

**Commonwealth of Massachusetts - Department of Environmental Protection
Clean Water State Revolving Fund Program**

Policy on Eligible Project Costs

Purpose

This document establishes MassDEP's guidelines for determining the eligible project costs of water pollution abatement projects financed through the Clean Water State Revolving Fund Program (CWSRF).

Applicability

This guidance is intended for use by Local Governmental Units (LGUs) and their consultants in the preparation of applications for CWSRF funding, and by MassDEP SRF Program staff in reviewing loan applications.

Users of this guidance are strongly encouraged to review the regulatory provisions that address eligibility of costs (310 CMR 44.08), a copy of which is included as Appendix 2. For information on the types of projects eligible for financing through the CWSRF, refer to 310 CMR 44.04 (Appendix 1).

Applicants should also refer to the relevant Intended Use Plan (IUP) on which their project appears, since the annual IUP may limit which stages of project implementation (i.e., planning, design, or construction) are eligible. Because the demand for construction financing has significantly outstripped available funding, since the late 1990s, MassDEP has excluded from SRF eligibility design stage costs and design projects.

I. Introduction

This policy summarizes how MassDEP distinguishes *eligible costs* (those necessary for the completion of a water pollution abatement project) from *ineligible costs* (those which are not necessary for the completion of the project.) The guidance is provided primarily in the form of examples and includes separate listings for eligible and ineligible costs. Applicants should contact MassDEP for further guidance concerning any other categories of costs not clearly appearing on either list. In general, in addition to being **necessary**, eligible costs must be (a) **reasonable**, (b) **allocable** to the project, (c) **not a general expense** of carrying out the overall responsibilities of the LGU, and (d) **not funded** under another state or federal financial assistance program.

MassDEP determines the eligible costs of each project on a case-by-case basis after reviewing the LGU's loan application. This determination is incorporated within the Project Approval Certificate. Issuance of the Project Approval Certificate is contingent upon an applicant satisfying the criteria and procedures set forth in the CWSRF program regulations, 310 CMR 44.00.

II. Eligible Costs

The eligible costs in this guideline are divided into project phases and categories and include the Planning phase, the Design phase, the Construction phase, a Miscellaneous and Administrative category, and an Allowance category. *[Neither design costs nor allowances are currently eligible costs.]*

A. Planning Phase Eligible Costs

The costs of wastewater planning directly related to the water pollution abatement project are eligible costs. Examples of eligible planning projects include:

1. Integrated Water Resource Management Planning;
2. Comprehensive Wastewater Management Planning;
3. Storm Water Management Planning; and
4. Project Evaluation Reports (PER).

Eligible Project costs include:

1. The costs of professional and consulting services including necessary travel to meet project objectives.
2. The costs incurred in complying with the requirements of the National Environmental Policy Act (NEPA) and/or the Massachusetts Environmental Policy Act (MEPA).
3. The costs of infiltration/inflow (I/I) analysis, sewer system evaluation survey (SSES), hydrogeological studies, and activities incidental thereto.
4. Pilot studies.

B. Design Phase Eligible Costs [DESIGN PHASE COSTS ARE CURRENTLY INELIGIBLE FOR AN SRF LOAN]

The costs for preparation of construction drawings, specifications, pre-design reports, estimates, and construction contract documents related to the water pollution abatement project are eligible costs and include but are not limited to:

1. The costs of professional and consulting services including necessary travel to meet project objectives.
2. The costs of survey and borings.

