categories of iron or steel products. EPA may develop national or (US geographic) regional categorical waivers through the identification of similar circumstances in the detailed justifications presented to EPA in a waiver request or requests. EPA may issue a national waiver based on policy decisions regarding the public's interest or a determination that a particular item is not produced domestically in reasonably available quantities or of a sufficient quality. In such cases, EPA may determine it is necessary to issue a national waiver.

If you have any questions concerning the contents of this memorandum, you may contact us, or have your staff contact Jordan Dorfman, Attorney-Advisor, State Revolving Fund Branch, Municipal Support Division, at [dorfman.jordan@epa.gov](mailto:dorfman.jordan@epa.gov) or (202) 564-0614 or Kiri Anderer, Environmental Engineer, Infrastructure Branch, Drinking Water Protection Division, at [anderer.kirsten@epa.gov](mailto:anderer.kirsten@epa.gov) or (202) 564-3134.

Attachments

## Attachment 1: Information Checklist for Waiver Request

The purpose of this checklist is to help ensure that all appropriate and necessary information is submitted to EPA. EPA recommends that States review this checklist carefully and provide all appropriate information to EPA. This checklist is for informational purposes only and does not need to be included as part of a waiver application.

Items	✓	Notes
<b>General</b> <ul style="list-style-type: none"><li>• Waiver request includes the following information:<ul style="list-style-type: none"><li>— Description of the foreign and domestic construction materials</li><li>— Unit of measure</li><li>— Quantity</li><li>— Price</li><li>— Time of delivery or availability</li><li>— Location of the construction project</li><li>— Name and address of the proposed supplier</li><li>— A detailed justification for the use of foreign construction materials</li></ul></li><li>• Waiver request was submitted according to the instructions in the memorandum</li><li>• Assistance recipient made a good faith effort to solicit bids for domestic iron and steel products, as demonstrated by language in requests for proposals, contracts, and communications with the prime contractor</li></ul>		
<b>Cost Waiver Requests</b> <ul style="list-style-type: none"><li>• Waiver request includes the following information:<ul style="list-style-type: none"><li>— Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products</li><li>— Relevant excerpts from the bid documents used by the contractors to complete the comparison</li><li>— Supporting documentation indicating that the contractor made a reasonable survey of the market, such as a description of the process for identifying suppliers and a list of contacted suppliers</li></ul></li></ul>		
<b>Availability Waiver Requests</b> <ul style="list-style-type: none"><li>• Waiver request includes the following supporting documentation necessary to demonstrate the availability, quantity, and/or quality of the materials for which the waiver is requested:<ul style="list-style-type: none"><li>— Supplier information or pricing information from a reasonable number of domestic suppliers indicating availability/delivery date for construction materials</li><li>— Documentation of the assistance recipient's efforts to find available domestic sources, such as a description of the process for identifying suppliers and a list of contacted suppliers.</li><li>— Project schedule</li><li>— Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of construction materials</li></ul></li><li>• Waiver request includes a statement from the prime contractor and/or supplier confirming the non-availability of the domestic construction materials for which the waiver is sought</li><li>• Has the State received other waiver requests for the materials described in this waiver request, for comparable projects?</li></ul>		

## Attachment 2: HQ Review Checklist for Waiver Request

Instructions: To be completed by EPA. Review all waiver requests using the questions in the checklist, and mark the appropriate box as Yes, No or N/A. Marks that fall inside the shaded boxes may be grounds for denying the waiver. If none of your review markings fall into a shaded box, the waiver is eligible for approval if it indicates that one or more of the following conditions applies to the domestic product for which the waiver is sought:

1. The iron and/or steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.
2. The inclusion of iron and/or steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

Review Items	Yes	No	N/A	Comments
<b>Cost Waiver Requests</b>				
• Does the waiver request include the following information?				
— Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products				
— Relevant excerpts from the bid documents used by the contractors to complete the comparison				
— A sufficient number of bid documents or pricing information from domestic sources to constitute a reasonable survey of the market				
• Does the Total Domestic Project exceed the Total Foreign Project Cost by more than 25%?				
<b>Availability Waiver Requests</b>				
• Does the waiver request include supporting documentation sufficient to show the availability, quantity, and/or quality of the iron and/or steel product for which the waiver is requested?				
— Supplier information or other documentation indicating availability/delivery date for materials				
— Project schedule				
— Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of materials				
• Does supporting documentation provide sufficient evidence that the contractors made a reasonable effort to locate domestic suppliers of materials, such as a description of the process for identifying suppliers and a list of contacted suppliers?				
• Based on the materials delivery/availability date indicated in the supporting documentation, will the materials be unavailable when they are needed according to the project schedule? (By item, list schedule date and domestic delivery quote date or other relevant information)				
• Is EPA aware of any other evidence indicating the non-availability of the materials for which the waiver is requested?				
Examples include:				
— Multiple waiver requests for the materials described in this waiver request, for comparable projects in the same State				
— Multiple waiver requests for the materials described in this waiver request, for comparable projects in other States				
— Correspondence with construction trade associations indicating the non-availability of the materials				
• Are the available domestic materials indicated in the bid documents of inadequate quality compared those required by the project plans, specifications, and/or permits?				

