



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

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OFFICE OF
WATER

MEMORANDUM

SUBJECT: Award of Capitalization Grants with Funds Appropriated by P.L. 113-2, the “Disaster Relief Appropriations Act, 2013”

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I. PURPOSE

On January 29, 2013, the President of the United States signed into law, P.L. 113-2, “Making supplemental appropriations for the fiscal year ending September 30, 2013, to improve and streamline disaster assistance for Hurricane Sandy, and for other purposes.” Included in this Act is the “Disaster Relief Appropriations Act, 2013” (DRAA). This memorandum provides information and guidelines on how the Environmental Protection Agency (EPA) will award and administer State Revolving Fund Capitalization Grants appropriated to the State and Tribal Assistance Grants (STAG) account in the DRAA.

The guidance provided by this memorandum is intended to give States the flexibility that has always been a hallmark of the SRF programs, while ensuring the goals, objectives, and legal requirements of the DRAA are successfully met. EPA looks forward to working closely with the States of New Jersey and New York to help make the water and wastewater infrastructure in both states more resilient. To further the goals of the DRAA, EPA, with State and other federal agency participation, will organize multi-agency, multi-disciplinary, water infrastructure teams to focus resources in order to successfully and efficiently create adapt wastewater and drinking water systems in the states of New York and New Jersey to a future of potentially more intense weather events, ocean surges, sea level rise and water inundation and to serve as a model for future disasters.

II. BACKGROUND

The EPA section of the DRAA includes \$600 million in the STAG account: \$500 million for Clean Water State Revolving Fund (CWSRF) and \$100 million for Drinking Water State Revolving Fund (DWSRF) capitalization grants, available only to Region 2 States impacted by Hurricane Sandy.¹ The purpose of this section of the DRAA is to reduce flood damage risk and vulnerability or to enhance resiliency to rapid hydrologic change or a natural disaster at treatment works as defined by section 212 of the Federal Water Pollution Control Act or any eligible facilities under section 1452 of the Safe Drinking Water Act. Funds will remain available for obligation until expended, however, each State must receive a grant award by the end Fiscal Year 2014, otherwise the funds will be reallocated.² Funds must be expended within 24 months of obligation unless a waiver is granted by the Office of Management and Budget (OMB).³ Additionally, EPA has the authority to retain up to \$1 million for management and oversight.

The specific requirements governing the award of these capitalization grants are contained in P.L. 113-2. In addition, OMB has provided guidance at:

<http://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-07.pdf>.

The specific requirements contained in these documents are further described and explained in this memorandum. Nothing in this document is meant to conflict with or supersede P.L. 113-2, OMB Guidance, or any grant term and condition.

III. APPLICATION REQUIREMENTS

To enable States to meet statutory deadlines while ensuring adequate time to address the deadlines in the DRAA as well as relevant continuing legal requirements, EPA recommends that States submit grant applications as soon as possible. Applications under the DRAA should be submitted as separate grant applications from other SRF capitalization grants as there are unique requirements that attach to these funds.

In order to further accelerate the award of grants, EPA will allow States to apply for conditional grants, as well as partial grants. Conditional grants may be awarded based on a draft Intended Use Plan (IUP) as described below in III.A. Partial grants may be awarded based on a project list that does not contain projects in an amount equal to or greater than the funds available to the State under the DRAA.

The following will be required in order to award a grant.

A. INTENDED USE PLAN (IUP)

Section 606(c) of the Clean Water Act and section 1452(b) of the Safe Drinking Water Act require the States to prepare a plan identifying the intended uses of the funds in the SRF and describing

¹ Actual amounts available as shown in Attachment 2 reflect a 5% reduction due to sequestration.

² Clean Water Act § 604(c).

³ Section 904(c) of the DRAA gives the Director of OMB the authority to waive the 24 month expenditure requirement.

how those uses support the goals of the SRF. An IUP, meeting all requirements of Title VI of the Clean Water Act (CWA) and regulations, or section 1452 of the Safe Drinking Water Act (SDWA) and regulations, will be required for approval of a grant award and release of awarded funds. An IUP must contain the following:

I. List of Projects

Under section 606(c)(1) of the CWA, the IUP must contain a list of publicly owned treatment works projects on the State's priority list (PPL), developed pursuant to section 216 of the CWA, that are eligible for SRF construction assistance, subject to the requirements of the DRAA. This list must include: the name of the project sponsor; permit number or other applicable enforceable requirement, if available; the type of financial assistance; and the projected amount of eligible assistance. The IUP must also contain a list of the non-point source and national estuary protection activities under sections 319 and 320 of the CWA that the State expects to fund from its SRF. The list included in the IUP must contain eligible projects for which the total cost of assistance requested is at least equal to the amount of the grant being applied for before a grant can be awarded. Additionally, the IUP must contain a description of the intended uses of the additional subsidization allowance (described in V.B. below).

Under section 1452(b)(3)(B) of the SDWA, the IUP must contain a list of projects that are eligible for assistance under section 1452 and are to be assisted pursuant to the plan. This list must include: the name of the public water system, a description of the project, the priority assigned to the project, the expected terms of financial assistance, and the size of the community served. The fundable list included in the IUP must contain eligible projects for which the total cost of assistance requested is at least equal to the amount of the grant being applied for before a grant can be awarded. The IUP must also contain a comprehensive list of projects that may receive DWSRF assistance from the supplemental appropriation provided under the DRAA or from other sources. A State may combine the fundable and comprehensive lists into one list, provided that projects which are expected to receive assistance from available funds designated for use in the current IUP are identified.

2. Additional Elements

The CWSRF IUP must contain proposed assistance terms including interest rates; the short-term and long-term goals of the State loan fund; and a description of the means by which the State will choose those projects, consistent with the purposes of the DRAA.

The DWSRF IUP must contain proposed assistance terms including interest rates; the short-term and long-term goals of the State loan fund; a description of uses and amounts planned, consistent with the purposes of the DRAA, for set-aside funds to be taken under 1452(g)(2) of the SDWA; and a description of the means by which the State will choose those projects that are ready to proceed to construction.

