



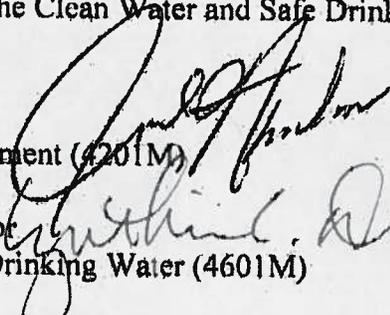
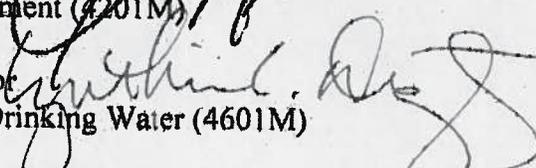
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAY 20 2011

OFFICE OF  
WATER

**MEMORANDUM**

**SUBJECT:** Procedures for Implementing the Fiscal Year 2011 Full-Year Continuing Appropriation Act Affecting the Clean Water and Safe Drinking Water State Revolving Fund Programs

**FROM:** James A. Hanlon, Director  
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Cynthia C. Dougherty, Director  
Office of Ground Water and Drinking Water (4601M) 

**TO:** Water Management Division Directors  
Regions I - X

This is to provide procedures on the implementation of provisions contained in EPA's Fiscal Year (FY) 2011 appropriation legislation. Specifically, the Department of Defense and Full-Year Continuing Appropriations Act, 2011, P.L. 112-10 (the final Fiscal Year 2011 Continuing Resolution), requires the EPA to continue implementing the provisions specified in the Fiscal Year 2010 Appropriations Act in Fiscal Year 2011. It includes the following language in Section 1101(a): "Such amounts [are appropriated] as may be necessary, at the level specified in subsection (c) and under the authority and conditions provided in applicable appropriations Acts for fiscal year 2010, for projects and activities . . . for which appropriations, funds, or other authority were made available in . . . The Department of Interior, Environment, and Related Agencies Appropriations Act, 2010 (division A of Public Law 111-88)." This language requires the Agency to carry forward the SRF provisions that were applicable to the FY 2010 SRF appropriated funds. Please note that the procedures have several key attachments which are referenced in text at appropriate places. These procedures are effective immediately and should be reflected in all capitalization grants that include FY 2011 funds.

We want to stress the continued importance of the on-going management of the SRF programs. In addition to the FY 2011 SRF Procedures, we want to call to your attention and highlight the long standing requirements that have been highlighted during recent reviews of the State programs. As part of the a State's SRF capitalization grant application, the Intended Use Plan must include the cash draw ratio the State will use as projects are funded. This is an important element to be included in the application record that will be used as the Region reviews the State management of the program.

The State Revolving Loan Programs continue to provide important low cost financial support to capital construction of drinking water and wastewater infrastructure. The Procedures include the requirements of the FY 2011 Appropriations Act and the principles of the October 1, 2011 Sustainability Policy and the Livability Principles resulting from the EPA-HUD-DOT Partnership.

Inquiries regarding the procedures should be directed to the respective program contacts for the Clean Water SRF (Sheila Platt, 202/564-0686) and for Drinking Water SRF (Peter Shanaghan, 202/564-3848).

**Attachments**

## **Procedures for Implementing Certain Provisions of EPA's Fiscal Year 2011 Full-Year Continuing Appropriation Affecting the Clean Water and Drinking Water State Revolving Fund Programs.**

### **I. PURPOSE**

The Fiscal Year (FY) 2011 Full-Year Continuing Appropriations Act (P.L. 112-10) carries forward requirements from the FY 2010 Appropriations Act (P.L. 111-88) affecting both the Clean Water and the Drinking Water State Revolving Fund (SRF) programs for FY 2011. These procedures address the implementation of the requirements and set forth administration priorities.

### **II. Administration Priorities**

On June 16, 2009, EPA joined with the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Transportation (DOT) to help improve access to affordable housing, more transportation options, and lower transportation costs while protecting the environment in communities nationwide. It is the goal of this partnership to discourage sprawl and encourage or incentivize locationally efficient investments, smart growth practices, and green infrastructure development.

As a result of this partnership, a set of guiding livability principles have been developed. The Livability Principles can be found at [www.epa.gov/smartgrowth/partnership/index.html#livabilityprinciples](http://www.epa.gov/smartgrowth/partnership/index.html#livabilityprinciples) and include: (1) Provide more transportation choices, (2) Promote equitable, affordable housing, (3) Increase economic competitiveness, (4) support existing communities, (5) Leverage federal investment, and (6) Value communities and neighborhoods. EPA recognizes that the first priority for States is protection of water quality (in the CWSRF) and public health (in the DWSRF). However, in the CWSRF<sup>1</sup> program States should not encourage the expansion of centralized infrastructure to accommodate growth where there are available projects that repair, replace, and upgrade infrastructure in existing communities. As a matter of an administration priority for both programs, EPA will increase its emphasis on the importance of directing SRF assistance to projects that support sustainable systems and that help build or maintain the technical, financial, and managerial capacity

of the recipient.

### **III. Application Requirements**

#### **A. *Intended Use Plan (IUP)***

A State's Intended Use Plan (IUP) will be submitted as part of its application for a capitalization grant under the FY 2011 Full-Year Continuing Appropriation. Both SRFs, the IUP must contain a description of the intended uses of the Additional Subsidization and the Green Project Reserve (GPR).

The IUP must contain GPR projects whose total SRF assistance is at least equal to 2 percent of the state's FY 2011 capitalization grant. For projects identified as GPR projects, the IUP must indicate which type of GPR project it is, whether it is a categorical GPR project or requires a business case, and how much of the project's cost is applicable to GPI. If a State has insufficient GPR projects to meet this threshold at the time of its submittal for a capitalization grant, the Region may award the grant with the requirement that the State submit an amended project list identifying projects equal to the remaining portion of the GPR requirement at a later date. The amended project list must be submitted prior to the funding of the additional GPR projects. For the DWSRF, any projects added thereafter must also be submitted in a further amended project list. For the CWSRF, all substitutions or changes to projects after an amended project list has been submitted must be identified in the Annual Report<sup>2</sup>. If a State plans to fund CWSRF decentralized wastewater systems project, then only the activity and the amount need to be identified in the IUP, but the complete list of projects would be included in the Annual Report.

The IUP shall include the criteria the State plans to use in determining the type and amount of additional subsidy that may be made available to assistance recipients listed in the IUP. To the extent practicable, the projects that will receive the additional subsidy and the amount should be shown in the IUP. Any eligible recipient of SRF funds may receive the additional subsidy.

Because the percentage requirements for GPR and the additional subsidy are linked to a single year's appropriation, EPA cannot allow credit for amounts above those percentage requirements to be banked.

#### **B. *Grant Conditions***

The FY 2011 Full-Year Continuing Appropriation includes requirements that are not

in the rules for either SRF; EPA will ensure implementation of these requirements through terms and conditions that will be applied to the capitalization grant award. Additional clarification is provided in these Procedures and may be provided as needed hereafter, generally through guidance that further explains means of compliance with the terms and conditions. Grant conditions to be included in FY 2011 capitalization grants are attached (Attachment 1).

#### **IV. FY 2011 Requirements**

##### **A. Green Project Reserve (GPR)**

The FY 2011 Full-Year Continuing Appropriation Act carries forward the FY 2010 provision which states that : “*Provided*, That for fiscal year 2010, to the extent there are sufficient eligible project applications, not less than 20 percent of the funds made available under this title to each State for Clean Water State Revolving Fund capitalization grants and not less than 20 percent of the funds made available under this title to each State for Drinking Water State Revolving Fund capitalization grants shall be used by the State for projects to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities.” These four categories of projects are the components of the GPR.

Projects meeting GPR criteria will follow the same process as all other SRF projects. Criteria for determining CWSRF and DWSRF GPR eligibility can be found in Attachment 2, “2011 Clean Water and Drinking Water State Revolving Fund 20% Green Project Reserve: Guidance for Determining Project Eligibility”. Projects clearly eligible for GPR are known as categorically eligible projects. A list of categorically eligible projects can be found in the GPR guidance mentioned above. Projects not found to be categorically eligible will need business cases. A business case needs to provide a well documented justification for a project to be considered a GPR project. States must review all business cases to determine GPR eligibility and post them on the State’s website by the end of the quarter in which the loan is made.

The Clean Water Act and the Safe Drinking Water Act articulate different requirements for project ranking systems used by States to prioritize projects in the Clean Water and Drinking Water SRF programs.

State CWSRF systems for ranking projects are based upon achieving optimum water quality management. All Section 212 projects must be ranked using a State's priority setting system. However, while it is common practice to fund projects in priority order, based upon readiness to proceed, States are not required to fund projects in priority order. Section 319 projects and Section 320 projects that do not meet the Section 212 eligibility definition do not need to be ranked. The GPR requirements specified in the FY 2011 Full-Year Continuing Appropriation require States to use an amount equal to at least 20 percent of the FY 2011 capitalization grant for GPR projects. Consequently, States are required to select GPR eligible projects that equal at least 20 percent of the FY 2011 capitalization grant, regardless of the projects' ranking in the CWSRF State priority setting system.

DWSRF systems for ranking projects must give priority for the use of funds to projects that address the most serious risk to public health, are necessary to ensure compliance with the requirements of the Safe Drinking Water Act (SDWA), and that assist systems most in need on a per household basis according to State affordability criteria. DWSRF programs must assign every project a priority and, to the extent known, an expected funding schedule, which are published in its Intended Use Plan (IUP). Once fundable projects have been identified, they are, to the maximum extent practicable, to be funded in priority order. Departures from the priority ranking are subject to certain program requirements including use of any procedures included in the IUP which would allow a State to bypass projects on the fundable list.

DWSRF projects that are qualified (in whole or in part) for GPR should be ranked on the same State priority list with non-GPR projects, but must be identified as GPR projects on those lists. Once ranked they should be selected separately from non-GPR projects, using the same priority system principles described above, until the total value of executed assistance agreements in qualified GPR projects totals an amount equal to at least 20 percent of the State's capitalization grant for FY 2011. In other words, GPR projects are identified as GPR and are ranked along with all eligible projects on the priority list but are selected for funding in a separate process for GPR projects only, until the 20 percent requirement is met.

A State will have met the 20 percent requirement when an amount equal to at least 20 percent of its FY 2011 capitalization grant allotment is in executed assistance agreements for qualifying GPR projects. If a GPR project is underbid and a State has not met the required 20 percent for GPR, the difference between the amount in the executed assistance agreement and the winning bid must be used for another GPR project(s). If upon completion of a GPR project, the invoiced amount is less than the amount in the executed loan agreement, the

difference does not have to be used for GPR and may be used for any other SRF project(s).

States that have sufficient qualified projects to meet the GPR do not need to solicit additional projects. States that do not have sufficient projects to meet the GPR requirement must continue to actively solicit and accept applications. States may not decline to consider funding applications for qualified GPR projects unless the 20 percent requirement has been met. Please note that States cannot use State level prohibitions, whether based on State statute, regulation, or policy, on funding the types of projects targeted by the GPR as a justification for insufficient applications.

### **Waivers**

States have sufficient time for the solicitation of eligible GPR project applications to meet the minimum GPR threshold of 20 percent. Accordingly, EPA strongly encourages States to put forth every effort to meet the 20 percent GPR requirement in the 2011 Full-Year Continuing Appropriations Act.<sup>3</sup> However, if at any time, a State determines that it cannot meet the 20 percent GPR requirement and has fully complied with the process identified in attached Term and Condition 4, including a demonstration of compliance with most or all of the actions listed below, they may request a waiver from EPA. Any requests for a waiver from the GPR requirement based on insufficient project applications will be reviewed by EPA Headquarters on a case by case basis. EPA will use the following sample actions as a guide when deciding whether to approve or disapprove a State's request for a waiver from GPR:

- Prominent messages on State SRF and green infrastructure websites;
- Notification clearly soliciting funding applications for projects eligible for GPR sent to all municipalities in the State;
- Targeted meetings with State programs associated with green infrastructure, water and energy efficiency, and other environmentally innovative projects;
- Notification clearly soliciting funding applications for projects eligible for GPR sent to mailing lists used by the aforementioned State programs;
- Targeted meetings with associations, watershed organizations and

environmental groups involved in green infrastructure, water and energy efficiency and other environmentally innovative projects;

- Notification clearly soliciting funding applications for projects eligible for GPR sent to mailing lists and members of aforementioned associations, watershed organizations and environmental groups.

If EPA approves a State's request for relief from the GPR requirement, then the portion of the GPR for which there are no qualified applications can be used for other conventional, eligible projects. If EPA does not approve a State's request, then the State must continue trying to solicit projects.

The following describes the roles and responsibilities for States, EPA Regions and EPA Headquarters in meeting the GPR requirement.