### **Attachment 3: Example Loan Agreement Language**

ALL ASSISTANCE AGREEMENT MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE AIS REQUIREMENT. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN SRF ASSISTANCE AGREEMENTS. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE LAW:

Comply with all federal requirements applicable to the Loan (including those imposed by the 2014 Appropriations Act and related SRF Policy Guidelines) which the Participant understands includes, among other, requirements that all of the iron and steel products used in the Project are to be produced in the United States (“American Iron and Steel Requirement”) unless (i) the Participant has requested and obtained a waiver from the Agency pertaining to the Project or (ii) the Finance Authority has otherwise advised the Participant in writing that the American Iron and Steel Requirement is not applicable to the Project.

Comply with all record keeping and reporting requirements under the Clean Water Act/Safe Drinking Water Act, including any reports required by a Federal agency or the Finance Authority such as performance indicators of program deliverables, information on costs and project progress. The Participant understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the Clean Water Act/Safe Drinking Water Act and this Agreement may be a default hereunder that results in a repayment of the Loan in advance of the maturity of the Bonds and/or other remedial actions.

#### **Attachment 4: Sample Construction Contract Language**

ALL CONTRACTS MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE AIS REQUIREMENT. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN ALL CONTRACTS IN PROJECTS THAT USE SRF FUNDS. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE OR LOCAL LAW:

The Contractor acknowledges to and for the benefit of the City of \_\_\_\_\_ (“Purchaser”) and the \_\_\_\_\_ (the “State”) that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund that have statutory requirements commonly known as “American Iron and Steel,” that requires all of the iron and steel products used in the project to be produced in the United States (“American Iron and Steel Requirement”) including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

## Attachment 5: Sample Certification 1

The following information is provided as a sample letter of certification for BABA and AIS compliance. Documentation must be provided on company letterhead.

Date

Company Name

Company Address

City, State Zip

Subject: BABA and AIS Certification for Project (XXXXXXXXXX)

I, (company representative), certify that the (melting, bending, coating, galvanizing, cutting, etc.) process for (manufacturing or fabricating) the following products and/or materials shipped or provided for the subject project is in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

BIL extends this procurement requirement to all construction projects going forward with the inclusion of the Build America, Buy America Act (BABA). Starting on May 14, 2022, all steel, iron, manufactured products, non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, and drywall used in infrastructure projects for federal financial assistance programs must be produced in the United States.

Item, Products and/or Materials:

1. Xxxx
2. Xxxx
3. Xxxx

Such process took place at the following location:

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative

## Attachment 5: Sample Certification 2

The following information is provided as a sample letter of certification for BABA and AIS compliance. Documentation must be provided on company letterhead.

Date

Company Name

Company Address

City, State Zip

Subject: BABA and AIS Certification for Project (XXXXXXXXXX)

I, (company representative), certify that the following products and/or materials shipped/provided to the subject project are in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

BIL extends this procurement requirement to all construction projects going forward with the inclusion of the Build America, Buy America Act (BABA). Starting on May 14, 2022, all steel, iron, manufactured products, non-ferrous metals, plastic and polymer-based products (including polyvinyl chloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, and drywall used in infrastructure projects for federal financial assistance programs must be produced in the United States.

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location:

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative

## **Appendix K**

### **Fiscal Sustainability Planning**

## FISCAL SUSTAINABILITY PLANNING

The Water Resources Reform and Development Act of 2014 (WRRDA) amended section 603(d)(1)(E) of the Clean Water Act, which now reads as follows: (E) *for a treatment works proposed for repair, replacement, or expansion, and eligible for assistance under subsection (c)(1), the recipient of a loan shall (i) develop and implement a fiscal sustainability plan that includes - (I) an inventory of critical assets that are a part of the treatment works; (II) an evaluation of the condition and performance of inventoried assets or asset groupings; (III) a certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan; and (IV) a plan for maintaining, repairing, and, as necessary, replacing the treatment works and a plan for funding such activities; or (ii) certify that the recipient has developed and implemented a plan that meets the requirements under clause (i);*

