

COVER SHEET FOR FINAL PROPOSAL

Notice Number 2020-89

Rule Number Env-Dw 1400

1. Agency Name & Address:

**Department of Environmental Services
29 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095**

2. RSA Authority: RSA 485-H:9

3. Federal Authority: _____

4. Type of Action:

- Adopt
- Amendment (only if Initial Proposal was filed before 9/27/20.)
- Repeal
- Readoption
- Readoption w/amendment

5. Short Title: **Per and Polyfluoroalkyl Substances (PFAS) Remediation Loan Fund Program**

6. Contact person for copies and questions:

Name: **Amy Rousseau**

Title: **Administrator, PFAS Response Section, MtBE Remediation Bureau**

Address: **Dept. of Environmental Services
29 Hazen Drive; P.O. Box 95
Concord, NH 03302-0095**

Phone #: **(603) 848-1372**

7. The rulemaking notice appeared in the Rulemaking Register on **October 15, 2020**.

**SEE THE INSTRUCTIONS--PLEASE SUBMIT ONE COPY OF THIS COVER SHEET AND ONE COPY OF THE FOLLOWING:
(optional to number correspondingly)**

8. The "Final Proposal-Fixed Text," including the cross-reference table required by RSA 541-A:3-a, II as an appendix.

9. Yes N/A Incorporation by Reference Statement(s) because this rule incorporates a document or Internet content by reference for which an Incorporation by Reference Statement is required pursuant to RSA 541-A:12, III.

10. Yes N/A The "Final Proposal-Annotated Text," indicating how the proposed rule was changed because the text of the rule changed from the Initial Proposal pursuant to RSA 541-A:12, II(d).

11. Yes N/A The amended fiscal impact statement because the change to the text of the Initial Proposal affects the original fiscal impact statement (FIS) pursuant to RSA 541-A:5, VI.

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5. Short Title: **Per and Polyfluoroalkyl Substances (PFAS) Remediation Loan Fund Program**

6. (a) Summary of what the rule says and of any proposed amendments:

The proposed rules implement RSA 485-H, Per and Polyfluoroalkyl Substances (PFAS) Fund and Programs, by establishing criteria and procedures for administering the PFAS Remediation Loan Fund (PFAS RLF) program to assist certain public water systems with the cost of complying with state maximum contaminant levels (MCLs) for PFAS as established in RSA 485:16-e. Those entities wishing to apply for financial assistance in the form of a low-interest loan with the possibility of partial loan forgiveness and contingent reimbursement from the PFAS RLF would be required to complete the application process as defined and explained in the proposed rules. The process comprises two steps: an eligibility request to determine whether the project for which funding is sought meets the eligibility requirements of RSA 485-H and a final application containing complete information needed to complete the loan process. The rules also include requirements for disbursements; accounting; environmental review; design, construction, and implementation phases including consulting and construction contracts; and establish criteria and procedures for seeking waivers to the rules.

6. (b) Brief description of the groups affected:

The proposed rules affect owners of community water system and non-profit non-transient non-community water systems whose source water has an exceedance of the per- and polyfluoroalkyl substance (PFAS) MCLs and who wish to obtain a loan from the PFAS Remediation Loan Fund to finance compliance measures such as treatment or development of a new source.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule Section(s)	State Statute(s) Implemented
Env-Dw 1400 (also see specific part below)	RSA 485-H
Env-Dw 1408	RSA 541-A:22, IV

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name:	Amy Rousseau	Title:	Administrator, PFAS Response Section, MtBE Remediation Bureau
Address:	Dept. of Environmental Services 29 Hazen Drive; P.O. Box 95 Concord, NH 03302-0095	Phone #:	(603) 848-1372
		Fax#:	(603) 271-7053
		E-mail:	Amy.E.Rousseau@des.nh.gov

The rules also can be viewed in PDF at
<http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm>

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **4:00 p.m. on Monday, November 16, 2020**

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Friday, November 6, 2020 at 1:00 PM**

This will be a virtual public hearing. Please register at:

<https://attendee.gotowebinar.com/register/3295466556399265808>

Place: **After registering, you will receive a confirmation email containing information about joining the webinar.**

If any problems, please contact Erin Holmes at 603-848-4259 or Erin.L.Holmes@des.nh.gov

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant): FIS # 20:081, dated 10/01/2020:

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

Not applicable, these are new rules.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):

The proposed rules establish procedures for certain public water systems to request an eligibility determination and apply for financial assistance from the Per and Polyfluoroalkyl Substances (PFAS) Loan Fund Program. The rules include requirements for accounting, environmental review, design, construction and implementation including consulting and construction contracts. The rules also establish criteria and procedures for seeking waivers to the rules. Costs associated with applying for a loan or financial assistance, are attributable to the proposed rules and would be incurred by owners of certain public water systems. Any remaining cost or benefit associated with the program is attributable to RSA 485-H which established the PFAS Loan Fund Program.

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

See #3 above. No cost or benefit to State citizens.

C. To independently owned businesses:

There will be no cost or benefit to most independently owned businesses. Non-profit entities that own non-transient non-community water systems with source water contaminated by PFAS may incur costs associated with applying for a loan or financial assistance.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The rules establish the procedures for applying for low-interest loans from the PFAS RLF. Any political subdivision that chooses to apply for such a loan has necessarily voted to pay any costs of applying. The rules thus do not mandate or assign any new, expanded or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivision and so do not violate Part I, Article 28-a of the N.H. Constitution.

Adopt Env-Dw 1400 to read as follows:

CHAPTER Env-Dw 1400 PER AND POLYFLUOROALKYL SUBSTANCES (PFAS) REMEDIATION
LOAN FUND PROGRAM FOR CERTAIN PUBLIC WATER SYSTEMS

Statutory Authority: RSA 485-H:9

PART Env-Dw 1401 PURPOSE; APPLICABILITY; USE OF STANDARD TERMS

Env-Dw 1401.01 Purpose. The purpose of this chapter is to implement RSA 485-H as to certain public water systems by establishing criteria and procedures for administering the per and polyfluoroalkyl substances (PFAS) remediation loan fund (PFAS RLF) program to assist with the cost of complying with state maximum contaminant levels (MCLs) for PFAS as established in RSA 485:16-e.

Env-Dw 1401.02 Applicability.

(a) This chapter shall apply to any community water system or non-profit, non-transient public water system that applies for financial assistance from the PFAS RLF.

(b) This chapter shall not apply to any publicly-owned and non-profit wastewater and wastewater residual treatment or storage facilities, as that portion of RSA 485-H will be implemented by Env-Wq 600.

Env-Dw 1401.03 Standard Terms. Any terms used in this chapter that are subject to Env-Dw 101.03 or that are defined in Env-Dw 103 shall have the meaning established therein unless otherwise specified herein.

PART Env-Dw 1402 CHAPTER-SPECIFIC DEFINITIONS

Env-Dw 1402.01 “Administrative costs” means expenses associated with managing PFAS RLF projects. The term includes but is not limited to costs for engineering and other consultants, environmental and technical reviews of proposed projects, participation in state overview inspections, and accounting and disbursement functions.

Env-Dw 1402.02 “Allonge” means an amendment to initial loan documents in which the final project cost and repayment terms are established.

Env-Dw 1402.03 “Applicant” means an entity that files an eligibility request or a final application, or both, for financial assistance from the PFAS RLF.

Env-Dw 1402.04 “Application” means the written document(s), with attachments, through which financial assistance is requested. The term includes the eligibility request and the final application.

Env-Dw 1102.05 “Asset maintenance and renewal plan” means a plan developed and implemented by a recipient to maintain and eventually replace water system infrastructure funded in whole or in part by the PFAS RLF.

Edit. “1402.05”

Env-Dw 1402.06 “Authorized representative” means an individual authorized by the applicant to sign documents associated with applying for and receiving funds from the PFAS RLF.

Env-Dw 1402.07 “Community water system” means “community water system” as defined in RSA 485:1-a, I, reprinted in Appendix B.

Env-Dw 1402.08 “Construction” means the erection, building, acquisition, alteration, remodeling, improvement, or extension of any components of a water system.

Env-Dw 1402.09 “Construction costs” means the applicant’s total direct and incidental costs of a construction project for which funding from the PFAS RLF is sought, including acquiring land, acquiring services such as design, engineering, and application preparation, acquiring materials and labor, and administrative costs.

Env-Dw 1402.10 “Construction project” means a project intended to control, improve, or develop a water system’s source of water or its infrastructure, including the requisite planning, land acquisition, design, and construction.

Env-Dw 1402.11 “Contingent reimbursement” means reimbursement of loan principle if funds become available as specified in RSA 485-H:6, and the term is separate and distinct from “loan forgiveness” as defined in Env-Dw 1402.28.

Env-Dw 1402.12 “Department” means the department of environmental services.

Env-Dw 1402.13 “Disadvantaged affordability criteria” means the criteria by which it is determined whether an eligible entity is eligible for loan forgiveness, as established in Env-Dw 1405.02.

Env-Dw 1402.14 “Disbursement” means a transfer of funds from the PFAS RLF to a recipient.

Env-Dw 1402.15 “Eligible costs” means project costs that are eligible for funding from the PFAS RLF, in accordance with RSA 485-H and this chapter.

Env-Dw 1402.16 “Eligible entity” means an entity that has been determined by the department in accordance with this chapter to be eligible for financial assistance under RSA 485-H.

Env-Dw 1402.17 “Engineering services” means consultations, investigations, reports, or other services in any combination relating to the design or construction, or both, of projects for which RSA 310-A requires a licensed professional engineer.

Env-Dw 1402.18 “Environmental review” means an analysis of the potential impact on the human and natural environment of a project for which funding is sought from the PFAS RLF.

Env-Dw 1402.19 “Excusable delay” means a delay that is beyond the recipient’s control in beginning or completing the planning, design, construction, or implementation of a project, such as a delay caused by an act of nature or war.

Env-Dw 1402.20 “Final project cost” means the dollar amount of eligible project expenditures plus any unpaid interest on the loan accrued during project planning, design, or construction, or any combination thereof.

Env-Dw 1402.21 “Financial assistance” means funds provided from the PFAS RLF to pay, in whole or in part, eligible costs for a project, in any of the formats allowed by RSA 485-H:4 through RSA 485-H:6.

Env-Dw 1402.22 “Financial assistance agreement” means the contract between the state and a recipient that establishes the rights and obligations of the state and the recipient relative to financial assistance from the PFAS RLF. The term includes original loan agreements, supplemental loan agreements, initial loan documents, and allonges.

Env-Dw 1402.23 “Governing body” means the group of individuals that has the authority and responsibility to authorize the applicant to enter into contracts and expend funds. The term applies to governmental entities as well as non-governmental entities.

Env-Dw 1402.24 “Governmental entity” means any of the following that has responsibility for providing drinking water for public consumption or otherwise funding a water system:

- (a) Any state agency, board, or commission;
- (b) Any political subdivision of the state, including but not limited to a county, city, town, or district; and
- (c) Any other public body created under state law.

Env-Dw 1402.25 “Infrastructure” means all structures and all mechanical and electrical equipment that connect a source of water to end users in a water system or that provide source water protection, including but not limited to all sources, treatment, storage, and distribution facilities and the land necessary therefor.

Env-Dw 1402.26 “Initial loan documents” means the initial financial assistance agreement between the state and a non-governmental recipient through which the state agrees to provide funds from the PFAS RLF to the recipient, and the recipient promises to use the funds as specified in its application and to repay the funds to the PFAS RLF.

Env-Dw 1402.27 “Initiation of operation” means a project that was funded in whole or in part using funds from the PFAS RLF is placed into use for the purposes for which it was intended.

Env-Dw ~~1102.28~~ “~~Land acquisition~~” means the purchase of an interest in land that is needed to complete an eligible project, whether in fee or by ~~casement~~. The term ~~includes associated~~ professional services such as appraisals, title searches, title opinions, and title insurance.

Edit. “1402.28”

Env-Dw 1402.29 “Loan forgiveness” means need-based forgiveness of principle repayment pursuant to RSA 485-H:5, and the term is separate and distinct from “contingent reimbursement” as defined in Env-Dw 1402.09.

Env-Dw 1402.30 “Maintenance” means actions taken to preserve the functional integrity and efficiency of infrastructure. The term includes preventive maintenance, corrective maintenance, and replacement of equipment and other infrastructure components, including but not limited to roofing, signs, and fences.

Env-Dw 1402.31 “Materially or significantly affect project cost or estimated revenues” means a change in estimated costs or revenues of more than 10%.

Env-Dw 1402.32 “Materially or significantly affect project design” means a change that would:

- (a) Alter the project’s performance standards;
- (b) Alter the type of water treatment provided by the project;
- (c) Delay or accelerate the project schedule by more than 10%; or
- (d) Alter the design drawings and specifications, or the location, size, capacity, or quality of any major part of the project, such that amended plans and specifications are required under RSA 485:8 or the applicable sections of Env-Dw 400.

Env-Dw 1402.33 “Non-profit entity” means an entity that qualifies as non-profit organization under the U.S. internal revenue code.

Env-Dw 1402.34 “Non-transient non-community water system” means “non-transient non-community water system as defined in RSA 485:1-a, XI, reprinted in Appendix B.

Env-Dw 1402.35 “Operation” means control of the processes and equipment that make up the water system. The term includes but is not limited to financial and personnel management, record keeping, laboratory control, process control, safety, and emergency operation planning.

Env-Dw 1402.36 “Operation and maintenance (O&M)” means the functions, duties, and labor associated with the daily operations and normal repairs, replacement of parts and structural components, and other activities needed to preserve an asset so that it continues to serve its intended function, and the term includes treatment media replacement and disposal.

Env-Dw 1402.37 “Original loan agreement” means the initial financial assistance agreement between the state and a governmental recipient through which the state agrees to provide funds from the PFAS RLF to the recipient and the recipient promises to repay the funds to the PFAS RLF.

Edit. "1402.38"

Env-Dw 1102.38 "Person" means "person" as defined in RSA 485:1-a, XIII, reprinted in Appendix B.

Env-Dw 1402.39 "PFAS RLF attorney" means the attorney(s) under contract to the department for the purpose of providing:

- (a) Legal review of initial loan documents and allonges; and
- (b) Other legal services associated with providing financial assistance to non-governmental entities.

