



**NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION**

**DRINKING WATER  
STATE REVOLVING FUND**

**Proposed Amendments to the Final FFY2009 Priority System,  
Intended Use Plan and Project Priority List  
and the  
Proposed Intended Use Plan for the  
AMERICAN RECOVERY AND REINVESTMENT ACT of 2009**

May 2009

Jon S. Corzine  
Governor



Mark N. Mauriello  
Acting Commissioner



## **I. Introduction:**

This Intended use Plan (IUP) accompanies New Jersey's application for the \$43,154,000 capitalization grant for its Drinking Water State Revolving Fund (DWSRF) under the American Recovery and Reinvestment Act (ARRA) of 2009. It is considered an amendment to the previously approved IUP for 2009 that was finalized and provided to the United States Environmental Protection Agency (USEPA) in July 2008.

## **II. DWSRF Program Goals**

The Safe Drinking Water Act (SDWA) Amendments of 1996 authorized a DWSRF to assist publicly and privately owned community water systems and nonprofit noncommunity water systems to achieve or maintain compliance with SDWA requirements and to further the public health objectives of the SDWA. The DWSRF is administered as a component of the Environmental Infrastructure Financing Program that also administers the State's Clean Water State Revolving Loan Fund (CWSRF).

New Jersey is committed to using the capitalization grant for which it is applying to provide assistance to water systems for capital improvement projects which will proceed quickly to construction, creating jobs and furthering the public health protection objectives of the SDWA. New Jersey's goal is to enter into binding commitments for projects which will proceed to construction or award of construction contracts by February 17, 2010. The State intends to award all assistance available under this capitalization grant in full conformance with the deadlines established under the ARRA and the terms and conditions of the capitalization grant award.

New Jersey recognizes that the goal of the ARRA is to expeditiously fund eligible projects that simultaneously will create jobs, promote economic recovery, and generate long-term benefits from infrastructure investment. In this grant, the State is being called upon to accomplish goals that may not previously have been priorities in the traditional DWSRF program. Some priorities and activities in the State's traditional program may not be practically attainable within the timeframes associated with the ARRA or within the allotment of funds provided to the State under the ARRA and therefore will be pursued using funds made available through the traditional DWSRF program.

## **III. Sources and Uses of Funds**

New Jersey is applying for a capitalization grant in the amount of \$43,154,000. This represents the amount that USEPA Region II informed the State that it is eligible to receive under the State's allocation from the supplemental appropriation enacted under the ARRA. The ARRA has waived the State match requirement that is normally required to receive capitalization grants. New Jersey also has the option to transfer up to \$14,240,820 from the CWSRF capitalization grant under the ARRA to DWSRF. If New Jersey decides to transfer CWSRF funds to the DWSRF, all funds will be transferred consistent with the ARRA guidelines.

New Jersey does not intend to utilize any set asides, instead dedicating the maximum funding to support economic recovery through capital improvement projects. New Jersey will bank the authority to reserve the monies for future capitalization grants. In addition to the ARRA funds, the State will continue to administer the traditional DWSRF program in 2009, once the ARRA funds are committed.

#### **IV. Criteria and Methods for Distribution of Funds:**

The ARRA identifies the following requirements relating to the use of funds:

- Priority shall be given to projects on a State priority list that are ready to proceed to construction within 12 months of the date of enactment of the American Recovery and Reinvestment Act,
- Each State shall use at least 50 percent of the funds to provide additional subsidization in the form of forgiveness of principal, negative interest loans, grants, or any combination thereof,
- Not less than 20 percent of the funds should be available for projects to address green infrastructure; water or energy efficiency improvements or other environmentally innovate activities (to the extent that such projects are available for funding),
- No funds may be used to purchase land or easements,
- Funds may be used to buy, refinance or restructure debt obligations of eligible recipients only where such debt was incurred on or after October, 1 2008,
- Each funding recipient (Governor, mayor, or chief executive) must certify that the project has been reviewed and vetted and deemed an appropriate use of taxpayer dollars,
- American iron, steel and manufactured goods are to be used unless any of three exceptions apply: (1) applying the requirement would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent, and
- Davis Bacon prevailing wage provisions apply to all contracts which are funded with ARRA monies.

