

DRAFT January 9, 2012

**INSTRUCTIONS REGARDING ZERO RATE OF INTEREST  
OF CERTAIN *NUTRIENT MANAGEMENT PROJECTS* FINANCED UNDER  
THE CLEAN WATER STATE REVOLVING FUND LOANS**

**Introduction**

In order to appropriately implement the Clean Water State Revolving Fund program, MassDEP seeks to finance projects that mitigate documented impacts to public health or the environment, and for which proponents have completed comprehensive planning and alternatives analysis. The Massachusetts Legislature has further directed MassDEP, pursuant to M.G.L. c. 29C, § 6, to provide zero percent interest financing to projects that meet the following criteria, as verified by the Department of Environmental Protection (MassDEP), are eligible for zero rate of interest State Revolving Fund (SRF) loans:

- (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 to a violation of a nutrient-related total maximum daily load standard or other nutrient based standard, to a MassDEP 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 (CWMP) approved pursuant to regulations adopted by MassDEP;
- (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 MassDEP 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 the land use controls that were in effect on the date the Secretary of the Executive Office of Energy and Environmental Affairs issued a certificate for the CWMP pursuant to the Massachusetts Environmental Policy Act, M.G.L. c. 30, §§ 61-62H, and the MEPA regulations at 301 CMR 11.00.

**MassDEP expects that the thresholds established by the Legislature will limit the number of projects that qualify for the zero interest loans.**

## Instructions

Local government units seeking a zero rate of interest SRF financing for water pollution abatement projects must establish their eligibility by completing an SRF Application Addendum using a form provided by MassDEP for such purposes. The Addendum must include the following:

- (1) If the applicant has a MassDEP approved CWMP, then the applicant should submit a copy of the MassDEP approval letter with the Addendum. If the applicant does not already have a MassDEP approved CWMP, evidenced by a DEP approval letter then the applicant should submit a copy of the applicant's CWMP with a copy of the certificate for the CWMP issued by the Secretary of the Executive Office of Energy and Environmental Affairs;
- (2) A narrative explanation establishing that the project is primarily intended to remediate or prevent nutrient enrichment of surface waters or water supply sources in order to meet a NPDES permit or an EPA-approved TMDL or to otherwise implement a nutrient management plan approved by MassDEP, including (a) specific reference to the applicant's CWMP or nutrient management plan approved by MassDEP, (b) a copy of any such plan, and (c) a detailed estimate of the project flows and costs primarily intended to remediate or prevent nutrient enrichment and the project flows and costs not associated with remediating or preventing nutrient enrichment;
- (3) A narrative explanation demonstrating that the applicant has established flow neutral land use controls<sup>1</sup> as provided in 314 CMR 44.04(3), including reference to the specific land use controls adopted to ensure such flow neutrality, and authenticated copies of such land use controls or sewer use regulation and all pertinent maps and overlays; this requirement applies to all users tributary to the wwtp regardless of what community the user may be located within;<sup>2</sup>
- (4) If the applicant is subject to a regional water resources management plan, then the applicant must submit a copy of such plan and a narrative explanation establishing that the applicant's project is consistent with such plan. The applicant shall submit a letter, certificate or other written determination from the regional planning agency deeming the project consistent with the regional water resources management plan if such a plan exists. If the applicant is not subject to a regional water resources management plan, then the applicant must certify as much; and

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<sup>1</sup> Such land use controls include lawfully adopted bylaws, ordinances, and regulations.

<sup>2</sup> In the case of a zoning or general bylaw, the submitted bylaw shall have been reviewed and approved by the Massachusetts Attorney General as required by M.G.L. c. 40, § 32, or pursuant to Chapter 831 of the Act of 1977, as amended. In the case of any other land use controls, the city or town clerk must authenticate such copies.

- (5) Certification that the applicant is not currently subject to a MassDEP enforcement order, administrative consent order or unilateral administrative order or enforcement action by the United States Environmental Protection Agency due a violation of a nutrient-related total maximum daily load standard or other nutrient based standard or otherwise subject to a state or federal court order relative to the proposed project.