Env-Dw 1402.40 "PFAS RLF financial advisor" means the individual or entity under contract to the department for the purpose of assessing the financial risk of providing financial assistance to non-governmental entities.

Env-Dw 1402.41 "Planning" means preparing and evaluating reports and studies of alternative PFAS remediation solutions in order to select the most cost-effective feasible option.

Env-Dw 1402.42 "Pledge" means the act or process through which a recipient commits, obligates, and encumbers its real or personal property or its existing or anticipated revenues to the state as security and means for repayment of the financial assistance received by the recipient from the PFAS RLF.

Env-Dw 1402.43 "Project" means the project proposed to be completed with PFAS RLF funding, including the planning, design, or construction, or any combination thereof, of any or all aspects of the project that are necessary to comply with the MCLs for PFAS.

Env-Dw 1402.44 "Recipient" means an applicant that receives financial assistance from the PFAS RLF.

Env-Dw 1402.45 "Repayment" means the payment of principal or interest, or both, on funds received as a loan by a recipient from the PFAS RLF.

Env-Dw 1402.46 "Replacement" means the installation of new or refurbished equipment, accessories, or appurtenances for existing equipment, accessories, or appurtenances that no longer perform as originally intended.

Env-Dw 1402.47 "Resident project representative" means an individual who:

- (a) Is qualified to the satisfaction of the recipient, in consultation with the department, by reason of education and experience to inspect construction projects; and
- (b) Reports to a licensed professional engineer when the project's plan and scope of work indicate supervision by an engineer is required.

Env-Dw 1402.48 "Responsible bidder" means an entity that:

- (a) Has the technical knowledge necessary to perform the contract;
- (b) Has adequate financial resources to perform the contract;
- (c) Is able to comply with the legal and regulatory requirements associated with the contract;
- (d) Is able to deliver or otherwise perform according to the contract schedule;
- (e) Has either a history of satisfactory performance or no history of unsatisfactory performance;
- (f) Has a good reputation for integrity as generally known in the industry or the community; and
- (g) Has or can obtain necessary data, equipment, and other resources to perform the contract.

Env-Dw 1402.49 "Scheduled completion date" means the date stated in the original loan agreement or initial loan documents on which the construction project that received PFAS RLF funds is intended to be placed into use for the purposes for which it was intended.

Env-Dw 1402.50 "Security" means real or personal property or other collateral that is pledged by a non-governmental recipient to ensure repayment of a loan to the state.

Env-Dw 1402.51 “State” means the state of New Hampshire.

Env-Dw 1402.52 “Substantial completion” means that construction of the project, or a discrete part thereof, is sufficiently completed that the project or discrete part can be used for the purposes for which it is intended.

Env-Dw 1402.53 “Supplemental loan agreement” means an amendment to the original loan agreement between the state and a governmental recipient that stipulates the final project cost and applicable repayment terms.

Env-Dw 1402.54 “User charge” means a charge levied on users of a water system for the user’s share of the cost of water system operation and maintenance, plus any allocable portion of capital improvements.

Env-Dw 1402.55 “Water system” means a public water system as defined by RSA 485:1-a, XV, reprinted in Appendix B.

PART Env-Dw 1403 ELIGIBILITY; ELIGIBILITY REQUEST REQUIREMENTS

Env-Dw 1403.01 Eligible Projects and Costs.

(a) Community water systems and non-profit non-transient non-community water systems whose testing of untreated source water shows confirmed exceedance of the state MCLs for PFAS, as established in RSA 485:16-e and as determined pursuant to Env-Dw 705.06, shall be eligible to apply for financial assistance from the PFAS RLF for remediation efforts begun after September 30, 2019, as specified in RSA 485-H:3.

(b) The construction costs of a project shall be determined as eligible if the applicant demonstrates that the criteria stated in RSA 485-H:3, I, reprinted in Appendix C, are met.

(c) Costs of operation and maintenance (O&M) shall be determined as eligible to the extent they are directly and solely related to operating and maintaining infrastructure that was funded with PFAS RLF funds or that would have been eligible for such funding if it had been available and sought, regardless of when the infrastructure was constructed.

Env-Dw 1403.02 Additional Eligibility Criteria for Construction Projects. In order to be eligible for financial assistance from the PFAS RLF, construction projects also shall:

- (a) Comply with applicable federal requirements;
- (b) Comply with applicable state design criteria as specified in Env-Dw 400;
- (c) For water supply treatment, be based on a 20-year life expectancy from the estimated date of initiation of operation; and
- (d) For design capacity for intake or raw water mains, be based on a 40-year life expectancy from the estimated date of initiation of operation.

Env-Dw 1403.03 Additional Eligibility Criteria for Costs of O&M. RESERVED

Env-Dw 1403.04 Eligibility Request Procedures for Construction Projects. Any entity meeting the eligibility requirements of Env-Dw 1403.01 and Env-Dw 1403.02 that wants to receive financial assistance from the PFAS RLF for a construction project shall file an eligibility request by:

- (a) Completing an eligibility request as described in Env-Dw 1403.05;
- (b) Signing and certifying the eligibility request as described in Env-Dw 1403.06; and
- (c) Submitting the completed, signed eligibility request:

- (1) **Electronically, per the instructions in the eligibility request form; or**
- (2) In writing, by US Postal Service mail, private delivery service, or other in-hand delivery to:

NHDES PFAS RLF Program
 29 Hazen Drive
 P.O. Box 95
 Concord, NH 03302-0095

Unclear. This is unclear because a person reading this rule won't know where to send the information electronically. The Department could provide the general email address for the program and edit this as it did in the proposal for 2020-54, Env-Dw 1100. Consider: " form that is available on the department's website at www.des.nh.gov; (2) Electronically to the program (insert program email address); or" Renumber (2) to (3).

Env-Dw 1403.05 Eligibility Request Information for Construction Projects.

(a) To be processed as provided in Env-Dw 1403.06(a), the applicant shall provide the following information to the department on an "Eligibility Request" form, **NHDES-W-03-257**, available at <https://onlineforms.nh.gov/?FormTag=NHDES-W-03-257> or via the department's web site at www.des.nh.gov, provided by the department:

Edit. Insert "2020-11-24"

- (1) The water system's name and the town or city in which it is located;
- (2) The water system's PWS identifier;
- (3) The name, title, email address, and daytime telephone number of the applicant's point of contact for the eligibility request;
- (4) A short title for the project;
- (5) A concise description of the proposed project, for example "develop replacement water source" or "upgrade treatment system" and of the need for the proposed project, together with a brief description of the alternatives that have been considered and a demonstration of how the eligibility requirements of RSA 485-H:3, I are met;
- (6) The amount of loan requested;
- (7) The loan term requested, which shall be 5, 10, 15, or 20 years, except that a system serving a community that meets the disadvantaged affordability criteria established in Env-Dw 1405.02 may request a 30-year term, provided the loan term shall not exceed the design life of the improvement for which the loan is being requested; and
- (8) If the applicant uses a paper-based eligibility request, the name and title of the individual authorized by the applicant to sign the eligibility request on behalf of the applicant.

Unclear. The form has a certification that is not included in the rule.

(b) The applicant also shall provide to the department as much of the following information as practicable and necessary to support the demonstration of eligibility pursuant to (a)(5), above:

- (1) For construction costs, an estimate of total project costs, including materials and labor costs, a construction contingency, and estimated planning and engineering costs, plus the amount and a description of any other costs, which may include application preparation, and other administrative costs, together with a statement of all assumptions made in estimating the costs;
- (2) The current residential water rate per single family home per year;
- (3) The median household income of the population served, which may be based on:
 - a. The results of an income survey done within the prior 3 years;
 - b. Data from the American Community Survey, available at <http://www.census.gov/acs>; or
 - c. Data available on the department's website;
- (4) The date the applicant received governing body approval to borrow funds for the project or the date the applicant anticipates receiving such approval;

- (5) The anticipated date that the:
 - a. Design will be started;
 - b. Construction contract will be awarded; and
 - c. Project will be completed; and
- (6) The source of other funding contributing to the project, if any, and for each source the amount and status of the funding.

Env-Dw 1403.06 Eligibility Request Signatures and Certifications.

(a) The applicant shall sign and date the eligibility request as follows:

- (1) If the applicant uses a paper-based eligibility request, the applicant’s authorized representative shall sign and date the eligibility request and print his or her name and title in the location indicated; and
- (2) If the applicant uses the electronic eligibility request, submitting the eligibility request shall constitute the signature and the date the submission is received by the department shall constitute the date of the eligibility request.

(b) Submission of the eligibility request, whether electronically or on paper, shall constitute certification by the applicant that:

- (1) The information provided is true, not misleading, and as complete as practicable, to the knowledge and belief of the applicant;
- (2) The applicant understands that any department determination that the applicant and the applicant’s project qualifies for funding from the PFAS RLF that is based on false, incomplete, or misleading information is subject to modification, up to and including reversal, through an adjudicative proceeding conducted in accordance with applicable provisions of Env-C 200; and

Edit. “shall be”

(3) The signer is subject to the penalties specified in New Hampshire law for falsification in official matters, currently RSA 641. Edit. “pursuant to” or delete it.

(c) If the applicant’s authorized representative is, or is acting on behalf of, a listed engineer as defined in Env-C 502.10, the signature also shall constitute certification that the signer understands that the submittal of false or misleading information constitutes grounds for debarring the listed engineer from the roster.

Env-Dw 1403.07 Department Processing of Eligibility Requests for Construction Projects.

(a) The department shall consider each eligibility request in the order in which the eligibility requests were submitted if:

- (1) The eligibility request contains sufficient information for the department to determine the identity of the applicant and the applicant’s point of contact, the nature and scope of the proposed project, and the term and amount of funding likely to be needed;
- (2) The applicant is an eligible entity; and
- (3) The proposed project meets the criteria specified in Env-Dw 1403.01 and Env-Dw 1403.02.

(b) If the applicant’s eligibility request meets the criteria in (a), above, the department shall provide written instructions for filing a final application as described in Env-Dw 1404.01, including the applicant’s and department’s agreed-to deadline for filing the final application.

(c) If the department determines that the applicant’s eligibility request does not meet the criteria in (a), above, the department shall notify the applicant of the reason(s) why in writing within 14 days of making the determination.

(d) In response to being notified that an eligibility request does not meet the criteria in (a), above, an applicant that is an eligible entity may modify or supplement any information and submit a new eligibility request to the department.

Env-Dw 1403.08 Eligibility Request Procedures for Costs of O&M. RESERVED

Env-Dw 1403.09 Eligibility Request Information for Costs of O&M. RESERVED

Env-Dw 1403.10 Department Processing of Eligibility Requests for Costs of O&M.

Edit. Do not use the reserved designation for the last section in a part unless the provision is mandated by statute. See Section 4.10 of Ch. 4 of the *Manual*.

Env-Dw 1404 PROCEDURES FOR RECEIPT OF PFAS REMEDIATION LOAN FUNDS

Env-Dw 1404.01 Final Application Requirements and Procedures for Construction Projects.

Edit.
Insert
“2020-11-24”

An applicant whose construction project is determined by the department to meet the criteria in Env-Dw 1403.06(a) who wishes to obtain funding shall submit a “Final Loan Application”, NHDES-W-03-258, available at <https://onlineforms.nh.gov/?FormTag=NHDES-W-03-258> or via the department’s web site at www.des.nh.gov, to the department, with the following:

- (1) The information required for a final application specified in Env-Dw 1404.03;
- (2) Confirmation of the applicant’s authority to borrow as specified in Env-Dw 1404.04;
- (3) Information regarding the environmental review required by Env-Dw 1406, as specified in Env-Dw 1404.05;
- (4) The bank information specified in Env-Dw 1404.06;
- (5) A planning document as specified in Env-Dw 1404.07; and
- (6) Verification of a revenue program as specified in Env-Dw 1404.08.

Unclear. The form has a certification that is not included in the rule.

(b) The department shall suspend further action on the application if any of the following are true:

- (1) The project is found to be ineligible;
- (2) The applicant informs the department in writing that it does not intend to pursue financial assistance from the PFAS RLF;
- (3) The applicant does not submit a final application by the agreed-to deadline stated in the instructions sent pursuant to Env-Dw 1403.06(b); or
- (4) Insufficient funds remain in the PFAS RLF account to execute the loan.

(c) The department shall notify the applicant in writing if processing is suspended under (b)(1), (b)(3), or (b)(4), above.

Env-Dw 1404.02 Conditions Arising from Application; No Impact on Other Authority.

(a) By applying for financial assistance, the applicant shall be deemed to have agreed to the following:

- (1) From the time of first application for financial assistance for a project throughout all stages of construction and implementation, and at any other time while any assistance from the PFAS RLF to the applicant is outstanding, the recipient shall allow the department to inspect:

Unclear. In Env-Dw 1407.03(c)(6) on p. 24 and Env-Dw 1407.09(a) on p. 27 the applicant is required to allow inspections, not “deemed” to agree by the act of applying. Consider: “the applicant agrees to...”

Edit. A citation is needed to Env-Dw 1407.03(c)(6) or Env-Dw 1407.09(a). (Describes the scope of the inspections and that they can occur during normal business hours.)

Edit. "project site"

- a. The **project** and any and all incidental works, areas, facilities, and premises otherwise pertaining to the project for which application is made; and
- b. Any and all books, accounts, records, contracts or other instruments, documents, and other information possessed by the recipient or its contractors, agents, employees or representatives which relate in any respect to the receipt, deposit, or expenditure of financial assistance funds; and

(2) After project completion, the recipient shall allow the department to conduct **periodic site visits** to confirm that the project is functioning as intended.

(b) Nothing in these rules shall prevent the department from exercising any inspection or other regulatory authority relative to the applicant's project or other regulated facilities conferred on the department by any provision of law.