- a. State Roles:** States are responsible for proactively soliciting projects that satisfy the GPR requirements. After projects are ranked and selected, the States will include a list of GPR projects in the IUP that clearly identifies categorically GPR projects and those that require a business case. The business cases for non-categorical GPR projects do not need to accompany the IUP through the public review process nor do they need to be submitted to EPA. States are responsible for reviewing all GPR business cases and posting them on the State's website. The posting of a business case must occur by the end of the quarter in which the loan is made.
- b. EPA Regional Role:** EPA reviews the list of GPR projects in the IUP to ensure the projects listed as categorical GPR projects match the 2011 GPR Guidance and to ensure that States are meeting the 20 percent GPR requirement. During the State annual review, Regions will review all business cases and evaluate compliance with the GPR requirement. In addition to reviewing business cases, Regions will select at least one GPR project file for review each year.
- c. EPA Headquarters Role:** EPA Headquarters has developed Procedures and GPR Eligibility Guidance (Attachment 2) that establish eligibility for use of the GPR and will help States identify GPR projects. EPA Headquarters will review and approve/disapprove all GPR waiver requests.

**B. Additional Subsidies**

The additional subsidy provision carried forward from the FY 2010 Appropriation Act states that “*Provided further*, That not less than 30 percent of the funds made available under this title to each State for Clean Water State Revolving Fund capitalization grants and not less than 30 percent of the funds made available under this title to each State for Drinking Water State Revolving Fund capitalization grants shall be used by the State to provide additional subsidy to eligible recipients in the form of forgiveness of principal, negative interest loans, or grants (or any combination of these), except that for the Clean Water State Revolving Fund capitalization grant appropriation this section shall only apply to the portion that exceeds \$1,000,000,000.”

EPA recognizes that the first priority for States is protection of water quality (in the CWSRF) and public health (in the DWSRF). However, the additional subsidies provision in the FY 2011 Full-Year Continuing Appropriation, as a departure from the historical practice in the base program of both SRFs, raises some challenging issues for States. The resolution of these issues can be usefully informed by the consideration and appropriate application of relevant Livability Principles in the HUD-DOT-EPA Partnership, particularly Principles 4, 5, and 6. The following discussion draws on these Principles to illuminate the considerations States should address in meeting the additional subsidies requirement of the FY 2011 capitalization grant.

**1. Targeting Subsidy**

a. The FY 2010 Conference Report language states that “The conferees believe that priority for additional subsidies should be given to projects in communities that could not otherwise afford such projects and directs the Agency and the States to track how these subsidies are used and by what types of communities.” This language applies to both the CWSRF and DWSRF programs.

Any eligible recipient of assistance from a State Revolving Fund may receive additional subsidization. While State programs may adopt their own policies regarding distribution of additional subsidies, the Conference Report and EPA strongly encourage

programs to target, as a priority, the additional subsidies to communities that could not otherwise afford an SRF loan. These communities may include, for example, disadvantaged communities or environmental justice communities. The report language requires EPA and the States to track how the subsidies are used.

b. In the base programs, the SRFs are structured to leverage the federal investment through an expanding Fund that – as it revolves – draws in repayments and interest as well as leveraged bond proceeds (in many States). Under this additional subsidization requirement, where a large amount of base program capitalization grant funds will not revolve, EPA believes that it is prudent to include new specifications in the capitalization agreements with States that ensure that the additional subsidies are funding infrastructure that supports existing communities and is sustainable. However, in the CWSRF<sup>4</sup> program States should not encourage the expansion of centralized infrastructure to accommodate growth where there are available projects that repair, replace, and upgrade infrastructure in existing communities. As a matter of administrative priority for both programs, EPA will increase its emphasis on the importance of directing SRF assistance to projects that support sustainable systems and that help build or maintain the technical, financial and managerial capacity of the recipient.

By providing the additional subsidies only to communities that lack the ability to afford necessary projects to protect public health and the environment, the SRF programs affirmatively support communities in achieving clean and safe water.

c. Section 602(a) of the CWA and section 1452(a)(3)(A)(i) of SDWA provides the authority to add such new specifications to the capitalization grant. CWA Section 602(a) specifies that the “State shall enter into an agreement with the Administrator which shall include but not be limited to the specifications set forth in subsection (b)...” SDWA Section 1452(g)(3)(A) authorizes EPA to publish guidance “to ensure that each State commits and expends funds allotted to the State under this section as efficiently as possible.” Therefore, EPA is adding a grant condition to all FY 2011 CWSRF and DWSRF capitalization grants (see Attachment 1).

The State Annual Report must include an explanation as to how the State did or did not address the provisions of the term and condition on sustainability.

## 2. Types of Additional Subsidies

a. **Principal Forgiveness.** A SRF may provide assistance in the form of principal forgiveness. Principal forgiveness must be specified 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 SRF 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 SRF 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 5.

## 3. Calculation of Additional Subsidization for the CWSRF program.

a. Of the \$1,521,950,000 provided by the FY 2011 Full-Year Continuing Appropriation, \$1,446,940,000 is available for capitalization grants to the 51 CWSRF programs after accounting for the set-asides and territory allocations. The additional subsidization provision only applies to \$446,940,000, or the portion of the \$1,446,940,000 available for capitalization grants that exceeds \$1 billion.

b. Nationally, the maximum amount of additional subsidization

that may be provided is \$446,940,000 and the minimum amount that must be provided is \$134,082,000, which is 30 percent of \$446,940,000. The CWSRF programs should refer to the table included in policy memorandum *CWSRF 11-01: Availability of FY 2011 Clean Water Act Title VI Funds* issued on May 6, 2011 for State specific amounts of maximum and minimum additional subsidization. A copy of the table is also attached (Attachment 3).

4. Calculation of Additional Subsidization for the DWSRF program.

Each of the 51 DWSRF programs should multiply their capitalization grant amount by .30 to obtain the 30 percent floor that must be provided as additional subsidization. A table is provided as an attachment (Attachment 4).

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

The 2011 Full-Year Continuing Appropriation carries forward language that allows States to provide grants to eligible recipients. All EPA grants must comply with certain Federal law, Executive Orders, and OMB Circulars. A detailed description of these laws, orders and implementing regulations is available through the OGD Grant Intranet website at <http://intranet.epa.gov/ogd> or on the internet at <http://www.epa.gov/ogd/grants/regulations.htm>.

a. The regulations at 40 CFR Part 31 apply to grants 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.

b. EPA's Assistance Administration Manual 5700 outlines 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/ogd/> (under Update 3) and

at <http://www.epa.gov/ogd/grants/regulations.htm>.

## 6. Grants to Non-Profit Organizations.

Funds appropriated 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. Grants cannot be awarded to a nonprofit organization classified by the Internal Revenue Service as a 501(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).

### *C. Davis-Bacon Requirements*

The Davis-Bacon provision carried forward to FY 2011 from the FY 2010 Appropriation Bill states that: "For fiscal year 2010 the requirements of section 513 of the Federal Water Pollution Control Act (33 U.S.C. 1372) shall apply to the construction of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund as authorized by title VI of that Act (33 U.S.C. 1381 et seq.), or with assistance made available under section 205(m) of that Act (33 U.S.C. 1285(m)), or both."

"For fiscal year 2010 the requirements of section 1450(e) of the Safe Drinking Water Act (42 U.S.C. 300j-9(e)) shall apply to any construction project carried out in whole or in part with assistance made available by a drinking water treatment revolving loan fund as authorized by section 1452 of that Act (42 U.S.C. 300j-12)."

Regarding the assistance agreements affected by this provision, the procedures are found in EPA memoranda of November 30, 2009 and May X, 2011, subject "Application of Davis-Bacon Wage Act Requirements to Fiscal Year 2010 CWSRF and DWSRF Assistance Agreements" and "Application of Davis-Bacon Wage Act Requirements to Fiscal Year 2011 CWSRF and DWSRF Assistance Agreements" (Attachment 5).

EPA is also adding the attached terms and conditions regarding wage rate requirements to all CWSRF and DWSRF FY 2011 capitalization grants. Additional information on compliance with the Davis-Bacon requirements is included in Attachment 6. In FY 2011, EPA will provide, as needed, additional technical assistance.

#### ***D. Reporting Requirements***

The conference report (H. Rpt. 111-316, at 166) for the FY 2010 Appropriation directs EPA and the States not only to track how additional subsidies are used, but also "by what types of communities." The language of the FY 2010 conference report carries forward for FY 2011. States shall report quarterly in the CWSRF Benefits Reporting (CBR) and DWSRF Project Benefits Reporting (PBR) systems on the use of all SRF funds. This information will also need to be included in the Annual Report. Quarterly reporting shall include use of the funds for the GPR and Additional Subsidization as described in D1 below as well as information on the environmental benefits of SRF assistance agreements, as described in D2.

##### **1. Data Elements**

For both SRFs, the CBR/PBR and the Annual Report must contain information on the progress made in meeting the GPR and Additional Subsidization requirements.

For all projects that receive additional subsidization, the following data elements must be entered quarterly into CBR/PBR and, a list containing the following information must be included in State Annual Reports. (Additional clarification on the items listed below is provided in CBR/PBR.)

- a. Assistance Recipient Name
- b. Total amount of SRF assistance provided
- c. Project name and identification number

d. Project Location

e. Type of additional subsidy (grant, principal forgiveness, negative interest).

f. Amount of additional subsidy

g. Y/N – Would the recipient have been able to afford a loan without the additional subsidy (Using the States' own criteria for making this determination, such as use of their SRF loan evaluation criteria)?

h. Characteristics of the community served by the project - population of communities (based on NIMS categories)

For projects that receive funding under the Green Project Reserve, a list of projects that includes the following information must be included in the Annual Report and entered into CBR/PBR. (Additional clarification on the items below is provided in CBR/PBR.)

a. Assistance Recipient Name

b. Total amount of SRF assistance provided

c. Project name and identification number

d. Type of project (green infrastructure, water efficiency, energy efficiency, environmentally innovative).

e. Amount of SRF funding for GPR portion of the project

f. Of the total amount of GPR funding, the amount of subsidy provided (if any)

g. A brief description of the project (i.e., rain garden, renewable energy at POTW, water efficient fixtures).

h. Population served by the project (not required for CWSRF nonpoint source projects)

## 2. Environmental/Public Health Benefits Reporting

In 2005, all 51 CWSRF programs agreed to use a suite of environmental indicators to show how their CWSRF projects impact water quality and public health. The CBR system was developed based on these indicators. States shall report quarterly in CBR on the environmental benefits of all assistance agreements. The specific required data elements are listed in Attachment 7.

In FY 2010, the DWSRF program identified project level data to be reported quarterly to the Drinking Water Project and Benefits Reporting System (PBR) for the base program. These data elements will be used for states' quarterly reporting in FY 2011. The data elements are identified in Attachment 8 and will be used for reporting environmental/public health benefits of DWSRF assistance agreements.

## 3. Annual Report/ CBR/PBR

The CBR and PBR are the best available means of comprehensively tracking project-level information on a real-time basis. The data elements identified in Section D1 have been added to the existing data elements in the CBR/PBR systems. The CBR/PBR forms must be completed quarterly, starting with the first quarter in which the assistance agreement is made.

The data elements identified in Section D1 and Attachments 7 and 8 must also be reported in the Annual Report. Summary reports, compiling the quarterly data, can be generated by CBR/PBR and may be included as an attachment to the Annual Report to meet this reporting requirement.

## Attachments

<sup>1</sup> Recognizing the explicit, statutory prohibition against funding growth in the DWSRF.

<sup>2</sup> All references to the Annual Report pertain to the CWSRF Annual Report and the DWSRF Biennial Report.

<sup>3</sup> The SRF capitalization grant award and project selection and funding process is well established. States have two years to receive their capitalization grant, including in this instance FY 2011 and 12. Once a payment is made, a binding commitment for projects equaling that amount must be entered into within one year. There is no statutory deadline beyond the binding commitments for SRF projects to be under contract or construction. Notwithstanding the above, States are encouraged to expeditiously utilize available funds for high priority water infrastructure projects.

<sup>4</sup> Recognizing the explicit, statutory prohibition against funding growth in the DWSRF.

## ATTACHMENT 1

### **Required Grant Conditions**

1. The recipient of funds for the State Revolving Funds from P.L. 112-10, the FY 2011 Full-Year Continuing Appropriation, agrees to comply with all requests for data related to the use of the funds under Subchapter VI of the Clean Water Act (CWA) or Section 1452 of the Safe Drinking Water Act (SDWA), and to report all uses of the funds no less than quarterly, as EPA specifies for the CWSRF Benefits Reporting database and the Drinking Water Project Benefits Reporting database. This reporting shall include but not be limited to data with respect to compliance with the Green Project Reserve and additional subsidization requirements as specified in the FY 2010 Interior and Environment Appropriation Act and the Conference Report (H. Rpt. 111-316) and as outlined in the FY 2011 Procedures document, and other data as necessary to carry out the authorities cited in this Grant Condition.
  
