

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
Office of Water Resources

**Rules and Regulations for the Priority Determination System for  
Federal and State Assistance to Local Governmental Units for  
Construction of Water Pollution Abatement Projects**



November 1983

As Amended: August 1987, June 1991, May 1996, April 1998, August 2003 and August, 2009

Regulation # 12-190-019

**AUTHORITY:** These regulations are adopted pursuant to Chapters 42-17.1, 42-35, 46-12, and 46-12.2 of the Rhode Island General Laws of 1956, as amended

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

RULES AND REGULATIONS FOR THE PRIORITY DETERMINATION SYSTEM  
FOR FEDERAL AND STATE ASSISTANCE TO LOCAL GOVERNMENTAL UNITS  
FOR CONSTRUCTION OF WATER POLLUTION ABATEMENT PROJECTS

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**RULE 1. PURPOSE**

The Priority Determination System is designed to achieve optimum water quality management results from the Rhode Island Department of Environmental Management's (DEM) water pollution abatement project construction assistance programs, consistent with the powers and duties of the Department denoted in Chapters 42-17.1, 46-12, and 46-12.2 of the Rhode Island General Laws (RIGL), as amended, and the Federal Water Pollution Control Act [33 U.S.C. Sec. 1251 et. seq., as amended], commonly called the Clean Water Act.

The Priority Determination System describes procedures for annually determining the priority rating and ranking of all categories of identified water pollution abatement projects proposed by local governmental units which may receive federal and/or state funding assistance from any such programs administered by the DEM.

The relative rankings of water pollution abatement projects on the Priority List developed under these regulations will be utilized by the various assistance programs of the DEM, Office of Water Resources. Actual annual assistance awards are determined by the criteria and methodology contained in the rules and regulations for each specific assistance program. These assistance programs may include, but are not limited to, the State Revolving Fund (SRF) and the Interceptor Bond Fund (IBF) account of the Rhode Island Clean Water Act Environmental Trust Fund.

**RULE 2. AUTHORITY**

These rules and regulations are promulgated pursuant to RIGL Chapter 42-17.1, Environmental Management, RIGL Chapter 46-12, Water Pollution, and RIGL Chapter 46-12.2, Rhode Island Clean Water Finance Agency, in accordance with RIGL Chapter 42-35, Administrative Procedures.

**RULE 3. APPLICATION**

The terms and provisions of these rules and regulations shall be liberally construed to permit the Department to effectuate the purposes of state law, goals, and policies.

**RULE 4. DEFINITIONS**

For the purposes of these regulations, the following terms shall have the following meanings:

**"Agency" or "RICWFA"** means the Rhode Island Clean Water Finance Agency established by RIGL Chapter 46-12.2.

**"Areawide Waste Treatment Management Plan (208 Plan)"** means the plan prepared by the State pursuant to Section 208 of the Clean Water Act.

**"Chief Executive Officer"** means the mayor in any city, the president of the town council in any town, or the executive director of any authority or commission unless some other officer or body is designated to perform the functions of a chief executive officer under the provisions of a local charter or other law.

**"Clean Water Act (CWA)"** means the Federal Water Pollution Control Act, codified at 33 U.S.C Sec. 1251 et seq., as amended.

**"Community Comprehensive Plan (CCP)"** means a plan prepared pursuant to the Rhode Island Comprehensive Planning and Land Use Regulation Act, Chapter 45-22.2 of the RIGL.

**"Comprehensive Conservation and Management Plan (CCMP)"** means a plan prepared pursuant to the requirements of Section 320 of the Clean Water Act.

**"Construction"** means any one or more of the following: Preliminary planning to determine the feasibility of treatment works, engineering, scientific, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions, erection, building, acquisition, alteration, rehabilitation, improvement, or extension of treatment works, or the administration, inspection, or supervision of any of the foregoing items.

**"Combined Sewer"** shall mean a sewer which serves as a sanitary sewer and a storm sewer.

**"Combined Sewer Overflow (CSO)"** means flow from a combined sewer in excess of the interceptor or regulator capacity that is discharged into a receiving water without going to a WWTF. A CSO occurs prior to reaching a WWTF and is distinguished from bypasses which are intentional diversions of waste streams from any portion of a WWTF.