Any State that chooses to transfer funds between either of the CWSRF and DWSRF capitalization grants received under the DRAA must state their intention to do so in their IUP. Any transfers are subject to the statutory limits of the SRFs. Uniquely, for capitalization grants under the DRAA, any transfer will be subject to the DRAA requirements as outlined in this guidance.

3. Public Review and Comment

The IUP must contain a statement of how the State has met the requirement of section 605 of the CWA or section 1452(b)(1) of the SDWA for public review and comment on the preparation of the IUP.

4. Amended FY 2013 IUP

It should be noted that IUPs for both SRF programs may be in the form of amended FY 2013 IUPs, so long as the amended IUPs meet all of the above requirements.

5. Draft IUPs for Purposes of Conditional Grants

EPA understands that some States may complete their IUP but still require additional time to complete public review or approval by boards or State governments. The Agency will allow conditional grants to be made to facilitate expeditious use of funds upon final public review and/or approval. To receive a conditional grant a draft IUP must be ready for public review and/or consideration by agency/State government bodies and include the information shown above in III.A.1 and 2. Conditional awards will contain a grant condition stating that funds may not be drawn until an IUP has completed the review process and is approved by the Region. States must submit an IUP that has completed the public review process and received EPA approval before funds may be drawn.

6. IUPs for Purposes of Partial Grants

States that currently do not have a project list equal to the funds they can receive under the DRAA may apply for a partial award. The IUP for a partial award must include the information shown above in III.A.1, 2 and 3. A partial award will only be made for an amount equal to the total cost of the project list.

B. ADDITIONAL REQUIREMENTS

The following documents are required in order to complete a grant application:

- SF-424 Application for Federal Assistance, with original signature, including:
 - SF-424A, Budget by categories and indirect cost rate
 - SF-424B, Assurances for non-construction programs
- Certification regarding lobbying and SF LLL (applicable if EPA funds are over \$100,000)
- EPA Form 4700-4 pre-award compliance review report
- Detailed itemized budget
- Copy of negotiated indirect cost rate agreement

- Key contacts form
- Attorney General's opinion, as required in 40 CFR §35.3110(d)(2), and 40 CFR §35.3545(d).

IV. AWARD REQUIREMENTS

A. GRANT CONDITIONS

The DRAA includes a number of new requirements that will apply to projects funded in part or in whole with funds made available by this Act. Sample grant conditions are included in Attachment 3.

1. Continuing Requirements

All requirements promulgated through statute, guidance, or regulations issued by EPA for the implementation of the CWSRF and DWSRF programs will remain in effect (e.g., Davis-Bacon requirements) unless such requirements are inconsistent with the statutory requirements of the DRAA, conditions of the capitalization grant agreement, or the requirements contained in this document. For example, recipients of EPA financial assistance are required to comply with nondiscrimination statutes, including Title VI of the Civil Rights Act of 1964, and EPA's implementing regulations found at 40 C.F.R. Parts 5 and 7. Specifically, in accepting the assistance agreement, the recipient acknowledges it has an affirmative obligation to implement effective nondiscrimination compliance programs, including those that assure compliance with Title VI, and to ensure that its actions do not involve discriminatory treatment or effects even when facially neutral. The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented, or to otherwise demonstrate how it is meeting its nondiscrimination obligations.

For the most up-to-date program requirements, please refer to the memo issued on March 2, 2012, entitled, "Procedures for Implementing Certain Provisions of EPA's Fiscal Year 2012 Appropriations Affecting the Clean Water (CWSRF) and Drinking Water State Revolving Fund (DWSRF) Programs."

2. New Requirements

a. Cash Draws

Due to requirements for expedited spending of DRAA funds and increased oversight, EPA requires that all cash draws for projects funded with DRAA funds be drawn from the grant award made available by the DRAA in proportion to the DRAA funding in the overall assistance agreement. In other words, projects funded by the DRAA should not expend funds from other open SRF grants, and projects funded in part by the DRAA should expend funds from other open grants only to the extent and proportion to which other grants are identified as a source of partial funding towards the project.

b. Transfers

Any State that chooses to transfer funds between either of the CWSRF and DWSRF capitalization grants received under the DRAA must state their intention to do so in their IUP.

c. Additional Subsidization

The DRAA contains the following requirement:

“Provided further, That notwithstanding the requirements of section 603(d) of the Federal Water Pollution Control Act, for the funds appropriated herein, each State shall use not less than 20 percent but not more than 30 percent of the amount of its capitalization grants to provide additional subsidization to eligible recipients in the form of forgiveness of principal, negative interest loans or grants or any combination of these:”

To receive a CWSRF or DWSRF grant award, each State must agree to use at least 20%, but no more than 30% of its grant for the above purposes, as described in further detail in V.B. below.

d. Eligible Uses of Funds

The DRAA contains the following two provisions:

“Provided, That notwithstanding section 604(a) of the Federal Water Pollution Control Act and section 1452(a)(1)(D) of the Safe Drinking Water Act, funds appropriated herein shall be provided to States in EPA Region 2 for wastewater and drinking water treatment works and facilities impacted by Hurricane Sandy:

“Provided further, That the funds appropriated herein shall only be used for eligible projects whose purpose is to reduce flood damage risk and vulnerability or to enhance resiliency to rapid hydrologic change or a natural disaster at treatment works as defined by section 212 of the Federal Water Pollution Control Act or any eligible facilities under section 1452 of the Safe Drinking Water Act, and for other eligible tasks at such treatment works or facilities necessary to further such purposes:”

This section defines the scope of eligible activities authorized under the DRAA by restricting the eligible uses of both the CWSRF and DWSRF programs. For an activity to be eligible under the DRAA, it must meet the following criteria:

A project that is otherwise SRF eligible and serves one of the following purposes:

- Facilitates preparation for, adaptation to, or recovery from climate change or any other type of natural disaster for a wastewater or drinking water treatment work or related facility;
- Reduces the likelihood of physical damage to a treatment works or drinking water system;
- Reduces a treatment works' or water system's susceptibility to physical damage or ancillary impacts caused by floods; or,

- Facilitates preparation for, adaptation to, or recovery from a sudden, unplanned change in the amount of and movement of water in proximity to a treatment works or water system.