Foremost, due to Federal restrictions, projects are eligible for ARRA funding only if they can be under contract or construction by February 17, 2010.

#### **A. Loan Terms and Fees**

The Bureau of Safe Drinking Water Technical Assistance will jointly manage the DWSRF program with the Municipal Finance and Construction Element of the New Jersey Department of

Environmental Protection (NJDEP) and the New Jersey Environmental Infrastructure Trust (Trust).

Through leveraging by the Trust (that is, the sale of revenue bonds, the proceeds of which are loaned to project sponsors), the State is able to provide low interest loans to more projects than if leveraging was not done. It should be noted that the 1981 Water Supply Bond Act authorized financing only to publicly owned systems, and the 1996 SDWA amendments did not change the 1981 Water Supply Bond Act requirements. The State utilizes the 1981 Water Supply Bond Act to provide the 20 percent match to the SRF federal capitalization grant funds, a condition under both the CWSRF and the DWSRF programs. No state match is required for the ARRA capitalization grant. Federal funds can be used to fund both privately owned and publicly owned water systems.

Legislative appropriation and authorization bills are introduced each spring for each funding cycle. The DWSRF program closed in escrow on 163 loans (\$762,360,705) over the past eleven funding cycles in 1998 to 2008 with loans being fully executed in November of each year.

Projects selected for receipt of ARRA funds will be awarded as follows. Fifty percent of the total project costs (up to \$5 million) will be awarded as principal forgiveness loans; 25 percent of the total project costs (up to \$2.5 million) will be awarded as zero interest loans from NJDEP and 25 percent of the balance of the total project cost (up to \$2.5 million) will be awarded as a loan at the market rate from the Trust. If the total project(s) cost (including the leveraged Trust portion) for a water system is more than \$10 million, then the remainder of the project will be covered by the traditional DWSRF program. In order to further promote the State's economic recovery and generate long-term benefits from infrastructure investment, Governor Corzine has determined that the loan terms for the traditional DWSRF program for 2009 will be 75 percent zero interest loan and 25 percent market rate from the Trust. Projects that do not receive ARRA monies will be eligible for the traditional DWSRF 2009 financing program, in ranked order.

For example, if a project selected to receive ARRA funds costs \$15 million it would be funded as follows: \$5 million loan as principal forgiveness (no repayment required) utilizing ARRA funds; \$2.5 million loan at zero interest utilizing ARRA funds and \$2.5 million loan at market rate from the Trust for \$10 million of project costs. The balance of the project costs (\$5 million) would be funded as \$3.75 million (75 percent) zero interest loan from NJDEP (DWSRF traditional loan) and \$1.25 million from the Trust for a total of: \$5 million loan with principal forgiveness, \$6.25 million loan at zero interest from NJDEP and \$3.75 million loan at market rate from the Trust. In these situations, ARRA requirements (e.g. materials, reporting) would be applied to the total project.

Please note that loan terms for supplemental loans will be the same terms as were made for the original executed DWSRF loan.

The Planning and Design Financing Program is a new program providing low interest loans to finance the cost of environmental planning documents and engineering design services for environmental infrastructure projects utilizing loan monies provided by the Trust from Trust

accounts, such as interest earnings. The loans are structured as temporary financing for preliminary project activities with the expectation that the environmental infrastructure projects will secure long-term financing through the Trust.

Upon receipt of an application, the NJDEP provides a determination as to project eligibility. Project loans are made upon a project sponsor's compliance with program loan requirements. Planning and Design loans are for a period not to exceed two years and at interest rates established by the Trust's Board of Directors. The Planning and Design Loan Program provides Trust loans up to \$500,000 per project loan. Additional information can be obtained at <http://www.njeit.org>.

Projects on the ARRA Project List are subject to review, approval (including pre-award approval, where appropriate), and certification by the NJDEP. The project sponsor proceeds with advertising and awarding contracts with an option to receive a Trust Interim Loan and with no guarantee of receiving ARRA monies until such time that the Borrower provides a certification that the construction contract has been awarded and they are proceeding with project implementation, subject to the availability of ARRA funds.