For “treatment works” projects on the 2018 Clean Water Intended Use Plan, a fiscal sustainability plan (FSP) must be prepared and implemented. This provision is not applicable to planning projects and non-point source projects (section 319 projects). Section 212(2)(A) of the Clean Water Act provides the following definition of treatment works: (2)(A) *The term “treatment works” means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 201 of this act, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities;*

An FSP is very similar to an asset management plan. The only provision in the FSP that is not otherwise covered under asset management is the evaluation and implementation of water and energy conservation efforts. A number of guidance documents have been prepared by various entities on the preparation of asset management plans. MassDEP has provided several online resources to assist in the preparation of FSPs and asset management plans that can be found on the MassDEP website at <https://www.srfmadep.com/state-revolving-fund-applications-forms/cwdw/srf2017resourceupdates.pdf>

An FSP must be a written plan that addresses the four elements listed above. It must be maintained by the LGU and made available for inspection upon request. MassDEP will not initially be collecting and reviewing FSPs. MassDEP will seek only a certification by the LGU that the plan has been prepared and implemented in order for final payment to be made.

For Local Governmental Units (LGUs) that have already prepared and implemented an FSP, the attached certification should be submitted with the loan application.

MassDEP expects that very few LGUs will have an FSP fully prepared by the time the loan application is submitted. Therefore, the LGU may develop the FSP concurrent with the construction of the project. However, a detailed schedule must be provided to MassDEP, with the loan application, outlining when the LGU anticipates that the FSP will be prepared and implemented. MassDEP encourages LGUs to complete the FSP in as expeditious a manner as possible, but it must be completed before the final payment is made on the project. **The Borrower will not be able to receive a final payment if the FSP is not completed.** Once the FSP is prepared and implemented, the LGU must forward the attached certification to MassDEP. In addition, a condition will be added to the Project Regulatory Agreement requiring compliance with the FSP provisions.

The development of an FSP is an eligible cost under the SRF loan. If an LGU wishes to finance the cost of the FSP development, these costs should be identified in the loan application.

## FISCAL SUSTAINABILITY PLAN CERTIFICATION

I \_\_\_\_\_, of  
(name) (title/position)

\_\_\_\_\_ hereby certify that a Fiscal Sustainability Plan meeting  
(local governmental unit)

the requirements of section 603(d)(1)(E) of the Federal Water Pollution Control Act has been prepared and implemented; and further certify that water and energy conservation efforts have been evaluated and will be implemented as part of the Fiscal Sustainability Plan.

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(date)

# **Appendix L**

## **Cost and Effectiveness**

## **COST AND EFFECTIVENESS**

The Water Resources Reform and Development Act of 2014 (WRRDA) amended section 602(b)(13) of the Clean Water Act, which now reads as follows:

*(13) beginning in fiscal year 2016, the State will require as a condition of providing assistance to a municipality or inter-municipal, interstate, or State agency that the recipient of such assistance certify, in a manner determined by the Governor of the State, that the recipient—*

*(A) has studied and evaluated the cost and effectiveness of the processes, materials, techniques, and technologies for carrying out the proposed project or activity for which assistance is sought under this title; and*

*(B) has selected, to the maximum extent practicable, a project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation, taking into account—*

*(i) the cost of constructing the project or activity;*

*(ii) the cost of operating and maintaining the project or activity over the life of the project or activity; and*

*(iii) the cost of replacing the project or activity;*

MassDEP expects that applicants will have evaluated the cost of their project as well as the effectiveness of the solution in the required planning element, such as a Comprehensive Wastewater Management Plan or a Project Evaluation Report. These reports typically evaluate alternatives and compare their various life cycle costs. The only additional work necessary is to evaluate that the project maximizes the potential for efficient water use and energy conservation. This evaluation, if not already complete, can be appended to the planning document. This effort must be completed before final payment can be made.

The attached certification must be submitted with the loan application.

## COST AND EFFECTIVENESS CERTIFICATION

I \_\_\_\_\_, hereby  
(name) (title/position)

certify that \_\_\_\_\_ has studied and evaluated the cost and  
(local governmental unit)

effectiveness of the processes, materials, techniques, and technologies for carrying out the proposed project or activity; and has selected, to the maximum extent practicable, a project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation, taking into account:

- (i) the cost of constructing the project or activity;
- (ii) the cost of operating and maintaining the project or activity over the life of the project or activity; and
- (iii) the cost of replacing the project or activity.

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(date)