Env-Dw 1404.03 Information Required for Final Application for Construction Costs. The applicant shall provide the following information for a request for funding for a construction project:

- (a) The water system's name and PWS identifier;
- (b) Whether the applicant is a governmental or non-governmental eligible entity;
- (c) The water system's mailing address, including street name and number or post office box number, city or town, and zip code including 4-digit extension;
- (d) The name, title, email address, and daytime telephone number including area code of the applicant's contact for:
 - (1) Questions regarding the final application; and
 - (2) Repayment billing;
- (e) A short title for the project;
- (f) The primary location where the work will be done;
- (g) A concise explanation of the need for the proposed project, including how it will address public health protection, and what alternatives have been considered;
- (h) An estimate of the following project costs:
 - (1) Estimated construction costs;
 - (2) A construction contingency of 10%;
 - (3) Estimated planning and engineering costs, which may include application preparation costs;
 - (4) The amount and a description of any other costs that are necessary for the project to achieve compliance with the PFAS MCLs; and
 - (5) The total estimated costs;
- (i) The amount of the loan being requested;
- (j) The term requested, which shall be 5, 10, 15, or 20 years, except that a system serving a community that meets the disadvantaged affordability criteria established in Env-Dw 1405.02 may request a 30-year term, provided the loan term shall not exceed the design life of the improvement for which the loan is being requested;
- (k) The current residential water rate per single family home per year;

Edit. Remove italics.

(l) The tentative project schedule, including:

- (1) The actual or anticipated date the applicant was or will be authorized by its governing body to borrow funds for the project;
- (2) The actual or anticipated date the design was or will be started;
- (3) The anticipated date the construction contract will be awarded; and
- (4) The anticipated date the project will be completed;

Edit. "pursuant to" or "found out" or delete it.

(m) A state vendor code number obtained pursuant to the vendor code requirements established by the New Hampshire department of administrative services, **currently** Adm 603;

(n) The name and title of the individual authorized by the applicant to sign the application on behalf of the applicant;

(o) For governmental applicants, a letter signed by an authorized representative stating whether or not the applicant has any debt outside the NH Municipal Bond Bank and, if the debt is rated, the rating;

(p) For non-governmental applicants, documentation of the extent of the applicant's existing debt; and

(q) A copy of the applicant's latest annual report or financial statements.

Env-Dw 1404.04 Applicant's Authority to Borrow.

Edit. Insert "2020-11-24,"

(a) For a governmental applicant, the confirmation required by Env-Dw 1404.01(a)(2) shall consist of a completed "Authority to Borrow - Public Entities", NHDES-W-03-259, available at <https://onlineforms.nh.gov/?FormTag=NHDES-W-03-259> or via the departments' web site at www.nh.gov, which shall constitute proof that the applicant's governing body passed or approved a valid warrant article or resolution, as applicable, that:

Unclear. The form has a certification that is not included in the rule.

- (1) Authorizes the applicant to:
 - a. Raise, appropriate, and spend the amount of funds to be requested for the identified project;
 - b. Apply for funding for the identified project; and
 - c. Enter into a binding contract to repay all funds that are received as a loan;

(2) Designates an individual, by title and name, to be the applicant's authorized representative for purposes of:

Unclear. The form only requires that the applicant "agrees to make provisions for assuming proper and efficient operation and maintenance of the facilities after completion of the construction."

- a. Signing and filing the application and furnishing such information, data, and documents pertaining to the application as may be required; and
- b. If financial assistance is awarded, furnishing such information, data, and documents pertaining to disbursements of the funds;

Identifies, by name and title, each individual who is authorized to sign the original loan agreement and supplemental loan agreement should funds be awarded; and

(4) **Binds the applicant to operate and maintain all facilities constructed or modified with the funds received in accordance with all applicable requirements.**

Edit. Insert "2020-11-24,"

(b) For a non-governmental applicant, the confirmation required by Env-Dw 1404.01(a)(2) shall consist of a completed "Authority to Borrow", NHDES-W-03-260, available at <https://onlineforms.nh.gov/?FormTag=NHDES-W-03-260> or via the department's web site at www.des.nh.gov, which shall constitute proof that the applicant's governing body passed a valid resolution that:

(1) Authorizes the applicant to:

Unclear. The form has a certification that is not included in the rule.

- a. Apply for funding from the PFAS RLF for the identified project;
 - b. Enter into a binding contract to repay all funds that are received as a loan; and
 - c. Pledge security to the state to ensure such repayment;
- (2) Designates an individual, by title and name, to be the applicant’s authorized representative for purposes of:
- a. Signing and filing the application and furnishing such information, data, and documents pertaining to the application as required; and
 - b. If financial assistance is awarded, furnishing such information, data, and documents pertaining to disbursements of the funds;
- (3) Includes any other approval actions that may be required to authorize borrowing of funds;
- (4) Identifies, by name and title, each individual who is authorized to sign the initial loan document, allonge, and such promissory notes and security instruments as are required to complete the pledge of security should funds be awarded; and
- (5) Binds the applicant to operate and maintain all facilities constructed or modified with the funds received in accordance with all applicable requirements.

Unclear. The form only requires that the applicant “agrees to make provisions for assuming proper and efficient operation and maintenance of the facilities after completion of the construction.”

- (c) A non-governmental applicant shall submit with the proof required by (b), above, copies of:
 - (1) The applicant’s bylaws or articles of incorporation, or both, as applicable; and
 - (2) The approved minutes of the meeting at which the resolution was approved.
- (d) The proof required by (a) or (b), above, shall be in a written document that is certified and sealed by:
 - (1) The town clerk or equivalent for a governmental entity; or
 - (2) The board secretary or comparable official for a non-governmental entity.

Edit. Insert “2020-11-24,”

Env-Dw 1404.05 Report of Environmental Review. The applicant shall provide the following information on the “Environmental Review” form, NHDES-W-03-261, available at <https://onlineforms.nh.gov/?FormTag=NHDES-W-03-261> or via the department’s web site at www.des.nh.gov:

- (a) The water system’s name, mailing address, and PWS identifier;
- (b) The short title for the project;
- (c) An introductory paragraph that reads as follows, with the water system’s name filled in:

“The [PWS Name] has applied for funds through the State of New Hampshire Department of Environmental Services PFAS Remediation Loan Fund (PFAS RLF), in accordance with NH Code Admin. Rules Env-Dw 1400. This document fulfills the requirements of Env-Dw 1405.01(a)(3) relative to providing information on the environmental review required by Env-Dw 1407”
- (d) An overview of the applicant’s water system and its customers, including the system’s source(s), capacity, number of service connections, and approximate population served;
- (e) An explanation of the need and justification for the proposed project;
- (f) A description of the scope of the proposed project, including estimated costs;
- (g) A list of each document that is available for public review that supplements the information provided pursuant to (d)-(f), above;

Edit. “1406.”

(h) A summary of potential environmental impacts arising from the proposed project relative to air emissions, noise, surface water, groundwater, wetlands, wildlife, and habitat;

(i) A summary of potential impacts on the community in terms of social and economic aspects, recreation, historic sites, and indirect impacts;

(j) The date the applicant's governing body authorized funding for the project or is expected to authorize such funding;

(k) A statement that the applicant agrees to publish a public notice to initiate a 30-day comment period on the report; and

(l) An 8.5-inch by 11-inch copy of a topographic map at a scale that clearly identifies the location of the project and maximum extent of disturbance.

Env-Dw 1404.06 Bank Information. The bank information required by Env-Dw 1404.01(a)(4) shall be as follows:

(a) The name of the recipient;

(b) The department-assigned project number;

(c) The name, title, daytime telephone and fax numbers including area code, and email address of the individual who will be the contact for billing and notifications of fund transfers;

(d) The name, title, daytime telephone and fax numbers including area code, and email address of the individual who will be the contact for audits;

(e) The name, mailing address, and main telephone number including area code of the recipient's financial institution;

(f) The name, title, daytime telephone and fax numbers including area code, and email address of the recipient's point of contact at the financial institution;

(g) The recipient's financial institution's ABA routing number for ACH transactions;

(h) The name on the account and the type of account, for example checking or savings; and

(i) The account number.

Env-Dw 1404.07 Planning Document. The planning document required by Env-Dw 1404.01(a)(5) shall facilitate review of the proposed project and alternatives thereto from the viewpoints of function, operation, economics, reliability, safety, efficiency, cost-effectiveness, and environmental compatibility, by providing the following:

(a) Identification of the planning area boundaries and characteristics and the existing needs related to the water system;

(b) A cost-benefit analysis of feasible water systems or conveyance alternatives capable of meeting state and federal requirements, which details all monetary costs including the present worth or equivalent annual value of all capital costs and operation;

(c) All information necessary for the design of the proposed project and alternatives;

(d) The most current estimate of project cost itemized as to major facilities or items including land and easement costs, fees for engineering services, fees for legal services, fees for financial services, contingencies, and interest during construction; and

Edit. "shall"

(e) A statement that the applicant has a program in place for funding the maintenance and eventual replacement of the funded asset, or, if there is no such program in place, a plan for developing an asset maintenance and renewal plan as part of the funded construction project.

Env-Dw 1404.08 Establishment and Verification of Revenue Program.

(a) The applicant shall establish:

- (1) A schedule of user charges that is designed to generate sufficient revenues to cover operation and maintenance expenses as well as any allocable portion of capital improvements; and
- (2) A dedicated source or sources of revenue to repay the loan.

(b) For purposes of (a)(2), above, a revenue source shall be considered dedicated when the recipient passes or adopts an ordinance or other binding resolution committing the source of funds for repayment to the PFAS RLF.

(c) The applicant’s ordinance or other binding resolution dedicating a source of funding for repayment of the loan shall be in effect and binding on the applicant prior to the loan agreement taking effect.

Edit. “, 2020-11-24,”

(d) For an applicant that is a governmental entity, the verification required by Env-Dw 1404.01(a)(6) shall be made using “Financial Certification - Publicly-Owned Systems”, NHDES-W-03-262, available at <https://onlineforms.nh.gov/?FormTag=NHDES-W-03-262> or via the department’s web site at www.des.nh.gov, by:

- (1) Identifying the source of repayment;
- (2) Stating whether or not the applicant has existing debt outside the New Hampshire municipal bond bank and, if so, the amount of the debt and whether the debt is rated and, if the debt is rated, the rating; and
- (3) Certifying that the applicant has the financial capability to support both the project loan repayment and continuing operation and maintenance of its water system.

Unclear. The form contains a certification not included in here.

Edit. “, 2020-11-24,”

(e) For an applicant that is a non-governmental entity, the verification required by Env-Dw 1404.01(a)(6) shall be made using “Financial Certification - Privately-Owned Systems”, NHDES-W-03-263, available at <https://onlineforms.nh.gov/?FormTag=NHDES-W-03-263> or via the department’s web site at www.des.nh.gov, by:

- (1) Identifying the source of repayment; and
- (2) Certifying that the applicant:
 - a. Has the financial capability to support both the project loan repayment and continuing operation and maintenance of its water system; and
 - b. Will conduct and report on a financial audit, including compliance and controls, in any calendar year it receives PFAS RLF funds in excess of \$500,000.

Unclear. The form contains a certification not included here.

Env-Dw 1404.09 Signatures and Certifications for Final Applications.

(a) The applicant’s authorized representative shall sign and date the final application as follows:

- (1) If the applicant uses a paper-based application, the authorized representative shall sign and date the application and print his or her name and title in the location indicated; and
- (2) If the applicant uses the web-based application, submitting the form shall constitute the signature and the date the submission is received by the department shall constitute the date of the application.

(b) Submission of the application, whether electronically or on paper, shall constitute certification by the signer that:

- (1) The signer has been duly authorized by the applicant to sign the application;
- (2) The information provided is true, complete, and not misleading to the knowledge and belief of the signer;
- (3) The applicant understands that any department determination that the applicant and the applicant's project qualifies for funding from the PFAS RLF that is based on false, incomplete, or misleading information is subject to modification, up to and including reversal, through an adjudicative proceeding conducted in accordance with applicable provisions of Env-C 200; and
- (4) The applicant and the signer are subject to the penalties specified in New Hampshire law for falsification in official matters, currently RSA 641.

Edit.
 "pursuant to" or "found out" or delete it.

(c) If the applicant's authorized representative is, or is acting on behalf of, a listed engineer as defined in Env-C 502.10, the signature also shall constitute certification that the signer understands that the submittal of false or misleading information constitutes grounds for debarring the listed engineer from the roster.

Env-Dw 1404.10 Final Application Processing for Construction Projects.

(a) The department shall determine that the application is complete and all or a portion of the proposed project is eligible for financial assistance from the PFAS RLF if:

- (1) All or a portion of the proposed project is within the scope of eligible projects identified in Env-Dw 1403;
- (2) The applicant has submitted all information and documents required by Env-Dw 1404.01; and
- (3) The applicant has signed the application as required by Env-Dw 1404.09.

(b) The department shall notify the applicant in writing of its eligibility determination.

(c) If the department determines that the applicant's project is not eligible, the notice sent pursuant to (b), above, shall specify the reason(s) for the determination and inform the applicant that the department will reconsider the determination if the applicant submits modified or supplemental information.

(d) If the applicant wants the department to reconsider its determination that a project is ineligible, the applicant shall submit modified or supplemental information within 30 days of the date of the notice and request the department to reconsider its decision in light of the new information.

(e) Upon receipt of a request to reconsider in light of new information, the department shall review the information and make a decision in accordance with (a) through (c), above, except that no further reconsideration shall occur.

Env-Dw 1404.11 Final Application Requirements and Procedures for Costs of O&M. RESERVED

Env-Dw 1404.12 Information Required for Final Application for Costs of O&M. RESERVED

Env-Dw 1404.13 Final Application Processing for Costs of O&M. RESERVED

Edit. Do not use the reserved designation for the last section in a part unless the provision is mandated by statute. See Section 4.10 of Ch. 4 of the *Manual*.

PART Env-Dw 1405 FINANCIAL ASSISTANCE; PAYMENTS; ACCOUNTING

Env-Dw 1405.01 Types of Assistance and Related Conditions.

(a) Financial assistance awarded by the department shall be one of the following:

- (1) A loan;
- (2) A combination of a loan and loan forgiveness;
- (3) A combination of a loan and contingent reimbursement; or
- (4) A combination of a loan, loan forgiveness, and contingent reimbursement.