2. In accordance with 40 CFR 31.40, 40 CFR 35.3165, and 40 CFR 35.3570, the recipient agrees to provide in its Annual Report information regarding key project characteristics, milestones, and environmental/public health protection results in the following areas: 1) achievement of the outputs and outcomes established in the Intended Use Plan; 2) the reasons for delays if established outputs or outcomes were not met; 3) any additional pertinent information on environmental results; 4) compliance with the Green Project Reserve requirement as outlined in the FY 2011 Procedures document; and 5) compliance with the additional subsidization requirement as described in the FY 2011 Procedures document.
  
3. Preamble:

The 2011 Full-Year Continuing Appropriation to the CWSRF and DWSRF programs requires that a portion of the capitalization grant funds be used to provide additional subsidization, while relying on the purposes of the Funds in their underlying acts.

The application of the additional subsidies – in the form in which they are authorized in the FY 2011 Full-Year Continuing Appropriation – to the base SRF programs raises important issues for the underlying SRF programs. While the DWSRF program has since its inception offered discretion to States to provide additional subsidization, that authority was closely circumscribed by requirements that communities assisted meet the State’s definition of “disadvantaged,” and that the subsidies provided in any year could not exceed 30 percent of the capitalization grant. In contrast, the FY 2011 Full-Year Continuing Appropriation requires States to provide a minimum of 30 percent up to the entire amount of their DWSRF capitalization grants as additional subsidies. For the CWSRF, not less than 30 percent of the States total capitalization grants that exceed \$1,000,000,000 must be used for additional subsidies. For both programs, additional subsidies can be provided to “any eligible” recipient of SRF assistance, although priority for additional subsidies should be given to communities that could not otherwise afford eligible projects (see section 3b).

Moreover, the similar provision in ARRA was in a one-time, supplemental appropriation that was in addition to the base SRF program appropriation for FY 2009. The additional subsidization provision in FY 2011 comes in the appropriation for the base SRF programs. By authorizing States to provide up to 30.89 percent (CWSRF) or 100 percent (DWSRF) of the base SRF program capitalization grant in additional subsidies, this FY 2011 provision contemplates the possibility that, for the first time, only a portion or none of these base program capitalization grant funds will be repaid into the State Revolving Funds.

Under these circumstances, in which a large amount of base program capitalization grant funds will not revolve, it is prudent to include additional specifications in the capitalization agreements with States that ensure that the subsidies are funding infrastructure that is sustainable (not enabling the expansion of centralized infrastructure to accommodate growth while failing to adequately repair, replace, and upgrade infrastructure in existing communities who are not otherwise able to afford such projects). Section 602(a) of the CWA and section 1452(a)(3)(A)(i) of SDWA gives the authority to add such specifications to the capitalization grant. CWA Section 602(a)

specifies that the “State shall enter into an agreement with the Administrator which shall include but not be limited to the specifications set forth in subsection (b)....” SDWA Section 1452(g)(3)(A) authorizes EPA to publish guidance “to ensure that each state commits and expends funds allotted to the State under this section as efficiently as possible.” Therefore, EPA is adding a grant condition to all FY 2011 CWSRF and DWSRF capitalization grants.

a. The recipient agrees to use 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. 112-10 as follows:

(1) Clean Water State Revolving Fund capitalization recipients agree to use at least 9.27 percent, and no more than 30.89 percent of the funds provided by this grant to provide additional subsidization in accordance with P.L. 112-10. (For the exact amount, see Attachment 3 to the 2011 Procedures.)

(2) Drinking Water State Revolving Fund capitalization grant recipients agree to use at least 30 percent of the funds provided by this grant to provide additional subsidization in accordance with P.L. 112-10.

b. Priority for additional subsidies should be given to communities that could not otherwise afford such projects. To further ensure sustainability of projects receiving additional subsidies, these subsidies should be directed to: 1) repair, replacement, and upgrade of infrastructure in existing communities; 2) investigations, studies, or plans that improve the technical, financial and managerial capacity of the assistance recipient to operate, maintain, and replace financed infrastructure; and/or 3) preliminary planning, alternatives assessment and eligible capital projects that reflect the full life cycle costs of infrastructure assets, conservation of natural resources, and alternative approaches to integrate natural or “green” systems into the built environment. The recipient agrees to provide in its Annual Report an explanation as to how they did or did not address this provision.

4. The recipient agrees to make a timely and concerted solicitation for projects that address green infrastructure, water or energy efficiency

improvements or other environmentally innovative activities. The recipient agrees to include in its IUP such qualified projects, or components of projects, that total an amount at least equal to 20% of its capitalization grant. If there are not sufficient qualified projects or components already in the IUP that total 20% of the FY2011 funds available, the recipient agrees to conduct additional solicitation, to amend its project list to include any such qualified projects thus identified, and to provide not less than 20% of such FY 2011 funds available to such projects on its amended project list. If there are not sufficient qualified projects or components on the amended project list after such additional solicitation, the recipient may if necessary submit a waiver request to EPA in accordance with the FY 2011 Procedures.

**5. Wage Rate Requirements:**

a. CWSRF: The recipient agrees to include in all agreements to provide assistance for the construction of treatment works carried out in whole or in part with such assistance made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.), or with such assistance made available under section 205(m) of that Act (33 U.S.C. 1285(m)), or both, a term and condition requiring compliance with the requirements of section 513 of that Act (33 U.S.C. 1372) in all procurement contracts and sub-grants, and require that loan recipients, procurement contractors and sub-grantees include such a term and condition in subcontracts and other lower tiered transactions. All contracts and subcontracts for the construction of treatment works carried out in whole or in part with assistance made available as stated herein shall insert in full in any contract in excess of \$2,000 the contract clauses as attached hereto entitled "Wage Rate Requirements Under FY 2011 Full-Year Continuing Appropriation." This term and condition applies to all agreements to provide assistance under the authorities referenced herein, whether in the form of a loan, bond purchase, grant, or any other vehicle to provide financing for a project, where such agreements are executed on or after October 30, 2009 and before October 1, 2011.

b. DWSRF: The recipient agrees to include in all agreements to provide assistance for any construction project carried out in whole or in part with such assistance made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act

(42 U.S.C. 300j-12), a term and condition requiring compliance with the requirements of section 1450(e) of the Safe Drinking Water Act (42 U.S.C.300j-9(e)) in all procurement contracts and sub-grants, and require that loan recipients, procurement contractors and sub-grantees include such a term and condition in subcontracts and other lower tiered transactions All contracts and subcontracts for any construction project carried out in whole or in part with assistance made available as stated herein shall insert in full in any contract in excess of \$2,000 the contract clauses as attached hereto entitled "Wage Rate Requirements Under FY 2011 Full-Year Continuing Appropriation." This term and condition applies to all agreements to provide assistance under the authorities referenced herein, whether in the form of a loan, bond purchase, grant, or any other vehicle to provide financing for a project, where such agreements are executed on or after October 30, 2009 and before October 1, 2011.

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## ATTACHMENT 2

### **2011 Clean Water and Drinking Water State Revolving Fund 20% Green Project Reserve: Guidance for Determining Project Eligibility**

I. Introduction: The Fiscal Year (FY) 2011 Full-Year Continuing Appropriation Act (P.L. 112-10) included additional requirements affecting both the Clean Water and the Drinking Water State Revolving Fund (SRF) programs. This attachment is included in the *Procedures for Implementing Certain Provisions of EPA's Fiscal Year 2011 Full-Year Continuing Appropriation Affecting the Clean Water and Drinking Water State Revolving Fund Programs*. Because of differences in project eligibility for each program, the Clean and Drinking Water SRFs have separate guidance documents that identify specific goals and eligibilities for green infrastructure, water and energy efficient improvements, and environmentally innovative activities. Part A includes the details for the Clean Water SRF program, and Part B the Drinking Water SRF program.

Public Law 112-10 carries forward language from the FY 2010 Appropriation that states: "Provided, that for fiscal year 2010, to the extent there are sufficient eligible project applications, not less than 20 percent of the funds made available under this title to each State for Clean Water State Revolving Fund capitalization grants and not less than 20 percent of the funds made available under this title to each State for Drinking Water State Revolving Fund capitalization grants shall be used by the State for projects to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities." These four categories of projects are the components of the Green Project Reserve (GPR).

II. GPR Goals: Congress' intent in enacting the GPR is to direct State investment practices in the water sector to guide funding toward projects that utilize green or soft-path practices to complement and augment hard or gray infrastructure, adopt practices that reduce the environmental footprint of water and wastewater treatment, collection, and distribution, help utilities adapt to climate change, enhance water and energy conservation, adopt more sustainable solutions to wet weather flows, and promote innovative approaches to water management problems. Over time, GPR projects could enable utilities to take savings derived from reducing water losses and energy consumption, and use them for public health and environmental enhancement projects. Additionally, EPA expects that green projects will help the water sector improve the quality of water services without putting additional strain on the energy grid, and by reducing the volume of water lost every year.

III. Background: For the FY 2010 GPR Guidance, EPA used an inclusive approach to determine what is and is not a 'green' water project. Wherever possible, this guidance references existing consensus-based industry practices to provide assistance in developing green projects. Input was solicited from State-EPA and EPA-Regional workgroups and the water sector. EPA staff also reviewed approaches promoted by green practice advocacy groups and water associations, and

green infrastructure implemented by engineers and managers in the water sector. EPA also assessed existing 'green' policies within EPA and received input from staff in those programs to determine how EPA funds could be used to achieve shared goals.

The FY 2011 SRF GPR Guidance provides States with information needed to determine which projects count toward the GPR requirement. The intent of the GPR Guidance is to describe projects and activities that fit within the four specific categories listed in the FY 2010 Appropriations Act which also apply to the FY 2011 Full-Year Continuing Appropriation. This guidance defines each category of GPR projects and lists projects that are clearly eligible for GPR, heretofore known as categorically eligible projects. For projects that do not appear on the list of categorically projects, they may be evaluated for their eligibility within one of the four targeted types of GPR eligible projects based upon a business case that provides clear documentation (see the *Business Case Development* sections in Parts A & B below).

GPR may be used for planning, design, and/or building activities. Entire projects, or the appropriate discrete components of projects, may be eligible for GPR. Projects do not have to be part of a larger capital project to be eligible. All projects or project components counted toward the GPR requirement must clearly advance one or more of the objectives articulated in the four categories of GPR discussed below.

The Green Project Reserve sets a new precedent for the SRFs by targeting funding towards projects that States may not have funded in prior years. Water quality benefits from GPR projects rely on proper operation and maintenance to achieve the intended benefits of the projects and to achieve optimal performance of the project. EPA encourages states and funding recipients to thoroughly plan for proper operation and maintenance of the projects funded by the SRFs, including training in proper operation of the project. It is noted, however, that the SRFs cannot provide funding for operation and maintenance costs, including training, in the SRF assistance agreements. Some of these costs may, however, be funded through appropriate DWSRF set-asides under limited conditions:

## **PART A – CWSRF GPR SPECIFIC GUIDANCE**

### **CWSRF Eligibility Principles**

**State SRF programs are responsible for identifying projects that count toward GPR. The following overarching principles, or decision criteria, apply to all projects that count toward GPR and will help states identify projects.**

- 0.1 **All GPR projects must otherwise be eligible for CWSRF funding.** The GPR requirement does not create new funding authority beyond that described in Title VI of the CWA. Consequently, a subset of 212, 319 and 320 projects will count towards the GPR. The principles guiding CWSRF funding eligibility include:
- 0.2 All Sec 212 projects must be consistent with the definition of “treatment works” as set forth in section 212 of the Clean Water Act (CWA).
- 0.2-1 All section 212 projects must be publicly owned, as required by CWA section 603(c)(1).
- 0.2-2 All section 212 projects must serve a public purpose.
- 0.2-3 POTWs as a whole are utilized to protect or restore water quality. Not all portions of the POTW have a direct water quality impact in and of themselves (i.e. security fencing). Consequently, POTW projects are not required to have a direct water quality benefit, though most of them will.
- 0.3 Eligible nonpoint source projects implement a nonpoint source management program under an approved section 319 plan or the nine element watershed plans required by the 319 program.
- 0.3-1 Projects prevent or remediate nonpoint source pollution.
- 0.3-2 Projects can be either publicly or privately owned and can serve either public or private purposes. For instance, it is acceptable to fund land conservation activities that preserve the water quality of a drinking water source, which represents a public purpose project. It is also acceptable to fund agricultural BMPs that reduce nonpoint source pollution, but also improve the profitability of the agricultural operation. Profitability is an example of a private purpose.
- 0.3-3 Eligible costs are limited to planning, design and building of capital water quality projects. The CWSRF considers planting trees and shrubs, purchasing equipment, environmental cleanups and the development and initial delivery of education programs as capital water quality projects. Daily maintenance and operations, such as expenses and salaries are not considered capital costs.
- 0.3-4 Projects must have a direct water quality benefit. Implementation of a water quality project should, in itself, protect or improve water quality. States should be able to estimate the quantitative and/or qualitative water quality benefit of a nonpoint source project.
- 0.3-5 Only the portions of a project that remediate, mitigate the impacts of, or prevent water pollution or aquatic or riparian habitat degradation should be funded. Where water quantity projects improve water quality (e.g. reduction of flows from impervious surfaces that adversely affect stream health, or the modification of

irrigation systems to reduce runoff and leachate from irrigated lands), they would be considered to have a water quality benefit. In many cases, water quality protection is combined with other elements of an overall project. For instance, brownfield revitalization projects include not only water quality assessment and cleanup elements, but often a redevelopment element as well. Where the water quality portion of a project is clearly distinct from other portions of the project, only the water quality portion can be funded by the CWSRF.