C. Construction Phase Eligible Costs

The costs of construction and related activities necessary to build the water pollution abatement project are eligible costs and include but are not be limited to:

1. The costs of professional and consulting services including necessary travel to meet project objectives.
2. The construction contract including a 5 % construction contingency

3. Costs of start-up services for on-site training of operating personnel in operation and control of specific treatment processes, laboratory procedures, and maintenance and records management.
4. The cost of an O & M manual or revisions to an existing O & M manual for wastewater treatment plants and major pumping stations.
5. The cost for post construction certification.
6. The costs of groundwater monitoring facilities necessary to determine the possibility of groundwater deterioration, depletion or modification resulting from building the project.
7. The cost (including associated legal, administrative and engineering costs) of land that will be an integral part of land application treatment acquired in fee simple or by lease or easement; including:
 - a) Costs of a reasonable amount of land, considering irregularities in application patterns, and the need for buffer areas, berms, and dikes;
 - b) Cost of land acquired for a soil absorption system for a group of two or more homes or municipal buildings;
 - c) Cost of land acquired for storage of treated wastewater in land treatment systems before land application. Only the volume necessary for storage that is greater than the volume necessary for treatment is eligible. The eligible cost will be determined by the ratio of the storage volume to the total volume of the pond.
 - d) Cost of land appraisals.
8. Relocation costs associated with wastewater treatment plant construction.
9. Cost of acquiring all or part of an existing publicly or privately owned wastewater pollution abatement works provided all the following criteria are met:
 - a) The acquisition, in and of itself, considered apart from any upgrade, expansion or rehabilitation, provides new pollution control benefits;
 - b) The acquired pollution abatement works was not built with previous federal or state financial assistance;
 - c) The primary purpose of the acquisition is not the reduction, elimination, or redistribution of public or private debt; and
 - d) The acquisition does not circumvent the requirements of 310 CMR 44.00, or other state or local requirements.
10. Cost of a reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations and laboratory equipment necessary to conduct tests required for plant operation.
11. Costs for purchase and/or transportation of biological seeding materials required for expeditiously initiating the treatment process operation.
12. Cost of permanently fixed shop equipment (i.e., lathes, drill press other power shop equipment) installed at the pollution abatement works necessary for the operation of the works.
13. Costs of necessary safety equipment to be used exclusively at the pollution abatement facility provided the equipment meets applicable federal, state, local or industry safety requirements.
14. Costs of a reasonable inventory of necessary maintenance equipment (such as lawn mowers, snow blowers, and power and shop tools) and customary furniture and office equipment for new treatment works, provided these purchases are to be used exclusively for that treatment facility. These purchases should receive prior MassDEP approval, be appropriate for the facility's size and usage and should be limited in cost.

15. Vehicles having as their purpose the transportation of liquid or dewatered wastes from the collector point (including individual or on-site systems) to the treatment facility or disposal site, or other purposes for which MassDEP agrees is a necessary part of the project.
16. Computers and ancillary software necessary for efficient operation of the water pollution abatement facility.
17. Costs of royalties for the use of or rights in a patented process or product.
18. Costs allocable to the water pollution control purpose of multiple purpose projects.
19. Costs necessary to mitigate direct, adverse, physical impacts resulting from building pollution abatement works.
20. Change orders and the costs of meritorious contractor claims for increased costs under sub agreements provided the costs are within the scope of the project, not caused by the borrower's mismanagement; and not caused by the borrower's vicarious liability for the improper actions of others. Eligible costs include:
 - a) Building costs resulting from defects in the plans, design drawings and specifications, or other sub agreement documents only to the extent that the costs would have been incurred if the sub agreement documents had been free of defects, and excluding the costs of any rework, delay, acceleration, or disruption caused by such defects.
 - b) Costs of equitable adjustments for differing site conditions.
Settlements, arbitration awards, and court judgments which resolve contractor claims shall be eligible only to the extent that they meet the requirements of 310 CMR 44.00, are reasonable, and do not attempt to pass on to the state the cost of events that were the responsibility of the borrower, the contractor, or others.
21. The costs (including legal, technical, and administrative costs) of assessing the merits of or negotiating the settlement of a claim by or against a borrower under a sub agreement provided the claim arises from work within the scope of the project, a formal amendment to the loan agreement is executed specifically covering the costs before they are incurred, and the costs are not incurred to prepare documentation that should be prepared by the contractor to support a claim against the awardee.
22. The cost associated with the preparation of the pollution abatement works site before, during and, to the extent agreed on in the loan agreement, after building, including the cost of demolition of existing structures on the pollution abatement works site (including rights-of-way) if building cannot be undertaken without such demolition.
23. The cost of removal, relocation or replacement of utilities, if the borrower is legally obligated to pay such costs under state or federal law.
24. The cost of restoring streets and rights-of-way to their original condition. The need for such restoration must result directly from the construction and will generally be limited to those costs of temporary and permanent paving and repaving of sewer trenches and road surfaces.
25. The cost of mobile stand-by generator necessary to supply power for the transmission of wastewater or residuals from small low pressure (STEP or grinder pumps 5 horsepower or under) systems or small pumping stations where permanently installed generators are not feasible, not cost effective, nor have been required by MassDEP.
26. Purchase and installation of equipment for permanent monitoring of flow in sewer systems.
27. Costs for removing, and assuring elimination of infiltration or inflow that is cost-effective or value-effective to remove and may be for any or all of the following:
 - a) Joint testing and sealing;
 - b) Manhole sealing;
 - c) Manhole cover raising and cover and frame replacement to prevent inflow;
 - d) Service lateral repair and replacement in public ways only;