(b) Loans awarded by the department shall be made only with the following conditions:

(1) A loan shall have a term not to exceed the maximum number of years specified in the final application;

2) Principal and interest payments shall commence within:

- a. One year of substantial project completion for construction projects; or
- b. One year of loan closing for costs of O&M;

3) The recipient shall establish a dedicated source of revenue for repayment of the loan in accordance with Env-Dw 1404.08;

4) The recipient **has completed** all necessary documentation and agreements required by the department to issue a loan; and

5) The loan **has been approved** by the governor and executive council (G&C).

Edit. To have a consistent format with the other subparagraphs, (b)(4) should say "shall have completed" and (b)(5) should say "shall have been approved."

Env-Dw 1405.02 Loan Forgiveness & Contingent Reimbursement.

(a) The department shall forgive 10 percent of the loan principal to eligible entities that meet the following disadvantaged affordability criteria:

- (1) The water system serves residents whose median household income (MHI) is less than the statewide MHI based on the most recent census data or income survey;
- (2) The water system has a water rate that exceeds 0.8% of the MHI of the system; and
- (3) At least 50% of the residential units served by the water system must be occupied at least 6 months of the year by a population whose MHI is less than the statewide MHI based on the most recent census data or income survey.

(b) Community water systems owned by a county shall be eligible for loan forgiveness if the county MHI is below the statewide MHI.

(c) Loan forgiveness shall be applied:

- (1) At the first repayment for governmental entities; and
- (2) At each monthly repayment throughout the term of the loan for non-governmental entities.

(d) Total loan forgiveness under this section shall not exceed the amount specified in RSA 485-H, III for both drinking water pursuant to this chapter and clean water pursuant to Env-Wq 600 combined.

(e) Contingent on availability of funds as specified in RSA 485-H:6, the department shall reimburse up to 50 percent of the loan principal to all loan recipients as specified in RSA 485-H:6, II, as follows:

- (1) If insufficient funds are received by the state to cover 50 percent of the principal, the reimbursement shall be prorated;

(2) In no instance shall the loan reimbursement exceed 50 percent of the total loan amount, unless the recipient received loan forgiveness under RSA 485-H:5, in which case the combined maximum shall be 60 percent; and

(3) In the event a loan recipient receives compensation from a responsible party, the department shall not grant partial loan forgiveness that in combination with any compensation would exceed 100 percent of the total cost of the remediation.

(f) For both governmental and non-governmental entities, contingent reimbursement amounts shall at the time of award be immediately subtracted from the remaining principle and if the remaining principle is less than the award amount then the difference shall be reimbursed.

Env-Dw 1405.03 Original Loan Agreements (OLAs) for Governmental Entities.

(a) Following acceptance of an application from a governmental entity and upon determining that funds are available, the department shall prepare an original loan agreement (OLA) that contains the following provisions:

- (1) The loan amount;
- (2) The interest rate for the loan;
- (3) The length of the repayment term;
- (4) A description of the construction project or costs of O&M, as applicable;
- (5) Authorization for representatives of the department to examine any of the loan recipient's records that pertain to transactions relating to the loan agreement, construction contracts, engineering contracts, or other consulting contracts for the purpose of inspection, audit, and copying during normal business hours;
- (6) For construction projects, a requirement for the recipient to develop and adhere to an asset maintenance and renewal plan for the funded improvements; and
- (7) Any other provision(s) required by state or federal law in order for the agreement to be valid.

(b) The department shall transmit the OLA to the recipient for review. If the recipient agrees with the terms, the recipient shall sign and date the OLA and return the signed OLA to the department.

(c) Upon receipt of a signed OLA, the department shall sign the OLA and submit the OLA to the G&C for approval.

(d) If approved by the G&C, then:

- (1) The OLA shall be effective upon approval by the G&C; and
- (2) The department shall send a copy of the approved OLA to the recipient.

Env-Dw 1405.04 Initial Loan Documents (ILDs) for Non-Governmental Entities.

(a) Following acceptance of an application from a non-governmental entity, the department shall send the applicant's financial information to the PFAS RLF financial advisor for review.

(b) If the department determines, based on the assessment provided by the PFAS RLF financial advisor, that lending money to the applicant would not pose an unreasonable risk of loss due to non-repayment of funds provided to the applicant, the department shall prepare the initial loan documents (ILD) that contain the following provisions:

- (1) The loan amount;

- (2) The interest rate for the loan;
- (3) The length of the repayment term;
- (4) A description of the construction project or costs of O&M, as applicable;
- (5) Authorization for representatives of the department to examine any of the loan recipient's records that pertain to transactions relating to the loan agreement, construction contracts, or engineering contracts for the purpose of inspection, audit, and copying during normal business hours;
- (6) For construction projects, a requirement for the recipient to develop and adhere to an asset maintenance and renewal plan for the funded improvements;
- (7) Security for the loan; and
- (8) Any other provision(s) required by state or federal law in order for the agreement to be valid.

(c) The department shall send the drafted ILD to the PFAS RLF attorney and to the applicant for review and comment.

(d) If the applicant agrees to the terms of the ILD and the PFAS RLF attorney does not identify issues that could cause the ILD to not be enforceable, the department shall submit the unsigned ILD to the G&C for approval.

Edit. Remove hyphen.

(e) If the G&C approves the ILD, the department and the recipient shall schedule a loan closing for a mutually-acceptable date and time.

(f) The recipient shall bring the following documents to the closing:

- (1) Proof of authority to enter into contracts in New Hampshire, such as a certificate of good standing from the New Hampshire secretary of state's office that is valid on the date of the loan closing;
- (2) If the recipient was formed under the laws of a jurisdiction other than New Hampshire, a certificate of good standing from the state of incorporation or other registration that is valid as of the date of the loan closing; and
- (3) Any additional documents identified by the PFAS RLF attorney and identified in the loan closing agenda.

(g) After the recipient signs the ILD, the department shall:

- (1) Sign the ILD; and
- (2) Provide a copy of the signed ILD to the recipient, the PFAS RLF financial advisor, and the PFAS RLF attorney.

(h) The ILD shall be effective upon signing by the recipient and the department.

Env-Dw 1405.05 Interest Rates Established.

(a) The interest rate charged on the outstanding balance of disbursed funds prior to the scheduled completion date or substantial completion date for a construction project or date of first repayment for costs of O&M shall be equal to 1.0 % annually.

(b) The interest rate charged on the outstanding balance of disbursed funds after the date of scheduled completion or substantial completion, whichever is earlier, for a construction project or date of first repayment for costs of O&M shall be the interest rate established pursuant to (c), below, that is in effect at the time the

Unclear. It is unclear what is meant by “shall establish...as the 11-Bond Index published online.” It is unclear why the Department is inserting the website for the bond index into the rule. In the Department’s response to OLS comment, it states that it is choosing to establish the rates once per year after the Bond Index’s publication, and the intent is not to incorporate the Index. If all that is meant is that the Department is waiting until after the publication of the Index to establish the rates, then it could simply say that here and without including the website. Consider: “of each year after the on-line publication of the 11-Bond Index.”

loan agreement is transmitted to the recipient pursuant to Env-Dw 1405.02(b) or Env-Dw 1405.03(c), as applicable.

(c) The department shall establish the interest rates for all loans the first Thursday in August of each year as the 11-Bond Index published online the prior week by The Bond Buyer (<https://www.bondbuyer.com>).

(d) Loans funded jointly with the drinking water state revolving fund (DWSRF) shall receive the DWSRF rate as set forth in Env-Dw 1100 et seq.

(e) Provisions of federal law that apply when federal funding is received shall not apply to PFAS RLF construction projects unless the project receives federal funding from another source, such as from the DWSRF.

Env-Dw 1405.06 Accrual of Interest Charges.

(a) Interest on any loan funds disbursed to the recipient shall begin to accrue on the date of each disbursement of such funds by the state.

(b) The recipient shall pay interest charges incurred on disbursed funds by choosing to pay:

- (1) Prior to the commencement of the loan repayment;
- (2) At the time of the first repayment;
- (3) By adding the accrued interest to the outstanding principal balance, provided the resulting balance does not exceed the amount of the approved loan; or
- (4) A combination of (1) through (3), above.

(c) The interest rate during loan repayment shall be fixed over the loan repayment period.

Env-Dw 1405.07 Timely Use of Funds.

(a) A recipient shall begin to expend funds within 6 months of the effective date of the original loan agreement or initial loan documents, as applicable.

(b) If a recipient fails to comply with (a), above, the department shall request the recipient to show cause why the loan should not be cancelled.

(c) The department’s request shall:

- (1) Be in writing;
- (2) Specify a date by which the recipient **must** respond to the request, which shall be not less than 20 working days from the date of the notice; and
- (3) Inform the recipient that the recipient may request an adjudicative hearing prior to the loan being cancelled.

Edit. “shall”

(d) If the recipient wishes to have an adjudicative hearing, the recipient shall:

- (1) Respond in writing to the request sent by the department pursuant to (b), above; and
- (2) Include a request for a hearing in the response.

(e) If the recipient requests an adjudicative hearing and a settlement is not reached, the hearing shall be conducted in accordance with the provisions of Env-C 200 that apply to such hearings.

(f) If the recipient shows that the delay in expending the funds was based on an excusable delay, the department shall not cancel the loan.

Env-Dw 1405.08 Disbursement Requests for Construction Projects.

- (a) To obtain a disbursement for eligible work and equipment from the funds awarded for a construction project, the recipient shall submit a written disbursement request to the department by mail or email.
- (b) The written request shall include the following, as applicable to the request:
- (1) A written request for disbursement that includes the information specified in (c), below, and is signed as specified in (d), below; and
 - (2) As applicable:
 - a. Invoices for equipment and materials delivered and properly stored;
 - b. Invoices for engineering or consulting services;
 - c. Payment requisitions from the contractor(s); and
 - d. Invoices for eligible work not covered under a. through c., above.
- (c) The request for disbursement shall include the following:
- (1) The name and mailing address of the recipient;
 - (2) The total amount of the original loan or grant;
 - (3) The PFAS RLF project number and disbursement request number;
 - (4) Whether the request is for a partial payment or for final payment;
 - (5) The start and end dates of the period covered by the request;
 - (6) For each of the following classifications, the amount for the total project, the amount determined to be PFAS RLF eligible, the amount included in previous requests, and the amount of the current request, as applicable:
 - a. Administrative costs;
 - b. Pre-construction costs;
 - c. Construction;
 - d. Construction administration;
 - e. Equipment;
 - f. Miscellaneous costs; and
 - g. Other, with a brief description;
 - (7) The total for each category of costs identified in (6), above;
 - (8) The percent of the loan or grant previously disbursed;
 - (9) The total percent of loan or grant disbursed including the current request; and
 - (10) The name, title and signature of the authorized representative;

(d) The recipient shall not make disbursement requests more frequently than once per calendar month per loan.

Env-Dw 1405.09 Disbursements.

(a) The department shall approve a request submitted as specified in Env-Dw 1405.06 if it determines:

- (1) The costs covered by the request are eligible costs covered by the recipient's financial assistance agreement; and
- (2) The costs have not been covered by any previous disbursement.

(b) Upon approval of the request, the department shall authorize the disbursement to be made from the PFAS RLF, subject to Env-Dw 1405.08.

Env-Dw 1405.10 Assurances for Construction Projects. The department shall not disburse any PFAS RLF funds for a construction project until the recipient provides evidence of the following:

- (a) Approved project plans and specifications, if applicable;
- (b) Compliance with best available technology where applicable for primary and secondary contaminants;
- (c) A written agreement to maintain project financial accounts in accordance with Env-Dw 1405.14 and to maintain project accounts as separate accounts; and
- (d) A written agreement to provide notice of initiation of operation to the department upon beginning operation of the project.

Env-Dw 1405.11 Supplemental Loan Agreement for Loans to Governmental Recipients for Construction Projects.

- (a) Upon completion of a construction project by a governmental recipient, the department shall:
 - (1) Prepare a supplemental loan agreement (SLA) to reflect actual project expenditures and to establish:
 - a. The loan term selected by the recipient and the corresponding interest rate as stated in the OLA; and
 - b. The loan repayment schedule based on the final project cost; and
 - (2) Transmit the SLA to the recipient, who shall review and sign it.
- (b) Upon receipt of the signed SLA, the department shall sign the SLA and send a copy thereof to the recipient.

Env-Dw 1405.12 Allonge for Loans to Non-Governmental Recipients for Construction Projects.

- (a) Upon completion of a construction project by a non-governmental recipient, the department shall:
 - (1) Prepare an allonge to reflect actual project expenditures and to establish:
 - a. The loan term selected by the recipient and the corresponding interest rate as stated in the ILD; and
 - b. The loan repayment schedule based on the final project cost; and

- (2) Transmit the allonge to:
 - a. The PFAS RLF attorney for review; and
 - b. The recipient, who shall review and sign it.

(b) Upon receipt of a signed allonge, the department shall sign the allonge and send a copy thereof to the recipient.

Env-Dw 1405.13 Supplemental Loan Agreement for Loans to Governmental Recipients for O&M Costs.
RESERVED

Env-Dw 1405.14 Allonge for Loans to Non-Governmental Recipients for O&M Costs. RESERVED

Env-Dw 1405.15 Loan Repayment.

(a) The recipient shall repay all funds received and interest accrued thereon to the department as stipulated in the SLA or allonge, as applicable.

(b) The department shall deposit all funds that are repaid under this chapter to be credited directly to the PFAS RLF.

(c) A community that meets the disadvantaged affordability criteria established in Env-Dw 1405.02 that has received loan forgiveness pursuant to Env-Dw 1405.02 shall repay only such funds and interest remaining, if any, after the forgiveness is applied.

(d) The loan repayment shall:

- (1) Not exceed the loan term established in the SLA or allonge;
- (2) For governmental recipients for construction projects, begin by the earlier of one year following substantial completion of the project or one year following the scheduled completion date as stated in the OLA; and
- (3) For non-governmental recipients for construction projects:
 - a. Commence interest-only payments by 6 months following the earlier of substantial completion of the project or the scheduled completion date as stated in the ILD; and
 - b. Commence principal and interest repayments by one year following the earlier of substantial completion of the project or the scheduled completion date as stated in the ILD.

(e) The loan shall be amortized on an annual basis for governmental entities and on a monthly basis for non-governmental entities.