- 0.3-6 Point source solutions to nonpoint source problems are eligible as CWSRF nonpoint source projects. Section 319 Nonpoint Source Management Plans identify sources of nonpoint source pollution. In some cases, the most environmentally and financially desirable solution has point source characteristics and requires an NPDES discharge permit. For instance, a septage treatment facility may be crucial to the proper maintenance and subsequent functioning of decentralized wastewater systems. Without the septage treatment facility, decentralized systems are less likely to be pumped, resulting in malfunctioning septic tanks.
  
- 0.4 Eligible projects under section 320 implement an approved section 320 Comprehensive Conservation Management Plan (CCMP).
  - 0.4-1 Section 320 projects can be either publicly or privately owned.
  - 0.4-2 Eligible costs are limited to capital costs.
  - 0.4-3 Projects must have a direct benefit to the water quality of an estuary. This includes protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on water, and requires the control of point and nonpoint sources of pollution to supplement existing controls of pollution.
  - 0.4-4 Only the portions of a project that remediate, mitigate the impacts of, or prevent water pollution in the estuary watershed should be funded.
  
- 0.5 GPR projects must meet the definition of one of the four GPR categories. The Individual GPR categories do not create new eligibility for the CWSRF. The projects that count toward GPR must otherwise be eligible for CWSRF funding.
  
- 0.6 GPR projects must further the goals of the Clean Water Act.<sup>1</sup>

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<sup>1</sup>Drinking Water Utilities can apply for CWSRF funding

## CWSRF Technical Guidance

The following sections outline the technical aspects for the CWSRF Green Project Reserve. It is organized by the four categories of green projects: green infrastructure, water efficiency, energy efficiency, and environmentally innovative activities. Categorically green projects are listed, as well as projects that are ineligible. Design criteria for business cases and example projects that would require a business case are also provided.

### 1.0 GREEN INFRASTRUCUTRE

- 1.1 Definition: Green stormwater infrastructure includes a wide array of practices at multiple scales that manage wet weather and that maintain and restore natural hydrology by infiltrating, evapotranspiring and harvesting and using stormwater. On a regional scale, green infrastructure is the preservation and restoration of natural landscape features, such as forests, floodplains and wetlands, coupled with policies such as infill and redevelopment that reduce overall imperviousness in a watershed. On the local scale green infrastructure consists of site- and neighborhood-specific practices, such as bioretention, trees, green roofs, permeable pavements and cisterns.
- 1.2 Categorical Projects
- 1.2-1 Implementation of green streets (combinations of green infrastructure practices in transportation rights-of-ways), for either new development, redevelopment or retrofits including: permeable pavement<sup>2</sup>, bioretention, trees, green roofs, and other practices such as constructed wetlands that can be designed to mimic natural hydrology and reduce effective imperviousness at one or more scales. Vactor trucks and other capital equipment necessary to maintain green infrastructure projects.
- 1.2-2 Wet weather management systems for parking areas including: permeable pavement<sup>2</sup>, bioretention, trees, green roofs, and other practices such as constructed wetlands that can be designed to mimic natural hydrology and reduce effective imperviousness at one or more scales. Vactor trucks and other capital equipment necessary to maintain green infrastructure projects.
- 1.2-3 Implementation of comprehensive street tree or urban forestry programs, including expansion of tree boxes to manage additional stormwater and enhance tree health.
- 1.2-4 Stormwater harvesting and reuse projects, such as cisterns and the systems that allow for utilization of harvested stormwater, including pipes to distribute stormwater for reuse.
- 1.2-5 Downspout disconnection to remove stormwater from sanitary, combined sewers and separate storm sewers and manage runoff onsite.
- 1.2-6 Comprehensive retrofit programs designed to keep wet weather discharges out of all types of sewer systems using green infrastructure technologies and approaches such as green roofs, green walls, trees and urban reforestation, permeable

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<sup>2</sup> The total capital cost of permeable pavement is eligible, not just the incremental additional cost when compared to impervious pavement.

pavements and bioretention cells, and turf removal and replacement with native vegetation or trees that improve permeability.

- 1.2-7 Establishment or restoration of permanent riparian buffers, floodplains, wetlands and other natural features, including vegetated buffers or soft bioengineered stream banks. This includes stream day lighting that removes natural streams from artificial pipes and restores a natural stream morphology that is capable of accommodating a range of hydrologic conditions while also providing biological integrity. In highly urbanized watersheds this may not be the original hydrology.
  - 1.2-8 Projects that involve the management of wetlands to improve water quality and/or support green infrastructure efforts (e.g., flood attenuation).<sup>3</sup>
    - 1.2-8a Includes constructed wetlands.
    - 1.2-8b May include natural or restored wetlands if the wetland and its multiple functions are not degraded and all permit requirements are met.
  - 1.2-9 The water quality portion of projects that employ development and redevelopment practices that preserve or restore site hydrologic processes through sustainable landscaping and site design.
  - 1.2-10 Fee simple purchase of land or easements on land that has a direct benefit to water quality, such as riparian and wetland protection or restoration.
- 1.3 Projects That Do Not Meet the Definition of Green Infrastructure
- 1.3-1 Stormwater controls that have impervious or semi-impervious liners and provide no compensatory evapotranspirative or harvesting function for stormwater retention.
  - 1.3-2 Stormwater ponds that serve an extended detention function and/or extended filtration. This includes dirt lined detention basins.
  - 1.3-3 In-line and end-of-pipe treatment systems that only filter or detain stormwater.
  - 1.3-4 Underground stormwater control and treatment devices such as swirl concentrators, hydrodynamic separators, baffle systems for grit, trash removal/floatables, oil and grease, inflatable booms and dams for in-line underground storage and diversion of flows.
  - 1.3-5 Stormwater conveyance systems that are not soil/vegetation based (swales) such as pipes and concrete channels. Green infrastructure projects that include pipes to collect stormwater may be justified as innovative environmental projects pursuant to Section 4.4 of this guidance.
  - 1.3-6 Hardening, channelizing or straightening streams and/or stream banks.
  - 1.3-7 Street sweepers, sewer cleaners, and vactor trucks unless they support green infrastructure projects.

#### 1.4 Decision Criteria for Business Cases

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<sup>3</sup> Wetlands are those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, vernal pools, and similar areas.

- 1.4-1 Green infrastructure projects are designed to mimic the natural hydrologic conditions of the site or watershed.
- 1.4-2 Projects that capture, treat, infiltrate, or evapotranspire water on the parcels where it falls and does not result in interbasin transfers of water.
- 1.4-3 GPR project is in lieu of or to supplement municipal hard/gray infrastructure.
- 1.4-4 Projects considering both landscape and site scale will be most successful at protecting water quality.
- 1.4-5 Design criteria are available at:  
<http://cfpub.epa.gov/npdes/greeninfrastructure/munichandbook.cfm> and  
<http://cfpub.epa.gov/npdes/greeninfrastructure/technology.cfm>

1.5 Examples of Projects Requiring A Business Case

- 1.5-1 Fencing to keep livestock out of streams and stream buffers. Fencing must allow buffer vegetation to grow undisturbed and be placed a sufficient distance from the riparian edge for the buffer to function as a filter for sediment, nutrients and other pollutants.

## 2.0 WATER EFFICIENCY

- 2.1 Definition: EPA's WaterSense program defines water efficiency as the use of improved technologies and practices to deliver equal or better services with less water. Water efficiency encompasses conservation and reuse efforts, as well as water loss reduction and prevention, to protect water resources for the future.

2.2 Categorical Projects

- 2.2-1 Installing or retrofitting water efficient devices, such as plumbing fixtures and appliances
  - 2.2-1a For example -- shower heads, toilets, urinals and other plumbing devices
  - 2.2-1b Where specifications exist, WaterSense labeled products should be the preferred choice (<http://www.epa.gov/watersense/index.html>).
  - 2.2-1c Implementation of incentive programs to conserve water such as rebates.
- 2.2-2 Installing any type of water meter in previously unmetered areas
  - 2.2-2a If rate structures are based on metered use
  - 2.2-2b Can include backflow prevention devices if installed in conjunction with water meter
- 2.2-3 Replacing existing broken/malfunctioning water meters, or upgrading existing meters, with:
  - 2.2-3a Automatic meter reading systems (AMR), for example:
    - 2.2-3a(i) Advanced metering infrastructure (AMI)
    - 2.2-3a(ii) Smart meters
  - 2.2-3b Meters with built in leak detection
  - 2.2-3c Can include backflow prevention devices if installed in conjunction with water meter replacement
- 2.2-4 Retrofitting/adding AMR capabilities or leak detection equipment to existing meters (not replacing the meter itself).

- 2.2-5 Water audit and water conservation plans, which are reasonably expected to result in a capital project.
  - 2.2-6 Recycling and water reuse projects that replace potable sources with non-potable sources,
    - 2.2-6a Gray water, condensate and wastewater effluent reuse systems (where local codes allow the practice)
    - 2.2-6b Extra treatment costs and distribution pipes associated with water reuse.
  - 2.2-7 Retrofit or replacement of existing landscape irrigation systems with more efficient landscape irrigation systems, including moisture and rain sensing equipment.
  - 2.2-8 Retrofit or replacement of existing agricultural irrigation systems with more efficient agricultural irrigation systems.
- 2.3 Projects That Do Not Meet the Definition of Water Efficiency
- 2.3-1 Agricultural flood irrigation.
  - 2.3-2 Lining of canals to reduce water loss.
  - 2.3-3 Replacing drinking water distribution lines. This activity extends beyond CWSRF eligibility and is more appropriately funded by the DWSRF.
  - 2.3-4 Leak detection equipment for drinking water distribution systems, unless used for reuse distribution pipes.
- 2.4 Decision Criteria for Business Cases
- 2.4-1 Water efficiency can be accomplished through water saving elements or reducing water consumption. This will reduce the amount of water taken out of rivers, lakes, streams, groundwater, or from other sources.
  - 2.4-2 Water efficiency projects should deliver equal or better services with less net water use as compared to traditional or standard technologies and practices
  - 2.4-3 Efficient water use often has the added benefit of reducing the amount of energy required by a POTW, since less water would need to be collected and treated; therefore, there are also energy and financial savings.
- 2.5 Examples of Projects Requiring a Business Case.
- 2.5-1 Water meter replacement with traditional water meters (see AWWA M6 *Water Meters – Selection Installation, Testing, and Maintenance*).
  - 2.5-2 Projects that result from a water audit or water conservation plan
  - 2.5-3 Storage tank replacement/rehabilitation to reduce loss of reclaimed water.
  - 2.5-4 New water efficient landscape irrigation system (where there currently is not one).
  - 2.5-5 New water efficient agricultural irrigation system (where there currently is not one).

### **3.0 ENERGY EFFICIENCY**

- 3.1 Definition: Energy efficiency is the use of improved technologies and practices to reduce the energy consumption of water quality projects, use energy in a more efficient way, and/or produce/utilize renewable energy.

## 3.2 Categorical Projects

- 3.2-1 Renewable energy projects such as wind, solar, geothermal, micro-hydroelectric, and biogas combined heat and power systems (CHP) that provide power to a POTW. (<http://www.epa.gov/cleanenergy>). Micro-hydroelectric projects involve capturing the energy from pipe flow.
  - 3.2-1a POTW owned renewable energy projects can be located onsite or offsite.
  - 3.2-1b Includes the portion of a publicly owned renewable energy project that serves POTW's energy needs.
  - 3.2-1c Must feed into the grid that the utility draws from and/or there is a direct connection.
- 3.2-2 Projects that achieve a 20% reduction in energy consumption are categorically eligible for GPR<sup>4</sup>. Retrofit projects should compare energy used by the existing system or unit process<sup>5</sup> to the proposed project. The energy used by the existing system should be based on name plate data when the system was first installed, recognizing that the old system is currently operating at a lower overall efficiency than at the time of installation. New POTW projects or capacity expansion projects should be designed to maximize energy efficiency and should select high efficiency premium motors and equipment where cost effective. Estimation of the energy efficiency is necessary for the project to be counted toward GPR. If a project achieves less than a 20% reduction in energy efficiency, then it may be justified using a business case.
- 3.2-3 Collection system Infiltration/Inflow (I/I) detection equipment
- 3.2-4 POTW energy management planning, including energy assessments, energy audits, optimization studies, and sub-metering of individual processes to determine high energy use areas, which are reasonably expected to result in a capital project are eligible. Guidance to help POTWs develop energy management programs, including assessments and audits is available at [http://www.epa.gov/waterinfrastructure/pdfs/guidebook\\_si\\_energymanagement.pdf](http://www.epa.gov/waterinfrastructure/pdfs/guidebook_si_energymanagement.pdf).