A detailed list of examples of eligible activities can be found in Attachment 1. Please note that if a State wishes to fund an activity not specifically listed in Attachment 1, an explanation of how the project addresses the aforementioned purposes must be included in the State's Intended Use Plan.

e. Eligible Entities

The DRAA contains the following provision:

“Provided, That notwithstanding section 604(a) of the Federal Water Pollution Control Act and section 1452(a)(1)(D) of the Safe Drinking Water Act, funds appropriated herein shall be provided to States in EPA Region 2 for wastewater and drinking water treatment works and facilities impacted by Hurricane Sandy:”

The section defines the scope of entities eligible to receive funding authorized under the DRAA. An eligible entity is any otherwise SRF eligible entity, within a county of the declared disaster that was damaged or had a loss or disruption of a mission-essential function, including loss of function where there was potential impact to public health. Maps of the declared disaster areas can be found at: <http://www.fema.gov/disaster/4085> (for New York) and <http://www.fema.gov/disaster/4086> (for New Jersey).

f. Completion of IUP

For those States that apply for a conditional grant award, a condition will be included in the grant stating that funds may not be drawn until an IUP has completed the review process and is approved by the Region. States must submit an IUP that has completed the public review process and has EPA approval before funds may be drawn. For partial grants, an amended IUP including projects in an amount equal to the remaining funds available to the State under the DRAA must be submitted to EPA before the grant is amended to award the remaining funds.

g. Reporting

States will be required to report on the uses of funds provided by the DRAA. The CWSRF Benefits Reporting System (CBR) and the Drinking Water Project Benefit Reporting System (PBR), will be used to gather information regarding key project characteristics and milestones, as shown in Attachment 5. EPA recommends that project data be entered into the reporting systems as soon as agreements are signed with assistance recipients.

h. Use of FEMA Flood Hazard Data

States will be required to comply with a new grant condition that requires States, where applicable, to use FEMA flood hazard risk data to guide decision-making and to determine elevation and reconstruction requirements. The new grant condition can be found in Attachment 3.

V. PROGRAM IMPLEMENTATION

A. ACCELERATED EXPENDITURES

1. Deadline for Expenditures

The DRAA contains the following at section 904(c):

“Funds for grants provided by this division shall be expended by the grantees within the 24-month period following the agency's obligation of funds for the grant, unless, in accordance with guidance to be issued by the Director of OMB, the Director waives this requirement for a particular grant program and submits a written justification for such waiver to the Committees on Appropriations of the House of Representatives and the Senate. In the case of such grants, the agency shall include a term in the grant that requires the grantee to return to the agency any funds not expended within the 24-month period.”

The purpose of this language is to ensure that all funds appropriated under the DRAA are not only committed to projects through binding commitments or executed loan agreements, but that all DRAA funds have been used within 24 months of the grant award to the State. In order to meet the requirements of the DRAA, all funds must be expended by the end of the 24-month period following grant award.

Based on this deadline, States are advised to include appropriate conditions that may include termination, in their agreements with local recipients. If the State fails to meet the 24-month deadline in the DRAA, EPA must deobligate the funds from the State. Therefore, it is imperative that States have complementary protective provisions in their agreements with local recipients.

In the event that OMB grants a waiver to the SRF programs through the use of its waiver authority outlined in the quoted language above, further information will be provided.

2. Deobligation of Funds

The Administrator must deobligate any funds that do not meet the required deadline for expenditure, unless the deadline is waived by OMB. Decisions regarding reallocation or reobligation will be made at a later time, if necessary.

B. MANAGEMENT OF ADDITIONAL SUBSIDIZATION

The DRAA contains the following requirement for the use of CWSRF and DWSRF funds:

“Provided further, That notwithstanding the requirements of section 603(d) of the Federal Water Pollution Control Act, for the funds appropriated herein, each State shall use not less than 20 percent but not more than 30 percent of the amount of its capitalization grants to provide additional subsidization to eligible recipients in the form

of forgiveness of principal, negative interest loans or grants or any combination of these.”

1. Eligible Assistance Recipients

Any eligible recipient of CWSRF or DWSRF assistance as defined in IV.A.2.e. is eligible for additional subsidization. States are encouraged to consider the needs of disadvantaged communities when considering the distribution of additional subsidization.

2. Eligible Activities

Any activity eligible for assistance from a CWSRF or DWSRF, subject to the restrictions of IV.A.2.d., is eligible for additional subsidization. A list of example activities is included as Attachment 1.

3. Eligible Forms of Additional Subsidization

a. Principal Forgiveness

A State CWSRF or DWSRF may provide assistance in the form of principal forgiveness. Principal forgiveness must be granted at the execution of the loan agreement for the amount forgiven to be counted against the total required to be provided as additional subsidization. The amount counted against the requirement is the amount of principal forgiven.

b. Negative-Interest Loans

A State CWSRF or DWSRF may provide assistance in the form of negative-interest loans. A negative-interest loan is a loan for which the rate of interest is such that the total payments over the life of the loan are less than the principal of the loan. The negative-interest rate must be included in the loan agreement at the time of execution to be counted against the total required to be provided as additional subsidization. The amount counted against the requirement is the difference between the principal of the loan and the total payments expected over the life of the loan.

c. Grants

A State CWSRF or DWSRF may provide assistance in the form of a grant. The grant must be provided at the time of assistance agreement execution to be counted against the total required to be provided as additional subsidization. The amount counted against the requirement is the total grant amount included in the agreement. It should be noted that grant recipients under this provision are considered “subgrantees” for the purposes of EPA’s grant regulations as detailed below in section V.B.5.

4. Calculation of Additional Subsidization Provided

Each State must calculate its use of additional subsidization in the manner described in V.B.3. above. Within 1 year of the award of the capitalization grant, each State must show that it has committed at least 20 percent, but not more than 30 percent of its award amount in the form of additional subsidization.