(f) Should excusable delay be incurred beyond the scheduled completion date of a construction project, the department shall:

- (1) Offer to modify the SLA or allonge, as applicable, to account for the delays; and
- (2) If the recipient so requests, negotiate an appropriate modification of the SLA or allonge, as applicable.

(g) Any recipient may repay a loan, in whole or in part, prior to the date stipulated in the SLA or allonge, as applicable, with no prepayment penalty.

Env-Dw 1405.16 Use of Funds; Return of Funds.

(a) The recipient shall use and expend financial assistance provided from the PFAS RLF solely and exclusively for the payment of authorized eligible construction costs or costs of O&M, as applicable, for which the financial assistance was approved.

(b) If the recipient uses any funds provided from the PFAS RLF for anything other than eligible costs on the specific project for which such funds were furnished, the recipient shall return or otherwise repay to the department all such funds.

Env-Dw 1405.17 Retainage for Construction Projects.

(a) The recipient may withhold a percentage of all partial payments to contractors on a construction project as retainage until the project is complete.

(b) If the recipient intends to withhold a retainage, the recipient shall specify the terms and conditions relating to the retainage in the contract documents submitted pursuant to Env-Dw 1406.03.

Env-Dw 1405.18 Accounting. Each recipient shall:

(a) Use generally accepted accounting principles;

(b) Place all funds received from the PFAS RLF in a project account for the sole purpose of planning, designing, and constructing the construction project or costs of O&M, as applicable, as approved by the department;

(c) Use all funds received from the PFAS RLF for the sole purpose of planning, designing, and constructing the construction project or paying O&M costs, as applicable, as approved by the department;

(d) Provide to the department an audit conducted by an accountant licensed under RSA 309-B who meets the qualifications for a forensic accountant established by the Governmental Accounting Standards Board (GASB) for a governmental entity or by the Financial Accounting Standards Board (FASB) for non-governmental entities:

(1) Annually, if the recipient expends more than \$500,000 of PFAS RLF funds in a calendar year;
or

(2) In response to a department request for an audit based on a reasonable suspicion of fraud or misuse of PFAS RLF funds;

(e) For a construction project, maintain insurance coverage on the project in an amount adequate to protect the state's investment, as determined based on the nature of the project and the amount of funding provided from the PFAS RLF in consultation with the department;

(f) For a construction project, comply with any special conditions specified by the department's environmental determination until all financial obligations to the state have been discharged; and

(g) Continually abide by the terms of the financial assistance agreement, applicable rules, and relevant state and federal statutes for operation and maintenance of the facility.

PART Env-Dw 1406 ENVIRONMENTAL REVIEW FOR CONSTRUCTION PROJECTS

Env-Dw 1406.01 Environmental Review Required for Construction Projects. Any construction project for which financial assistance from the PFAS RLF is requested shall be reviewed by the department for impacts on the human and natural environment in accordance with this part.

Env-Dw 1406.02 General Procedure. The department shall perform an environmental review and prepare an environmental review report based on the applicant's proposed construction project as specified in Env-Dw 1108.

PART Env-Dw 1407 DESIGN, CONSTRUCTION, AND IMPLEMENTATION PHASES FOR CONSTRUCTION PROJECTS

Env-Dw 1407.01 Consulting Contracts for Expenditures of PFAS RLF Funds.

(a) For all construction projects funded from the PFAS RLF that require consulting services, the contract for such services shall contain the following:

- (1) A description of the services to be provided by the consultant, including the due date for any report or plans that will be prepared; Edit. "shall"
- (2) The recipient's responsibilities under the contract;
- (3) The estimated time of completion of the services covered by the contract;
- (4) Compensation to be paid to the consultant; and
- (5) Termination provisions.

(b) The recipient shall comply with all applicable procedures and incidental legal requirements in awarding the consultant's contract.

Env-Dw 1407.02 Plans and Specifications for Construction Projects.

(a) For construction projects, the recipient shall submit engineering plans and specifications that conform to the applicable design standards specified in Env-Dw 400.

(b) For projects other than construction projects, the recipient shall submit plans and specifications that are appropriate to the proposed project.

(c) Department approval of the plans and specifications shall not relieve the recipient of any liabilities or responsibilities with respect to the design, construction, operation, or performance of the project.

Env-Dw 1407.03 Construction Contract Documents for Construction Projects.

(a) The recipient shall submit construction contract documents to the department for review and approval.

(b) No construction project shall be offered for public bid until after the department has reviewed the contract documents as specified in Env-Dw 1407.04.

(c) The construction contract documents submitted by the recipient to the department shall contain the following:

- (1) Bidding requirements for the construction of the project that meet the requirements in Env-Dw 1408.05, including bid advertisement or solicitation for competitive quotations, information for bidders, a bid proposal form that separates eligible construction from ineligible construction, and applicable bid security requirements;
- (2) Agreement and applicable requirements for the payment bond, performance bond, notice to proceed, and related documents such as the contractor's affidavit, the contractor's release, the certificate of substantial completion, and the format for change orders;

- (3) For loans greater than \$100,000, general and supplemental conditions for the construction of the project, including provisions requiring the contractor to obtain and maintain the appropriate insurance coverage;
- (4) Plans and specifications as specified in Env-Dw 1407.02;
- (5) Appendices including boring logs, permits, and other details as appropriate;
- (6) Provisions giving authorized representatives of the department access to all construction activities, books, records, and documents for the purpose of inspection, audit, and copying during normal business hours; and
- (7) Such conditions, specifications, and other provisions as are required to comply with state and local law.

Env-Dw 1407.04 Department Review of Construction Contract Documents.

- (a) The department shall review the construction contract documents submitted pursuant to Env-Dw 1407.03 within 30 calendar days of receipt.
- (b) The department shall approve the contract documents if they:
 - (1) Meet the requirements listed in Env-Dw 1407.03(c);
 - (2) Are consistent with all applicable state requirements; and
 - (3) Are consistent with the planning document submitted pursuant to Env-Dw 1404.07.
- (c) After the contract documents are approved, no changes to the contract documents shall be made unless the recipient obtains prior approval from the department pursuant to Env-Dw 1407.06.
- (d) After the contract documents are approved, no increases in project cost or scope shall be made unless the recipient obtains prior approval from the department pursuant to Env-Dw 1407.06.
- (e) Department approval of the contract documents shall not relieve the recipient of any liabilities or responsibilities with respect to the design, construction, operation, or performance of the project.

Env-Dw 1407.05 Bidding Requirements for Construction Contracts. Recipients of funds for a construction project shall comply with the following bidding requirements:

- (a) The bid period shall be not less than 14 calendar days, unless the department has approved a shorter bid period due to an imminent threat to public health or safety;
- (b) The advertisement for bids or competitive quotes shall include the following information:
 - (1) The project name and contract number;
 - (2) The location of work;
 - (3) A description of work to be performed;
 - (4) The time and date at which the bids **will** be publicly opened and read aloud, and a statement that bids received after that time **will** not be accepted;
 - (5) An address and cost information for obtaining plans and specifications; and
 - (6) The addresses where plans and specifications **can** be examined;
- (c) For projects with estimated construction costs over \$100,000, the advertisement shall also include:

Edit. "shall"

- (1) A requirement for a bid security in the amount of 5% of the bid in the form of a certified check or a bid bond executed by a surety company authorized to do business in New Hampshire and made payable to the recipient; and
- (2) A statement that a 100% performance bond and a 100% payment bond will be required;
- (d) The recipient shall reserve the right to:
 - (1) Reject any or all bids; and
 - (2) Waive any informalities or minor defects on bids received; and
- (e) If any addenda to the bid are needed, the recipient shall:
 - (1) Submit the proposed addenda to the department for review as much in advance of issuing it as possible;
 - (2) Refrain from issuing the addenda without approval from the department; and
 - (3) Issue the approved addenda 5 days or more prior to bid opening.

Env-Dw 1407.06 Changes to Construction Contract Documents and Construction Project Cost or Scope.

- (a) After the construction contract documents have been approved by the department, the recipient shall not make, allow, or authorize any changes, modifications, or amendments to or departure from the approved plans and specifications that would materially or significantly affect project cost, estimated revenues, or project design without the prior written approval of the department.
- (b) A request to modify contract documents as described in (a), above, shall:
 - (1) Identify each change for which approval is sought;
 - (2) Explain the reason(s) for each change requested, including an explanation of the operational or economic consequences of the requested change(s) not being approved; and
 - (3) Explain how the request meets the criteria specified in (d) or (e), below, as applicable.
- (c) The department shall approve or deny the request within 10 working days of receipt of a request that meets the criteria of (b), above.
- (d) For changes other than increases to project cost or scope, the department shall approve each requested change in the contract documents that the recipient demonstrates are:
 - (1) Eligible costs that can be covered by the existing financing arrangement, if there are any costs associated with the change(s);
 - (2) Consistent with the goal(s) of the project; and
 - (3) Protective of the health of the public served by the recipient's water system.
- (e) The department shall approve a request for an increase in project cost or scope if the following criteria are met:
 - (1) The increased cost or scope was not reasonably foreseeable at the time the original project proposal was submitted;
 - (2) The cost increase results in a total cost no greater than the prevailing rate for the item to which the cost is attributable such as, but not limited to, labor and materials; and

(3) The item to which the cost increase is attributable is an eligible cost as specified in Env-Dw 1404; and

(4) The PFAS RLF has sufficient monies available at the time the request is filed to cover the proposed cost increase.

(f) The amount of funding provided from the PFAS RLF shall be increased only by approval from the department, with G&C approval.

Env-Dw 1407.07 Awarding Construction Contracts.

(a) The recipient of financial assistance from the PFAS RLF for a construction project shall comply with all applicable legal procedures and other legal requirements in advertising for bids and awarding the construction contract.

(b) The text of the construction contract documents shall not vary from the text of the contract documents approved pursuant to Env-Dw 1407.04, unless a change has been approved pursuant to Env-Dw 1407.06.

(c) After receiving and reviewing bids, the recipient shall select the lowest responsive bid or competitive quotation, unless approval is requested and obtained from the department to award the contract to a higher bid or quotation based on the lowest bid or quotation not being from a responsible bidder.

(d) The recipient shall request approval from the department to award the construction contract by submitting the following in writing to the department:

- (1) A revised estimate of eligible project costs;
- (2) For loans greater than \$100,000, monthly cash flow projections;
- (3) Evidence of solicitation for bids or competitive quotations;
- (4) A tabulation of all bids that were received;
- (5) A letter signed by the recipient's authorized representative indicating the contract value and the name of the bidder to whom the contract is planned to be awarded;
- (6) A copy of the bid proposal of the bidder to whom the contract is planned to be awarded;
- (7) If the bidder selected is not the lowest bidder, an explanation of why the lowest bidder was not selected; and
- (8) Certification that all necessary permits, land acquisitions, and easements have been secured.

(e) The department shall approve the award of the construction contract if it determines that all applicable requirements have been met. The applicant shall not award the construction contract until after it has received written approval to do so from the department.

(f) For all construction projects funded by the PFAS RLF program, following receipt of approval from the department the recipient shall sign a construction contract with the selected contractor.

Edit.
Comma.

Env-Dw 1407.08 Recipient's Obligations for Inspections During Construction.

(a) During the construction phase of the project, the recipient shall obtain the engineering or other inspection services necessary to assure completion of the project in accordance with the financial assistance agreement and the approved plans and specifications.

(b) After the construction contract is awarded, the recipient shall provide for on-site inspections of the project by a resident project representative that are sufficient to provide assurance to the recipient and the department that the work is being performed in a satisfactory manner in accordance with the approved plans and specifications, approved alterations, and sound engineering principles and building practices.

Env-Dw 1407.09 Department Inspections During Construction.

(a) The recipient shall allow the department to inspect the project during normal business hours in order to confirm that:

- (1) The materials furnished meet the approved specifications; and
- (2) The project is being built in accordance with the approved plans and specifications and any approved alterations.

(b) In conjunction with project inspections, the department shall:

- (1) Inspect the materials that are visible at the time of the inspection to determine compliance with the approved plans and specifications; and
- (2) Document the manner and progress of the project, conditions relating to the materials furnished, and the contractor's compliance with the approved plans and specifications for the project.

(c) Inspections by the department shall not release the contractor from any obligation to perform the work in accordance with the requirements of the contract documents, nor shall such inspections release the project engineer from determining compliance with the requirements of the contract documents.

(d) The contractor and recipient shall provide the department **with such accommodations as are needed** for the department to determine whether the work as performed is in accordance with the requirements and intent of the contract. **Unclear.** It is unclear what the contractor and recipient are actually being required to do in this context.

(e) The department shall, as soon as practicable, bring to the attention of the recipient and the resident project representative any discrepancies between the approved plans and specifications and the actual work observed of which it becomes aware through its inspections.

(f) Upon being notified of any such discrepancies, the recipient and the resident project representative shall immediately:

- (1) Initiate necessary action to rectify the deficiencies; or
- (2) Provide documentation explaining the reason(s) for the discrepancies and demonstrating that the installation meets applicable requirements.

(g) If the recipient's resident project representative disagrees with the department as to whether material furnished or work performed conforms with the terms of the construction contract, the recipient shall direct the resident project representative to reject questionable materials and initiate other action provided for in the construction contract, including suspension where necessary, until all disputed issues are resolved in accordance with the terms of the construction contract.

Env-Dw 1407.10 Testing During Construction.

(a) In addition to normal testing procedures required of the recipient, the department shall require such additional tests of building materials and processes as the department determines to be necessary to demonstrate compliance with the approved plans and specifications and any approved alterations thereto during the building of projects financed in whole or in part by PFAS RLF funds.

(b) All tests, whether for the department or the project engineer, shall conform to current American Water Works Association standards as specified in Env-Dw 407, American Association of State Highway and Transportation Officials, American Society of Testing and Materials, and the New Hampshire department of transportation published procedures, or similar criteria, as applicable to the specific materials and processes proposed by the recipient to be used in the project.

(c) The department shall specify which tests are applicable based on the specific materials and processes proposed by the recipient to be used in the project. Samples for testing shall be furnished free of cost to the department upon request at the construction site.

Env-Dw 1407.11 Limitations on Construction Project Modifications; Requests for Approval.

