

## **CLEAN WATER STATE REVOLVING FUND (CWSRF) - ZERO PERCENT INTEREST RATE LOANS**

### Questions and Answers

#### ***What is the Clean Water State Revolving Fund (CWSRF)?***

The CWSRF is a federal-state financing mechanism that subsidizes water quality improvement projects that are undertaken by local governments. Many cities and towns in Massachusetts have used CWSRF to finance wastewater management planning since the program began in 1991. CWSRF loans have a standard term of twenty years and an interest rate of 2%.

#### ***How does a community access CWSRF financing?***

The CWSRF is administered by MassDEP, which conducts an annual project solicitation each summer. The solicitation is a competitive process under which the Department receives project proposals, identifies the most critical projects in terms of environmental and public health and ranks the proposals accordingly.

#### ***Which CWSRF projects are eligible for the zero percent interest rate?***

The statute that provided the zero interest rate included five specific criteria that a community must meet in order to be eligible for the zero percent rate. The criteria are:

- 1) The project is primarily intended to remediate or prevent nutrient enrichment of a surface water body or a source of water supply;
- (2) the applicant is not currently subject, due a violation of a nutrient-related total maximum daily load standard or other nutrient based standard, to a department of environmental protection enforcement order, administrative consent order or unilateral administrative order, enforcement action by the United States Environmental Protection Agency or subject to a state or federal court order relative to the proposed project;
- (3) the applicant has a Comprehensive Wastewater Management Plan approved pursuant to regulations adopted by the Department of Environmental Protection;
- (4) The project has been deemed consistent with the regional water resources management plans if one exists;
- (5) the applicant has adopted land use controls, subject to the review and approval of the department of environmental protection in consultation with the department of housing and economic development and, where applicable any regional land use regulatory entity, intended to limit wastewater flows to the amount authorized under zoning and wastewater regulations as of the date of the approval of the CWMP.

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

Nutrient management projects are a relatively new development. The Clean Water Act has been successful in helping to restore the nations' waters, with unchecked addition of residential and industrial waste to our waterways largely a thing of the past. Despite the billions of dollars invested in the

wastewater infrastructure, water quality continues to be impacted by excessive nutrients , including algae blooms, fish mortality and loss of habitat. Enhanced treatment technology, which brings the nutrients down to a level that is sustainable for the water body, is a very expensive undertaking.

***Why aren't all CWSRF loans financed at zero percent?***

The Commonwealth provides the funds for subsidizing loans from market rate to 2 % and the additional subsidy down to zero percent will be absorbed by the Commonwealth. It is not within the Commonwealth's financial ability or plans to subsidize all the CWSRF loans to zero percent.

***Are all nutrient management projects eligible for zero percent loans?***

No. The Legislative intent of the statute which provides 0% CWSRF loans for nutrient management projects was that the financing be exclusive, rather than inclusive. Not all nutrient management projects will qualify for the zero interest loans. Only those projects that meet the five criteria noted above will be eligible. MassDEP cannot amend the statute, or re-engineer the legislative intent, and is therefore aware that there are projects that will be ineligible for access to zero interest financing.

***If a project meets the five statutory criteria, is it guaranteed a zero percent interest rate?***

No, it is not. The statute limits the volume of zero interest loans to 35% of the IUP total in any given year. If the cost of the qualifying loans for nutrient projects exceeds 35% of the IUP cost, the Department will finance in rank order according to the ranking order on the Priority List. Some lower-ranked, but programmatically eligible proposals may therefore be unable to receive zero percent interest. They will be offered standard two percent loans.

***Are there any other limitations?***

The zero interest rate program is time-limited. The statute allows qualifying projects on the 2009-2019 Intended Use Plans to qualify for zero percent interest. Because of the timing of the regulations, the Department will retroactively re-finance some of project loans down to zero percent. Any project on an IUP published after the zero-interest rate regulations are promulgated will have to meet all of the provisions of the statute by the closing of the project loan to qualify for the zero percent interest rate. The Department will not re-finance loans for proponents who retroactively meet the standards in place for zero interest loans.

***How does the Department plan to interpret the five statutory criteria?***

The Department has consulted with the Legislature and has accepted public comment related to the zero percent interest program regulations. The outcome of those consultations is the following set of interpretations.

- (1) *The project is primarily intended to remediate or prevent nutrient enrichment of a surface water body or a source of water supply.*

The project must address a nutrient management problem that is identified within a community's Comprehensive Wastewater Management Plan (CWMP) **and** the cost of the nutrient management approach must comprise a majority of the cost of the project.