5. Laws, Regulations and Requirements for Assistance Agreements that are in the Form of Grants

The DRAA contains language that allows State CWSRF or DWSRF programs to provide grants to eligible recipients. A listing of the Federal Laws and Executive Orders that apply to all EPA grants, including those authorized by the DRAA, is contained in Attachment 4. These authorities apply to all projects funded in whole or in part by a grant authorized by the DRAA. Some of the authorities only apply to grants that include construction. A more detailed description of the Federal laws, Executive Orders, OMB Circulars and their implementing regulations is available through the OGD Grants Intranet website at <http://intranet.epa.gov/ogd/>.

The regulations at 40 CFR Part 31 apply to grants or subgrants and cooperative agreements awarded to State and local (including tribal) governments. The regulations at 40 CFR Part 30 apply to grants with nonprofit organizations and with non-governmental for-profit entities. Note that the latter grants cannot be made with DWSRF funds except to eligible public water systems, because only certain public water systems are eligible recipients of DWSRF project assistance that can be provided under the DRAA.

OGD added a section to EPA's Assistance Administration Manual 5700 outlining Agency policy on the award and management of subawards, "*Policy on Subawards Under Assistance Agreement*". The policy applies to subaward work under awards and supplemental amendments issued after May 15, 2007. The policy clarifies subrecipient eligibility, addresses subaward competition requirements, and provides guidance regarding the distinctions between procurement contracts and subawards. It also includes special considerations regarding subawards to 501(c)(4) and for-profit organizations, and subawards to foreign/international organizations or any entity performing work in a foreign country. The policy is primarily implemented through an administrative National Term and Condition for Subawards. The subaward policy can be found at <http://intranet.epa.gov/rmpolicy/ads/updates.htm> (under Update 3).

6. Grants to Non-Profit Organizations

Funds appropriated under the DRAA can, under certain circumstances, be used for grants to nonprofit organizations. Such grants to nonprofit organizations cannot be made with DWSRF funds except to eligible public water systems, because only certain public water systems are eligible recipients of DWSRF project assistance that can be provided under the DRAA. However, grants can be made with CWSRF funds.

However, grants cannot be awarded to a nonprofit organization classified by the Internal Revenue Service as a 501(c)(4) organization unless that organization certifies that it will not engage in

lobbying activities, even with their own funds (see Section 18 of the Lobbying Disclosure Act, 2 U.S.C.A § 1611). The rationale for any award to a nonprofit organization should be clearly explained, suitably documented, and included in the project file.

VI. ALLOTMENT OF FUNDS

The DRAA contains the following provision:

“Provided, That notwithstanding section 604(a) of the Federal Water Pollution Control Act and section 1452(a)(1)(D) of the Safe Drinking Water Act, funds appropriated herein shall be provided to States in EPA Region 2 for wastewater and drinking water treatment works and facilities impacted by Hurricane Sandy.”

Unlike typical appropriations, Congress specifically exempted EPA from the requirement to use the formulas contained in the Clean Water Act and the Safe Drinking Water Act when allocating funds to the States. Furthermore, the funds are restricted to those States in Region 2 with wastewater and drinking water treatment works and facilities impacted by Hurricane Sandy. EPA has determined that funds will be allotted in proportion to the populations of the impacted counties in New York and New Jersey, as defined by the Federal Emergency Management Agency. The population ratio aligns with preliminary needs estimates submitted by both New York and New Jersey. A chart containing specific percentages and allotment amounts can be found in Appendix 2.

ACTIONS

If you have not already done so, you and your staff should initiate discussions with the States to ensure proper planning is taking place to implement the DRAA. Additionally, the States should be provided with a copy of this memorandum prior to grant award to ensure that the applicant is on notice of the applicable statutory requirements before the grant is awarded.

If you have any questions concerning the contents of this memorandum, you may contact me, or have your staff contact George Ames, Chief, State Revolving Fund Branch, Municipal Support Division, at (202) 564-0661, or Charles Job, Chief, Infrastructure Branch, Drinking Water Protection Division, at (202) 564-3941.

Attachments

ATTACHMENT 1

Projects Eligible under the DRAA

Clean Water SRF List of Eligible Projects

If a project is not specifically listed below, an explanation of how the project addresses the purposes outlined in Section IV.2.d. of the Guidance must be included in the State's Intended Use Plan.

I. Projects that prevent interruption of collection system operation in the event of a flood or natural disaster, including but not limited to:

- a. Physical "hardening" or waterproofing of pumps and electrical equipment at pump stations and other components of collection systems (including storage facilities and associated equipment) through upgrade or replacement, including:
 - Installation of submersible pumps
 - Waterproofing electrical components (e.g. pump motors)
 - Waterproofing circuitry
 - Dry floodproofing/sealing of structure to prevent floodwater penetration
 - Installation/construction of wind resistant features (e.g. wind resistant roofing materials, wind-damage resistant windows, storm shutters)
- b. Relocation of pump stations or other collection system facilities to less flood prone areas
- c. Installation of physical barriers around pump stations or other collection system facilities (e.g. levies or dykes)
- d. Installation of back-up generators or alternative energy sources (including switch boxes) that service pump stations or other collection system facilities
- e. Correction of significant infiltration and inflow problems that increase the likelihood of sewer backups or flooding of a treatment works
- f. Separation of combined sewers that will result in a reduced risk of flooding of the collections system and/or treatment works
- g. Installation/construction of redundant collection system components and equipment
- h. Regionalization project that enables diversion of wastewater flows to an alternate system for emergency wastewater collection and treatment services
- i. SCADA system projects to allow remote or multiple system operation locations
- j. Replacement of damaged equipment with more energy efficient equipment
- k. Construction or installation of flood attenuation, diversion, and retention infrastructure within or beyond the boundaries of a treatment works that protects the collection system
 - Green infrastructure that reduces flood risk by reducing stormwater runoff, including permeable pavement, green roofs and walls, bioretention infrastructure (e.g. constructed wetlands, detention basins, riparian buffers, or stormwater tree trenches/pits/boxes), stream daylighting, and downspout disconnection
 - Natural systems, and features thereof, capable of mitigating a storm surge, such as barrier beach and dune systems, tidal wetlands, living shorelines, and natural berms/levees
 - Floodwater pumping systems