(a) After construction has commenced, the recipient shall not make, allow, or authorize any changes, modifications, or amendments to, or any departures from, the approved plans and specifications that would materially or significantly affect project cost, estimated revenues, or project design in accordance with Env-Dw 1407.06 without prior written approval from the department.

(b) The recipient shall request approval for changes covered by (a), above, by submitting the following information in writing to the department:

- (1) The name of the recipient and the name and location of the recipient’s water system;
- (2) The project number of the final financial assistance agreement;
- (3) For each modification for which the recipient is seeking approval:
 - a. A description of the modification; and
 - b. The reason(s) why the modification is necessary; and
- (4) An explanation of the operational and economic consequences to the water system and to public health and the environment of the department not approving the requested modifications.

(c) Prior departmental approval of project change orders shall not be required if the recipient’s project engineer certifies to the department that such change, modification, amendment, or departure:

- (1) Will not materially or significantly affect project cost, estimated revenues, or project design; and
- (2) Is consistent with the objectives of the project and within the scope of the final financial assistance agreement.

Env-Dw 1407.12 Approval of Project Modifications.

(a) Subject to (b) and (c), below, the department shall approve a request submitted pursuant to Env-Dw 1407.11 if:

- (1) The scope of the project as modified is consistent with the original intent of the financial assistance;
- (2) The project as modified will not cause the water system to be out of compliance with the federal SDWA, 40 CFR Parts 141, 142, and 143, RSA 485, and applicable rules in subtitle Env-Dw; and
- (3) If additional PFAS RLF funds are requested, then:

Edit. “shall be”

- a. ~~The increased cost~~ **is** approvable under the criteria established in Env-Dw 1407.06(e); and
- b. The fund **has** sufficient monies available at the time the request is filed to cover the proposed cost increase.

Edit. “shall have”

(b) The department shall review the request and notify the recipient and resident project representative as soon as practicable considering the scope of the request.

(c) A change of project scope, such as the addition of new construction items, shall not be eligible for additional funding after loan closing unless one of the following conditions are met:

- (1) The change of scope is necessary due to an inadvertent oversight, and is needed to provide an operable water system and not to replace faulty construction or equipment already funded; or
- (2) The change of scope is necessary due to changes in federal or state requirements.

(d) The amount of funding provided from the PFAS RLF shall be increased only by a formal amendment in writing with the department, with ~~governor and council approval~~ Edit. "G&C"

Env-Dw 1407.13 Construction Phase Submittal. During the construction phase of the project, the recipient shall submit to the department:

- (a) A notice of completion of construction, upon completion of project construction; and
- (b) Any building phase submittals required by the final financial assistance agreement to be submitted to the department.

Env-Dw 1407.14 Final Inspection of Construction Projects and Review of Records.

- (a) Upon completion of any construction project for which financial assistance from the PFAS RLF has been provided, the applicant shall furnish to the department written notification of completion.
- (b) Upon receipt of such notification, or upon project completion should notification not be furnished as required, and prior to the department approving the final loan disbursement, the department shall:
 - (1) Confirm that the project has been completed as contemplated in the financial assistance agreement, which shall include conducting a final on-site inspection of the project, if necessary, with the recipient or the recipient's designee; and
 - (2) Review the recipient's records relative to funds furnished to the recipient from the PFAS RLF.

PART Env-Dw 1408 WAIVERS

Env-Dw 1408.01 Purpose. The purpose of the rules in this part is to accommodate situations in which strict compliance with all requirements established by this chapter may not be in the best interests of the public or the PFAS RLF.

Env-Dw 1408.02 Procedures.

- (a) Any applicant or recipient who is or would be directly and adversely affected by the strict application of a rule in Env-Dw 1400 may request a waiver thereof from the department.
- (b) Each request for a waiver shall be filed in writing by the authorized representative of the applicant or recipient, as applicable.
- (c) Each request for a waiver shall include the information specified in Env-Dw 1408.03 and be signed as required by Env-Dw 1408.04.

Env-Dw 1408.03 Content and Format of Requests. The person requesting the waiver shall provide the following information to the department:

- (a) The name, mailing address, and daytime telephone number including area code of the requestor;

- (b) The eligibility request, application, or loan to which the waiver request relates; and
- (c) For each waiver sought, the following:
 - (1) **The number of the specific section of the rules;**
 - (2) A complete explanation of why a waiver is being requested, including an explanation of the economic and operational consequences of complying with the rule as written;
 - (3) If applicable, a full explanation of the alternate(s) proposed to be substituted for the requirement in the rule, including documentation or data, or both, to support the alternative;
 - (4) Whether the need for the waiver is time-limited and, if so, the estimated length of time the waiver **will** be needed; and
 - (5) A complete explanation of why the applicant believes that having the waiver granted will meet the criteria in Env-Dw 1408.05.

Edit. “The specific administrative rule provision(s) for which the waiver is being sought;”

Edit. “shall”

Env-Dw 1408.04 Signature Required.

- (a) The authorized representative of the applicant or recipient that is requesting the waiver shall sign the request.
- (b) The authorized representative’s signature shall constitute certification that:
 - (1) The information provided is true, complete, and not misleading to the best of the signer’s knowledge and belief;

Edit. “pursuant to” or “found at” or delete.

- (2) The signer understands that any waiver granted based on false, incomplete, or misleading information is subject to revocation; and
- (3) ~~The signer is subject to the penalties specified in New Hampshire law for falsification in official matters,~~ **currently** RSA 641.

(c) If the signer is or is acting on behalf of a listed engineer as defined in Env-C 502.10, the signature also shall constitute certification that the signer understands that the submittal of false, incomplete, or misleading information could constitute grounds for debarring the listed engineer from the roster.

Env-Dw 1408.05 Criteria.

- (a) Subject to (b), below, the department shall grant a waiver if:
 - (1) Granting the waiver, conditional upon implementation of alternatives, if applicable, **will** result in circumstances that are as protective of the public, the environment, and the integrity of the PFAS RLF program as the requirements contained in this chapter;
 - (2) Granting the waiver, conditional upon implementation of alternatives, if applicable, **will** not adversely impact the department’s obligations under RSA 485-H; and
 - (3) Strict adherence to the rule would not be in the best interest of the public, the environment, or the PFAS RLF.
- (b) No waiver shall be granted if the effect of the waiver would be to waive or modify a state or federal statutory requirement, including but not limited to any requirement of RSA 485 or RSA 485-H unless such statute or grant expressly provides that the requirement may be waived or modified.

Edit. “shall”

Env-Dw 1408.06 Decisions.

- (a) The department shall notify the person requesting the waiver of its decision in writing within 30 calendar days of receiving a complete request. If the request is denied, the department shall specify the reason(s) for the denial in the notice.
- (b) The department shall include such conditions in a waiver as are necessary to ensure that the criteria specified in Env-Dw 1408.05 are met, including if applicable the implementation of alternatives.
- (c) If the need for a waiver is temporary, the waiver shall specify the date on which it expires.

Note to JLCAR on Legis. Intent: The rulemaking public hearing for this proposal was to be held on 11/6/20 as a webinar public hearing via Go To Webinar. RSA 541-A:11 appears to presume in-person hearings, since it refers to postponements due to inclement weather, for example. The RSA certainly does not address remote public hearings as it was enacted before the use of such technologies, and it hasn't been interpreted to allow for remote hearings, with their additional requirements affecting access as compared to in-person hearings. RSA 541-A:41 states that RSA 541-A governs all agency rulemaking hearings unless specifically excepted. While the Governor's E.O. #12 amends RSA 91-A to allow for remote hearings, that does not apply to departments. But the JLCAR may wish to ask the Department how the hearing proceeded and the public's access to it, since RSA 541-A:11, I(a) requires that an agency "shall afford all interested persons reasonable opportunity to testify...in accordance with the terms of the notice." A legislative fix may be needed in RSA 541-A:11, along with changes to all Chapter 200 rules, to clearly allow for remote rulemaking hearings.

APPENDIX A: STATE STATUTES IMPLEMENTED

Rule Section(s)	State Statute(s) Implemented
Env-Dw 1400 (also see specific part below)	RSA 485-H
Env-Dw 1408	RSA 541-A:22, IV

APPENDIX B: STATUTORY DEFINITIONS

RSA 485:1-a

- I. "Community water system" means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.
- XI. "Non-transient non-community water system" means a system which is not a community water system and which serves the same 25 people, or more, over 6 months per year.
- XIII. "Person" means any individual, partnership, company, public or private corporation, political subdivision or agency of the state, department, agency or instrumentality of the United States, or any other legal entity.
- XIV. "Political subdivision" means any municipality, county, district, or any portion or combination of 2 or more thereof.
- XV. "Public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Such term includes (1) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (2) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Any water system which meets all of the following conditions is not a public water system:
 - (a) Consists only of distribution and storage facilities (and does not have any collection and treatment facilities);
 - (b) Obtains all of its water from, but is not owned or operated by, a public water system; and
 - (c) Does not sell water to any person.

APPENDIX C: REFERENCED STATUTE
CHAPTER 485-H
PER AND POLYFLUOROALKYL SUBSTANCES (PFAS)
FUND AND PROGRAMS

485-H:1 Purpose Statement. Communities across the state have been impacted by per and polyfluoroalkyl substances (PFAS) contamination, largely through no fault of their own. The cost of remediating this contamination for many communities would result in dramatically higher water and sewer rates for end users. The existence of these man-made chemicals, some of which are occurring at unhealthy levels in New Hampshire’s drinking water, require a strategy to protect, preserve, and enhance the water that New Hampshire citizens and environment rely upon.

485-H:2 Definitions. In this chapter:

- I. “Community water system” means “community water system” as defined in RSA 485:1-a.
- II. “Department” means the department of environmental services.
- III. “Drinking water standard” means the maximum contaminant levels in accordance with RSA 485:16-e.
- IV. “Fund” means the PFAS remediation loan fund established in RSA 485-H:10.
- V. “Non-transient non-community water system” means “non-transient non-community water system as defined in RSA 485:1-a.
- VI. “Wastewater residuals” means septage, sludge, or biosolids.

485-H:3 Implementation of Drinking Water Protection Program. The department shall provide low interest loans to community water systems and non-profit, non-transient public water systems whose testing of untreated source water shows confirmed exceedance of the state maximum contaminant level for PFAS, for remediation efforts begun after September 30, 2019.

I. Projects shall only be financed after the applicant demonstrates that the proposed plan for remediation is the most cost-effective solution, as reviewed and approved by the department. The applicant shall provide evidence in the application for funding that there are no no-cost or low-cost efforts such as blending of source water or shutting down an impacted source that would result in the system meeting applicable state maximum contaminant level with no unreasonable adverse effects. The applicant shall also show that there is no responsible party identified by the department or that the responsible party, potentially including the applicant, has provided their appropriate share of the funding for the proposed project.

II. Loans may be made for up to the total cost of the project, after any responsible party’s contribution, addressing the contamination.

485-H:4 Implementation of Groundwater, Surface Water and Aquatic Life Protection. The department shall provide low interest loans to publicly-owned and non-profit wastewater and/or wastewater residual treatment or storage facilities that are required to treat effluent and residuals to achieve PFAS standards prior to discharge or disposal.

I. Projects shall only be financed after the applicant demonstrates that the proposed plan for remediation is the most cost-effective solution, as reviewed and approved by the department. The applicant shall provide evidence in the application for funding that there are no no-cost or low-cost efforts that would result in the system meeting standards with no unreasonable adverse effects. The applicant shall also show that there is no responsible party identified by department or that the responsible party, potentially including the applicant, has provided their appropriate share of the funding for the proposed project.

II. Loans may be made for up to the total cost of the project, after any responsible party’s contribution, addressing the contamination.

485-H:5 Loan Principal Forgiveness Based Upon Need.

I. The department shall forgive up to 10 percent of the loan principal to community water systems and non-profit, non-transient non-community water systems using the same qualifying standards for forgiveness used in the drinking water state revolving loan program established under RSA 486:14.

II. The department shall forgive up to 10 percent of the loan principal for publicly-owned and non-profit wastewater treatment facilities using the same qualifying standards for forgiveness used in the clean water state revolving loan program established under RSA 486:14.

III. Total loan forgiveness under this section shall not exceed \$5 million for both drinking water and clean water combined.

485-H:6 Contingent Reimbursement.

I. Following the reimbursement of the department of justice for legal expenses related to relevant litigation; the transfer of funds to the revenue stabilization reserve account pursuant to RSA 7:6-e; the redemption of bonds issued or debt incurred pursuant to RSA 6:13-e, III(a); and reimbursement of the general fund for any debt principal or interest payments made to support bonds issued or debt incurred pursuant to RSA 6:13-e, III(a), any remaining funds from judgments or settlements received by the state resulting from lawsuits against the manufacturers of PFAS shall be deposited into the drinking water and groundwater trust fund established in RSA 6-D:1.

II. In addition to the loan forgiveness described in RSA 485-H:5, the department, upon certification by the state treasurer that funds from judgments or settlements have been received and used to redeem the bonds issued under RSA 6:13-e in full and the general fund has been reimbursed for all interest and principal payments charged against it to support said bond, shall grant partial loan forgiveness to the loan recipients, up to 50 percent of the loan principal.

(a) If insufficient funds are received by the state to cover 50 percent of the principal, the reimbursements shall be prorated. In no instance shall the loan reimbursement exceed 50 percent of the total loan amount, unless it received loan forgiveness under RSA 485-H:5, in which case the combined maximum shall be 60 percent.

(b) In the event a loan recipient receives compensation from a responsible party, the department shall not grant partial loan forgiveness that in combination with any compensation would exceed 100 percent of the total cost of the remediation.

485-H:7 Drinking Water and Groundwater Trust Fund Exception. Notwithstanding any law to the contrary, any funds deposited into the drinking water and groundwater trust fund established in RSA 6-D:1 as a result of this chapter may be transferred to the department to be used for funding PFAS remediation projects, including those at wastewater treatment facilities, at the discretion of the fund's advisory commission.

485-H:8 Duties of the Department.

I. The department shall perform the following duties to the limit of available funding:

(a) Establishing and administrating the PFAS remediation loan program to assist municipalities; community and non-profit, non-transient non-community water systems; and publicly owned and non-profit wastewater treatment facilities with the cost of complying with state maximum contaminant level for PFAS.