**"Costs"** means any or all costs relating to the planning, designing, acquiring, constructing and carrying out and placing in operation a water pollution abatement project including, but not limited to, the following: planning, design, acquisition, construction, expansion, improvement and rehabilitation of facilities; acquisition of real or personal property; demolitions and relocations; labor, materials, machinery and equipment; services of architects, engineers, scientists, environmental and financial experts and other consultants; feasibility studies; rate/cost recovery/user charge studies; borings, survey, and other preliminary engineering costs; plans and specifications; administrative costs; legal costs; all costs related to project financing; and any and all other expenses necessary or incidental to the financing and construction of a water pollution abatement project.

**"Department" or "DEM"** means the Department of Environmental Management of the state of Rhode Island.

**"Director"** means the Director of the Rhode Island Department of Environmental Management or any subordinate or subordinate to whom the Director has delegated the powers and duties vested in him or her by Chapters 46-12, 46-12.2, or 42-17.1 of the RIGL, as amended.

**"Fiscal Year"** means the state of Rhode Island fiscal year: 1 July to 30 June.

**"Growth Center"** means a designated area, consistent with the state-approved local Community Comprehensive Plan, where compact, mixed-use development is accommodated without depleting a community's natural, historic and cultural resources.

**"Infiltration/Inflow (I/I)"** means the total flow from both infiltration and inflow without distinguishing the source.

**"Landfill"** means any site where the disposal of wastes and/or sludge occurs or has occurred by placing them in or on the land, compacting, and covering with a layer of soil.

**"Local Governmental Unit"** means any city, town, 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(s), including the Narragansett Bay Water Quality Management District Commission.

**"Materials"** means product(s) employed in or by-products generated by industrial, commercial, and/or agricultural processes.

**"Materials Storage Area"** means any pile, impoundment, compound, facility or other area where materials are contained, held or otherwise stored in such a manner which causes, contributes to, or contaminates runoff.

**"Nonpoint Source (NPS) Management Plan"** means a plan prepared pursuant to the requirements of Section 319

of the Clean Water Act.

**"Onsite Wastewater Treatment System (OWTS)"** means any system of piping, tanks, disposal areas, alternative toilets or other facilities designed to function as a unit to convey, store, treat and/or dispose of sanitary sewage by means other than discharge into a public sewage collection system.

**"Pollution"** means the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.

**"Project" or "Water Pollution Abatement Project"** means any project that contributes to the education, removal, curtailment, or mitigation of pollution of the surface waters or groundwater of the state, or the restoration of the quality of said waters, and conforms with any applicable planning document which has been approved and/or adopted. This definition shall be construed to include the planning, design, construction or any other distinct stage or phase of a project.

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

**"Raw Sewage Discharge"** means any discharge to a receiving water of untreated sanitary sewage.

**"Runoff"** means water that drains from an area as surface flow.

**"Sanitary Sewer"** means a sewer which conveys wastewater from residences, commercial buildings, industrial plants, and institutions.

**"State Guide Plan (SGP)"** means goals, policies, or plan elements for the physical, economic, and social development of the state, adopted by the State Planning Council in accordance with Section 42-11-10 of the General Laws of Rhode Island, 1956, as amended.

**"Storm Sewer"** means a sewer intended to convey only storm waters, surface runoff, street wash waters, and drainage.

**"Total Maximum Daily Load (TMDL)"** means the amount of a pollutant that may be discharged into a waterbody and still maintain water quality standards. The TMDL is the sum of the individual wasteload allocations for point sources and the load allocations for nonpoint sources and natural background taking into account a margin of safety.

**"Underground Storage Tank"** means any one or a combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of petroleum product or hazardous materials, and the volume of which (including the volume of the underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground.

**"Wastewater Facilities Plan (WWFP)"** means a plan prepared pursuant to the requirements of Section 201 of the federal Clean Water Act which is a detailed 20-year wastewater treatment, conveyance, and disposal plan, including an assessment of the environmental impacts of the plan, and which also contains information 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 (RIGL 45-22.2).