- e) Pipe and manhole replacement and lining;
 - f) The costs of services incurred during the rehabilitation to ensure that the work was accomplished in accordance with the design drawings and specifications.
 - g) Studies and investigations on private property to determine sources of infiltration and inflow.
 - h) Work related to storm drainage systems where it is demonstrated that the work is essential to the permanent removal of inflow.
 - i) Development of an I/I manual which shall include, at a minimum, improvements to sewer use ordinances, user charge systems and collection system operation and maintenance programs.
 - j) Post rehabilitation certification.
 - k) Sewer separation in partially combined systems.
28. Abatement of combined sewer overflows (CSO), including sewer separation, storage, and treatment. The eligibility of replacements with larger pipe sizes and/or additional catch basins may be eligible only with prior consultation with MassDEP.
29. Purchase and installation of grinder pump systems or septic tank effluent pump (STEP) systems and piping to the sewer main, provided the LGU has obtained an easement (including a blanket easement) and the community is responsible for the maintenance of the grinder or STEP pump system. In general electrical work and piping from the house to grinder and or STEP pump system is ineligible, however electrical work from the grinder pump to any necessary control/alarm panels is eligible.

D. Miscellaneous and Administrative Eligible Costs

Other costs necessary to plan or implement a water pollution abatement project include, but are not limited to:

1. The costs of police traffic details during construction.
2. Preliminary and or final Plan of Operation.
3. Costs of force account work provided the borrower demonstrates to the satisfaction of MassDEP that the work can be accomplished more economically by the use of the force account method, or that emergency circumstances dictate its use, and that it possesses the necessary competence required to accomplish, document, and audit such work.

III. Ineligible Costs

Ineligible Project Costs are those costs that MassDEP determines are the Local Government Unit's (LGU's) responsibility and or are not necessary for the completion of the project. MassDEP has determined that ineligible costs include, but are not limited to, the following:

1. Costs that are incurred in excess of the approved project costs shall not be eligible for a subsidy under the loan unless MassDEP has approved the increase through an amendment to the project approval certificate and the loan has been amended to include the increased amount.
2. The operational costs of water pollution abatement projects shall be ineligible for SRF assistance.