## 3.3 Projects That Do Not Meet the Definition of Energy Efficiency

- 3.3-1 Renewable energy generation that is *privately* owned or the portion of a publicly owned renewable energy facility that does not provide power to a POTW, either through a connection to the grid that the utility draws from and/or a direct connection to the POTW.
- 3.3-2 Simply replacing a pump, or other piece of equipment, because it is at the end of its useful life, with something of average efficiency.
- 3.3-3 Facultative lagoons, even if integral to an innovative treatment process.

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<sup>4</sup> The 20% threshold for categorically eligible CWSRF energy efficiency projects was derived from a 2002 Department of Energy study entitled *United States Industrial Electric Motor Systems Market Opportunities Assessment, December 2002* and adopted by the Consortium for Energy Efficiency. Further field studies conducted by Wisconsin Focus on Energy and other State programs support the threshold.

<sup>5</sup> A unit process is a portion of the wastewater system such as the collection system, pumping stations, aeration system, or solids handling, etc.

- 3.3-4 Hydroelectric facilities, except micro-hydroelectric projects. Micro-hydroelectric projects involve capturing the energy from pipe flow.
- 3.4 Decision Criteria for Business Cases
- 3.4-1 Project must be cost effective. An evaluation must identify energy savings and payback on capital and operation and maintenance costs that does not exceed the useful life of the asset.  
[http://www.epa.gov/waterinfrastructure/pdfs/guidebook\\_si\\_energymangement.pdf](http://www.epa.gov/waterinfrastructure/pdfs/guidebook_si_energymangement.pdf)
- 3.4-2 The business case must describe how the project maximizes energy saving opportunities for the POTW or unit process.
- 3.4-3 Using existing tools such as Energy Star's Portfolio Manager ([http://www.energystar.gov/index.cfm?c=evaluate\\_performance.bus\\_portfoliomanager](http://www.energystar.gov/index.cfm?c=evaluate_performance.bus_portfoliomanager)) or Check Up Program for Small Systems (CUPSS) (<http://www.epa/cupss>) to document current energy usage and track anticipated savings.
- 3.5 Examples of Projects Requiring a Business Case
- 3.5-1 POTW projects or unit process projects that achieve less than a 20% energy efficiency improvement.
- 3.5-2 Projects implementing recommendations from an energy audit that are not otherwise designated as categorical.
- 3.5-3 Projects that cost effectively eliminate pumps or pumping stations.
- 3.5-4 Infiltration/Inflow (I/I) correction projects that save energy from pumping and reduced treatment costs and are cost effective.
- 3.5-4a Projects that count toward GPR cannot build new structural capacity. These projects may, however, recover existing capacity by reducing flow from I/I.
- 3.5-5 I/I correction projects where excessive groundwater infiltration is contaminating the influent requiring otherwise unnecessary treatment processes (i.e. arsenic laden groundwater) and I/I correction is cost effective.
- 3.5-6 Replacing pre-Energy Policy Act of 1992 motors with National Electric Manufacturers Association (NEMA) premium energy efficiency motors.
- 3.5-6a NEMA is a standards setting association for the electrical manufacturing industry (<http://www.nema.org/gov/energy/efficiency/premium/>).
- 3.5-7 Upgrade of POTW lighting to energy efficient sources such as metal halide pulse start technologies, compact fluorescent, light emitting diode (LED).
- 3.5-8 SCADA systems can be justified based upon substantial energy savings.
- 3.5-9 Variable Frequency Drive can be justified based upon substantial energy savings.

#### **4.0 ENVIRONMENTALLY INNOVATIVE**

- 4.1 Definition: Environmentally innovative projects include those that demonstrate new and/or innovative approaches to delivering services or managing water resources in a more sustainable way.

## 4.2 Categorical Projects

- 4.2-1 Total/integrated water resources management planning likely to result in a capital project.
- 4.2-2 Utility Sustainability Plan consistent with EPA SRF's sustainability policy.
- 4.2-3 Greenhouse gas (GHG) inventory or mitigation plan and submission of a GHG inventory to a registry (such as Climate Leaders or Climate Registry)
  - 4.3-3a Note: GHG Inventory and mitigation plan is eligible for CWSRF funding.
  - 4.2-3b EPA Climate Leaders:
    - <http://www.epa.gov/climateleaders/basic/index.html>
    - Climate Registry: <http://www.theclimateregistry.org/>
- 4.2-4 Planning activities by a POTW to prepare for adaptation to the long-term effects of climate change and/or extreme weather.
  - 4.2-4a Office of Water – Climate Change and Water website:
    - <http://www.epa.gov/water/climatechange/>
- 4.2.5 Construction of US Building Council LEED certified buildings or renovation of an existing building on POTW facilities.
  - 4.2-5a Any level of certification (Platinum, Gold, Silver, Certified).
  - 4.2-5b All building costs are eligible, not just stormwater, water efficiency and energy efficiency related costs. Costs are not limited to the incremental additional costs associated with LEED certified buildings.
  - 4.2-5c U.S. Green Building Council website:
    - <http://www.usgbc.org/displaypage.aspx?CategoryID=19>
- 4.2-6 Decentralized wastewater treatment solutions to existing deficient or failing onsite wastewater systems.
  - 4.2-6a Decentralized wastewater systems include individual onsite and/or cluster wastewater systems used to collect, treat and disperse relatively small volumes of wastewater. An individual onsite wastewater treatment system is a system relying on natural processes and/or mechanical components, that is used to collect, treat and disperse or reclaim wastewater from a single dwelling or building. A cluster system is a wastewater collection and treatment system under some form of common ownership that collects wastewater from two or more dwellings or buildings and conveys it to a treatment and dispersal system located on a suitable site near the dwellings or buildings. Decentralized projects may include a combination of these systems. EPA recommends that decentralized systems be managed under a central management entity with enforceable program requirements, as stated in the *EPA Voluntary Management Guidelines*.
    - [http://www.epa.gov/owm/septic/pubs/septic\\_guidelines.pdf](http://www.epa.gov/owm/septic/pubs/septic_guidelines.pdf)
  - 4.2-6b Treatment and Collection Options: A variety of treatment and collection options are available when implementing decentralized wastewater systems. They typically include a septic tank, although many configurations include additional treatment components following or in place of the septic tank, which provide for advanced treatment solutions. Most disperse treated effluent to the soil where further treatment occurs, utilizing either conventional soil absorption fields or alternative soil dispersal methods which provide advanced treatment. Those that

discharge to streams, lakes, tributaries, and other water bodies require federal or state discharge permits (see below). Some systems promote water reuse/recycling, evaporation or wastewater uptake by plants. Some decentralized systems, particularly cluster or community systems, often utilize alternative methods of collection with small diameter pipes which can flow via gravity, pump, or siphon, including pressure sewers, vacuum sewers and small diameter gravity sewers. Alternative collection systems generally utilize piping that is less than 8 inches in diameter, or the minimum diameter allowed by the state if greater than 8 inches, with shallow burial and do not require manholes or lift stations. Septic tanks are typically installed at each building served or another location upstream of the final treatment and dispersal site. Collection systems can transport raw sewage or septic tank effluent. Another popular dispersal option used today is subsurface drip infiltration. Package plants that discharge to the soil are generally considered decentralized, depending on the situation in which they are used. While not entirely inclusive, information on treatment and collection processes is described, in detail, in the "*Onsite Wastewater Treatment Technology Fact Sheets*" section of the EPA Onsite Manual [http://www.epa.gov/owm/septic/pubs/septic\\_2002\\_osdm\\_all.pdf](http://www.epa.gov/owm/septic/pubs/septic_2002_osdm_all.pdf) and on EPA's septic system website under Technology Fact Sheets. [http://cfpub.epa.gov/owm/septic/septic.cfm?page\\_id=283](http://cfpub.epa.gov/owm/septic/septic.cfm?page_id=283)

#### 4.3 Projects That Do Not Meet the Definition of Environmentally Innovative

- 4.3-1 Air scrubbers to prevent nonpoint source deposition.
- 4.3-2 Facultative lagoons, even if integral to an innovative treatment processes.
- 4.3-3 Surface discharging decentralized wastewater systems where there are cost effective soil-based alternatives.
- 4.3-4 Higher sea walls to protect POTW from sea level rise.
- 4.3-5 Reflective roofs at POTW to combat heat island effect.

#### 4.4 Decision Criteria for Business Cases

- 4.4-1 State programs are allowed flexibility in determining what projects qualify as innovative in their state based on unique geographical or climatological conditions.
  - 4.4-1a Technology or approach whose performance is expected to address water quality but the actual performance has not been demonstrated in the state;
  - 4.4-1b Technology or approach that is not widely used in the State, but does perform as well or better than conventional technology/approaches at lower cost; or
  - 4.4-1c Conventional technology or approaches that are used in a new application in the State.

#### 4.5 Examples of Projects Requiring a Business Case

- 4.5-1 Constructed wetlands projects used for municipal wastewater treatment, polishing, and/or effluent disposal.

- 4.5-1a Natural wetlands, as well as the restoration/enhancement of degraded wetlands, may not be used for wastewater treatment purposes and must comply with all regulatory/permitting requirements.
- 4.5-1b Projects may not (further) degrade natural wetlands.
- 4.5-2 Projects or components of projects that result from total/integrated water resource management planning consistent with the decision criteria for environmentally innovative projects and that are Clean Water SRF eligible.
- 4.5-3 Projects that facilitate adaptation of POTWs to climate change identified by a carbon footprint assessment or climate adaptation study.
- 4.5-4 POTW upgrades or retrofits that remove phosphorus for beneficial use, such as biofuel production with algae.
- 4.5-5 Application of innovative treatment technologies or systems that improve environmental conditions and are consistent with the Decision Criteria for environmentally innovative projects such as:
  - 4.5-5a Projects that significantly reduce or eliminate the use of chemicals in wastewater treatment;
  - 4.5-5b Treatment technologies or approaches that significantly reduce the volume of residuals, minimize the generation of residuals, or lower the amount of chemicals in the residuals. (National Biosolids Partnership, 2010; *Advances in Solids Reduction Processes at Wastewater Treatment Facilities Webinar*; [http://www.e-wef.org/timssnet/meetings/tnt\\_meetings.cfm?primary\\_id=10CAP2&Action=LONG&subsystem=ORD%3cbr](http://www.e-wef.org/timssnet/meetings/tnt_meetings.cfm?primary_id=10CAP2&Action=LONG&subsystem=ORD%3cbr)).
  - 4.5-5b(i) Includes composting, class A and other sustainable biosolids management approaches.
- 4.5-6 Educational activities and demonstration projects for water or energy efficiency.
- 4.5-7 Projects that achieve the goals/objectives of utility asset management plans ([http://www.epa.gov/safewater/smallsystems/pdfs/guide\\_smallsystems\\_assetmanagement\\_bestpractices.pdf](http://www.epa.gov/safewater/smallsystems/pdfs/guide_smallsystems_assetmanagement_bestpractices.pdf); <http://www.epa.gov/owm/assetmanage/index.htm>).
- 4.5-8 Sub-surface land application of effluent and other means for ground water recharge, such as spray irrigation and overland flow.
  - 4.5-8a Spray irrigation and overland flow of effluent is not eligible for GPR where there is no other cost effective alternative.

### **Business Case Development**

**This guidance is intended to be comprehensive: however, EPA understands our examples projects requiring a business case may not be all inclusive. A business case is a due diligence document. For those projects, or portions of projects, which are not included in the categorical projects lists provided above, a business case will be required to demonstrate that an assistance recipient has thoroughly researched anticipated 'green' benefits of a project. Business cases will be approved by the State (see section III.A. in the *Procedures for Implementing Certain Provisions of EPA's Fiscal Year 2011 Full-Year Continuing Appropriation Affecting the Clean Water and Drinking Water State Revolving Fund Programs*). An approved business case must be included in the State's project files**

**and contain clear documentation that the project achieves identifiable and substantial benefits. The following sections provide guidelines for business case development.**

**5.0 Length of a Business Case**

- 5.0-1 Business cases must address the decision criteria for the category of project
- 5.0-2 Business cases should be adequate, but not exhaustive.
  - 5.0-2a There are many formats and approaches. EPA does not require any specific one.
  - 5.0-2b Some projects will require detailed analysis and calculations, while others may not require more than one page.
  - 5.0-2c Limit the information contained in the business case to only the pertinent 'green' information needed to justify the project.
- 5.0-3 A business case can simply summarize results from, and then cite, existing documentation – such as engineering reports, water or energy audits, results of water system tests, etc.