In the past, adequate resources were available to cover the NJDEP's costs for administration of the loan project without levying a fee. Given tight fiscal constraints since the SFY2003 Appropriations Act, the NJDEP has been required to collect fees from all borrowers. Since SFY2005, the NJDEP fee has been standardized at two percent and collected from all borrowers. A description of the NJDEP fee and a chronological summary of the fees were included in the Final FFY2009 IUP. There is no DWSRF funding involved in the NJDEP loan origination fee.

## **B. Additional Subsidization**

The ARRA requires that 50 percent of assistance provided be in the form of additional subsidies. New Jersey has the authority to offer principal forgiveness in an amount up to 50 percent of the value of a loan made by the State's DWSRF Program.

### **Distribution of ARRA Funds:**

The attached Project Priority List (PPL) demonstrates that at least 50 percent of the available funding for projects will be provided via principal forgiveness. New Jersey may fund the remainder of the cost of the project up to \$10 million through a combination of 25 percent of the project cost as a zero interest loan, and 25 percent as a market rate loan through the Trust. Costs that exceed \$10 million will be funded as indicated above (i.e. 75 percent of the balance of costs will be funded at zero percent interest using traditional DWSRF funds, 25 percent of the balance of costs beyond \$10 million will be funded at market rate utilizing additional Trust loans). Projects will be funded until all the ARRA funds are disbursed Principal forgiveness or other loan subsidizations are limited to the ARRA funds.

### **C. Green Infrastructure**

The ARRA requires that, to the extent there are sufficient eligible project applications, not less than 20 percent of the funds (\$8,630,800) provided for projects be used for water efficiency, energy efficiency, green infrastructure or other environmentally innovative activities. The projects listed in the attached Fundable Project Priority List include 10 possible projects with a total ARRA assistance amount of \$31.2 million (out of \$43,154,000 requested in this IUP). This does not mean, however, that all the projects included on this list will be considered a priority over the remaining projects on the total ARRA project list of 46 projects. Once the Department has awarded a total of \$8,630,800 for projects that meet the “green infrastructure criteria”, we will proceed with the review and award of projects included on the total ARRA project list based on readiness to proceed.

The 10 projects meet one or more of the specific objectives required by this provision and clarified through Attachment 8 of the USEPA Guidance issued on March 3, 2009. Projects on the PPL meeting one or more objectives are designated as follows: Green Infrastructure = G; Energy Efficiency = E; Water Efficiency = W; Other Environmentally Innovative Activity = O. Note that the projects that meet the USEPA definition of green reserve without a business case study are listed first on the PPL, then the green reserve projects are listed (even though these projects have a higher rank).

As the 20 percent requirement for New Jersey amounts to a required total of \$8,630,800, the State has met this requirement of the ARRA.

### **D. Priority for Projects Ready to Proceed to Construction in 12 Months/Preference for Expedient Activities**

New Jersey has an approved priority system for its DWSRF program that ranks projects in accordance with criteria associated with public health, compliance, affordability, approved drinking water plans and state designations. However, the ARRA requires that priority be given to projects that will be ready to proceed to actual construction within 12 months of enactment.

To implement this new priority and solicit information regarding additional projects that may be in a position to utilize additional funds, the NJDEP and the Trust issued a “Call for Projects” on December 18, 2008. The “Call for Projects” encouraged project sponsors to contact the NJDEP before January 30, 2009 so that initial discussions would occur regarding project eligibility, project design, permitting status, and project schedule for project sponsors that may be in a position to enter into loan agreements and begin construction. The response to the “Call for Projects” has been substantial; the NJDEP received over 100 additional applications for State funding for drinking water related projects as a result of this request. The deadline for project sponsors to submit the following items to the NJDEP in order to be eligible to participate in and utilize funds through the ARRA program was March 16, 2009:

1. A request to be placed and ranked on the DWSRF Project Priority List;
2. Project ranking forms

3. A commitment letter to participate in the FFY 2009 / SFY 2010 Funding Cycle;
4. Complete planning documents, complete design documents, and evidence that all permits and approvals to proceed to construction have been received; and
5. A complete loan application for financial assistance.