**"Wastewater Treatment Facility (WWTF)"** means any equipment, devices, and systems for preventing, abating, reducing, storing, conveying, treating, separating, recycling, reclaiming, or disposing of sanitary or combined sewage.

**"Watershed Action Plan"** means a document that identifies watershed goals and management objectives along with specific action items that are needed. The plan is developed in consultation with all key stakeholders within the watershed including, but not limited to, federal, state and local governmental agencies, non-governmental organizations and the private sector.

## **RULE 5. PROJECT PRIORITY LIST**

A project cannot receive funding from any DEM assistance program which utilizes the Priority Determination System unless it is on the approved Project Priority List. The chief executive officer of a local governmental unit must submit to the DEM, Office of Water Resources a letter of intent or equivalent document requesting that the proposed project receive funding from a DEM construction assistance program. To be rated and ranked under the project priority system, the letter of intent for a requested project must include:

- (A) Documentation that the requested project is, at a minimum, not inconsistent with: the State Guide Plan; a Community Comprehensive Plan; the Non-Point Source Management Plan; the Areawide Waste Treatment Management Plan or Plans; the Comprehensive Conservation and Management Plan; an approved Wastewater Facilities Plan. **EXCEPTION:** this requirement does not necessarily apply to request for assistance for planning or scientific investigations/studies.
- (B) A total costs estimate of all costs relating to the project.
- (C) A project description and schedule.

The Director shall annually prepare and promulgate a ranked priority list of all water pollution abatement projects for which assistance has been properly requested.

## **RULE 6. PROJECT RATING**

The Director shall rate each project according to the project rating criteria of Appendix I of these regulations. In order to rate a project, the Director must determine that the project will contribute to achieving the State water quality policy goals and objectives. The numerical scores in Appendix I are based on the following:

- (A) The existing conditions that cause the pollution.
- (B) The benefits of the proposed project, including improvements in overall efficiency and service.
- (C) Improvements to water quality.
- (D) Intergovernmental needs, requirements, or mandates identified in: the State Guide Plan; a Community Comprehensive Plan; the Non-Point Source Management Plan; the Areawide Waste Treatment Management Plan; the Comprehensive Conservation and Management Plan; a Special Area Management Plan; an approved Total Maximum Daily Load or Watershed Action Plan, or an approved Wastewater Facilities Plan.
- (E) The degree to which a project is ready to proceed.

The Director shall assign points to each project rating criterion based upon the most current information available to him/her, including information received prior to or during the public hearing required under Rule 8 of these regulations.

Point values have been assigned to subcategories based on needs and priorities identified in but not limited to: the State Guide Plan; a Community Comprehensive Plan; the Nonpoint Source Management Plan; the Areawide Waste Treatment Management Plan; the Comprehensive Conservation and Management Plan; DEM Water Quality Regulations; RIDEM Rules and Regulations for Groundwater Quality; and an approved Wastewater Facilities Plan.

The Director shall annually evaluate the rating of each project and make such changes as deemed necessary.

## **RULE 7. PROJECT RANKING**

Projects will be ranked based upon points accumulated under the Rule 6 rating process. The Director shall not place projects on the priority list and shall remove projects from the list when it is determined that the projects will not contribute to achieving applicable state water quality goals, policies, standards, or objectives.

## **RULE 8. REVIEW AND ADOPTION OF PROJECT PRIORITY LIST**

The Director shall hold a public hearing annually on the proposed priority list prior to adopting and filing the final priority list with the Secretary of State.

Public notice of the availability of the proposed list and the place and time of the public hearing shall be published in a newspaper of the State with statewide circulation, or on the Department's website, for at least thirty (30) calendar days, or as required by RIGL 42-35, in advance of the hearing to afford all interested persons reasonable opportunity to submit data, views, or arguments concerning the proposed priority list. The public notice shall indicate the location where copies of the draft priority list may be obtained and/or reviewed by interested parties prior to the hearing.