Applicants shall submit a paper copy and compact disc containing a PDF file of the completed Addendum to MassDEP, DHED and, if applicable, the regional land use regulatory entity, as follows:

To MassDEP:

Steven McCurdy, Director  
MassDEP Division of Municipal Services  
One Winter Street - 6th floor  
Boston, MA 02108

To DHED:

Elaine Wijnja, Principal Planner Department of Housing and Economic  
Development  
100 Cambridge Street - Suite 300  
Boston, MA 02114

To the applicable regional land use regulatory entity:

at the address identified in Appendix 1 attached hereto.

Deadlines. Applicants must demonstrate that they meet the zero percent interest program thresholds, before their SRF loans are permanently financed. For projects proposed for the CWSRF program for 2013 and after, such applicants must submit a completed SRF Application Addendum at the time of submittal of a Loan Application Form.

Some projects that may qualify for the zero interest rate will have commenced before promulgation of the regulations. For those projects listed on the 2009-2011 Intended Use Plans, applicants must submit a completed SRF Application Addendum, not later than **February 1, 2013**. For projects for which the applicant has submitted a 2010 CWSRF Project Evaluation Form seeking listing on the 2012 Intended Use Plan, such applicants must submit a completed SRF Application Addendum before a loan application is submitted for the project.

Agency review. Within 60 days of its receipt of a complete SRF Application Addendum, MassDEP will consult with DHED and, if appropriate, the regional land use regulatory entity, to determine whether the applicant has adopted flow neutral land use controls in accordance with this Guidance. MassDEP will send a letter to the applicant within 14

days of such determination stating whether or not the Addendum establishes the applicant's eligibility for such financing and, if not, setting forth the basis for the determination. MassDEP's final eligibility determination is not subject to further administrative review. It is, therefore, essential that applicants make diligent efforts to fully complete their SRF Application Addendum and adequately document the basis for eligibility.

### **Capacity Limitation**

The legislation limits the cost of loans available at 0% to thirty-five percent of the CWSRF IUP capacity in any given year. For example, a \$300M CWSRF IUP could finance up to \$105M at 0% interest. If eligible projects in excess of \$105M were to be proposed, MassDEP will afford the zero percent interest rate to projects in rank order as listed on the IUP. In that instance, highly ranked projects that are eligible would be financed at zero percent, while some lower ranked eligible project, might not. The low ranked projects would receive the standard 2% interest rate.

## APPENDIX 1

Berkshire Regional Planning Commission  
1 Fenn Street, Suite 201  
Pittsfield, MA 01201-6629  
Tel.: (413) 442-1521

Cape Cod Commission  
3225 Main Street  
Barnstable, MA 02630-1105  
Tel. (508) 362-3828

Central Massachusetts Regional Planning Commission  
2 Washington Square – 2d Floor  
Worcester, MA 01604-4016  
Tel. (508) 756-7717

Franklin Regional Council of Governments  
425 Main Street - Ste 20  
Greenfield, MA 01301-3443  
Tel. (413) 774-3167

Martha's Vineyard Commission  
The Stone Building  
33 New York Avenue  
P.O. Box 1447  
Oak Bluffs MA 02557  
Tel. 508-693-3453

Merrimack Valley Planning Commission  
160 Main Street  
Haverhill, MA 01830  
Tel. 978-374-0519

Metropolitan Area Planning Council  
60 Temple Place  
Boston, MA 02111-1379  
Tel. (617) 451-2770

Montachusett Regional Planning Commission  
1427 Water Street  
Fitchburg, MA 01420-7266  
Tel. (978) 345-7376

Nantucket Planning and Economic Development Commission  
2 Fairgrounds Rd.  
Nantucket, MA 02554  
Tel. (508) 228-7237

Northern Middlesex Council of Governments  
40 Church Street - Unit 2,  
Lowell, MA 01852-2686  
Tel. (978) 454-8021

Old Colony Planning Council  
70 School Street  
Brocton, MA 02301  
Tel. (508) 583-1833

Pioneer Valley Planning Commission  
136 Damon Road  
Northampton, MA 01060-1818  
Tel. (413) 584-4937

Southeastern Regional Planning and Economic Development District  
88 Broadway  
Taunton, MA 02780  
Tel. (508) 824-1367