New Jersey has reviewed the preliminary information to identify those projects that are most likely able to proceed to actual construction within the next 12 months. Criteria used to establish this list include: those projects that have submitted the appropriate, administrative and engineering reports described above and deemed eligible under the DWSRF program. New Jersey also considered factors such as permit status, construction schedule and potential environmental impact. Projects that 1) required no permits or 2) had already received all permits, or 3) totaled more than 250 priority points and have applied for the appropriate permits, were deemed ready to proceed and were given an opportunity to compete for the ARRA monies (see the attached Comprehensive 2009 Proposed ARRA Priority List in Appendix C).

The NJDEP currently has 430 projects for a total cost of \$1.376 billion on the Master List. Within that list, the NJDEP currently has 215 projects at a total cost of \$610 million (including supplemental loans) on the Comprehensive 2009 Proposed Traditional Priority List. Within that list, the NJDEP currently has 46 projects at a total cost of \$125 million on the Comprehensive 2009 Proposed ARRA Priority List. We anticipate that there will be more projects “ready to proceed” than ARRA funds available. Therefore, projects that are ready to proceed within the ARRA potential section of the PPL will be awarded ARRA monies until the funds are exhausted. Projects that are not awarded ARRA funds will be eligible to receive loans under the traditional DWSRF program.

Historically, any eligible project under the DWSRF program that met the program requirements and was ready to proceed was able to receive a DWSRF loan. As the dollar amount of eligible projects is in excess of the limited funds available, it is possible that some projects that are eligible and ready to proceed will not be within the NJDEP fundable range under either the ARRA or traditional DWSRF programs.

A fundable line will be determined after the potential 2009 applications have reaffirmed their commitment for the possible ARRA monies or the traditional program monies by June 1, 2009. It is possible that this line will fluctuate as project sponsors elect to bypass themselves or project sponsors are notified that their projects will, for various reasons, be bypassed. These project sponsors may continue to pursue funding through the traditional DWSRF program, as the fluctuation of the fundable line may increase or decrease the number of projects that are reachable. However, there is no guarantee of funds. The NJDEP will continue to pursue additional sources of monies as a source of funding for DWSRF construction projects.

#### **E. Avoidance of Reallotment/Relationship to Traditional Program**

New Jersey, recipients, subrecipients, and subcontractors may be required to collect and report information on projects funded (partially or in total) by ARRA monies in the DWSRF Benefits Reporting System or other reporting systems, as required under the ARRA guidelines.

New Jersey understands that the USEPA may deobligate grant funds from States that fail to meet requirements on use of funds. New Jersey intends to avoid deobligation by regularly reviewing data reported by the applicant to ensure project progress in accordance with USEPA's strict requirements. If issues are identified, New Jersey will work with the USEPA to resolve any issues, ensure timely project progress and avoid loss of federal funds. New Jersey will also include conditions in its binding commitments to ensure that assistance recipients make timely progress with respect to entering into contracts and/or construction. If a recipient fails to maintain progress with these conditions, the NJDEP will make every effort to provide funding from other DWSRF sources, but will not risk loss of ARRA funds to the State. ARRA funds will be redistributed to projects that can meet the necessary commitments.

If New Jersey is eligible for additional funds made available from other States that fail to meet deadlines, New Jersey will provide USEPA with a list of projects from its priority list that are ready to proceed to construction, and will also provide a certification through an amendment to this IUP that all funds received for these projects will be under contract for construction within 120 days of reallocation.

#### **F. Environmental Outputs and Outcomes**

In accordance with the requirements of EPA Order 5700.7, the following are the output/outcome measures for ARRA funds:

1. Output: There will be 3 projects financed to meet the green/energy infrastructure requirement.

Outcome: The funding of these projects will not only stimulate the economy and promote jobs growth for new and sustainable jobs, it will also promote the environmental and green goals of New Jersey.

2. Output: There will be 5 projects financed to upgrade water treatment plants, replace and/or rehabilitate water mains and appurtenances in the State.

