

RHODE ISLAND GOVERNMENT REGISTER
PUBLIC NOTICE OF PROPOSED RULEMAKING

AGENCY: Department of Environmental Management
DIVISION: Office of Water Resources
RULE IDENTIFIER: 250-RICR-150-20-1, ERLID #: 941
REGULATION TITLE: Rules and Regulations for the State Revolving Fund (SRF) Program
RULEMAKING ACTION: Direct Final

Direct Final: If no formal objection is received on or before Thursday, May 17, 2018 Department of Environmental Management will file the amendment without opportunity for public comment.

TYPE OF FILING: Amendment

TIMETABLE FOR ACTION ON THE PROPOSED RULE:

Public Notice: Tuesday, April 17, 2018.

End of Comment Period Date: Thursday, May 17, 2018.

SUMMARY OF PROPOSED RULE: The purpose of these State Revolving Fund (SRF) Program regulations is to establish procedures for the issuance of Certificates of approval for water pollution abatement projects seeking financial assistance from the Clean Water State Revolving Fund.

COMMENTS INVITED:

All interested parties are invited to submit written or oral comments concerning the proposed regulations by **Thursday, May 17, 2018**, to the addresses listed below.

ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS:

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WHERE COMMENTS AND PROPOSED REGULATION MAY BE INSPECTED:

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SUPPLEMENTARY INFORMATION:

Regulatory Analysis Summary and Supporting Documentation: N/A

Authority for This Rulemaking: R.I. Gen. Laws Chapter 46-12.2

Regulatory Findings:

In the development of the proposed amendment consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

The Proposed Amendment: The purpose of this amendment is to reformat the regulation in accordance with the RICR. to remove non-regulatory materials, and to update outdated language within the regulation.

Department of Environmental Management proposes to amend 250-RICR-150-20-1. Electronic copies of the proposed rulemaking are available at the Secretary of State and DEM's website at the following web addresses:

<http://sos.ri.gov/ProposedRules/>

<http://www.dem.ri.gov/documents/regulations/index.php>

250-RICR-150-20-01

Title 250 ENVIRONMENTAL MANAGEMENT

Chapter 150 WATER RESOURCES

SUBCHAPTER 20 - FINANCIAL ASSISTANCE

Part 1 - Rules and Regulations for the State Revolving Fund (SRF) Program

1.1 Purpose

The purpose of these State Revolving Fund (SRF) Program regulations is to establish ~~procedures for the issuance of Certificates of approval and implement a perpetual revolving loan fund as a source of low-cost financial assistance for water pollution abatement projects seeking financial assistance from the Clean Water State Revolving Fund, which contribute to the removal, curtailment or mitigation of pollution of the waters of the state. Establishment of this program is required and authorized by §46-12.2 of the General Laws of Rhode Island to secure the benefits of Title VI of the federal Clean Water Act for the State of Rhode Island.~~

1.2 Legal Authority

- A. The federal Clean Water Act, [33 U.S.C. § 1251 et seq. \(2018\)](#), ("CWA") authorized establishment of, and funding for, a capitalization grant program to states for establishing perpetual revolving loan funds as a source of low-cost financing for water pollution abatement projects.
1. The creation of the ~~Rhode Island Clean Water Finance Agency~~[Rhode Island Infrastructure Bank](#) ("AgencyBank") and the charge to work in conjunction with the Rhode Island Department of Environmental Management ("DEM") to secure the benefit of the CWA Title VI program for Rhode Island was established by Chapter 303 of the Rhode Island Public Laws of 1989. This chapter was codified as [R.I. Gen. Laws Chapter 46-12.2](#)~~Chapter 12.2 of Title 46 of the Rhode Island General Laws (RIGL)~~.
 2. These SRF Program regulations are adopted in accordance with Chapter 42-35 (the Administrative Procedures Act) pursuant to: the requirements of [R.I. Gen. Laws Chapter § 46-12.2](#); the Director's powers and duties under [R.I. Gen. Laws Chapters 42-17.1](#), [and 46-12.2](#) and [R.I. Gen. Laws § 46-12-3](#); and the federal requirements of Title VI of the CWA.
 3. These regulations are effective twenty (20) days from the date of filing with the Secretary of State.

1.3 Superseded Regulations

These regulations supersede and entirely replace the "Rules and Regulations for the State Revolving Loan Fund (SRF) Program" dated March 1991 and amended June 1994 and September 1997.

1.4 Severability

If any provision of these rules and regulations or the application thereof to any local government unit, person, or circumstance is held invalid by a court of competent jurisdiction, the remainder of the rules and regulations shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections shall not affect the validity of the remainder of these rules and regulations.