The Director shall accept written comments on the draft priority list from the time of public notice of availability until seven (7) calendar days following the public hearing. The Director shall consider fully all written and oral submissions respecting the proposed rule, and make any changes deemed necessary to serve the purposes of these regulations.

The Director will adopt a final priority list and file it with the Secretary of State. Upon adoption of the final priority list, if requested to do so by an interested person, the Director will issue a concise statement of the principal reasons for and against its adoption, incorporating therein the reasons for overruling the considerations urged against its adoption. The effective date of the adopted priority list will be twenty (20) days following the filing with the Secretary of State.

The Director shall permanently retain a copy of the priority list hearing record which should include a copy of the final priority list filed with the Secretary of State, the transcript of the public hearing, copies of all comments, and any statement by the Director regarding the comments on or adoption of the final project priority list.

The Director shall include such information in the project priority list for each project as required by the EPA pursuant to the Clean Water Act and guidance issued pursuant thereto.

## **RULE 9. PROJECT PRIORITY LIST REVISION**

As necessary, but no less than annually, the Director shall review the project priority list for changes in estimated project schedules, project costs and/or scope. The Director may propose modification of the project priority list at any time according to these procedures:

(A) Addition to the list: projects can only be added to the list by a public hearing

(B) Removal from the list:

- (1) The Director may remove a project completely from the project priority list if it is determined: that it is fully funded by other assistance programs; that it is not consistent with an approved WWFP or applicable comprehensive management plan; or that significant deficiencies exist in the project scope of work or costs analysis.
- (2) The Director shall notify by certified mail the local governmental unit whose project will be removed and the basis for the removal. The local governmental unit shall have ten (10) calendar days from receipt of the letter to submit evidence to the DEM showing that its project should not be removed.

- (3) The Director shall review his/her decision based on the information submitted by the local governmental unit and shall revise his/her decision if deemed necessary.
  - (4) A local governmental unit whose project is removed after such review by the Director may request that the Director reverse his/her decision to remove the project only if substantial rights of the applicant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are without factual basis or are an unfair interpretation of the rules and regulations.
- (C) Revisions of a Clerical Nature: Revisions of a clerical nature require neither a public hearing nor documentation.

**RULE 10. SEVERABILITY**

If any provision of these Rules and Regulations, or the application thereof to any local governmental unit or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules and Regulations shall not be affected thereby.

**RULE 11. SUPERSEDED RULES AND REGULATIONS**

On the effective date of these Rules and Regulations, all previous Rules and Regulations, and any policies regarding the administration and enforcement of the Priority Determination System shall be superseded. However, any enforcement action taken by, or application submitted to, the Department prior to the effective date of these Rules and Regulations shall be governed by the Rules and Regulations in effect at the time the enforcement action was taken, or application filed.

**RULE 12. EFFECTIVE DATE**

The foregoing "Rules and Regulations for the Priority Determination System for Federal and State Assistance to Local Governmental Units for Construction of Water Pollution Abatement Projects", after due notice, are hereby adopted and filed with the Secretary of State this \_\_\_\_\_ day of August 2009 to become effective twenty (20) days thereafter, in accordance with the provisions of Chapters 42-17.1, 42-35, 46-12, and 46-12.2 of the General Laws of Rhode Island of 1956, as amended.

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W. Michael Sullivan, Ph.D., Director  
Department of Environmental Management