Outcome: The funding of these projects will stimulate the economy, promote jobs growth for new and sustainable jobs, and result in higher quality drinking water in New Jersey.

#### **G. Public Review and Comment**

Federal DWSRF rules require that States' DWSRF programs include public participation activities. The NJDEP distributes this proposed IUP to all community and nonprofit noncommunity water systems, county and local health authorities, selected environmental groups, selected engineering consultants, water associations, and assorted State agencies.

Information about this program and essential contact information is available on the NJDEP Division of Water Supply webpage, <http://www.nj.gov/dep/watersupply>, which can be accessed from the State of New Jersey home page, <http://www.nj.gov>. This IUP is also available by

accessing ENDEX, the New Jersey Digital Environmental Library maintained by Rutgers, the State University of New Jersey. Public Access to ENDEX is available directly via <http://njedl.rutgers.edu/NJdlib>. The catalogue of loans and grants is available on the State of New Jersey page, <http://www.nj.gov/dep/grantandloanprograms>.

A public hearing is scheduled for Monday, May 18<sup>th</sup> at 10:00 AM in the Public Hearing Room at the New Jersey Department of Environmental Protection, 401 East State Street, 1<sup>st</sup> Floor, Trenton, New Jersey. Directions are available on the NJDEP home page, <http://www.nj.gov/dep/where.htm>.

A short presentation will be made at 10:00 a.m. summarizing the proposed ARRA program followed by the public hearing. Oral comments may be presented at the hearing. However, all comments should be submitted in writing by June 1, 2009 to:

Sandra Krietzman, Bureau Chief  
New Jersey Department of Environmental Protection  
Bureau of Safe Drinking Water Technical Assistance  
P.O. Box 426  
Trenton, NJ 08625-0426

**APPENDIX A**  
**FFY2009/SFY 2010 Drinking Water Financing Program Schedule**  
 (Using FFY 2009 and Other Available Federal Monies)

<b><u>DATE</u></b>	<b><u>ACTION</u></b>
Before April 12, 2008	-Project Ranking Forms are due from prospective project sponsors for projects not already on the Project List
April 12, 2008	-Public hearing on FFY2009 Priority System, Intended Use Plan and Project Priority List proposal
Before October 1, 2008	-Prospective project sponsors attend preplanning meeting with NJDEP prior to submitting Commitment Letter
October 1, 2008	-Project Commitment Letters due
December 18, 2008	-Applicants submit all planning documents to NJDEP
On or before January 15, 2009	-Call for Projects issued, in anticipation of ARRA monies -NJDEP/Trust submit list of projects (based on Priority System ranking methodology) to Legislature for forthcoming State Fiscal Year
March 16, 2009	-Applicants submit all design documents to NJDEP -Applicants submit complete loan application to NJDEP -Supplemental Loan applications due -Additional Projects with required documentation accepted as per Call for Projects dated December 18, 2008
May 18, 2009	-Public hearing on Amended FFY2009 Priority System, Intended Use Plan and Project Priority List proposal
On or before May 15, 2009	-Financial Plan for forthcoming State Fiscal Year submitted by Trust to Legislature -Applicants submit ARRA financial addendum form to the Trust
June 1, 2009	Potential borrowers confirm their intent to participate in the ARRA or traditional programs
June 30, 2009	-Legislature acts on Financial Plan -Trust transmits both draft loan agreements to qualifying ARRA applicants
July through October 2009	-Execute NJDEP/Trust loan ARRA, Supplemental and ready Traditional agreements in rolling escrow closings
August 2009	-Applicants submit traditional financial addendum form to the Trust
October 2009	-ARRA, Supplemental and ready Traditional Loan award
October 15, 2009	-Certification of traditional loan projects
Mid-November to Mid-December 2009	-Execute NJDEP/Trust traditional agreements in escrow closings
Late January 2010	-Traditional Loan Award

## APPENDIX B



# - ECONOMIC RECOVERY PROGRAM FOR 2009 - CALL FOR PROJECTS

December 18, 2008

In anticipation of the approval of the federal economic recovery package that has been introduced by Congress, the Department of Environmental Protection (Department) and the New Jersey Environmental Infrastructure Trust are seeking projects that will be in a position to take advantage of these funds.