1.5 Definitions

- A. "AgencyBank" means the ~~Rhode Island Clean Water Finance Agency~~Rhode Island Infrastructure Bank.
- B. "Approved Project" means any project or portion thereof that has been issued a Certificate of Approval by the DEM for financial assistance from the AgencyBank.
- C. "Categorical Exclusion (CE)" means a category of project which does not individually or cumulatively have significant effects on the environment.
- D. "Certificate of Approval (CA)" means the project Certificate of Approval per RI Gen. Laws § 46-12.2-8. ~~A Certificate of Approval must be issued by DEM prior to disbursement of SRF loan funds by the AgencyBank.~~
- E. "Chief Executive Officer (CEO)" means the Mayor-mayor in any city, the President-president of the town council in any town and the Executive-executive Director-director of any authority or commission, unless some other officer or body is designated to perform the functions of a chief executive officer under any bond act or under the provisions of a local charter or other law.
- F. "Clean Water Act (CWA)" means ~~the Federal Water Pollution Control Act, codified at 33 U.S.C., Section 1251 et. seq., as amended~~as defined by RI Gen. Laws § 46-12.2-2.
- G. "Community Comprehensive Plan (CCP)" means a plan prepared pursuant to the Rhode Island Comprehensive Planning and Land Use Regulation Act, RI Gen. Laws Chapter 45-22.2.
- H. "Comprehensive Conservation and Management Plan (CCMP)" means a plan prepared pursuant to the requirements of Section 320 of the federal Clean Water Act.

- I. "Corporation" means any corporate person, including but not limited to: corporations, societies, associations, limited liability companies, partnerships, and sole proprietorships.
- J. "Cost(s)" ~~as applied to any approved project, any or all costs, whenever incurred, approved by DEM, as defined~~ as applied to any project, means any or all costs, whenever incurred, in accordance with ~~in~~ RI Gen. Laws § 46-12.2-2 and § 46-12.2-8.
- K. "Cumulative Impact" means the impact on the environment which results from the incremental impact of project(s) when added to other past, present, and reasonably foreseeable future actions or projects, regardless of which ~~agency~~ agency, local governmental unit, corporation or person undertakes such other actions or projects.
- L. "DEM" means the Rhode Island Department of Environmental Management.
- M. "Director" means the Director of DEM or his/her designee
- N. "Effects" and "impacts", as used in these regulations, are synonymous. Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, and health, whether direct, indirect, or cumulative. The distinctions are:
1. Direct effects are caused by project(s) and occur at the same time and place.
 2. Indirect effects are also caused by project(s) and may be later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.
 3. Cumulative effects are caused by both the direct and indirect effects of water pollution abatement projects, plus the effects of other projects which are planned in the planning area.
- O. "Environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment (see the definition of "effects").
- P. "Environmental Assessment (EA)" means a chapter, appendix, or amendment of a Wastewater Facilities Plan or other document
1. That serves to:

- a. Briefly provide sufficient evidence and analysis of effects of proposed project(s) as a basis for DEM to determine whether to issue a Finding Of No Significant Impact (FONSI) or require an Environmental Impact Statement (EIS) to be prepared;
 - b. Document compliance with state and federal environmental review requirements when no EIS is required;
 - c. Facilitate preparation of an EIS when one is necessary;
2. Shall include:
- a. Brief discussions of the need for the proposed project(s)
 - b. Brief discussions of alternatives to recommended project(s) which involve unresolved conflicts concerning alternative uses of available resources
 - c. Brief discussions of the environmental impacts of the proposed project(s) and alternatives and outline means to mitigate environmental impacts
 - d. Agencies and persons consulted during the environmental assessment, and responses to substantive comments.

QP. "Environmental Impact Statement (EIS)" means a detailed written statement prepared as a supplemental chapter of a Wastewater Facilities Plan or other document if DEM determines the Environmental Assessment identifies significant impacts associated with the preferred alternative project(s). The EIS will address:

1. The environmental impact(s) of the proposed project(s)
2. Any detrimental effects on the environment which cannot be avoided should the proposed project(s) be implemented
3. Alternatives to the proposed project(s) and the environmental impacts of those alternatives
4. The relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity
5. Any irreversible and irretrievable commitments of resources which would be involved in the project(s) if implemented

RQ. "EPA" means the U.S. Environmental Protection Agency.

SR. "Finding of No Significant Impact (FONSI)" means a document prepared by DEM briefly presenting the reasons for determining why project(s) will not have a

significant effect on the environment. It shall include the EA and shall note any other environmental documents related to it. The FONSI need not repeat any of the discussion in the EA, but may incorporate it by reference.

TS. "Loan" means a loan as defined in RI Gen. Laws § 46-12.2-2 ~~by the Agency Bank to a local governmental unit or person for costs of an approved project.~~

UT. "Loan agreement" means any agreement as defined in RI Gen. Laws § 46-12.2-2 ~~entered into by the Agency Bank and a local governmental unit or person.~~

VU. "Local Governmental Unit" means ~~any town, city, district, commission, agency, authority, board or other political subdivision or instrumentality of the state or of any political subdivision thereof responsible for the ownership or operation of a water pollution abatement project including the Narragansett Bay Commission~~ as defined in RI Gen. Laws § 46-12.2-2.

WV. "Mitigation" means:

1. Avoiding an impact altogether by not implementing a certain project or parts of a project
2. Minimizing an impact by limiting the degree or magnitude of a project and its implementation
3. Rectifying an impact by repairing, rehabilitating, or restoring the affected environment.
4. Reducing or eliminating an impact over time by preservation and maintenance operations during the life of a project.
5. Compensating for an impact by replacing or providing substitute resources or environments.