- (2) *The applicant is not currently subject, due a violation of a nutrient-related total maximum daily load standard or other nutrient based standard, to a department of environmental protection*

*enforcement order, administrative consent order or unilateral administrative order, enforcement action by the United States Environmental Protection Agency or subject to a state or federal court order relative to the proposed project.*

The intent of this provision was that the community act to address its nutrient management problems without having been compelled to do so by an enforcement action by the federal or state government. Often, a negotiated consent order is used to set a project on a schedule and those orders will not automatically render an applicant ineligible for zero interest. However, if the proponent slips the enforcement schedule, and has further action taken against it by the federal or state regulatory authority, then the project will not be eligible for zero interest. However, the project could still receive the standard two percent interest loan.

*(3) The applicant has a Comprehensive Wastewater Management Plan approved pursuant to regulations adopted by the Department of Environmental Protection.*

The municipality must have a state-approved Comprehensive Wastewater Management Plan to qualify for a zero percent interest rate. The CWMP is the single most important document to establish the eligibility of the project. The CWMP will describe how the project fits in as a nutrient management strategy within the proponent's overall wastewater management plan. CWMPs also describe the local wastewater needs areas and potential wastewater flow regime under current zoning. CWMPs will outline non-traditional and traditional approaches to wastewater management and allow communities to select the proposals that best address their particular watershed's characteristics and plans. Finally, CWMPs will discuss regional options for the management of wastewater and nutrients.

*(4) The project has been deemed consistent with the regional water resources management plans if one exists.*

Presently, MassDEP is not aware of any existing current regional water resources management plans. However, there is at least one such plan under development which is intended to encourage watershed-based planning that recognizes natural and not political boundaries. Any project proponent that opts not to follow regional water resources management plan recommendations will be ineligible for the zero percent interest rate. However, that project may still be eligible for a standard 2% loan, as the statute does not prohibit the project from receiving the standard financing.

*(5) The applicant has adopted land use controls, subject to the review and approval of the department of environmental protection in consultation with the department of housing and economic development and, where applicable any regional land use regulatory entity, intended to limit wastewater flows to the amount authorized under zoning and wastewater regulations as of the date of the approval of the CWMP.*

The development of wastewater service normally has a beneficial impact on public health and the environment. However, there has also been some history of indiscriminate growth or sprawl associated with wastewater service in the past. The statute was crafted carefully to insure that the zero interest rate loans do not encourage sprawl. While communities will be required to demonstrate that they have planned their flow allocations, the decisions on how the allocations will be made are solely within each municipality's discretion.

The total volume of septic flow in a municipality is limited by the land use zoning and soil conditions. The existence of a sewer connection to a property can obviate those limits because a sewer is not limited by soil condition, lot size or the presence of high groundwater or wetland boundaries. The idea

of flow neutrality is, generally speaking, that wastewater systems should not create a massive increase in capacity above what is possible under the existing land use controls and natural site limitations and Title 5 of the Massachusetts sanitary code's limit of 110 gallons per day per bedroom. Municipalities may use that number to calculate the maximum flow of underdeveloped properties. (Watershed Benchmark Flow???) Alternatively, they may use existing water meter data from their own, or similarly sized communities, to develop a lesser calculation for the existing wastewater facility total flow amount in a planning area, including flow amounts from on-site subsurface disposal systems, collection systems, and wastewater treatment plants, as set forth in a local governmental unit's Department-approved Comprehensive Water Resource Management Plan.

Regional wastewater districts will be largely unable to qualify for the zero percent interest rate, unless they can demonstrate that they have the authority to implement land use controls related to flow neutrality. MassDEP understands that it is unlikely that any regional authority has such authority.

***Can the Department provide model by-laws that demonstrate flow-neutrality?***

Presently, there are not any model by-laws that have been certified by DHCD as adequate to protect growth neutrality. However, as the agencies process requests for zero interest rate, examples will be added to this Q&A guidance.

***Does MassDEP maintain a list or database of communities that have prepared and completed qualifying plans? Is there is a statute of limitations (for lack of a better term) regarding how current that plan must be?***

MassDEP does not have a full inventory of CWMPs, though will attempt to assemble one as received them from applicants. The age of the CWMP is not important, but the content is. If the plan does not describe a Nutrient problem and provide a recommended solution, that plan will not satisfy the requirement.

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

Contact Steve McCurdy at the Division of Municipal Services at MassDEP 617-292-5779  
[steven.mccurdy@state.ma.us](mailto:steven.mccurdy@state.ma.us)

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