**5.1 Content of a Business Case**

- 5.1-1 Quantifiable water and/or energy savings or water loss reduction for water and energy efficiency projects should be included.
- 5.1-2 The cost and financial benefit of the project should be included, along with the payback time period where applicable. (NOTE; Clean Water SRF requires energy efficiency projects to be cost effective.)

**5.2 Items Which Strengthen Business Case, but Are Not Required**

- 5.2-1 Showing that the project was designed to enable equipment to operate most efficiently.
- 5.2-2 Demonstrating that equipment will meet or exceed standards set by professional associations.
- 5.2-3 Including operator training or committing to utilizing existing tools such as Energy Star's Portfolio Manager or CUPSS for energy efficiency projects.

**5.3 Example Business Cases Are Available at <http://www.srfbusinesscases.net/>.**

## **PART B – DWSRF GPR SPECIFIC GUIDANCE**

### **DWSRF Eligibility Principles**

**State SRF programs are responsible for identifying projects that count toward GPR. The following overarching principles, or decision criteria, apply to all projects that count toward GPR and will help states identify projects.**

- 0.1 All GPR projects and activities must otherwise be eligible for DWSRF funding. The GPR requirement does not create new funding authority beyond that described in Section 1452 of the SDWA.
- 0.2 GPR projects and activities must meet the definition of one of the four GPR categories. The individual GPR categories do not create new eligibility for the DWSRF. The projects that count toward GPR must otherwise be eligible for DWSRF funding.
- 0.3 GPR projects and activities must further the goals stated in Section 1452 of the Safe Drinking Water Act.
- 0.4 Projects and activities that utilize the DWSRF set-asides can also be eligible for GPR. Planning and assessment activities, such as conducting water or energy audits, are eligible, as well as green-oriented capacity development, source water protection, and total/integrated water resources management planning activities. Where applicable, the pertinent set-asides that can be used are noted in the next section.

### **DWSRF Technical Guidance**

**The following sections outline the technical aspects for the DWSRF Green Project Reserve. It is organized by the four categories of green projects: green infrastructure, water efficiency, energy efficiency, and environmentally innovative activities. Categorically green projects are listed, as well as projects that are ineligible. Design criteria for business cases and example projects that would require a business case are also provided.**

#### **1.0 GREEN INFRASTRUCTURE**

- 1.1 Definition: Green stormwater infrastructure includes a wide array of practices at multiple scales that manage wet weather and that maintains and restores natural hydrology by infiltrating, evapotranspiring and harvesting and using stormwater. On a regional scale, green infrastructure is the preservation and restoration of natural landscape features, such as forests, floodplains and wetlands, coupled with policies such as infill and redevelopment that reduce overall imperviousness in a watershed. On the local scale, green infrastructure consists of site- and neighborhood-specific practices, such as bioretention, trees, green roofs, permeable pavements and cisterns.
- 1.2 Categorical Projects The following types of projects, done at a utility-owned facility or as part of a water infrastructure project, can be counted toward the GPR if they are a part of an eligible DWSRF project:
  - 1.2-1 Pervious or porous pavement
  - 1.2-2 Bioretention

- 1.2-3 Green roofs
  - 1.2-4 Rainwater harvesting/cisterns
  - 1.2-5 Gray water use
  - 1.2-6 Xeriscape
  - 1.2-7 Landscape conversion programs
  - 1.2-8 Retrofitting or replacing existing irrigation systems with moisture and rain sensing equipment
- 1.3 Projects That Do Not Meet the Definition of Green Infrastructure
- 1.3-1 Stormwater controls that have impervious or semi-impervious liners and provide no compensatory evapotranspirative or harvesting function for stormwater retention.
  - 1.3-2 Stormwater ponds that serve an extended detention function and/or extended filtration. This includes dirt lined detention basins.
  - 1.3-3 In-line and end-of-pipe treatment systems that only filter or detain stormwater.
  - 1.3-4 Underground stormwater control and treatment devices such as swirl concentrators, hydrodynamic separators, baffle systems for grit, trash removal/floatables, oil and grease, inflatable booms and dams for in-line underground storage and diversion of flows.
  - 1.3-5 Stormwater conveyance systems that are not soil/vegetation based (swales) such as pipes and concrete channels. Green infrastructure projects that include pipes to collect stormwater may be justified as innovative environmental projects pursuant to Section 4.4 of this guidance.
- 1.4 Decision Criteria for Business Cases
- 1.4-1 Green infrastructure projects are designed to mimic the natural hydrologic conditions of the site or watershed.
  - 1.4-2 Projects capture, treat, infiltrate, or evapotranspire stormwater on the parcels where it falls and does not include inter basin transfers of water.
  - 1.4-3 GPR project is in lieu of or to supplement municipal hard/gray infrastructure.
  - 1.4-4 Projects considering both landscape and site scale will be most successful at protecting water quality.
  - 1.4-5 Design criteria is available at <http://cfpub.epa.gov/npdes/greeninfrastructure/munichandbook.cfm> and <http://cfpub.epa.gov/npdes/greeninfrastructure/technology.cfm>

## **2.0 WATER EFFICIENCY**

2.1 Definition: EPA's WaterSense program defines water efficiency as the use of improved technologies and practices to deliver equal or better services with less water. Water efficiency encompasses conservation and reuse efforts, as well as water loss reduction and prevention, to protect water resources for the future.

### **2.2 Categorical Projects**

- 2.2-1 Installing or retrofitting water efficient devices such as plumbing fixtures and appliances

- 2.2-1a For example – showerheads, toilets, urinals, and other plumbing devices
- 2.2-1b Implementation of incentive programs to conserve water such as rebates
- 2.2-1c WaterSense labeled products (<http://www.epa.gov/watersense/index.html>)
- 2.2-2 Installing any type of water meter in previously unmetered areas:
  - 2.2-2a If rate structures are based on metered use,
  - 2.2-2b Can include backflow prevention devices if installed in conjunction with water meter.
- 2.2-3 Replacing existing broken/malfunctioning water meters with:
  - 2.2-3a Automatic meter reading systems (AMR), for example:
    - 2.2-3a(i) Advanced metering infrastructure (AMI).
    - 2.2-3a(ii) Smart meters.
  - 2.2-3b Meters with built in leak detection,
  - 2.2-3c Can include backflow prevention devices if installed in conjunction with water meter replacement.
- 2.2-4 Retrofitting/adding AMR capabilities or leak equipment to existing meters (not replacing the meter itself).
- 2.2-5 Conducting water utility audits, leak detection studies, and water use efficiency baseline studies, which are reasonably expected to result in a capital project or in a reduction in demand to alleviate the need for additional capital investment.
  - 2.2-5a Funded through set-asides: Small Systems Technical Assistance, State Program Management – Capacity Development, or Local Assistance & Other State Programs – Capacity Development; where consistent with the state capacity development strategy
  - 2.2-5b For standard practices, see AWWA M36 *Water Audits and Loss Control Programs*.
  - 2.2-5c Free Water Audit Software, Version 4.1 (2010) (<http://www.awwa.org/Resources/WaterLossControl.cfm?ItemNumber=47846&navItemNumber=48155>)
- 2.2-6 Developing conservation plans/programs reasonably expected to result in a water conserving capital project or in a reduction in demand to alleviate the need for additional capital investment.
  - 2.2-6a Funded through set-asides: Small Systems Technical Assistance, State Program Management – Capacity Development, or Local Assistance & Other State Programs – Capacity Development; where consistent with the state capacity development strategy
  - 2.2-6b For standard practices, see AWWA M52 *Water Conservation Programs – A Planning Manual*
- 2.2-7 Recycling and water reuse projects that replace potable sources with non-potable sources,
  - 2.2-7a Gray water, condensate, and wastewater effluent reuse systems (where local codes allow the practice).
  - 2.2-7b Extra treatment costs and distribution pipes associated with water reuse.
- 2.2-8 Retrofit or replacement of existing landscape irrigation systems to more efficient landscape irrigation systems, including moisture and rain sensing controllers.

- 2.2-9 Projects that result from a water efficiency related assessments (such as water audits, leak detection studies, conservation plans, etc) as long as the assessments adhered to the standard industry practices referenced above.
  - 2.2-10 Distribution system leak detection equipment, portable or permanent.
  - 2.2-11 Automatic flushing systems (portable or permanent).
  - 2.2-12 Pressure reducing valves (PRVs).
  - 2.2-13 Internal plant water reuse (such as backwash water recycling).
- 2.3 Projects That Do Not Meet the Definition of Water Efficiency
- 2.3-1 Covering open finished water reservoirs – Federally mandated, so not considered “above and beyond.”
- 2.4 Decision Criteria For Business Cases
- 2.4-1 Water efficiency can be accomplished through water saving elements or reducing water consumption. This will reduce the amount of water taken out of rivers, lakes, streams, groundwater, or from other sources.
  - 2.4-2 Water efficiency projects should deliver equal or better services with less net water use as compared to traditional or standard technologies and practices.
  - 2.4-3 Efficient water use often has the added benefit of reducing the amount of energy required by a drinking water system, since less water would need to be treated and transported; therefore, there are also energy and financial savings.
  - 2.4-4 Proper water infrastructure management should address where water losses could be occurring in the system and fix or avert them. This could be achieved, for example, by making operational changes or replacing aging infrastructure.
- 2.5 Example Projects Requiring a Business Case
- 2.5-1 Water meter replacement with traditional water meters (see AWWA M6 *Water Meters – Selection, Installation, Testing, and Maintenance*).
  - 2.5-2 Distribution pipe replacement or rehabilitation to reduce water loss and prevent water main breaks (see AWWA M28 *Rehabilitation of Water Mains*).
  - 2.5-3 Storage tank replacement/rehabilitation to reduce water loss.
  - 2.5-4 New water efficient landscape irrigation system (where there currently is not one).

### **3.0 ENERGY EFFICIENCY**

- 3.1 Definition: Energy efficiency is the use of improved technologies and practices to reduce the energy consumption of water projects, use energy in a more efficient way, and/or produce/utilize renewable energy.
- 3.2 Categorical Projects<sup>6</sup>
- 3.2-1 Renewable energy projects, which are part of a public health project, such as wind, solar, geothermal, and micro-hydroelectric that provide power to a utility

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<sup>6</sup> EPA has concluded that existing literature does not support a 20% energy efficiency improvement threshold for drinking water systems; therefore, there is no categorical 20% threshold for pumping/treatment systems for the DWSRF. A business case is required.

- (<http://www.epa.gov/cleanenergy>). Micro-hydroelectric projects involve capturing the energy from pipe flow.
- 3.2-1a Utility-owned renewable energy projects can be located on-site or off-site.
  - 3.2-1b Includes the portion of a publicly owned renewable energy project that serves the utility's energy needs.
  - 3.2-1c Must feed into the grid that the utility draws from and/or there is a direct connection.
  - 3.2-2 Utility energy management planning, including energy assessments, energy audits, optimization studies, and sub-metering of individual processes to determine high energy use areas, which are reasonably expected to result in energy efficiency capital projects or in a reduction in demand to alleviate the need for additional capital investment.
    - 3.2-2a Funded through set-asides: Small Systems Technical Assistance, State Program Management – Capacity Development, or Local Assistance & Other State Programs – Capacity Development; where consistent with the state capacity development strategy
    - 3.2-2b For standard energy management practices, see *Ensuring a Sustainable Future: An Energy Management Guidebook for Wastewater and Water Utilities*, located at [http://www.epa.gov/waterinfrastructure/pdfs/guidebook\\_si\\_energymanagement.pdf](http://www.epa.gov/waterinfrastructure/pdfs/guidebook_si_energymanagement.pdf)
    - 3.2-2c Energy Efficiency Step-By-Step Guide: <http://www.epa.gov/region09/waterinfrastructure/howto.html>
  - 3.2-3 National Electric Manufacturers Association (NEMA) Premium energy efficiency motors (<http://www.nema.org/gov/energy/efficiency/premium/>)
- 3.3 Projects That Do Not Meet the Definition of Energy Efficiency
- 3.3-1 Simply replacing a pump, or other piece of equipment, because it is at the end of its useful life, with something of average efficiency. (Note: replacing it with higher efficiency equipment requires a business case)
  - 3.3-2 Hydroelectric facilities, except micro-hydroelectric projects. Micro-hydroelectric projects involve capturing the energy from pipe flow.
- 3.4 Decision Criteria for Business Cases
- 3.4-1 Projects should include products and practices which will decrease environmental impacts, such as reducing greenhouse gas emissions, and provide financial savings.
  - 3.4-2 Projects should include approaches to integrate energy efficient practices into daily management and long-term planning (<http://water.epa.gov/infrastructure/sustain/energyefficiency.cfm>).
  - 3.4-3 Operator training in conjunction with any energy savings project is strongly encouraged in order to maximize the energy savings potential.
  - 3.4-4 Using existing tools such as Energy Star's Portfolio Manager ([http://www.energystar.gov/index.cfm?c=evaluate\\_performance.bus\\_portfoliomanager](http://www.energystar.gov/index.cfm?c=evaluate_performance.bus_portfoliomanager)) or Check Up Program for Small Systems (CUPSS)

(<http://www.epa.gov/cupss/>) to document current energy usage and track anticipated savings.