XW. "National Environmental Policy Act (NEPA)" means the National Environmental Policy Act of 1969, codified at 42 U.S.C. 4321 et. seq., as amended

YX. "Non-Point Source (NPS) Management Plan" means a plan, including appendices and/or amendments, prepared pursuant to the requirements of Section 319 of the federal Clean Water Act.

ZY. "Person" means any natural ~~or corporate~~ person, ~~including bodies politic and corporate, public departments, offices, agencies, authorities and political subdivisions of the state, corporations, societies, associations and partnerships, and subordinate instrumentalities of any one or more political subdivisions of the state.~~

AAZ. "Priority Determination System" means the system by which water pollution abatement projects are rated ~~and ranked by DEM, Office of Water Resources~~ on

the basis of environmental benefit and other criteria pursuant to rules and regulations promulgated by DEM as they may be amended from time to time.

~~ABA.~~ "Project" or "water pollution abatement project" means any project ~~that contributes to prevention, removal, curtailment, mitigation of pollution, or to the restoration and/or improvement of the quality of the waters of the state, is consistent with state goals, policies and objectives expressed in the State Guide Plan and adopted elements thereof, and is also consistent with a plan approved pursuant to the requirements of Sections 212 (WWFP), 319 (NPS Plan), or 320 (GCMP) of the federal~~eligible pursuant to Title VI of the Clean Water Act.

ACB. "Project Priority List (PPL)" means an annual ranked listing based on relative priority ratings of all water pollution abatement projects for which federal or state assistance is requested from DEM's assistance programs.

~~AC.~~ "RIGL" means the Rhode Island General Laws of 1956, as amended.

AD. "Record of Decision (ROD)" means a document prepared by DEM briefly reviewing the significant effects project(s) will have on the environment. It shall include the EIS and shall note any other environmental documents related to it. Since the EIS is included, the ROD need not repeat any of the discussion in the EIS, but may incorporate it by reference. The ROD will specify mitigation measures necessary to allow a project to proceed.

AE. "Significantly", as used in the DEM environmental review process, means considering both the context and intensity of impacts, whether beneficial or detrimental.

1. Context means that the significance of the impacts of a project must be analyzed in several contexts such as: the community as a whole (social, economic); the affected region; the affected interests; and the locality. Significance varies with the setting of the proposed project(s). In the case of a site-specific action, such as siting of a wastewater treatment facility, significance would usually depend upon the effects in the locale rather than in the whole planning area. Conversely, extending interceptor and collector sewers to a previously undeveloped portion of the planning area would result in effects on many elements of the environment.
2. Intensity refers to the severity of the impact. The parties responsible for facility planning must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:
 - a. Impacts may be both beneficial and detrimental. A significant effect may exist even if it is believed on balance that the effect will be beneficial.

- b. The degree to which the proposed project(s) affect public health or safety.
- c. Unique characteristics of the geographic area impacted by the project(s) such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
- d. The degree to which the effects of the proposed project(s) on the quality of the environment are likely to be controversial.
- e. The degree to which the possible effects on the environment are uncertain or involve unique or unknown risks.
- f. The degree to which a project may establish a precedent for future projects with similar effects or represents a decision in principle about a future consideration.
- g. Whether the project(s) is related to other projects with individually minor but cumulatively major impacts. -Significance exists if it is reasonable to anticipate a cumulatively major impact on the environment. Significance cannot be avoided by terming a project temporary or by breaking it down into small component parts.
- h. The degree to which the project may detrimentally affect districts, sites, highways, structures or objects listed in or eligible for listing in the National Register of Historic Places, or may cause loss or destruction of significant scientific, cultural, or historic resources.
- i. The degree to which the project may detrimentally affect an endangered or threatened species or its habitat that has been determined to be critical under the federal Endangered Species Act of 1973.
- j. Whether a project threatens a violation of federal, state or local law or requirements imposed for the protection of the environment.

AF. "State Guide Plan" shall mean goals, policies, or plan elements for the physical, economic, and social development of the state, adopted by the State Planning Council in accordance with [R.I. Gen. Laws § 42-11-10](#) ~~of the General Laws of Rhode Island, 1956, as amended.~~

AG. "Title VI" means Title VI of the federal Clean Water Act, [33 U.S.C. § 1383 \(2018\)](#).

AH. "Wastewater" means all flows in sanitary or combined sewers and all septage.

AI. "Wastewater Facilities Plan (WWFP)" means a plan prepared pursuant to the requirements of Section 201 of the federal Clean Water Act, [33 U.S.C. § 1281](#)

(2018), which is a detailed 20-year wastewater treatment, conveyance, and disposal plan, including an assessment of the environmental impacts of the plan, prepared to meet the statutory and regulatory requirements of the DEM for systems to prevent pollution and the consistency requirements of the Comprehensive Planning and Land Use Regulation Act ([R.I. Gen. Laws Chapter 45-22.2](#)).

- AJ. "Wastewater Treatment Facility (WWTF)" means any equipment, devices, and systems for preventing, abating, reducing, storing, conveying, treating, separating, recycling, reclaiming, or disposing of septage and flows from sanitary or combined sewers.
- AK. "Waters of the state" shall include all surface waters including all waters of the territorial sea, tidewaters, all inland waters of any river, stream, brook, pond or lake, and all ground waters and wetlands of the state of Rhode Island.