Notice Given on:        May 14, 2008

Filing Date:            \_\_\_\_\_

Effective Date:        \_\_\_\_\_

**APPENDIX I - PROJECT RATING CRITERIA**

APPLICANT: \_\_\_\_\_ PROJECT: \_\_\_\_\_

		<b>Point Values</b>	<b>Actual Rating</b>	<b>Item #</b>
<b>I.</b>	<b><u>EXISTING CONDITIONS CRITERIA</u> †</b>			
A.	Direct Raw Sewage Discharge/Sanitary Sewer Overflow	7		A
B-1	Failing OWTS. - Documented Water Quality Degradation	7		B-1
B-2	Failing OWTS – Other	3		B-2
C-1	Untreated/uncontrolled runoff - Documented Water Qual. Degrad. (Pathogen impacts)	5		C-1
C-2	Untreated/uncontrolled runoff - Documented Water Qual. Degrad. (Non-path. impacts)	3		C-2
C-3	Untreated/uncontrolled runoff – Other	2		C-3
D-1	Wastewater Treatment Facility	3		D-1
D-2	Collection System/Pump Station	1		D-2
E.	Combined Sewer Overflows	10		E
F.	Landfill - Closure imminent or closed	3		F
G-1	Underground Storage Tank – Leaking	3		G-1
G-2	Underground Storage Tank - Potential to leak (single wall construction)	2		G-2
H.	Materials Storage Area	3		H
I-1	Sub-surface Discharge - non-sanitary wastewater	2		I-1
I-2	Sub-surface Discharge - stormwater only	1		I-2
J.	Stormwater treatment/management facility	3		J
L.	Atmospheric Deposition	1		L
M.	Excessive Flows - exceeds design flow or operational capacity	3		M

**Section I - Total Points** \_\_\_\_\_

**II. PROPOSED PROJECT BENEFITS CRITERIA † \***

A.	Project Provides for Resource Conservation/Multiple-use Benefits	5		A
B.	Regional Project (i.e. project serves more than one community)	3		B
C-1	Treatment of Septage at Existing WWTF (from outside service area)	3		C-1
C-2	Treatment of Septage at Existing WWTF (within service area only)	2		C-2
D.	Operational Reliability Improvement	2		D
E.	Project helps to alleviate a Sewer Connection/Extension Ban in the area served	5		E
F.	Demonstration or Pilot Projects	2		F
G.	Project incorporates pollution prevention/waste minimization techniques	2		G
H.	Project protects or restores a critical aquatic habitat or resource	3		H
I.	Project provides technical assistance/public education	2		I
J.	Project improves permitted discharge from interim to final limits (discharge is presently in compliance with interim limits)	3		J
K.	Project addresses/prevents water pollution within a growth center	3		K
L.	Project incorporates energy conservation or other sustainable infrastructure measures	2		L

**Section II - Total Points** \_\_\_\_\_

**III. WATER QUALITY IMPROVEMENT CRITERIA ‡**

A.	<u>Surface Water Restoration</u> † [Use Integrated 305(b)/303(d) Report]			
A-1	Project affects a Category 4.A or 4.B waterbody	8		A-1
A-2	Project affects a Category 5 waterbody	6		A-2
A-3	Project affects a Category 4.C waterbody	4		A-3
	<b>Subtotal III A</b>			
B.	<u>Surface Water Protection</u> † [Use RIDEM Water Qual. Regs. & 305(b)/303(d) Report]			
B-1	Project affects an SRPW waterbody	6		B-1
B-2	Project affects a Category 2 waterbody	4		B-2

**Subtotal III B** \_\_\_\_\_

C.	<u>Groundwater Protection Factor [Use Rules and Regulations for Groundwater Quality] †</u>		
C-1	Project affects a Wellhead Protection Area for Community Water System Well	6	C-1
C-2	Project affects an area of GAA Groundwater	4	C-2
C-3	Project affects an area of GA Groundwater	2	C-3
C-4	Project affects an area of GB Groundwater	1	C-4

**Subtotal III C** \_\_\_\_\_

**Section III - Total Points** \_\_\_\_\_

**IV. INTERGOVERNMENTAL NEEDS CRITERIA ††**

A.	Project is consistent with Community Comprehensive Plan/State Guide Plan	3	A
B.	Project is consistent with an approved 201 Wastewater Facilities Plan	3	B
C.	Project is consistent with a Special Area Management (SAM) Plan	3	C
D.	Project is consistent with the Areawide Waste Management Plan (208 Plan)	1	D
E.	Project is consistent with the Nonpoint Source Management Plan (319 Plan)	3	E
F.	Project is consistent with the Comp. Conservation and Management Plan (CCMP)	3	F
G.	Project is consistent with TMDL or Watershed Action Plan	3	G
H.	Project is consistent with the Ten Priority Beaches Plan	3	H
I.	Project is consistent with the local Stormwater Management Plan	3	I