### 3.5 Example Projects Requiring a Business Case

- 3.5-1 Energy efficient retrofits, upgrades, or new pumping systems and treatment processes (including variable frequency drives (VFDs)).
- 3.5-2 Pump refurbishment to optimize pump efficiency (such as replacing or trimming impellers if pumps have too much capacity, replacing damaged or worn wearing rings/seals/bearings, etc.).
- 3.5-3 Projects that result from an energy efficiency related assessments (such as energy audits, energy assessment studies, etc), that are not otherwise designated as categorical.
- 3.5-4 Projects that cost effectively eliminate pumps or pumping stations.
- 3.5-5 Projects that achieve the remaining increments of energy efficiency in a system that is already very efficient.
- 3.5-6 Upgrade of lighting to energy efficient sources (such as metal halide pulse start technologies, compact fluorescent, light emitting diode, etc).
- 3.5-7 Automated and remote control systems (SCADA) that achieve substantial energy savings (see AWWA M2 *Instrumentation and Control*).

## 4.0 ENVIRONMENTALLY INNOVATIVE

- 4.1 Definition: Environmentally innovative projects include those that demonstrate new and/or innovative approaches to delivering services or managing water resources in a more sustainable way.
- 4.2 Categorical Projects
  - 4.2-1 Total/integrated water resources management planning, or other planning framework where project life cycle costs (including infrastructure, energy consumption, and other operational costs) are minimized, which enables communities to adopt more efficient and cost-effective infrastructure solutions.
    - 4.2-1a Funded through set-asides: Small Systems Technical Assistance, State Program Management, or Local Assistance & Other State Programs.
    - 4.2-1b Plans to improve water quantity and quality associated with water system technical, financial, and managerial capacity.
    - 4.2-1c Eligible source water protection planning.
      - 4.2-1c(i) Periodic, updated, or more detailed source water delineation or assessment as part of a more comprehensive source water protection program.
      - 4.2-1c(ii) Source water monitoring (not compliance monitoring) and modeling as part of a more comprehensive source water protection program.
      - 4.2-1c(iii) <http://www.epa.gov/safewater/dwsrf/pdfs/source.pdf>
    - 4.2-1d Planning activities by a utility to prepare for adaptation to the long-term affects of climate change and/or extreme weather.

- 4.2-1d(i) Office of Water – Climate Change and Water website:  
<http://www.epa.gov/water/climatechange/>
- 4.2-2 Utility Sustainability Plan consistent with EPA's SRF sustainability policy.
- 4.2-3 Greenhouse gas (GHG) inventory or mitigation plan and submission of a GHG inventory to a registry (such as Climate Leaders or Climate Registry), as long as it is being done for a facility which is eligible for DWSRF assistance.
  - 4.2-3a EPA Climate Leaders:  
<http://www.epa.gov/climateleaders/basic/index.html>
  - 4.2-3b Climate Registry – <http://www.theclimateregistry.org/>
- 4.2-4 Source Water Protection Implementation Projects
  - 4.2-4a Voluntary, incentive based source water protection measures pursuant to Section 1452(k)(1)(A)(ii), where the state primacy agency has determined that the use of such measures will reduce or preclude the need for treatment. Under the FY 2010 appropriation, additional subsidization for these measures may be provided in the form of principal forgiveness or negative interest rate loans.
  - 4.2-5 Construction of US Building Council LEED certified buildings, or renovation of an existing building, owned by the utility, which is part of an eligible DWSRF project.
    - 4.2-5a Any level of certification (Platinum, Gold, Silver, Certified).
    - 4.2-5b All building costs are eligible, not just stormwater, water efficiency and energy efficiency related costs. Costs are not limited to the incremental additional costs associated with LEED certified buildings.
    - 4.2-5c <http://www.usgbc.org/DisplayPage.aspx?CategoryID=19>
- 4.3 Projects That Do Not Meet the Definition of Environmentally Innovative
  - 4.3-1 Higher sea walls to protect water infrastructure facilities from sea level rise.
  - 4.3-2 Reflective roofs at water infrastructure facilities to combat heat island effect.
- 4.4 Decision Criteria for Business Cases
  - 4.4-1 State programs are allowed flexibility in determining what projects qualify as innovative in their state based on unique geographical and climatological conditions.
    - 4.4-1a Technology or approach whose performance is expected to address water quality but the actual performance has not been demonstrated in the state;  
or
    - 4.4-1b Technology or approach that is not widely used in the state, but does perform as well or better than conventional technology/approaches at lower cost; or
    - 4.4-1c Conventional technology or approaches that are used in a new application in the state.
- 4.5 Example Projects Requiring A Business Case
  - 4.5-1 Projects, or components of projects, that result from total/integrated water resources management planning (including climate change) consistent with the

Decision Criteria for environmentally innovative projects and that are DWSRF eligible.

- 4.5-2 Application of innovative treatment technologies or systems that improve environmental conditions and are consistent with the Decision Criteria for environmentally innovative projects, such as:
  - 4.5-2a Projects that significantly reduce or eliminate the use of chemicals in water treatment.
  - 4.5-2b Treatment technologies or approaches that significantly reduce the volume of residuals, minimize the generation of residuals, or lower the amount of chemicals in the residuals (Cornwell, 2009; *Water Treatment Residuals Engineering*; Water Research Foundation).
  - 4.5-2c Trenchless or low impact construction technology.
  - 4.5-2d Using recycled materials or re-using materials on-site.
- 4.5-3 Educational activities and demonstration projects for water or energy efficiency (such as rain gardens).
- 4.5-4 Projects that achieve the goals/objectives of utility asset management plans ([http://www.epa.gov/safewater/smallsystems/pdfs/guide\\_smallsystems\\_assetmanagement\\_bestpractices.pdf](http://www.epa.gov/safewater/smallsystems/pdfs/guide_smallsystems_assetmanagement_bestpractices.pdf); <http://www.epa.gov/owm/assetmanage/index.htm>).

### **DWSRF Business Case Development**

**This guidance is intended to be comprehensive; however, EPA understands our examples projects requiring a business case may not be all inclusive. A business case is a due diligence document. For those projects, or portions of projects, which are not included in the categorical projects lists provided above, a business case will be required to demonstrate that an assistance recipient has thoroughly researched anticipated 'green' benefits of a project. Business cases will be approved by the State (see Section III.A. in the *Procedures for Implementing Certain Provisions of EPA's Fiscal Year 2011 Full-Year Continuing Appropriation Affecting the Clean Water and Drinking Water State Revolving Fund Programs*). An approved business case must be included in the State's project files and contain clear documentation that the project achieves identifiable and substantial benefits. The following sections provide guidelines for business case development.**

- 5.0 Length of a Business Case
  - 5.0-1 Business cases should be adequate but not exhaustive.
    - 5.0-1a There are many formats and approaches. EPA does not require any specific one.
    - 5.0-1b Some projects will require detailed analysis and calculations, while others many not require more than one page.
    - 5.0-1c Limit the information contained in the business case to only the pertinent 'green' information needed to justify the project.
  - 5.0-2 A business case can simply summarize results from, and then cite, existing documentation – such as engineering reports, water or energy audits, results of water system tests, etc.
- 5.1 Content of a Business Case

- 5.1-1 Business cases must address the decision criteria for the category of project.
  - 5.1-2 Quantifiable water and/or energy savings or water loss reduction for water and energy efficiency projects should be included.
  - 5.1-3 The cost and financial benefit of the project should be included, along with the payback time period, where applicable.
- 5.2 Items Which Strengthen Business Case, but Are Not Required
- 5.2-1 Showing that the project was designed to enable equipment to operate most efficiently.
  - 5.2-2 Demonstrating that equipment will meet or exceed standards set by professional associations.
  - 5.2-3 Including operator training or committing to utilizing existing tools such as Energy Star's Portfolio Manager or CUPSS for energy efficiency projects.
- 5.3 Example Business Cases Are Available at <http://www.srfbusinesscases.net/>.

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**ATTACHMENT 3**  
**FY 2011 Additional Subsidization and Green Project Reserve Requirements**

	FY 2011 Capitalization Grant (Allotment Less 604(b)) <sup>1</sup>	Additional Subsidization <sup>2</sup>		Green <sup>3</sup>
		Minimum Amount that must be provided as Additional Subsidization	Maximum Amount that may be provided as Additional Subsidization	Minimum Amount that must be provided for Green Projects
<b>Region 1</b>				
Connecticut	\$18,080,000	\$1,676,326	\$5,587,754	\$3,618,000
Maine	\$11,431,000	\$1,059,264	\$3,530,880	\$2,286,200
Massachusetts	\$50,136,000	\$4,645,896	\$15,486,326	\$10,027,200
New Hampshire	\$14,757,000	\$1,367,471	\$4,558,236	\$2,951,400
Rhode Island	\$9,915,000	\$918,782	\$3,062,606	\$1,983,000
Vermont	\$7,222,000	\$669,233	\$2,230,777	\$1,444,400
<b>Region 2</b>				
New Jersey	\$80,342,000	\$5,591,646	\$18,636,819	\$12,068,400
New York	\$162,993,000	\$15,103,893	\$50,346,311	\$32,596,800
Puerto Rico	\$19,259,000	\$1,784,653	\$5,948,842	\$3,851,600
<b>Region 3</b>				
Delaware	\$7,222,000	\$669,233	\$2,230,777	\$1,444,400
Maryland	\$35,714,000	\$3,309,470	\$11,031,587	\$7,142,800
Pennsylvania	\$58,492,000	\$5,420,214	\$16,067,380	\$11,696,400
Virginia	\$30,220,000	\$2,600,384	\$9,334,545	\$6,044,000
West Virginia	\$23,019,000	\$2,133,076	\$7,110,255	\$4,603,600
<b>Region 4</b>				
Alabama	\$16,511,000	\$1,530,007	\$5,100,022	\$3,302,200
Florida	\$49,845,000	\$4,618,932	\$15,396,440	\$9,989,000
Georgia	\$24,967,000	\$2,313,590	\$7,711,985	\$4,993,400
Kentucky	\$18,794,000	\$1,741,583	\$5,805,210	\$3,758,800
Mississippi	\$13,304,000	\$1,232,827	\$4,109,424	\$2,660,800
North Carolina	\$26,650,000	\$2,469,546	\$8,231,821	\$5,330,000
South Carolina	\$15,127,000	\$1,401,757	\$4,672,524	\$3,025,400
Tennessee	\$21,451,000	\$1,967,776	\$6,625,921	\$4,290,200
<b>Region 5</b>				
Illinois	\$66,784,000	\$6,188,800	\$20,628,666	\$13,356,800
Indiana	\$35,588,000	\$3,297,794	\$10,992,647	\$7,117,800
Michigan	\$63,494,000	\$5,883,729	\$19,612,429	\$12,696,800
Minnesota	\$27,141,000	\$2,515,045	\$8,363,484	\$5,428,200
Ohio	\$63,129,000	\$7,703,224	\$25,677,413	\$16,625,800
Wisconsin	\$39,921,000	\$3,699,315	\$12,331,052	\$7,984,200
<b>Region 6</b>				
Arkansas	\$9,657,000	\$894,875	\$2,982,915	\$1,931,400
Louisiana	\$16,233,000	\$1,504,246	\$5,014,162	\$3,246,800
New Mexico	\$7,222,000	\$669,233	\$2,230,777	\$1,444,400
Oklahoma	\$11,930,000	\$1,105,504	\$3,685,014	\$2,366,000
Texas	\$67,492,000	\$6,254,207	\$20,847,357	\$13,496,400
<b>Region 7</b>				
Iowa	\$19,965,000	\$1,851,926	\$6,173,093	\$3,997,000
Kansas	\$13,326,000	\$1,235,051	\$4,118,637	\$2,665,800
Missouri	\$40,936,000	\$3,793,371	\$12,644,571	\$8,187,200
Nebraska	\$7,529,000	\$697,662	\$2,325,605	\$1,505,800
<b>Region 8</b>				
Colorado	\$11,812,000	\$1,094,570	\$3,648,585	\$2,362,400
Montana	\$7,222,000	\$669,233	\$2,230,777	\$1,444,400
North Dakota	\$7,222,000	\$669,233	\$2,230,777	\$1,444,400
South Dakota	\$7,222,000	\$669,233	\$2,230,777	\$1,444,400
Utah	\$7,759,000	\$718,995	\$2,396,649	\$1,551,800
Wyoming	\$7,222,000	\$669,233	\$2,230,777	\$1,444,400
<b>Region 9</b>				
Arizona	\$9,973,000	\$924,157	\$3,080,523	\$1,994,800
California	\$105,810,000	\$9,786,446	\$32,821,486	\$21,122,000
Hawaii	\$11,436,000	\$1,059,727	\$3,532,424	\$2,267,200
Nevada	\$7,222,000	\$669,233	\$2,230,777	\$1,444,400
<b>Region 10</b>				
Alaska	\$6,627,000	\$617,962	\$2,726,540	\$1,765,400
Idaho	\$7,222,000	\$669,233	\$2,230,777	\$1,444,400
Oregon	\$16,881,000	\$1,545,760	\$5,152,533	\$3,336,200
Washington	\$25,660,000	\$2,379,660	\$7,932,201	\$5,136,000
<b>Total</b>	<b>\$1,446,940,000</b>	<b>\$134,082,000</b>	<b>\$446,940,000</b>	<b>\$289,368,000</b>
<b>Total Amount Applicable to the Additional Subsidization Requirement</b>	<b>\$446,940,000</b>			

1. Does not include DC and the Territories (American Samoa, Guam, Northern Marianas, and the Virgin Islands).

2. Not less than 30% of the funds made available to each State for CWSRF capitalization grants shall be used by the State to provide additional subsidy to eligible recipients in the form of forgiveness of principal, negative interest loans, or grants. However, this requirement only applies to the portion of the CWSRF capitalization grant appropriation that exceeds \$1 Billion.