1.6 Eligibility

- A. All water pollution abatement projects proposed by local governmental units, [corporations](#) and persons, to the extent permitted by [Title VI of the Clean Water Act Chapter 46-12.2 of Title 46 of the General Laws](#), which are consistent with the state's goals, policies, and objectives as expressed in the State Guide Plan and are consistent with a plan approved under either Section 201, 319, or 320 of the federal Clean Water Act, [33 U.S.C. §§ 1281, 1329, and 1330 \(2018\)](#), are eligible for assistance from the SRF Program. Assistance will be offered and awarded to projects based on ranking of the environmental benefits of the project, readiness to proceed and availability of funds.
- B. Additional eligibility restrictions may apply to certain types of projects funded in whole or in part from funds awarded through Title VI of the Clean Water Act.

1.7 Environmental Review

- A. All Section 212 ([13 U.S.C. § 1292 \(2018\)](#)) projects funded by the SRF Program must have the environmental impacts of project alternatives analyzed and evaluated as part of facilities planning or reaffirmation of the environmental review of an existing Wastewater Facilities Plan (WWFP). All Section 212 projects will include an Environmental Assessment and, if significant impacts on the environment are identified at any point in the planning process, an Environmental Impact Statement must be prepared. DEM will prepare any FONSI or ROD that is required. DEM shall review and approve all properly documented requests for Categorical Exclusions. DEM can only issue Certificates of Approval for Section 212 design and construction projects identified in a DEM-approved Wastewater Facilities Plan and its associated environmental review. The State Environmental Review Process (SERP) for Section 212 projects [is conducted pursuant to § 1.12 of this Part. is included in these regulations as Appendix #1 Section 1.12 \(250-RICR-150-20-04.](#)

1. The environmental review requirements for most Section 319 and Section 320 ([33 U.S.C. §§ 1329, and 1330 \(2018\)](#)) projects will be satisfied when they are consistent with either the NPS Plan or the CCMP. Certain Section 319 and 320 projects with Section 212 attributes may be subject to additional environmental review requirements.
2. At the request of another state [agency](#), or quasi-state [agency](#), the SERP may be used by the Director to assess the environmental impacts of activities funded through programs other than the SRF program.

1.8 Certificate of Approval Process

A Certificate of Approval for a project must be issued by DEM as the basis for receiving an SRF loan from the [AgencyBank](#). Applications for a Certificate of Approval will be submitted to the DEM, Office of Water Resources: ~~Requirements for an application are contained in the SRF Loan Application Review Checklist which is included in these regulations as Appendix #2.~~

1.9 Loan Program

All loan requirements are contained in the [AgencyBank's](#) "[Clean Water State Revolving Fund](#) Loan Policies and Procedures".

1.10 –Project Administration and Audit

Any SRF loan project is subject to periodic site visits for reviews and inspections of the project progress, records, and accounts by either or both DEM and the [AgencyBank](#). All SRF project accounts must be reviewed as a major federal program under the federal Single Audit Act standards, [31 U.S.C. § 7501 et seq.](#), during any audit. All project management and fiscal records must be maintained by the borrower for a period of five years following project completion or final financial settlement, whichever is greater.

1.11 Penalties

In cases of non-compliance with conditions of a Certificate of Approval, a warning letter will be sent. Failure to correct or willful non-compliance with Certificate of Approval conditions will result in the issuing of a Notice of Violation by the DEM under the procedure detailed in [RI Gen. Laws § 42-17.1-2\(u\)](#). In addition to the Director's authority to assess administrative penalties for non-compliance under the authority of [Chapter RI Gen. Laws Chapter § 42-17.6](#), non-compliance with loan award conditions will be a condition of default of the SRF loan, and the local governmental unit or person may be assessed additional penalties by the ~~Rhode Island Clean Water Finance Agency~~ [Rhode Island Infrastructure Bank \(RICWFARIBBank\)](#).