(b) Establishing and administering a loan forgiveness program to assist disadvantaged communities with loan repayment.

(c) Awarding loan funds to projects that meet the following criteria:

(1) The project is or was necessary to comply with a state mandated PFAS standard and the applicant for funding is a municipality, a community water system, or a non-profit, non-transient public water system, or a publicly-owned or non-profit wastewater and/or wastewater residual treatment or storage facility.

(2) The applicant has demonstrated, to the satisfaction of the department, that low or no-cost solutions are neither viable nor effective.

(d) Awarding reimbursements to projects from the fund in a manner consistent with this chapter.

II. Every year beginning December 1, 2020, the department shall prepare and file a report with the general court evaluating the progress made relative to PFAS contamination, the efficiency of the program established under this chapter, and whether it continues to provide the maximum benefit to New Hampshire citizens, and providing any recommendations on potential additional tasks for which the fund could be used to address PFAS contamination.

485-H:9 Rules. The department shall adopt rules, under RSA 541-A, relative to administering PFAS remediation loan programs for eligible projects necessary to meet state PFAS standards.

485-H:10 PFAS Remediation Loan Fund Established. There is hereby established in the department the PFAS remediation loan fund which shall be maintained by the state treasurer in distinct and separate custody from all other funds, notwithstanding RSA 6:12. The state treasurer may invest the fund in accordance with RSA 6:8. Any earnings on fund moneys shall be added to the fund. All moneys in the fund shall be non-lapsing and shall be continually appropriated to the department. The PFAS remediation loan fund shall be

used to fund loans and reimbursements in accordance with this chapter. Funds from any bond proceeds, grants, loan repayments, legislative appropriations, donations, and other funds shall be credited to this fund.



AUTHORITY TO BORROW – PUBLIC ENTITIES
Water Division/Drinking Water and Groundwater Bureau
Per- and Polyfluoroalkyl Substances
Remediation Loan Fund (PFAS RLF)



RSA 485-H/Env-Dw 1400

The warrant article/resolution must indicate the authority to raise, appropriate and spend the requested funds, and must include the full loan amount.

Part 1: AUTHORITY TO FILE AND DESIGNATION OF AUTHORIZED REPRESENTATIVE

WHEREAS, _____ after thorough consideration
(LEGAL NAME OF APPLICANT)
of the nature of its drinking water system needs, hereby determines that the construction of certain works, generally described as: _____

(THE PROJECT)
is desirable and in the public interest, and to that end it is necessary to apply for assistance from the Per- and Polyfluoroalkyl Substances Remediation Loan Fund (PFAS RLF); and

WHEREAS, the Applicant has examined and duly considered the provisions of RSA 485-H and the New Hampshire Code of Administrative Rules Chapter Env-Dw 1400, which relate to loans from the PFAS RLF and deems it to be in the public interest to file a loan application and to authorize other actions in connection therewith;

NOW, THEREFORE, BE IT RESOLVED BY _____

_____ the governing body of said Applicant, as follows:

1. That the person holding the position of _____ currently held by
(TITLE)
_____ is hereby designated as the Authorized
(NAME)

Representative of the Applicant for the purpose of filing an application for a loan in accordance with New Hampshire Code of Administrative Rules Chapter Env-Dw 1400, furnishing such information, data, and documents pertaining to the applicant for a loan as may be required; and otherwise to act as the authorized representative of the Applicant in connection with this application and if such loan be made, is the designated Authorized Representative of the Applicant responsible for furnishing such information, data, and documents pertaining to disbursements for the loan.

2. That if such loan be made, the Applicant agrees to repay the loan as stipulated in the loan agreement.

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3. That a certified copy of this resolution be included as part of the application to be submitted for a loan.

4. That persons holding the following position(s) at the time of loan execution are authorized to sign the loan agreement binding the Applicant to the terms and conditions of the loan.

5. That if such loan be made, the Applicant agrees to make provisions for assuming proper and efficient operation and maintenance of the facilities after completion of the construction thereof.

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Unclear. See comment to Env-Dw 1404.04(a)(4).

VOTED:

I certify that said vote has not been amended or repealed and remains in full force and effect as of the date of this Certification and that _____ is the
(NAME)

(TITLE OF THE OFFICIAL WITH LEGAL AUTHORITY TO CERTIFY ACTIONS OF THE GOVERNING BODY)
of the Town of _____.

ATTEST:

Date: _____

Part 2: CERTIFYING AUTHORIZATION TO BORROW

I, the undersigned, the duly qualified and acting _____
(TITLE OF OFFICER)

of the _____
(APPLICANT)

herein called the Applicant and keeper of the records of the Applicant, including the journal of the proceedings of the _____
(GOVERNING BODY OF THE APPLICANT)

herein called the Governing Body do hereby certify:

1. That the attached resolution is a true and correct copy of the resolution as finally adopted at a meeting of the Governing Body held on the _____ day of _____, 20____, and duly recorded in my office;
2. That said meeting was duly convened and held in all respects in accordance with law and to the extent required by law, due and proper notice of such meeting was given; and a legal quorum was present throughout the meeting; and a legally sufficient number of members of the governing body voted in the proper manner and for the adoption of said resolution; that all other requirements and proceedings under the law incident to the proper adoption or passage of said resolution including publication, if required, have been duly fulfilled, carried out, and otherwise observed; and that I am authorized to execute this certificate;
3. That if an impression of the seal has been affixed below, it constitutes the official seal of the Applicant and this Certificate is hereby executed under such official seal; but if no seal has been affixed, the Applicant does not have an official seal;

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 20 ____.

If the Applicant has an official seal, impress here.

(seal)

(signature of officer)

(print name of officer)

(title of officer)

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FINANCIAL CERTIFICATION - PRIVATELY-OWNED SYSTEMS

Water Division/Drinking Water and Groundwater Bureau
Per- and Polyfluoroalkyl Substances
Remediation Loan Fund (PFAS RLF)

RSA 485-H/Env-Dw 1400

Instructions: The form below is a statement that the applicant has the financial capacity to support both the project loan repayment and continuing operation and maintenance.

Financial Certification Statement

The _____ hereby certifies that it has the financial capability to support both
(SYSTEM NAME)
the project loan repayment and continuing operation and maintenance. The source of repayment of the loan is as follows (*i.e. revenue earned from lot rents, condo fees, etc.*)

The _____ will conduct and report on a financial audit, including compliance and
(SYSTEM NAME)
controls, in any calendar year it receives PFAS RLF funds in excess of \$500,000.

The applicant hereby certifies that the signer has been duly authorized by the applicant to sign the application and that the information provided is true, complete, and not misleading to the knowledge and belief of the signer. The applicant further certifies that the applicant understands that any NHDES determination that the applicant and the applicant's project qualifies for funding from the PFAS RLF that is based on false, incomplete, or misleading information is subject to modification, up to and including reversal, through an adjudicative proceeding conducted in accordance with applicable provisions of Env-C 200, and that the applicant and the signer are subject to the penalties specified in New Hampshire law for falsification in official matters, currently RSA 641.

Signature of Authorized Representative

Name and Title

PFAS Remediation Loan Fund Program
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FINANCIAL CERTIFICATION - PUBLICLY-OWNED SYSTEMS



Water Division/Drinking Water and Groundwater Bureau Per- and Polyfluoroalkyl Substances Remediation Loan Fund (PFAS RLF)

RSA 485-H/Env-Dw 1400

Instructions: The form below is a statement that the applicant has the financial capacity to support both the project loan repayment and continuing operation and maintenance.

Financial Certification Statement

The _____ hereby certifies that it has the financial capability to support both the
(TOWN/CITY/ENTITY)

project loan repayment and continuing operation and maintenance. The source of repayment of the loan is as follows (i.e. water rate revenue, etc.)

The _____ will conduct and report on a financial audit, including compliance and controls, in
(TOWN/CITY/ENTITY)

any calendar year it receives PFAS RLF funds in excess of \$500,000.

The _____ have existing debt held outside the NH Municipal
(TOWN/CITY/ENTITY) (DOES/DOES NOT)

Bond Bank.

(List Existing Debt) _____

(If so, is the debt rated and what is the rating) _____

The applicant hereby certifies that the signer has been duly authorized by the applicant to sign the application and that the information provided is true, complete, and not misleading to the knowledge and belief of the signer. The applicant further certifies that the applicant understands that any NHDES determination that the applicant and the applicant's project qualifies for funding from the PFAS RLF that is based on false, incomplete, or misleading information is subject to modification, up to and

including reversal, through an adjudicative proceeding conducted in accordance with applicable provisions of Env-C 200, and that the applicant and the signer are subject to the penalties specified in New Hampshire law for falsification in official matters, currently RSA 641.

Signature of Authorized Representative

Name & Title



FINAL LOAN APPLICATION

Water Division/Drinking Water and Groundwater Bureau
Per- and Polyfluoroalkyl Substances
Remediation Loan Fund (PFAS RLF)



RSA 485-H/Env-Dw 1400

1. PUBLIC WATER SYSTEM INFORMATION:			
Water System Name:		PWS ID #:	
Town/City:		Municipal <input type="checkbox"/>	Private <input type="checkbox"/>
Contact Person:	Title:		
Mailing Address:		ZIP + 4:	
Phone:	Email:		
Primary site where work will be performed:			
Address:		ZIP + 4:	
Repayment Billing Contact:		Title:	
Email:	Phone:		

2. PROJECT TITLE:

3. PROJECT DESCRIPTION: provide a concise description of the project need and how it will address public health protection, and what alternatives have been considered:

4. PROJECT COST:	
Estimated Construction Cost	\$
Construction Contingency (10%)	\$
Estimated Engineering / Planning Costs	\$
Other Costs	\$
<i>Describe other costs:</i>	
Total Estimated Costs	\$
Amount of Loan Requested	\$

5. LOAN TERM*: (Ex. 5, 10, 15, 20 years)	years
---	-------

Notes

* Loan term cannot exceed the life-cycle cost of the financed asset/improvement.

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6. CURRENT RESIDENTIAL WATER RATE: (Based on 71,996 gallons/year)	\$	/single family home/year
---	----	--------------------------

7. PROJECT SCHEDULE:	
Anticipated Authority to Borrow Date	
Anticipated Design Start Date	
Anticipated Construction Contract Award Date	
Anticipated Project Completion Date	

8. VENDOR CODE – A vendor code may be obtained online at https://das.nh.gov/purchasing/vendorregistration/	<table border="1" style="width: 100%; height: 20px; border-collapse: collapse;"> <tr> <td style="width: 15%;"></td> <td style="width: 15%;"></td> <td style="width: 15%;"></td> <td style="width: 15%;"></td> <td style="width: 15%;"></td> <td style="width: 15%;"></td> </tr> </table>						

9. ATTACHMENTS

For governmental applicants, attach a letter signed by an authorized representative stating whether or not the applicant has any debt outside the NH Municipal Bond Bank and, if the debt is rated, the rating.

For non-governmental applicants, attach documentation of the extent of the applicant’s existing debt.

For all applicants, attach a copy of the applicant’s latest annual report or financial statements.

Applicant certifies that the signer has been duly authorized by the applicant to sign this application and that information in the application and in the attachments is true, correct and complete to the best of the representative’s knowledge and belief. Applicant further certifies that applicant understands that any NHDES determination that the applicant and the applicant’s project qualifies for funding from the PFAS RLF that is based on false, incomplete, or misleading information is subject to modification, up to and including reversal, through an adjudicative proceeding conducted in accordance with applicable provisions of Env-C 200, and that the applicant and the signer are subject to the penalties specified in New Hampshire law for falsification in official matters, currently RSA 641.

If the applicant’s authorized representative is, or is acting on behalf of, a listed engineer as defined in Env-C 502.10, the signature also constitutes certification that the signer understands that the submittal of false or misleading information is grounds for debarring the listed engineer from the roster.

Signature of Authorized Representative

Title

Date



ENVIRONMENTAL REVIEW

Water Division/Drinking Water and Groundwater Bureau Per- and Polyfluoroalkyl Substances Remediation Loan Fund (PFAS RLF)



RSA 485-H/Env-Dw 1400

This template contains standard language that is mandatory for the interagency environmental review.

- **Directions are in bold.** *Examples and suggested language are in italics.*
- **Please complete and return with attachments as individual electronic files** to the PFAS RLF Program.

FORM 3: REQUIRED ATTACHMENTS

___ 1-Page Executive Summary identifying project need and general scope (**Word document**)

___ 8½ x 11 Topo map indicating project location and maximum extent of disturbance (**PDF document**)

I. WATER SYSTEM NAME ANYTOWN WATER DISTRICT
 ADDRESS 1 MAIN ST
 ANYTOWN, NH 01234
 PROJECT TITLE WATER SYSTEM IMPROVEMENTS
 WATER SYSTEM PWS# _____

II. INTRODUCTION

The _____ has applied for funds through the State of New Hampshire
 (PWS NAME)

Department of Environmental Services PFAS Remediation Loan Fund (PFAS RLF), in accordance with NH Code Admin. Rules Env-Dw 1400. This document fulfills the requirements of Env-Dw 1404.01(a)(3) relative to providing information on the environmental review required by Env-Dw 1406.

III. BACKGROUND

(1-2 paragraphs providing an overview of the water system and the community it serves, including the system’s source(s), capacity, number of service connections, and approximate population served.)

Identify any available documents that supplement the background, purpose and / or need for the project.

Example: The _____ water system serves water to approximately 2,500 people through 1,200 services connections. The average water use for 2009 was approximately 250,000 gallons per day. The water sources include two gravel-packed wells, with approximate pumping rates of 200 gpm for Well #1, and 100 gpm for Well #2.

The following documents have been developed and are available for public review:

-
-

IV. PURPOSE and NEED

(1-2 paragraphs identifying the need and justification for the project.)

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Example: The original water system infrastructure was installed in the early 1900s and several major areas are in need of replacement. Sanitary surveys by the NHDES have cited significant deficiencies and the system has had trouble maintaining adequate operating pressures throughout its service area, especially in the northern part of the system. This water system improvement project will address aging infrastructure and drinking water quality.