- Flood water channels/culverts, physical barriers, and retention infrastructure

II. Projects that prevent floodwaters from entering a treatment works, including but not limited to:

- a. Installation of physical barriers around a facility (e.g. levies or dykes around the facility to prevent flooding)
- b. Relocation of facilities to less flood prone areas
- c. Construction or installation of flood attenuation, diversion, and retention infrastructure within or beyond the boundaries of a treatment works that protects the treatment works
 - Green infrastructure that reduces the risk of flooding by reducing stormwater runoff, including permeable pavement, green roofs and walls, bioretention infrastructure (e.g. constructed wetlands, detention basins, riparian buffers, or stormwater tree trenches/pits/boxes), stream daylighting, and downspout disconnection
 - Natural systems, and features thereof, capable of mitigating a storm surge, such as barrier beach and dune systems, tidal wetlands, living shorelines, and natural berms/levees
 - Floodwater pumping systems
 - Flood water channels/culverts, physical barriers, and retention infrastructure

III. Projects that maintain the operation of a treatment works and the integrity of the treatment train in the event of a flood or natural disaster, including but not limited to:

- a. Physical “hardening” or waterproofing of pumps and electrical equipment at treatment works through upgrade or replacement, including:
 - Installation of submersible pumps
 - Waterproofing electrical components (e.g. pump motors)
 - Waterproofing circuitry
 - Dry floodproofing/sealing of structure to prevent floodwater penetration
 - Installation/construction of wind resistant features (e.g. wind resistant roofing materials, wind-damage resistant windows, storm shutters)
- b. Relocation of critical equipment to less flood prone areas of a facility and/or elevation of critical structures
- c. Installation of physical barriers around individual treatment processes
 - Flood walls around treatment tanks
 - Elevated walls or capping of treatment tanks
- d. Installation of larger capacity storage tanks
 - Installation of larger capacity chemical storage tanks for continued treatment in absence of delivery service
 - Installation of larger capacity fuel storage tanks for back-up generators
 - Construction of storage tanks at treatment works to store overflows for future treatment
- e. Installation of back-up energy supply or alternative energy sources and/or hardening of existing connections to the power grid
- f. Installation/construction of redundant components and equipment
- g. Replacement of damaged equipment with more energy efficient equipment
- h. SCADA system projects to allow remote or multiple system operation locations

IV. Projects that preserve and protect treatment works equipment in the event of a flood or natural disaster, including but not limited to:

- a. Relocation of critical equipment to less flood prone areas of a facility and/or elevation of critical structures
- b. Prevention of saltwater damage to materials and equipment
 - Installation of salt water resistant chemical storage tanks
 - Installation of salt water resistant fuel storage tanks
 - Installation of salt water resistant equipment and appurtenances

V. Planning projects that assess a treatment works' vulnerability to flood damage or that analyze the best approach to integrate system and community sustainability/resiliency priorities in the face of a variety of uncertain futures including natural disasters and more frequent and intense extreme weather events, provided the planning work is reasonably expected to result in a capital project, including but not limited to:

- a. Risk/vulnerability assessments considering recent floodplain maps and projected sea level rise
- b. Alternatives analysis
- c. Asset Management Plans
- d. Emergency Preparedness, Response, and Recovery Plans

Drinking Water SRF List of Eligible Projects

If a project is not specifically listed below, an explanation of how the project addresses the purposes outlined in Section IV.2.d. of the Guidance must be included in the State's Intended Use Plan.

I. Projects that prevent interruption of water distribution system operation in the event of a flood or natural disaster, including but not limited to:

- a. Physical "hardening" or waterproofing of pumps and electrical equipment at pump stations and other components of distribution systems (including storage facilities and associated equipment) through upgrade or replacement, including:
 - Waterproofing electrical components (e.g. pump motors)
 - Waterproofing circuitry
 - Dry floodproofing/sealing of structure to prevent floodwater penetration
 - Installation/construction of wind resistant features (e.g. wind resistant roofing materials, wind-damage-resistant windows, storm shutters)
- b. Relocation of pump stations or other distribution system facilities to less flood prone areas
- c. Installation of physical barriers around pump stations or other distribution system facilities (e.g. levies or dykes)
- d. Installation of back-up generators or alternative energy sources (including switch boxes) that service pump stations or other distribution system facilities
- e. Installation/construction of redundant distribution system components and equipment
- f. Construction of interconnections with neighboring water systems which could provide an emergency water supply
- g. SCADA system projects to allow remote or multiple system operation locations
- h. Replacement of damaged equipment with more energy efficient equipment
- i. Construction or installation of flood attenuation, diversion, and retention infrastructure associated with an otherwise eligible drinking water project that protects the distribution system
 - Green infrastructure that reduces the risk of flooding by reducing stormwater runoff, including permeable pavement, green roofs and walls, bioretention infrastructure (e.g. constructed wetlands, detention basins, riparian buffers, or stormwater tree trenches/pits/boxes), stream daylighting, and downspout disconnection
 - Natural systems, and features thereof, capable of mitigating a storm surge, such as barrier beach and dune systems, tidal wetlands, living shorelines, and natural berms/levees
 - Floodwater pumping systems
 - Flood water channels/culverts, physical barriers, and retention infrastructure

II. Projects that prevent floodwaters from entering a treatment plant or well house, including but not limited to:

- a. Installation of physical barriers around a facility (e.g. levies or dykes around the facility to prevent flooding)
- b. Relocation of facilities to less flood prone areas

- c. Construction or installation of flood attenuation, diversion, and retention infrastructure associated with an otherwise eligible drinking water project that protects the treatment plant
 - Green infrastructure that reduces the risk of flooding by reducing stormwater runoff, including permeable pavement, green roofs and walls, bioretention infrastructure (e.g. constructed wetlands, detention basins, riparian buffers, or stormwater tree trenches/pits/boxes), stream daylighting, and downspout disconnection
 - Natural systems, and features thereof, capable of mitigating a storm surge, such as barrier beach and dune systems, tidal wetlands, living shorelines, and natural berms/levees
 - Floodwater pumping systems
 - Flood water channels/culverts, physical barriers, and retention infrastructure