3. Costs which are incurred in violation of applicable federal and state statutes, regulations, or requirements;
4. Bonus payments, not legally required, for completion of building before a contractual completion date.
5. Costs of basin or area wide planning which is not directly related to the project.
6. Removal, relocation or replacement of utilities located on land by privilege, such as franchise or privilege of sufferance.
7. The cost of vehicles for the transportation of the borrower's employees.
8. Items of routine "programmed" maintenance such as ordinary piping, air filters, couplings, hose, bolts, to major system components.
9. Ordinary operating expenses of the borrower including salaries and expenses of elected and appointed officials and preparation of routine financial reports and studies.
10. Personal injury compensation, claims related to wrongful deaths, or property damages arising out of the project.
11. Fines and penalties due to violations of, or failure to comply with, federal, state or local laws, regulations or procedures.
12. Costs outside the scope of the approved project as defined by the Project Evaluation Form.
13. Costs for capacity beyond the design life of the project.
14. Costs for which payment has been or will be received from another federal or state agency.
15. The cost of pollution abatement works that would provide capacity for new habitation or other establishments to be located in environmentally sensitive land such as wetland or floodplain.
16. The pro-rata portion of the costs for utilities, which cannot be dedicated for the sole purpose of the water pollution abatement project.
17. The costs of solutions to aesthetic problems, including design details which require expensive building techniques and architectural features and hardware, that are unreasonable or substantially higher in cost than approvable alternatives.
18. Preparation of applications, plans of study, and permits required by federal, state or local regulations or procedures unless previously deemed eligible in writing by MassDEP.
19. Architectural or engineering services or other services necessary to correct defects in a comprehensive wastewater management plan, design drawings and specifications, or other sub agreement documents *except meritorious contractor claims as allowed in section II, Construction Eligible Cost, #20.*
20. The costs of acquisition (including associated legal, administrative and engineering etc.) of sewer rights-of-way, waste treatment plant sites (including small system sites), sanitary landfill sites.
21. Any amount paid by the borrower for eligible land in excess of just compensation, based on the appraised value, the borrower's record of negotiation or any condemnation proceeding, as determined by the Commissioner.
22. Rehabilitation, enlargement or replacement of an existing pumping station or construction of a new pumping station not associated with or necessary for servicing the collection system to be built as part of the project shall not be an eligible portion of the project.
23. Costs associated with service connections outside the public way or easement; no more than one service connection per occupied lot or more than a Y fitting per vacant buildable lot.
24. Costs of electrical work and piping from the house to the grinder pump or STEP system.
25. Costs of non-technical services (legal or administrative) for development of a municipal pretreatment program, user charge system, sewer use ordinance, or inter-municipal agreement;

26. The cost (including associated legal, administrative and engineering costs) of land acquired in fee simple or by lease or easement
27. Buy-in cost to another community's system.
28. Corrective Action Reports and related corrective action construction for conventional technology.
29. Costs of issuance including administrative, legal and financial costs of the Trust or the local governmental unit associated with the approval, preparation, issuance and use of bonds as required by the Water Pollution Abatement Trust.

APPENDICES

1. 310 CMR 44.04 – Eligible Projects
2. 310 CMR 44.08 – Eligible Project Costs
3. Allowances for Planning and Design

Appendix 2

310 CMR 44.04: Eligible Projects

44.04 Eligible Projects

(1) Any water pollution abatement project, as defined in 310 CMR 44.03, is eligible to receive financial assistance from the Trust pursuant to 310 CMR 44.00. More specifically, eligible projects fall into the following categories:

- (a) Wastewater Treatment Projects, as defined in 310 CMR 44.03;
- (b) Infiltration Inflow (I/I) Projects, as defined in 310 CMR 44.03;
- (c) Collection System Projects, as defined in 310 CMR 44.03, provided, however, that at least 85% of the expected wastewater flow into the proposed collection system will be for wastewater flows in existence as of July 1, 1995, except, subject to the approval of the Department, in areas designated as city or town centers, rural village districts, or brownfields redevelopment areas, areas designated under M.G.L. c. 40R as "smart growth districts" or projects in Growth Districts designated by the Executive Office of Housing and Economic Development with the concurrence of the Executive Office of Energy and Environmental Affairs;
- (d) Nonpoint Source Projects, as defined in 310 CMR 44.03, including but not limited to projects financed under the Community Septic Management Program within the Fund to assist eligible homeowners to upgrade failed septic systems in compliance with 310 CMR 15.000: The State Environmental Code, Title 5: Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion of On-site Sewage Treatment and Disposal Systems and for the Transport and Disposal of Septage through underlying betterment agreements between a Local Governmental Unit and such homeowners;
- (e) The planning and/or design for any one of the project categories identified in 310 CMR 44.04(1)(a) through (d), including but not limited to comprehensive wastewater management planning under 310 CMR 44.09(2) and (3) and planning projects which implement the Nonpoint Source Management Plan, as developed and updated by the Department pursuant to § 319 of the CWA, provided that the total funding allocated for planning and/or design projects shall not exceed 10% of the total financial assistance authorized on the calendar year Intended Use Plan Project Listing portion of the priority list. The Department may modify the allocation of funds consistent with its identification of planning and/or design projects as a funding priority in a particular calendar year pursuant to 310 CMR 44.06(3);
- (f) Any project in the categories identified in 310 CMR 44.04(1)(a) through (d) which utilizes a single contractor to design, build and/or operate the project facilities, provided the procurement and use of such contractor is authorized by law, the project conforms with the state constitutional requirements governing the use of Commonwealth funds for public purposes, and the project otherwise meets the requirements of 310 CMR 44.00. The operational costs of such projects shall be ineligible for SRF assistance;
- (g) Projects for the development and implementation of a conservation and management plan under § 320 of the CWA, 33 U.S.C. § 1330;
- (h) The construction, repair, or replacement of publicly- or privately-owned decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage;
- (i) Publicly and privately owned, permitted and unpermitted projects that manage, reduce, treat, or recapture stormwater or subsurface drainage water;
- (j) Projects that reduce the demand for POTW capacity through water conservation, efficiency, or reuse, regardless of whether the activity takes place at publicly or privately owned properties;
- (k) Projects that develop and implement a watershed pilot project related to at least one of the six areas identified in § 122 of the CWA, 33 U.S.C. § 1274: watershed management of wet weather discharges, stormwater best management practices, watershed partnerships, integrated water resource planning, municipality-wide stormwater management planning, or increased resilience of treatment works;
- (l) Projects that reduce energy consumption needs for POTWs and related planning activities, such as energy audits and optimization studies;
- (m) Projects that include the equipment and piping required to reuse or recycle wastewater, stormwater, or subsurface drainage water;
- (n) Projects that provide financial assistance to any qualified nonprofit entity to provide assistance to small- and medium-sized POTWs for training activities, planning, design, and associated preconstruction activities and to assist POTWs in achieving compliance with the CWA. Ongoing operation and maintenance activities are not eligible;
- (o) Acquisition of land that is an integral part of the treatment system (e.g., land for spray

Appendix 2

irrigation or subsurface disposal) and that is necessary for construction of POTWs, including surface and subsurface easements, a place to store equipment and material during construction, land needed to locate eligible projects (e.g., pumping stations), and land integral to the treatment process;

(p) Projects that increase the security of POTWs; and

(q) Projects that use regional water resources to offset, by at least 100%, the impact of water withdrawals on local water resources in the watershed basin of the receiving community.

310 CMR 44.07: Eligible Project Costs

44.08 Eligible Project Costs

(1) Costs which the Department determines are necessary for the completion of the project are eligible for financing in the loan and to receive a subsidy under the loan.

(2) Costs which the Department determines are not necessary for completion of the project are ineligible for financing in the loan.

(3) The Department will base its eligible project cost determinations on its "Policy on Eligible Project Costs", which identifies the specific types of costs that are within the two categories under 310 CMR 44.08(1) and (2).

(4) Project costs incurred by an applicant prior to the date of issuance of the Department's project approval certificate are not eligible for a subsidy under the loan, except as follows:

(a) Preliminary engineering, comprehensive wastewater management planning, design or related professional services and construction work, may be approved by the Department prior to the issuance of a project approval certificate as project costs eligible for subsidy if:

1. the applicant has submitted a written and adequately substantiated request for approval;

2. written approval by the Department is obtained before initiation of the project and award of any loan for the project; and

3. the project is included and maintains its status on the current calendar year priority list.

(b) The Department's prior approval of costs in accordance with 310 CMR 44.08(4)(a) does not constitute a commitment to approve financial assistance for any project. Instead, such costs will be considered eligible project costs only if a loan is made by the Trust for the project. Accordingly, an applicant receiving the Department's prior approval of costs in accordance with 310 CMR 44.08(4)(a) proceeds at its own risk.