1.12 ~~Appendix 1:~~ State Environmental Review Process

A. ~~SECTION I.~~ General Process and Background

1. This State Environmental Review Process (SERP) addresses compliance with the National Environmental Policy Act [NEPA], a requirement of the Clean Water Act [CWA] for all projects funded with the federal portion of the Rhode Island SRF Program. Further, environmental review for natural resources inventories and consistency with the State Guide Plan (SGP) is required for all projects funded by the state portion of the SRF Program. The Rhode Island Comprehensive Planning and Land Use Regulation Act [R.I. General Laws ~~Chapter (RIGL) Chapter~~ § 45-22.2] requires not only coordination and consistency between state and local planning programs in the development of the Community Comprehensive Plan (CCP), but also consideration of environmental conditions during planning similar in many respects to NEPA.
2. To be eligible for funding by the SRF, projects must be identified in or consistent with the goals, policies, and objectives of the State of Rhode Island as expressed in the SGP and adopted elements thereof. All projects funded by the SRF must also be consistent with or identified in plans approved pursuant to the requirements of Sections 201, 319, or 320 of the federal Clean Water Act. Section 201 requires a Wastewater Facilities Plan (WWFP), a plan which assesses wastewater conveyance, treatment, and disposal needs for a twenty year planning period. The projects identified for implementation in the approved plan are called Section 212 projects. The Section 319 plan is "Rhode Island's Nonpoint Source (NPS) Management Plan", a plan which identifies projects to mitigate adverse water quality impacts from sources of pollution other than point sources. The Section 320 plan is the "Comprehensive Conservation and Management Plan (CCMP) for Narragansett Bay", a plan which identifies projects, objectives, and strategies for mitigation of pollutant loadings to the Narragansett Bay watershed. This plan has also been adopted as State Guide Plan Element 715.
3. All WWFPs or WWFP Updates funded by the SRF Program must meet the full federal environmental review requirements. This is necessary because the SRF Program contains both federal and state funds; to insure compliance with environmental consideration and planning consistency requirements under state law; to insure that design and construction projects are eligible for SRF Program loans; and to provide sufficient planning data to properly and efficiently manage the SRF Program for maximum benefit to the state. The environmental review requirements for most Section 319 and Section 320 projects are satisfied when they are identified in or consistent with either the NPS Plan or the CCMP, respectively. Certain Section 319 and 320 projects with Section 212 attributes may be subject to additional environmental review requirements.

4. All WWFPs or WWFP Updates funded by the SRF Program must contain at least an Environmental Assessment (EA). The EA will analyze and evaluate the impacts on the environment of all alternatives considered to address the existing and forecasted needs identified through the WWFP process. All planning assumptions and forecasts used in the WWFP must be consistent with those used to develop the CCP of the local governmental unit. If significant impacts are identified with the selected alternative, further analysis and evaluation will be required in an Environmental Impact Statement (EIS). Mitigation measures for impacts from the Section 212 project contracts identified in the WWFP will be contained in any Categorical Exclusion (CE), Finding Of No Significant Impact (FONSI), or Record Of Decision (ROD) issued by DEM. Mitigation measures will also be conditions in the Certificates of Approval for design or construction loans, as appropriate. Monitoring compliance or progress toward complying with mitigation measures will be part of the DEM SRF project inspections.
5. To fund Section 212 projects that are identified in a WWFP for which the environmental determination (CE, FONSI, or ROD) is greater than five years old, the information and the environmental review findings of the WWFP must be reaffirmed for the projects to be eligible for SRF Program funding. The reaffirmation process requires examination of the current need for, cost of, and environmental impact of already studied projects. If there are no significant changes from the prior WWFP or environmental review, DEM may then approve the reaffirmation request.
6. In general, Categorical Exclusions for projects should be identified through the wastewater facilities planning process (i.e. WWFPs or WWFP Update). The need for a project, however, prior to being identified in an approved WWFP must be demonstrated and must have no significant environmental impacts. Requests for a CE for projects may be made directly to DEM for approval prior to applying for an SRF loan. DEM will not approve any CE requests that result in an increase in average daily design flow or a change in treatment method.

B. ~~SECTION 2.~~ Local Governmental Unit Responsibility

1. The local governmental unit is responsible for providing the environmental review information as part of the WWFP required by the SRF program. ~~This is necessary to achieve the intention of NEPA that environmental information is available to public officials and citizens before decisions are made and before actions are taken, and that decisions are based on an understanding of environmental consequences.~~
2. The local governmental units must prepare an Environmental Assessment (EA) as part of the WWFP. Comments by all agencies with statutory and/or regulatory authority within the planning area (e.g. Statewide

Planning, Coastal Resources Management Council, DEM Wetlands, DEM Groundwater, RI Historical Preservation Commission, U.S. Fish & Wildlife, etc.) must be requested by the local governmental unit as part of the EA process. If the EA does not identify significant impacts from the project(s) identified in the WWFP, DEM will issue a FONSI. If, as a result of the EA, significant impacts are identified, the local governmental unit must prepare an Environmental Impact Statement (EIS). DEM will issue a Record of Decision (ROD) identifying mitigation measures necessary for the project to proceed.

3. DEM will independently review and evaluate the environmental information provided as part of the WWFP, and issue a CE, FONSI or ROD. Mitigation measures and comments by other agencies must be incorporated in the WWFP and will be reflected in any final determination rendered by the Department.

4. As part of the Certificate of Approval application process for a Wastewater Facilities Planning loan, DEM will be reviewing the scope of work for consultant services. DEM will require a draft of the WWFP and EA to be submitted for review and comment prior to a public hearing for the document.

C. ~~SECTION 3.~~ Public Notice and Participation

1. The local governmental unit must hold at least one public meeting/workshop during the preparation of the WWFP, preferably once the alternatives have been developed and the environmental impacts analyzed. This meeting will explain the Plan of Study and solicit public opinions and concerns. If the impacts identified with the preferred alternative in the EA are significant, the local governmental unit must issue a public notice stating that an EIS is being initiated and that a scoping meeting will be held. When the preferred alternative is identified, the community must hold a public hearing on the draft WWFP and draft EA/EIS. The Final WWFP and EA/EIS submitted to DEM for review and approval must include responses to all substantive public comments.