III. Projects that maintain the operation of a drinking water treatment plant, intake or well in the event of a flood or natural disaster, including but not limited to:

- a. Physical “hardening” or waterproofing of pumps and electrical equipment at pump stations and other components of distribution systems (including storage facilities and associated equipment) through upgrade or replacement, including:
 - Waterproofing electrical components (e.g. pump motors)
 - Waterproofing circuitry
 - Dry floodproofing/sealing of structure to prevent floodwater penetration
 - Installation/construction of wind resistant features (e.g. wind resistant roofing materials, wind-damage-resistant windows, storm shutters)
- b. Relocation of critical equipment to less flood prone areas of a facility and/or elevation of critical structures
- c. Installation of physical barriers around individual treatment processes
 - Flood walls around treatment tanks
 - Elevated walls or capping of treatment tanks (e.g. tanks, vaults)
- d. Installation of larger capacity storage tanks
 - Installation of larger capacity chemical storage tanks for continued treatment in absence of delivery service
 - Installation of larger capacity fuel storage tanks for back-up generators
 - Installation of larger capacity water storage facilities (e.g. raw water reservoirs, backwash tanks, contact basins)
- e. Installation of back-up energy supply or alternative energy sources and/or hardening of existing connections to the power grid
- f. Installation/construction of redundant distribution system components and equipment
- g. Replacement of damaged equipment with more energy efficient equipment
- h. SCADA system projects to allow remote or multiple system operation locations

IV. Projects that preserve and protect water system equipment in the event of a flood or natural disaster, including but not limited to:

- a. Relocation of critical equipment to less flood prone areas of a facility and/or elevation of critical structure
- b. Prevention of saltwater damage to materials and equipment
 - Installation of salt water resistant chemical storage tanks

- Installation of salt water resistant fuel storage tanks
- Installation of salt water resistant equipment and appurtenances

V. Planning projects that assess a treatment works' vulnerability to flood damage or that analyze the best approach to integrate system and community sustainability/resiliency priorities in the face of a variety of uncertain futures including natural disasters and more frequent and intense extreme weather events, provided the planning work is reasonably expected to result in a capital project, including but not limited to:

- a. Risk/vulnerability assessments considering recent floodplain maps and projected sea level rise
- b. Alternatives analysis
- c. Asset Management Plans
- d. Emergency Preparedness, Response, and Recovery Plans

ATTACHMENT 2

Sandy Supplemental SRF Allotments

Allotted by Population Impacted by Hurricane Sandy⁴

Eligible States	Total Impacted Population	Allotment Percentage	CWSRF Allotment	DWSRF Allotment
New Jersey	8,791,894	40.3%	\$191,105,958	\$38,221,192
New York	13,050,599	59.7%	\$283,102,375	\$56,620,475
Total	21,842,493	100.0%	\$474,208,333 ⁵	\$94,841,667 ⁶

⁴ Population impacted is calculated by using population data from the most recent U.S. Census for those counties with FEMA disaster declarations due to Hurricane Sandy.

⁵ Reflects a 5% reduction due to sequestration (including a 5% reduction for management and operations).

⁶ Reflects a 5% reduction due to sequestration (including a 5% reduction for management and operations).

ATTACHMENT 3

Sandy Supplemental Specific Additional Required Grant Conditions

1. The recipient agrees to expend funds obligated under this agreement within twenty-four (24) months from the date of obligation. The recipient agrees to return to the agency any funds not expended within the 24-month period following obligation. This requirement may be waived or the time period for expending funds may be extended by the Office of Management and Budget (OMB).
2. The recipient agrees to use not less than 20% nor more than 30% of the funds provided by this grant to provide additional subsidization in the form of principal forgiveness, negative interest rate loans, or grants in accordance with P.L. 113-2.
3. The recipient agrees to manage and expend all funds transferred between the CWSRF and the DWSRF included in this IUP or any amendments thereto consistent with the requirements of P.L. 113-2.
4. [DWSRF only, as applicable] The recipient agrees that for all funds for DWSRF set-aside uses other than any funds in the 4% set-aside used for administration, a contract or plan committing these funds will be in effect not later than twenty-four (24) months from the date of obligation of funds to this agreement.
5. The recipient agrees to enter into sub-recipient agreements only with entities that are eligible to receive funds under P.L. 113-2. Eligible entities are wastewater and drinking water treatment works and facilities impacted by Hurricane Sandy.
6. The recipient agrees that all funds, less the amount (capped at 4% of the grant award) used for administrative purposes, shall be used only for projects that are eligible to be funded under P.L. 113-2. Eligible projects are those whose purpose is to reduce flood damage risk and vulnerability or to enhance resiliency to rapid hydrologic change or a natural disaster at treatment works as defined by section 212 of the Federal Water Pollution Control Act [or any eligible facilities under section 1452 of the Safe Drinking Water Act] and for other eligible tasks at such facilities necessary to further such purposes.
7. Grantees shall use the best available flood hazard data identified by the Federal Emergency Management Agency, where applicable, to guide decision-making. Executive Order 11988 on floodplain management requires that federal agencies use the best available flood data to determine the location of projects and activities. In addition, best available flood risk data should be used to determine the elevation and reconstruction requirements. If the project or activity is located in a floodplain, it must should be designed using the best available data plus one foot as the baseline standard for elevation, if elevation is possible. If higher elevations are required by State or locally adopted code or standards, those higher standards would apply. With prior EPA approval, instead of elevating non-residential structures, grantees may, where appropriate, design and construct the project such that below the flood level, using the best

available flood data, the structural components have the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy or higher standards required by State and local codes. What is considered best available data depends on the flood hazard data adopted by the community or draft or preliminary flood hazard data that may be identified when the base flood elevation has increased. Improved flood hazard data ensures a stronger recovery. This term and condition shall apply whenever practicable and appropriate for reducing the risk of flood damage. Projects and activities to which this term and condition may not apply include but are not limited to subterranean sewer lines and drains, water permeable structures, and site assessment or remediation of underground storage tank releases.