(5) Costs incurred in excess of the approved project costs are not eligible for financing by the loan unless the project approval certificate and the loan are both amended to include the cost increase.

(6) A loan recipient shall exercise its best efforts to accomplish the work program set forth in the loan within the loan amount. Whenever a loan recipient reasonably believes that its project costs will exceed or be substantially less than the approved loan amount, it must promptly notify the Department in writing. The loan recipient must submit revised cost estimates for the project to the Department as soon thereafter as practicable. Neither the Department, nor the Trust, is under any obligation to approve costs in excess of the amount previously approved in the project approval certificate and loan.

(7) The final eligible project costs shall be the eligible costs approved by the Department upon completion of the project, unless audited. If such project costs are audited, the final eligible costs shall be the eligible costs approved by the Department at the completion of the audit.

Appendix 3

[DESIGN PHASE COSTS ARE CURRENTLY INELIGIBLE FOR AN SRF LOAN]

Allowances for Planning and Design

- (1) MassDEP will use the following tables to determine the allowance for Comprehensive Wastewater Management Planning, Project Evaluation Reports, engineering reports and design or design only. The allowance is not intended to reimburse the local government unit for all costs actually incurred for the project evaluation report or the project design. Rather, the allowance is intended to assist in defraying those costs.
- (2) The estimated and final allowance will be determined in accordance with these tables. The table is to be used in the event that the local government unit is not seeking cost reimbursement for an engineering report or project evaluation report. The amount of the allowance is computed by applying the resulting allowance percentage to the initial allowable building cost.
- (3) The initial allowable building cost is the initial allowable cost of constructing a project whether accomplished through subagreements or forced account. Specifically, the initial allowable building cost is the allowable cost of the following:
- (a) The initial award amount of all prime subagreements for building the project.
 - (b) The initial amounts approved for force account work performed in lieu of awarding a subagreement for building the project.
 - (c) The estimated allowance is to be based on the estimate of the initial allowable building cost.
 - (d) The final allowance will be determined one time only for each project, based on the initial allowable building cost, and will not be adjusted for subsequent cost increases or decreases.
 - (e) Prior to being reimbursed in the amount of the allowance, the local government unit must certify that it has expended at least the amount of the allowance, and certify the amount and percentage of such allowance paid to MBE(s) and WBE(s).
 - (f) If the professional service allowance amount paid to MBE(s) is less than _____% and/or the amount paid to WBE(s) is less than _____%, the applicant shall ensure that the remaining unmet portion of _____% MBE (dollar amount) and/or the remaining unmet portion of _____% MBE (dollar amount) are added to MBE/WBE professional services utilization requirements of the implementation (construction services) phase of the project.

Appendix 3 (continued)

[DESIGN PHASE COSTS ARE CURRENTLY INELIGIBLE FOR AN SRF LOAN]

Allowance for Planning and Design

<u>Building Cost</u>	<u>Allowance as % of Building Cost</u>
\$100,000 OR LESS.....	14.4945
120,000.	14.1146
150,000.....	13.6631
175,000.....	13.3597
200,000.....	13.1023
250,000.....	12.6832
300,000.....	12.3507
350,000.....	12.0764
400,000.....	11.8438
500,000.....	11.4649
600,000.....	11.1644
700,000.....	10.9165
800,000.....	10.7062
900,000.....	10.5240
1,000,000.....	10.3637
1,200,000.....	10.0920
1,500,000.....	9.7692
1,750,000.....	9.5523
2,000,000.....	9.3682
2,500,000.....	9.0686
3,000,000.....	8.8309
3,500,000.....	8.6348
4,000,000.....	8.4684
5,000,000.....	8.1975
6,000,000.....	7.9827
7,000,000.....	7.8054
8,000,000.....	7.6550
9,000,000.....	7.5248
10,000,000.....	7.4101
12,000,000.....	7.2159
15,000,000.....	6.9851
17,500,000.....	6.8300
20,000,000.....	6.6984