D. ~~SECTION 4.~~ Consistency Requirements

1. For compliance with state law, information used in the WWFP is required to be consistent with the local CCP. The CCP will provide the basic assumptions and data to be used for forecasting: land use and other development and social parameters; cumulative impacts from all projects planned within the project area; natural, cultural, and historical resources inventories; population; zoning; and infrastructure and public services needs. To be approved by DEM, all WWFPs must be consistent with the local CCP. For DEM SRF Program funding assistance, all Section 212

projects must be identified in a DEM-approved WWFP or meet the requirements for a Categorical Exclusion.

E. SECTION 5. Legal Procedures

1. Following the DEM decision to issue a CE, FONSI, ROD, or reaffirmation of a previous decision, DEM will invite public comments for thirty (30) days, or as required by R.I. Gen. Laws § 42-35-2.8, by publishing a notice of the determination made in a paper of statewide circulation and sending notification of such determination to all persons and associations who have advised the DEM that they wish to be noticed. During the public comment period, any interested party may submit written comments and may request a public hearing. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. Public hearings will be held in accordance with the provisions of the R.I. Administrative Procedures Act [R.I. Gen. Laws § 42-35-2.8]. Following public notice or public hearing, the final determination will be made by the Director.
2. At the time any final determination is made by the Director, DEM shall issue a response to comments. –The response shall briefly describe and respond to all substantive comments raised during the public comment period or during the public hearing. The response to comments shall be made available to the public. Any person aggrieved by a final DEM decision may pursue any legal remedies it may be entitled to under the R.I. Administrative Procedures Act [RI Gen. Laws § 42-35].
3. In cases of non-compliance with conditions of a Certificate of Approval, a warning letter will be sent. Failure to resolve the non-compliance through a warning letter will result in the issuing of a Notice of Violation by the DEM under the procedures detailed in RI Gen. Laws § 42-17.1-2(u). In addition to the Director's authority to assess administrative penalties for non-compliance under the authority of RI Gen. Laws Chapter § 42-17.6, non-compliance with loan award conditions will be a condition of default of the SRF loan, and the local governmental unit may be assessed additional penalties by the R.I. Clean Water Finance Agency Rhode Island Infrastructure Bank.

F. Section 6. State Agency Authority

1. The Department of Environmental Management is the designated agency responsible for environmental review of water pollution abatement projects under state law.
2. The Director of the Department of Environmental Management has broad authority to: "supervise and control the protection, development, planning, and utilization of the natural resources of the state, such resources

including (but not limited to) water..." R.I. Gen. Laws § 42-17.1-2(1); "to establish minimum standards for the establishment and maintenance of salutary environmental conditions" (R.I. Gen. Laws § 42-17.1-2(14)); and "to develop comprehensive programs for the prevention, control, and abatement of new or existing pollution of the waters of the state" (R.I. Gen. Laws § 46-12-3(b)). The Director is also specifically authorized (R.I. Gen. Laws §§ 42-17.1-2(19), 46-12-3(r), 46-12.2-8(d)) to issue, amend, revoke, and enforce reasonable rules and regulations necessary to carry out duties assigned by any provision of law, along with the power to assess administrative penalties in accordance with R.I. Gen. Laws Chapter 42-17.6 for failure to comply with R.I. Gen. Laws § 42-17.1-2(22).

3. In addition to the broad general powers above, the Director is specifically authorized: "to establish minimum standards...relating to the location, design, construction, and maintenance of all sewage disposal systems" (R.I. Gen. Laws § 42-17.1-(2)(12)); "to establish minimum standards for permissible types of septage" (R.I. Gen. Laws § 42-17.1-2(15)); "to establish minimum standards...for...the design, construction, operation, and maintenance of disposal facilities; and the location of various types of facilities" (R.I. Gen. Laws § 42-17.1-2(16)); "To approve...the construction, modification, and operation of discharge systems or any parts thereof and to require the prior submission of plans, specifications, and other data relative to discharge systems and to require that such plans, specifications, and other data be certified by a professional engineer registered in Rhode Island and to inspect such systems either under construction or in operation" (R.I. Gen. Laws § 46-12-3(j)); "to approve the operation of treatment facilities" (R.I. Gen. Laws § 46-12-3(t)); to "enforce...the standards...for the quality of...water, and the design, construction and operation of all sewage disposal systems" (R.I. Gen. Laws § 42-17.1-2(13)).