G. Population Served by the Project †

G-1	1 – 14,999	1	G-1
G-2	15,000 – 49,999	2	G-2
G-3	≥ 50,000	3	G-3

**Section IV - Total Points** \_\_\_\_\_

**V. READINESS TO PROCEED CRITERIA**

A.	Planning †		
A-1	Project Management/Recovery Plan has been approved	2	A-1
A-2	Wastewater Facilities Plan (WWFP) approved or reaffirmed	2	A-2
A-3	Environmental Assessment or Categorical Exclusion Approved	2	A-3
A-4	Lake Management Plan Approved	2	A-4
B.	Design		
B-1	Plans and Specifications approved	2	B-1
C.	Financial/Other ††		
C-1	Local bonding authority approved/ other local funds committed	2	C-1
C-2	Pre-application for SRF Funding complete (i.e. qualified for loan by RICWFA)	2	C-2
C-3	Grant funding has been secured	2	C-3
C-4	Local ordinance/zoning passed in support of the project	2	C-4

**Section V - Total Points** \_\_\_\_\_

Footnotes for Table I:

† Select one criterion, at most, for each category. For example, choose A-1, A-2 or neither as applicable.

† † Select each and every criterion which applies

\* Points are awarded for projects at the project site if the criterion is included in the proposed project.

‡ For water bodies that are included on the surface water reclamation and protection lists, the highest total point rating under either of those lists must be used, but not both.

RI DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
OFFICE OF WATER RESOURCES

**APPENDIX II - PROJECT CATEGORIES FOR PRIORITY DETERMINATION SYSTEM**

<u>CATEGORY</u>	<u>TYPE</u>	<u>RI#</u>	<u>EPA #</u>	<u>DEFINITION</u>
Secondary Treatment	WWTF	1	1	Replacement/modifications/additions based on an approved WWFP to achieve/maintain secondary treatment
Advanced Treatment	WWTF	2	2	Replacement/modifications/additions based on an approved WWFP to achieve/maintain advanced treatment
I/I Correction	Sewer	3A	3A	Corrective actions in sewer systems identified in an approved I/I Analysis or Sewer System Evaluation Survey
Sewer System Repair	Sewer	3B	3B	Rehabilitation is extensive repair of existing sewers/pump stations beyond scope of normal maintenance programs. Replacement is construction of parallel sewers/sewers with exact function of sewers to be abandoned. Replacement of pump stations is construction of a new pumping station with the same functions/flow capacity of the old facility. All must be in WWFP.
Collectors (Future)	Sewer	4A	4A	Sewers that will convey flows from future homes, businesses and industries identified in a CCP and approved in a WWFP
Interceptor (Future)	Sewer	4B	4B	Sewers that will convey flows from one or more Category 4A areas to another interceptor or WWTF
Collectors (Present)	Sewer	4C	---	Sewers to convey flows from present homes, Businesses, and industries identified in a CCP and approved in a WWFP
Interceptor (Present)	Sewer	4D	---	Sewers to convey flows from one or more Category 4C areas to another interceptor or WWTF
CSO	System	5	5	Combined sewer treatment/storage/separation per an approved WWFP
Planning	System	6	---	Detailed plan determining the need for and feasibility of water pollution abatement project(s)
Design	System	7	---	Plans, Specifications, & bidding documents
Non-Point	Mitig.	8	7	Implementation project per NPS Plan (SGP Element # 731)
Estuarine	Mitig.	9	---	Implementation project per Comprehensive Conservation and Management Plan (SGP Element # 715)
Onsite Wastewater Treatment System (OWTS)	WWTF	10	---	Alternative systems, subsurface (ISDS), and Wastewater Management Districts (WWMD) per RIGL 45-24.5
Stormwater	WWTF	11	6	Planning & Implementation of municipal stormwater management programs and controls
Other	Mitig.	12	---	Other water pollution abatement projects

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**APPENDIX III – ANNUAL PROJECT PRIORITY LIST**

This space reserved for the current Project Priority List