The economic recovery package (introduced as H.R. 7110) is intended to accelerate the construction of environmental infrastructure projects, create jobs and stimulate economic activity. Under the current bill, New Jersey could receive an additional \$262 million to finance clean water projects and an additional \$22 million for water supply projects. The economic recovery package is not expected to be enacted before the new administration takes office in January 2009. In anticipation of its enactment and given the proposed provisions that projects must be in a position to proceed within 120 days of the award of the funds to the State, USEPA has encouraged states to reach out to and communicate with potential fund recipients as soon as possible. At this point, the federal legislation would channel the economic recovery funds through the existing Clean Water or Drinking Water State Revolving Fund (SRF) Programs. However, until the legislation is approved, details regarding the mechanisms to award the funds and the timeframes that must be adhered to in order to qualify for the monies has yet to be determined. While details may change, it is important to identify projects that will be ready to commence within the short time frames that will be established.

A wide variety of wastewater treatment, stormwater management, water supply and nonpoint source pollution projects will be eligible. At this point in time we do not know if the recovery package will allow for grants or will be limited to loans. Traditionally loans have been made at half-market rate (except for smart growth projects which have been financed at one quarter-market rate). The Department and the Trust are considering various financing options including blending the two loans so projects able to begin construction sooner can get a lower interest rate. The following blending of the Department and Trust loans is being considered:

<u>For projects that are certified on or before:</u>	<u>Department Share</u>	<u>Trust Share</u>	<u>Approximate Interest Rate</u>
July 1, 2009	100%	0%	0%
July 31, 2009	90%	10%	0.5%
September 1, 2009	80%	20%	1.0%

Projects would be required to advertise and award a construction contract representing at least 30 percent of the project scope within 90 days of project certification and issue a notice to proceed within 120 days of project certification to qualify for the enhanced incentive financing rates identified above. Open space land acquisition and conservation projects are not eligible to participate in the Economic Recovery Program for 2009, but continue to be eligible under the traditional funding policies of the New Jersey Environmental Infrastructure Financing Program. Projects that have already committed to the 2009 traditional program to the Department in October 2008 will automatically be considered for inclusion in the 2009 Economic Recovery Program.

As an added incentive to encourage project sponsors to seek financing through the Economic Recovery Program in 2009, the Program is also considering a proposal to provide planning and/or design loans. These loans would be offered by the Trust to help defray the cost of engineering services that are needed to get an infrastructure project designed and permitted so that it is in a position to meet the 2009 deadlines.

The first step for any project to qualify for funding is to have the project placed and ranked on the appropriate clean water or drinking water priority lists. Sponsors can either do this electronically at <http://www.njeit.org> or by contacting the appropriate clean water or drinking water contact below. To receive funds projects must have planning and design complete and must obtain the needed approvals and permits. In addition information regarding economic benefits, including job creation, will be needed.

Project sponsors are encouraged to contact Stanley V. Cach, Jr., Assistant Director, at 609-292-8961 as soon as possible, but no later than January 30, 2009, so that a pre-application meeting can be arranged to discuss program requirements, project scope and the project schedule's compatibility with the aggressive timeframes of the economic recovery plan.

For Clean Water, Drinking Water and Financing

Dennis Hart, Executive Director, NJ Environmental Infrastructure Trust 609-219-8600  
Gautam Patel, Chief, Bureau of Financing and Construction Permits 609-984-6840  
Eugene Chebra, Chief, Bureau of Administration and Management 609-633-1208

For Drinking Water and DW Priority List

Phil Royer, Section Chief 609-292-5550  
Josephine Craver, Supervisor 609-292-5550

For Clean Water/Priority List

Scott Shymon, Supervisor  
609-292-3859

## **APPENDIX C**

- 1) Project Priority Master List**
  
- 2) Comprehensive 2009 Proposed Traditional Priority List**
  
- 3) Comprehensive 2009 Proposed ARRA Priority List**

< Click this link > to view or print Items 1 through 3 above  
(in MS-Excel spreadsheets).



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