8. Civil Rights Obligations (this is a new condition applicable to all federal grants)

GENERAL

This term and condition incorporates by reference the signed assurance provided by the recipient's authorized representative on: 1) EPA Form 4700-4, "Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance"; and 2) Standard Form 424B or Standard Form 424D, as applicable. These assurances and this term and condition obligate the recipient to comply fully with applicable civil rights statutes and implementing EPA regulations.

STATUTORY REQUIREMENTS

In carrying out this agreement, the recipient must comply with:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP), by entities receiving Federal financial assistance;
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance; and
- The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving Federal financial assistance.

If the recipient is conducting an education program under this agreement, it must also comply with:

- Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities operated by entities receiving Federal financial assistance.

If this agreement is funded with financial assistance under the Clean Water Act (CWA), the recipient must also comply with:

- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex in CWA-funded programs or activities.

REGULATORY REQUIREMENTS

The recipient agrees to comply with all applicable EPA civil rights regulations, including:

- For Title IX obligations, 40 C.F.R. Part 5; and
- For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, 40 C.F.R. Part 7.
- As noted on the EPA Form 4700-4 signed by the recipient's authorized representative, these regulations establish specific requirements including maintaining compliance information, establishing grievance procedures, designating a Civil Rights Coordinator, and providing notices of non-discrimination.

TITLE VI – LEP, Public Participation and Affirmative Compliance Obligation

- As a recipient of EPA financial assistance, you are required by Title VI of the Civil Rights Act to provide meaningful access to LEP individuals. In implementing that requirement, the recipient agrees to use as a guide the Office of Civil Rights (OCR) document entitled "*Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons.*" The guidance can be found at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004_register&docid=fr25jn04-79.pdf
- If the recipient is administering permitting programs under this agreement, the recipient agrees to use as a guide OCR's Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs. The Guidance can be found at <http://edocket.access.gpo.gov/2006/pdf/06-2691.pdf>.
- In signing this assistance agreement, the recipient acknowledges it has an affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.

ATTACHMENT 4

Listing of Cross-Cutting Federal Authorities for Assistance Loans and Subgrants Authorized Under the DRRA

Environmental Authorities

- Archeological and Historic Preservation Act, Pub. L. 93-291, as amended
- Clean Air Act, Pub. L. 95-95, as amended
- Clean Water Act, Titles III, IV and V, Pub. L. 92-500, as amended
- Coastal Barrier Resources Act, Pub. L. 97-348
- Coastal Zone Management Act, Pub. L. 92-583, as amended
- Endangered Species Act, Pub. L. 93-205, as amended
- Environmental Justice, Executive Order 12898
- Flood Plain Management, Executive Order 11988 as amended by Executive Order 12148
- Protection of Wetlands, Executive Order 11990 as amended by Executive Order 12608
- Farmland Protection Policy Act, Pub. L. 97-98
- Fish and Wildlife Coordination Act, Pub. L. 85-624, as amended
- Magnuson-Stevens Fishery Conservation and Management Act, Pub. L. 94-265
- National Historic Preservation Act, Pub. L. 89-655, as amended
- Safe Drinking Water Act, Pub. L. 93-523, as amended
- Wild and Scenic Rivers Act, Pub. L. 90-54, as amended

Economic and Miscellaneous Authorities

- Debarment and Suspension, Executive Order 12549
- Demonstration Cities and Metropolitan Development Act, Pub. L. 89 -754, as amended, and Executive Order 12372
- Drug-Free Workplace Act, Pub. L. 100-690
- New Restrictions on Lobbying, Section 319 of Pub. L. 101-121
- Prohibitions relating to violations of the Clean Water Act or Clean Air Act with respect to Federal contracts, grants, or loans under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, and Executive Order 11738
- Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended

Civil Rights, Nondiscrimination, Equal Employment Opportunity Authorities

- Age Discrimination Act, Pub. L. 94-135
- Equal Employment Opportunity, Executive Order 11246
- Section 13 of the Clean Water Act, Pub. L. 92-500
- Section 504 of the Rehabilitation Act, Pub. L. 93-112 supplemented by Executive Orders 11914 and 11250
- Title VI of the Civil Rights Act, Pub. L. 88-352

Disadvantaged Business Enterprise Authorities

- Participation by Disadvantaged Business Enterprises in Procurement Under Environmental Protection Agency (EPA) Financial Assistance Agreements

ATTACHMENT 5

Required Reporting Fields

CWSRF Project Benefits Reporting Data Elements—Hurricane Sandy Supplemental Additions in Bold

Date Fields	Required/Optional
Borrower	Required
Loan Execution Date	Required
Loan Tracking #	Required
Other State Tracking Number	Optional
Assistance Type	Required
Effective Interest Rate	Required
Incremental Funding	Optional
Phase #	Optional
Original Tracking #	Optional
Repayment Period	Required
Total Assistance (Initial Amount)	Required
Total Assistance (Final Amount)	Required
Final Amount (checkbox)	Required
Additional Subsidy Required	Required ARRA – 2013 and Hurricane Sandy Appropriation
Grant Amount \$	Required ARRA – 2013 and Hurricane Sandy Appropriation
Negative Interest Amount \$	Required ARRA – 2013 and Hurricane Sandy Appropriation
Principal Forgiveness Amount \$	Required ARRA – 2013 and Hurricane Sandy Appropriation
Funding is complete and funded amount has changed from initial amount	Required ARRA – 2013 and Hurricane Sandy Appropriation
Based on states criteria, could the borrower have afforded the project without additional subsidy provided	Required ARRA – 2013 and Hurricane Sandy Appropriation
% Funded by CWSRF	Required
IUP Year	Optional
Same Environmental Results checkbox	Optional
CWSRF Total From All Projects	Required
Check if loan funds one or more NPS project(s)	Required
Total NPS projects	Required
CW Needs Survey Number	Optional
If applicable, the number of NPS projects	Required
Assign Assistance to Federal Grants	Required
Project Description	Required
Project Start Date	Required
Project Completion Date	Required