4. State law also addresses protection of the environment as part of the comprehensive planning process. All municipalities of the state are currently in the process of developing or amending their CCP to meet the requirements of the Comprehensive Planning and Land Use Regulation Act (R.I. Gen. Laws Chapter 45-22.2). This act states: "Comprehensive planning must provide for protection, development, use and management of our land and natural resources" (R.I. Gen. Laws § 45-22.2-3(A)(3)); (A goal is), "To promote the protection of the natural...resources of each municipality and the state" (R.I. Gen. Laws § 45-22.2-3(C)(4)); "Rhode Island's cities and towns...shall: Plan for future land use which...protects our natural resources" (R.I. Gen. Laws § 45-22.2-5(A)(1)); [The natural and cultural resources element] "Shall provide an inventory of the significant natural resource areas such as water, soils, prime agricultural lands, natural vegetation systems, wildlife, wetlands, aquifers, coastal features, flood plains, and other natural resources and the policies for the protection and management of such areas" (R.I. Gen. Laws § 45-22.2-

6(E)). The R.I. Department of Administration's Division of Planning is responsible for the comprehensive planning process. ~~SECTION 6. State Agency Authority~~

- ~~1. The Department of Environmental Management is the designated agency responsible for environmental review of water pollution abatement projects under state law.~~
- ~~2. The Director of the Department of Environmental Management has broad authority to: "supervise and control the protection, development, planning, and utilization of the natural resources of the state, such resources including (but not limited to) water..." [RI Gen. Laws § 42-17.1-2(a)]; "to establish minimum standards for the establishment and maintenance of salutary environmental conditions" [RI Gen. Laws § 42-17.1-2(n)]; and "to develop comprehensive programs for the prevention, control, and abatement of new or existing pollution of the waters of the state" [RIGL 46-12-3(b)]. The Director is also specifically authorized [RI Gen. Laws §§ 42-17.1-2(s), 46-12-3(r), 46-12.2-8(d)] to issue, amend, revoke, and enforce reasonable rules and regulations necessary to carry out duties assigned by any provision of law, along with the power to assess administrative penalties in accordance with RIGL 42-17.6 for failure to comply [RI Gen. Laws § 42-17.1-2(v)].~~
- ~~3. In addition to the broad general powers above, the Director is specifically authorized: "to establish minimum standards...relating to the location, design, construction, and maintenance of all sewage disposal systems" [RI Gen. Laws § 42-17.1-(2)(l)]; "to establish minimum standards for permissible types of septage" [RI Gen. Laws § 42-17.1-2(o)]; "to establish minimum standards...for...the design, construction, operation, and maintenance of disposal facilities; and the location of various types of facilities" [RI Gen. Laws § 42-17.1-2(p)]; "To approve...the construction, modification, and operation of discharge systems or any parts thereof and to require the prior submission of plans, specifications, and other data relative to discharge systems and to require that such plans, specifications, and other data be certified by a professional engineer registered in Rhode Island and to inspect such systems either under construction or in operation" [RI Gen. Laws § 46-12-3(j)]; "to approve the operation of treatment facilities" [RI Gen. Laws § 46-12-3(t)]; to "enforce...the standards...for the quality of...water, and the design, construction and operation of all sewage disposal systems" [RI Gen. Laws § 42-17.1-2(m)].~~
- ~~4. State law also addresses protection of the environment as part of the comprehensive planning process. All municipalities of the state are currently in the process of developing or amending their CCP to meet the requirements of the Comprehensive Planning and Land Use Regulation Act [RI Gen. Laws § 45-22.2]. This act states: "Comprehensive planning~~

~~must provide for protection, development, use and management of our land and natural resources" [RI Gen. Laws § 45-22.2-3(A)(3)]; [A goal is]"To promote the protection of the natural...resources of each municipality and the state" [RI Gen. Laws § 45-22.2-3(C)(4)]; "Rhode Island's cities and towns...shall: Plan for future land use which...protects our natural resources" [RI Gen. Laws § 45-22.2-5(A)(1); [The natural and cultural resources element] "Shall provide an inventory of the significant natural resource areas such as water, soils, prime agricultural lands, natural vegetation systems, wildlife, wetlands, aquifers, coastal features, flood plains, and other natural resources and the policies for the protection and management of such areas" [RI Gen. Laws § 45-22.2-6(E)]. The R.I Department of Administration's Division of Planning is responsible for the comprehensive planning process.~~

~~1.13 Appendix 2:~~

~~Applicant _____ Project Name~~

~~Contact Person _____ Telephone~~

~~A/E Contact _____ Telephone~~

~~Procurement and Scope of Work (Section 212, 319, 320 projects)~~

~~Certification that the procurement meets all state and local requirements~~

~~A scope of work for A/E services sufficient to result in an approved project based on official DEM _____ policy/criteria/checklists.~~

~~Programmatic (Section 212, 319, 320 projects)~~

~~Certification of intent to comply with all applicable provisions of federal and/or state laws (App. 3 and 4).~~

~~Certified copy of the resolution of the governing body of the local governmental unit directing the CEO to submit an application for an SRF loan.~~

~~A summary sheet listing total project costs~~

~~A copy of the project schedule showing the date of completion for significant milestones~~

~~Environmental Review Process (Section 212 projects and projects with Section 212 attributes)~~

~~Facility Plan Loan – certifications that: an Environmental Assessment and, if necessary, an Environmental Impact Statement on the Facility Plan will be performed; the facility planning assumptions and forecasts will be consistent with the present and forecasted elements of the local Comprehensive Plan; and the DEM-approved Facility Plan is intended to be adopted as detailed sub-elements of the Services and Utilities and Implementation elements of the local Comprehensive Plan.~~

~~Design and Construction Loans: documentation that the project is detailed in a DEM-approved Facility Plan and documentation the project is addressed by a DEM-approved CE or a DEM-issued Finding of No Significant Impact or Record of Decision, including specified mitigation measures for the project.~~