3. To the extent that there are sufficient eligible projects, not less than 20% of the funds made available to each State for CWSRF capitalization grants shall be used by the State for projects to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities.





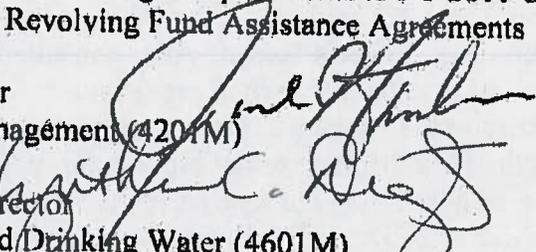
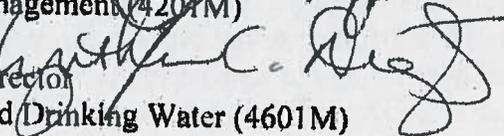
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAY 20 2011

OFFICE OF  
WATER

**MEMORANDUM**

**SUBJECT:** Application of Davis-Bacon Act Wage Requirements to FY 2011 Clean Water and Drinking Water State Revolving Fund Assistance Agreements

**FROM:** James A. Hanlon, Director  
Office of Wastewater Management (4201M)   
Cynthia C. Dougherty, Director  
Office of Groundwater and Drinking Water (4601M) 

**TO:** Water Management Division Directors  
Regions I-X

This is to advise that the Davis-Bacon Act wage requirements apply to all assistance provided by the Clean Water Act State Revolving Fund and the Safe Drinking Water Act State Revolving Fund through September 30, 2011.

On April 15, 2011, the President signed the Department of Defense and Full-Year Continuing Appropriations Act, 2011, P.L. 112-10 (the final FY 2011 Continuing Resolution (CR)). This law extends funding for both the Clean Water State Revolving Fund (CWSRF) and the Drinking Water State Revolving Fund (DWSRF) through September 30, 2011.

As you are aware, language in the FY 2010 Appropriations Act, P.L. 111-88, "Making Appropriations for the Department of Interior, Environment, and Related Agencies for the Fiscal Year Ending September 30, 2010," required states to include in all assistance agreements executed on or after October 30, 2010, for the construction of treatment works under the CWSRF or for any construction under the DWSRF, a provision requiring the application of the Davis-Bacon Act requirements for the entirety of the construction activities financed by the assistance agreement through the completion of construction, no matter when construction commences. This requirement was to continue through FY 2010, which ended on September 30, 2010.

The FY 2011 Full-Year Continuing Appropriations Act directs the Agency to continue implementing the provisions specified in the FY 2010 Appropriation Act in FY 2011 unless expressly directed otherwise in the final FY 2011 CR. The final FY 2011 CR includes the following language in Section 1101(a): "Such amounts [are appropriated] as may be necessary, at the level specified in subsection (c) and *under the authority and conditions provided in applicable appropriations Acts for fiscal year 2010*, for projects and activities . . . for which

appropriations, funds, or other authority were made available in . . . The Department of Interior, Environment, and Related Agencies Appropriations Act, 2010 (division A of Public Law 111-88)." (emphasis added). This language requires the Agency to carry forward the conditions that were applicable to the FY10 SRF appropriated funds. In addition, section 1104 of the final FY 2011 CR states that "[e]xcept as otherwise expressly provided in this division [Division B], the requirements, authorities, conditions, limitations, and other provisions of the appropriations Acts referred to in section 1101(a) shall continue in effect through the date specified in section 1106 [September 30, 2011]." The language in Division B of the final FY 2011 CR appropriates funds for the SRF capitalization grants at a lower amount for FY11 than provided in FY 2010. But, the final FY 2011 CR – specifically, Division B – does not expressly alter the SRF provisions of the FY 2010 Appropriation Act concerning the tribal and territorial set-asides, additional subsidy, Green Project Reserve, or Davis-Bacon. After consultation with the Office of General Council, we have determined that the above cited provisions in the FY 2011 Full-Year Continuing Appropriation require the Agency to carry forward the conditions that were made applicable by the language of the FY 2010 Appropriations Act through FY 2011. Therefore, all assistance agreements entered into during the time period covered by the Continuing Resolution must include the application of Davis-Bacon requirements.

Please contact either of us or have your staff contact Jordan Dorfman at (202) 564-0614 if you have questions.



## Attachment 5

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

NOV 30 2009

OFFICE OF  
WATER

### MEMORANDUM

**SUBJECT:** Application of Davis-Bacon Act Wage Requirements to Fiscal Year 2010 Clean Water State Revolving Fund and Drinking Water State Revolving Fund Assistance Agreements

**FROM:** Peter S. Silva *Michael Abgund for*  
Assistant Administrator

**TO:** Water Management Division Directors  
Regions I - X

On October 30, 2009, P.L. 111-88, "Making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes," was enacted. This law provides appropriations for both the Clean Water State Revolving Fund (CWSRF) and the Drinking Water State Revolving Fund (DWSRF) for Fiscal Year 2010, while adding new requirements to these already existing programs. One new requirement, and the focus of this memorandum, requires the application of Davis-Bacon Act requirements.

P.L. 111-88 includes the following language in Title II under the heading, "Administrative Provisions, Environmental Protection Agency,"

For fiscal year 2010 the requirements of section 513 of the Federal Water Pollution Control Act (33 U.S.C. 1372) shall apply to the construction of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund as authorized by title VI of that Act (33 U.S.C. 1381 et seq.), or with assistance made available under section 205(m) of that Act (33 U.S.C. 1285(m)), or both.

For fiscal year 2010 the requirements of section 1450(e) of the Safe Drinking Water Act (42 U.S.C. 300j-9(e)) shall apply to any construction project carried out in whole or in part with assistance made available by a drinking water treatment revolving loan fund as authorized by section 1452 of that Act (42 U.S.C. 300j-12).

In order to comply with this provision, States must include in all assistance agreements, whether in the form of a loan, bond purchase, grant, or any other vehicle to provide financing for a project, executed on or after October 30, 2009 (date of enactment of P.L. 111-88), and prior to

## Attachment 5

2

October 1, 2010, for the construction of treatment works under the CWSRF or for any construction under the DWSRF, a provision requiring the application of Davis-Bacon Act requirements for the entirety of the construction activities financed by the assistance agreement through completion of construction, no matter when construction commences.

Application of the Davis-Bacon Act requirements extend not only to assistance agreements funded with Fiscal Year 2010 appropriations, but to all assistance agreements executed on or after October 30, 2009 and prior to October 1, 2010, whether the source of the funding is prior year's appropriations, state match, bond proceeds, interest earnings, principal repayments, or any other source of funding so long as the project is financed by an SRF assistance agreement. If a project began construction prior to October 30, 2009, but is financed or refinanced through an assistance agreement executed on or after October 30, 2009 and prior to October 1, 2010, Davis-Bacon Act requirements will apply to all construction that occurs on or after October 30, 2009, through completion of construction.

Notably, there is no application of the Davis-Bacon Act requirements where such a refinancing occurs for a project that has completed construction prior to October 30, 2009. This provision does not apply to any project for which an assistance agreement was executed prior to October 30, 2009, no matter when construction occurs.

Further information may be provided in the form of "Questions and Answers" if necessary.

We fully understand the complexity of this provision and the difficulties involved in its application. If you have any question, please contact us, or have your staff contact Jordan Dorfman, Attorney-Advisor, State Revolving Fund Branch, Municipal Support Division, at (202) 564-0614, or Philip Metzger, Attorney-Advisor, Infrastructure Branch, Drinking Water Protection Division, at (202) 564-3776.

## ATTACHMENT 6

### **Wage Rate Requirements Under FY 2011 Full-Year Continuing Appropriation**

#### **Preamble**

With respect to the Clean Water and Safe Drinking Water State revolving Funds, EPA provides capitalization grants to each State which in turn provides subgrants or loans to eligible entities within the State. Typically, the subrecipients are municipal or other local governmental entities that manage the funds. For these types of recipients, the provisions set forth under Roman Numeral I, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section 3(ii)(A), below and for compliance as described in Section I-5.

Occasionally, the subrecipient may be a private for profit or not for profit entity. For these types of recipients, the provisions set forth in Roman Numeral II, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section II-3(ii)(A), below and for compliance as described in Section II-5.

#### **I. Requirements under FY 2011 Full-Year Continuing Appropriation For Subrecipients That Are Governmental Entities:**

The following terms and conditions specify how recipients will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under the FY 2011 Full-Year Continuing Appropriation with respect to State recipients and subrecipients that are governmental entities. If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient. If a State recipient needs guidance, the recipient may contact Joe Ochab, Region 9 Davis-Bacon Coordinator at 415-972-3761 or guidance. The recipient or subrecipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/esa/whd/recovery/>

##### **1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.**

Under the FY 2011 Full-Year Continuing Appropriation, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the recipient State before authorizing work on that site.

## 2. Obtaining Wage Determinations.

(a) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the subrecipient shall monitor [www.wdol.gov](http://www.wdol.gov) weekly to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.

(ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from [www.wdol.gov](http://www.wdol.gov) into the ordering instrument.

(c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or

ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

### **3. Contract and Subcontract provisions.**

(a) The Recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2011 Full-Year Continuing Appropriation, the following clauses:

#### **(1) Minimum wages.**

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, [www.dol.gov](http://www.dol.gov).

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written

evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at

<http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### (4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

#### **4. Contract Provision for Contracts in Excess of \$100,000.**

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The subrecipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or

subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

## 5. Compliance Verification

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the subrecipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be

conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.

## **II. Requirements under FY 2011 Full-Year Continuing Appropriation Act For Subrecipients That Are Not Governmental Entities**

The following terms and conditions specify how recipients will assist EPA in meeting its DB responsibilities when DB applies to EPA awards of financial assistance under the FY2011 Full-Year Continuing Appropriation Act with respect to subrecipients that are not governmental entities. If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient for guidance. If a State recipient needs guidance, the recipient may contact Joe Ochab, Region 9 Davis-Bacon Coordinator, at 415-972-3761 for guidance. The recipient or subrecipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/esa/whd/recovery/>

**Under these terms and conditions, the subrecipient must submit its proposed DB wage determinations to the State recipient for approval prior to including the wage determination in any solicitation, contract task orders, work assignments, or similar instruments to existing contractors.**

### 1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.

Under the FY 2011 Full-Year Continuing Appropriation, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the recipient State before authorizing work on that site.

### 2. Obtaining Wage Determinations.

(a) Subrecipients must obtain proposed wage determinations for specific localities at [www.wdol.gov](http://www.wdol.gov). After the Subrecipient obtains its proposed wage determination, it must submit the wage determination to (insert contact information for State recipient DB point of contact for wage determination) for approval prior to inserting the wage determination into a solicitation, contract or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments unless subsequently directed otherwise by the State recipient Award Official).

(b) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

- (i) While the solicitation remains open, the subrecipient shall monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.
- (ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(c) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from [www.wdol.gov](http://www.wdol.gov) into the ordering instrument.

(c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

### **3. Contract and Subcontract provisions.**

(a) The Recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2011 Full-Year Continuing Appropriation, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3) ), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, [www.dol.gov](http://www.dol.gov).

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient(s) to the State award official. The State award official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request, and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The subrecipient(s) shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee

programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### (4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

#### **4. Contract Provision for Contracts in Excess of \$100,000.**

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The subrecipient shall upon the request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or

subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

#### 5. Compliance Verification

(a). The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the subrecipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c). The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB . In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d). The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be

conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.