Facility Name	Required
Population Served By the Project	Required
Population Served By the System	Required
Borrower Population	Optional
Wastewater Volume (Design Flow) for the project	Required
Wastewater Volume (Design Flow) for the system	Required
Wastewater Volume (Design Flow) eliminated/conserved by this project	Required
Needs Categories	Required
Discharge Affected	Required
NPDES Permit Number/No NPDES Permit	Required
Other Permit Type	Optional
Other Permit Number	Optional
Waterbody Name (Primary Impacted)	Required
Waterbody ID (Primary Impacted)	Optional
Waterbody Name (Other Impacted)	Optional
Waterbody ID (Other Impacted)	Optional
Receiving Waterbody	Required
State Waterbody ID	Optional
Project Location (lat/long)	Optional
Counties Served Primary	Optional
Other County 1	Optional
Other County 2	Optional
Address Line 1	Required
Address Line 2	Optional
City, State, Zip Code	Required
Congressional District	Optional
Project Includes Green Project Reserve	Required
Green Infrastructure	Required if Green
Energy Efficiency Amount	Required if Green
Water Efficiency Amount	Required if Green
Green Innovative Amount	Required if Green
Amount of Additional Subsidy Provided used to funds GPR.	Required ARRA – 2013 and Hurricane Sandy Appropriation
Contributes to Water Quality...Improvement/Maintenance	Required
Allows the System to... Achieve Compliance/Maintain Compliance	Required
Affected Waterbody is... Impaired/Meeting Standards	Required
Allows the System to Address... existing TMDL/Projected TMDL/Watershed Management Plan	Required
Designated Surface Water Uses	Required

Other Uses and Outcomes	Optional
Other Project Comments	Optional
Monthly Outlay by Project	Required for Hurricane Sandy Supplemental
Monthly Disbursement by Project	Required for Hurricane Sandy Supplemental
Hurricane Sandy Supplemental Specific Other Funding Sources	Required for Hurricane Sandy Supplemental
Date All Planning Complete	Required for Hurricane Sandy Supplemental
Date First Construction Contract Signed	Required for Hurricane Sandy Supplemental
Date All Construction Contracts Signed	Required for Hurricane Sandy Supplemental
Disaster Impact Category	Required for Hurricane Sandy Supplemental
Resiliency Category	Required for Hurricane Sandy Supplemental

DWSRF Project Benefits Reporting Data Elements—Hurricane Sandy Supplemental Additions in Bold

Date Fields	Required/Optional
Borrower	Required
Loan Execution Date	Required
PWSID Number	Required
Loan Tracking Number	Required
Other State Tracking Number	Optional
Assistance Type	Required
Loan Interest Rate	Required
State Market Interest Rate	Optional
Loan Term	Optional
Incremental Funding	Optional
Phase #	Optional
Health Benefits	Optional
Total Assistance (initial Amount)	Required
Total Assistance (Final Amount)	Required
Final Amount (checkbox)	Required
Additional Subsidy Required	Required ARRA – 2013 and Hurricane Sandy Appropriation
Grant Amount \$	Required ARRA – 2013 and Hurricane Sandy Appropriation
Negative Interest Amount \$	Required ARRA – 2013 and Hurricane Sandy Appropriation
Principal Forgiveness Amount \$	Required ARRA – 2013 and Hurricane Sandy Appropriation
Net Loan Amount	Optional
Funding is complete and funded amount has changed from initial amount	Required ARRA – 2013 and Hurricane Sandy Appropriation
Based on states criteria, could the borrower have afforded the project without additional subsidy	Required ARRA – 2013 and Hurricane Sandy Appropriation

provided	
% Funded by the DWSRF	Optional
Disadvantaged Assistance	Required
IUP Year	Optional
Assign Assistance to Federal Grants	Required
System Name	Required
System Type	Required
Ownership Type	Optional
Age of System	Optional
Project Name	Required
Project Description	Required
Project Purpose	Required
Number of Projects Funded	Required
Public Health Impact Description	Required
Other Project Comments	Optional
Project Start Date	Required
Project Completion Date	Required
Project Consolidates Systems	Required
Number of Systems Eliminated	Optional
Project Creates New Systems	Required
Population Served by the Project	Optional
Population Served by the System	Required
Borrower Population	Optional
Number of Connections by the Project	Optional
Number of Connections by the System	Optional
Counties Served Primary	Optional
Other County 1	Optional
Other County 2	Optional
Address Line 1	Required
Address Line 2	Optional
City, State, Zip Code	Required
Congressional District	Optional
Project Includes Green Project Reserve	Required
Green Infrastructure	Required if Green
Energy Efficiency Amount	Required if Green
Water Efficiency Amount	Required if Green
Green Innovative Amount	Required if Green
Amount of Additional Subsidy Provided used to funds GPR.	Required ARRA – 2013 and Hurricane Sandy Appropriation
DWNIMS Project Categories (Transmission, Treatment, etc...)	Requirement
Compliance Objectives	Optional
State Set-Aside Information Recipient	Required
State Set-Aside Funding Amount	Required

State Set-Aside Funding Type	Required
Grant Number	Required
Grant Award Date	Required
State Organization Receiving Grant	Required
Monthly Outlay by Project	Required for Hurricane Sandy Supplemental
Monthly Disbursement by Project	Required for Hurricane Sandy Supplemental
Hurricane Sandy Supplemental Specific Other Funding Sources	Required for Hurricane Sandy Supplemental
Date All Planning Complete	Required for Hurricane Sandy Supplemental
Date First Construction Contract Signed	Required for Hurricane Sandy Supplemental
Date All Construction Contracts Signed	Required for Hurricane Sandy Supplemental
Disaster Impact Category	Required for Hurricane Sandy Supplemental
Resiliency Category	Required for Hurricane Sandy Supplemental