~~FOR DEM USE ONLY~~

~~Is this a project listed on the current Priority List? YES _____
NO _____~~

~~Is this a Section 212 project which is consistent with the 208/303 Plans?
YES _____ NO _____~~

~~Is this a Section 319 project which is consistent with the NPS Plan? YES _____
NO _____~~

~~Is this a Section 320 project which is consistent with the CCMP? YES _____
NO _____~~

~~COMMENTS:~~

~~Based on review of the contents of the application package for a loan from the
SRF, it is my opinion that all requirements for issuing a Certificate of
Approval for an SRF loan have been met.~~

~~SIGNED:~~

~~DATE: _____, 20~~

~~1.14 Appendix 3:~~

As the Chief Executive Officer of the _____, I hereby certify this local governmental unit will comply with the applicable statutory and/or regulatory requirements of the sections of the Rhode Island General Laws of 1956, as amended, cited below as a condition of award of a loan from the Rhode Island State Revolving Loan Fund (SRF) Program jointly administered by the Rhode Island Clean Water Finance Agency and the Rhode Island Department of Environmental Management. This certification is executed on the _____ day of _____, 20_____.

~~CEO, _____ of~~

~~§ 2-1, Fresh Water Wetlands~~

~~§ 23-23, Air Pollution [R.I. Clean Air Act]~~

~~§ 36-14, Code of Ethics~~

~~§ 37-12, Contractor's Bonds~~

~~§ 37-13, Labor and Payment of Debts by Contractors~~

~~§ 37-14.1, Minority Business Enterprise~~

~~§ 37-16, Public Works Arbitration Act~~

~~§ 38-1, Custody and Protection [of public records]~~

~~§ 38-2, Access to Public Records~~

~~§ 38-3, Public Records Administration~~

~~§ 42-10.1, Public Finance Management Board (debt issuance)~~

~~§ 42-35, Administrative Procedures~~

~~§ 42-45, Historical Preservation Commission (planning coordination)~~

~~§ 42-46, Open Meetings~~

~~§ 42-82, Farmland Preservation Act (eminent domain restrictions)~~

~~§ 42-110, Licensing of Chemical Purchasing (metal finishing pretreatment)~~

~~§ 45-14, Sewage Charges (user charge restrictions)~~

~~§ 45-22.2, Comprehensive Planning and Land Use Regulation Act (planning consistency)~~

~~§ 45-24.5, Wastewater Management Districts (sewage management)~~

~~§ 46-12, Water Pollution~~

~~§ 46-12.1, Underground Storage Tanks (fuel tanks at WWTFs)~~

~~§ 46-13, Public Drinking Water Supply (cross-connections, break tanks at WWTFs)~~

~~§ 46-23, Coastal Resources Management Council~~

~~1.15—Appendix 4:~~

~~As the Chief Executive Officer of the~~

~~, I hereby certify this local governmental unit will comply with the applicable statutory requirements of the federal laws cited below as a condition of award of a loan from the Rhode Island State Revolving Loan Fund (SRF) Program jointly administered by the Rhode Island Clean Water Finance Agency and the Rhode Island Department of Environmental Management. This certification is executed on the day of _____, 20_____.~~

~~_____, CEO, _____ of~~

~~Archeological and Historic Preservation Act of 1974, P.L. 86-523, as amended~~

~~Clean Air Act, 42 U.S.C. 7506(e)~~

~~Coastal Barrier Resources Act, 16 U.S.C. 3501 et. seq.~~

~~Coastal Zone Management Act Pub. L. 92-583, as amended~~

~~Endangered Species Act, 16 U.S.C. 1531, et. seq.~~

~~Federal Executive Order 11988, as amended by Executive Order 12148,
Floodplain Management~~

~~Federal Executive Order 11990, Protection of Wetlands~~

~~Farmland Protection Policy Act, 7 U.S.C. 4201, et. seq.~~

~~Fish and Wildlife Coordination Act, P.L. 85-624, as amended~~

~~National Historic Preservation Act of 1966, P.L. 89-665, as amended~~

~~Safe Drinking Water Act, P.L. 92-523, as amended~~

~~Wild and Scenic Rivers Act, P.L. 90-542, as amended~~

~~Demonstration Cities and Metropolitan Development Act of 1966, P.L. 89-754, as amended Executive Order 12372~~

~~Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Federal Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans~~

~~Age Discrimination Act, P.L. 94-135, as amended~~

~~Civil Rights Act of 1964, P.L. 88-352, as amended~~

~~Section 13 of P.L. 92-500; prohibition against sex discrimination under the federal Clean Water Act~~

~~Federal Executive Order 11246, Equal Employment Opportunity~~

~~Federal Executive Orders 11625, 12138, and 12432 Women's and Minority Business Enterprise~~

~~Section 504 of the Rehabilitation Act of 1973, P.L. 93-112, including Federal Executive Orders 11914 and 11250~~

~~Uniform Relocation and Real Property Acquisition Act of 1970, P.L. 91-646, as amended~~

~~Executive Order 12549, Debarment and Suspension~~

~~Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590~~

~~Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Contractor's Labor~~