V. DETAILS of PROJECT

(1-2 paragraphs describing the project scope, including estimated project cost.)

*Example: This project includes a new 0.5 million gallon (MG) storage tank and the replacement of 6,000 linear feet of 10-inch cast iron water main with 20-inch ductile iron water main in the north area of town, specifically along Main, Depot and Water Streets. All water main replacement work will occur within the existing road right-of ways. The new storage tank will be located off Depot Street on an undeveloped lot (*if possible quantify the approximate area (square footage) of disturbance).*

The estimated cost of the overall project is \$____,____. The Anytown Village Water District has applied to borrow up to \$____,____ to finance the project.

VI. ENVIRONMENTAL CONCERNS and MITIGATION

The following areas of environmental concern summarize the possible impacts from this project. The primary impacts are short-term and will affect the area only during the period of construction.

Air:

Ex. impacts will be limited to dust and diesel or other fuel exhaust created during the construction of the project. There are no anticipated long-term air impacts.

Noise:

Ex. from heavy construction machinery are the only noise impacts anticipated.

Surface water, groundwater and wetlands:

Ex. no significant wetlands, surface or groundwater impacts are anticipated. Erosion will be minimized by using erosion control methods such as hay bales, silt fences and rapid re-seeding of affected areas. Groundwater Discharge Permits, NPDES Construction General or Dewatering Permits, and Wetlands permits may be required. Best management practices will be employed in this effort. All appropriate permits shall be obtained from local, state and federal agencies as necessary.

Wildlife and Habitat:

Ex. No impacts to wildlife or habitat are anticipated from this project.

Social and Economic:

Ex. The social and economic impacts from the project are favorable. Water customers will benefit from improved water quality and quantity from the infrastructure upgrades. The financial impact on the ratepayer will be reduced through the use of low interest rates through the PFAS RLF.

Recreation and Historic:

Ex. No impacts to recreational or historic sites are anticipated.

Indirect impacts:

Ex. There are no indirect impacts anticipated from this project.

Whereas this project constitutes only a minor project and no significant environmental impacts are anticipated, a Finding of No Significant Impact (FNSI) is proposed.

VII. PUBLIC REVIEW

The _____ voted to authorize funding in the
(CITY COUNCIL/BOARD OF DIRECTORS/WATER COMMISSIONERS)
amount of \$ _____ for this project on _____ .
(DATE)

A public notice will be published by the _____
(CITY OF/TOWN OF/DISTRICT NAME/WATER SYSTEM NAME)
and a 30-day comment period will be held in accordance with the PFAS RLF rules.



ELIGIBILITY REQUEST

Water Division/Drinking Water and Groundwater Bureau

Per- and Polyfluoroalkyl Substances Remediation Loan Fund (PFAS RLF)



RSA 485-H:9/Env-Dw 1400

1. PUBLIC WATER SYSTEM INFORMATION:	
Water System Name:	PWS ID #:
Town/City:	Municipal <input type="checkbox"/> Private <input type="checkbox"/>
Contact Person:	Title:
Email:	Phone:

2. PROJECT TITLE:

3. PROJECT DESCRIPTION:
<p><i>Provide a concise description of the proposed project and the need for the proposed project, including how it will address public health protection, what alternatives have been considered, and a demonstration of how the eligibility requirements of RSA 485-H:3, I are met.</i></p>

4. COMMUNITY INFORMATION, if available:
<p>Current Residential Water Rate: \$ _____/single family home/year</p> <p><i>Based on 71,996 gallons/year. If cost of water is included in other charges (rent, condo fees), break out the estimated annual cost per unit of water. NHDES may request back-up documentation as these figures are used to determine affordability.</i></p>
<p>Median Household Income (MHI): \$ _____</p> <p><i>If known, MHI of population served using results of a recent income survey or latest data from the American Community Survey at http://www.census.gov/acs.</i></p> <p><i>Note: An income survey may be required for small, privately-owned water systems serving portions of a community where the survey data does not accurately reflect the income of the residents.</i></p>

5. PROJECT SCHEDULE, to the extent available:	
Anticipated Authority to Borrow Date:	
Anticipated Design Start Date:	
Anticipated Construction Contract Award Date:	
Anticipated Project Completion Date:	

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6. LOAN FUNDING REQUEST:	
Requested Loan Amount:	\$ _____
Loan Term* (5, 10, 15, 20 or 30** years):	_____ years

Notes

- * Loan term cannot exceed the life-cycle cost of the financed asset/improvement.
- ** Loans to disadvantaged water systems may be for a term of up to 30 years.

7. ESTIMATED PROJECT COSTS, to the extent available and necessary to support the demonstration of eligibility:			
Project Costs:			
<i>List all cost categories for this project with amounts that relate to PFAS remediation only.</i>			
Category	Amount		
Construction Costs:	\$		
Construction Contingency (10%):	\$		
Planning/Engineering Costs:	\$		
Other (describe):	\$		
	\$		
	\$		
Total Estimated Project Costs:	\$		
Assumptions made in estimating costs:			
Other Funding Sources Contributing to the Project:			
Source	Secured	Amount	Status
		\$	
		\$	
		\$	

Applicant certifies that the information in the application and in the attachments is true, correct and complete to the best of the representative’s knowledge and belief. Applicant understands that any department determination that the applicant and the applicant’s project qualifies for funding from the PFAS RLF that is based on false, incomplete, or misleading information is subject to modification, up to and including reversal, through an adjudicative proceeding conducted in accordance with applicable provisions of Env-C 200. Applicant also understands that the signer is subject to the penalties specified in New Hampshire law for falsification in official matters, currently RSA 641.

If the applicant’s authorized representative is, or is acting on behalf of, a listed engineer as defined in Env-C 502.10, the signature also constitutes certification that the signer understands that the submittal of false or misleading information is grounds for debarring the listed engineer from the roster.

3. That a certified copy of this resolution be included as part of the application to be submitted for a loan.

4. That persons holding the following position(s) at the time of loan execution are authorized to sign the loan agreement binding the Applicant to the terms and conditions of the loan.

5. That if such loan be made, the Applicant agrees to make provisions for assuming proper and efficient operation and maintenance of the facilities after completion of the construction thereof.

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Unclear. See comment to Env-Dw 1404.04(a)(4).

VOTED:

I certify that said vote has not been amended or repealed and remains in full force and effect as of the date of this Certification and that _____ is the
(NAME)

(TITLE OF THE OFFICIAL WITH LEGAL AUTHORITY TO CERTIFY ACTIONS OF THE GOVERNING BODY)
of the Town of _____.

ATTEST:

Date: _____

Part 2: CERTIFYING AUTHORIZATION TO BORROW

I, the undersigned, the duly qualified and acting _____
(TITLE OF OFFICER)

of the _____
(APPLICANT)

herein called the Applicant and keeper of the records of the Applicant, including the journal of the proceedings of the _____
(GOVERNING BODY OF THE APPLICANT)

herein called the Governing Body do hereby certify:

1. That the attached resolution is a true and correct copy of the resolution as finally adopted at a meeting of the Governing Body held on the _____ day of _____, 20____, and duly recorded in my office;
2. That said meeting was duly convened and held in all respects in accordance with law and to the extent required by law, due and proper notice of such meeting was given; and a legal quorum was present throughout the meeting; and a legally sufficient number of members of the governing body voted in the proper manner and for the adoption of said resolution; that all other requirements and proceedings under the law incident to the proper adoption or passage of said resolution including publication, if required, have been duly fulfilled, carried out, and otherwise observed; and that I am authorized to execute this certificate;
3. That if an impression of the seal has been affixed below, it constitutes the official seal of the Applicant and this Certificate is hereby executed under such official seal; but if no seal has been affixed, the Applicant does not have an official seal;

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 20 ____.

If the Applicant has an official seal, impress here.

(seal) _____
(signature of officer)

(print name of officer)

(title of officer)



AUTHORITY TO BORROW – PRIVATE ENTITIES
Water Division/Drinking Water and Groundwater Bureau
Per- and Polyfluoroalkyl Substances
Remediation Loan Fund (PFAS RLF)



RSA 485-H/Env-Dw 1400

Instructions: This is a resolution authorizing the Borrower to enter into a loan agreement with the State and pledges a security interest which means an applicant’s real or personal property, to ensure repayment of the loan to the department. This also authorizes a representative(s) to sign all loan documents associated with the project.

FORM 2B: REQUIRED ATTACHMENTS
___ Bylaws and/or Articles of Incorporation
___ Meeting minutes when authority was granted

**RESOLUTION FOR
AUTHORITY TO BORROW AND GRANT SECURITY INTERESTS**

At the _____ meeting of its _____
(NAME OF BORROWING ENTITY) (MEMBERS/UNIT OWNERS/BOARD OF DIRECTORS/SHAREHOLDERS)
held on _____ the _____ voted to
(DATE) (MEMBERS/UNIT OWNERS/BOARD OF DIRECTORS/SHAREHOLDERS)

approve the following resolution:

That the _____ is hereby authorized to enter into a loan agreement as
(NAME OF BORROWING ENTITY)
described below from the State of New Hampshire, and to authorize the granting of a security interest in its property,
for the purpose of securing the water system improvements loan for the Borrower’s project
_____ (the Project) in the amount of
(PROJECT TITLE)
\$ _____, at _____ % interest rate, for a term of _____ years.

Further, the Project is hereby approved and _____, _____ is authorized to
(NAME, TITLE OF AUTHORIZED REPRESENTATIVE)
sign loan application, loan agreements, promissory notes, security instruments and any and all papers necessary or
appropriate to satisfy the conditions of and execute the obligations of this loan on behalf of the Borrower.

Further, that if such loan be made, the Applicant agrees to make provisions for assuming proper and
efficient operation and maintenance of the facilities after completion of the construction thereof.

Unclear. This is a different requirement than the one found at Env-Dw 1404.04(b)(5).

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Part 2: CERTIFYING AUTHORIZATION TO BORROW

I, the undersigned, the duly qualified and acting _____
(TITLE OF OFFICER)

of the _____
(APPLICANT)

herein called the Applicant and keeper of the records of the Applicant, including the journal of the proceedings of the _____
(GOVERNING BODY OF THE APPLICANT)

herein called the Governing Body do hereby certify:

1. That the attached resolution is a true and correct copy of the resolution as finally adopted at a meeting of the Governing Body held on the _____ day of _____, 20____, and duly recorded in my office;
2. That said meeting was duly convened and held in all respects in accordance with law and to the extent required by law, due and proper notice of such meeting was given; and a legal quorum was present throughout the meeting; and a legally sufficient number of members of the governing body voted in the proper manner and for the adoption of said resolution; that all other requirements and proceedings under the law incident to the proper adoption or passage of said resolution including publication, if required, have been duly fulfilled, carried out, and otherwise observed; and that I am authorized to execute this certificate;
3. That if an impression of the seal has been affixed below, it constitutes the official seal of the Applicant and this Certificate is hereby executed under such official seal; but if no seal has been affixed, the Applicant does not have an official seal;

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 20____.

If the Applicant has an official seal, impress here.

Signed,

Signature Date

Print Name and Title

Signature Date

Print Name and Title

Signature Date

Print Name and Title



**FP 2020-89, Env-Dw 1400 Per and Polyfluoroalkyl Substances (PFAS) Remediation
Loan Fund Program
Summary of Comments on Initial Proposal with DES Responses
December 24, 2020**

Introduction

The proposed rules implement RSA 485-H, Per and Polyfluoroalkyl Substances (PFAS) Fund and Programs, by establishing criteria and procedures for administering the PFAS Remediation Loan Fund (PFAS RLF) program to assist certain public water systems with the cost of complying with state maximum contaminant levels (MCLs) for PFAS as established in RSA 485:16-e. Those entities wishing to apply for financial assistance in the form of a low-interest loan with the possibility of partial loan forgiveness and contingent reimbursement from the PFAS RLF would be required to complete the application process as defined and explained in the proposed rules. The process comprises two steps: an eligibility request to determine whether the project for which funding is sought meets the eligibility requirements of RSA 485-H and a final application containing complete information needed to complete the loan process. The rules also include requirements for disbursements; accounting; environmental review; design, construction, and implementation phases including consulting and construction contracts; and establish criteria and procedures for seeking waivers to the rules.

Six persons from the public attended the public hearing held on November 6, 2020 via GoToWebinar^(R), and comments were received. The Department did not receive any indication that anyone had any trouble connecting to the hearing. The Department also received written comments from the public. Written comments were also received from the Office of Legislative Services, Administrative Rules (OLS); those comments and the Department's responses thereto begin on page 3.

Env-Dw 1400 re: extent of funded costs

Comment: *"It seems that the loans are comprehensive in nature, funding "...up to the total cost of the project..." (RSA 485-H:3 (II)). From our review of various definitions and the January 4, 2019 DES report (R-WD-19-01), it is clear that operations and maintenance costs were included in the estimates used to create the PFAS Remediation Loan Fund. It also appears that actual MCLs are 2 to 5 times less than those used in the January 2019 report, possibly causing higher total project costs to treat to these lower concentrations. Env-Dw 1400 needs to be crystal clear on the extent of funded costs, from application preparation, to project design and construction, through ongoing operations and maintenance, including management of treatment residuals."*

Response: The Department agrees that to the extent that the eligibility requirements of RSA 485:H:3 are met, that pursuant to RSA 485-H:8 all costs of complying with state maximum contamination levels (MCLs) for per- and polyfluoroalkyl substances (PFAS) are eligible. These costs may be inclusive of application preparation, project design and construction, and ongoing operations and maintenance of the specific project elements as necessary to comply. Clarification of this is being proposed in the definitions and the substantive text. Note, however, that the Department has no experience with loaning money for O&M costs and has not had sufficient time to work through the details of how the process would work. For now, the Department has distinguished between construction project costs and costs of O&M, with most of the details of paying costs of O&M remaining to be developed. The Department is proposing to move forward with the rules even in the absence of those details based on its belief that the majority of the most pressing funding requests will be for construction projects, so the rules for those projects need to be in place expeditiously.

Env-Dw 1402 re: definitions

Comment: *"Where applicable, using and defining key terms from the Statute will make it easier to compare the two documents for consistency"*



FINANCIAL CERTIFICATION - PUBLICLY-OWNED SYSTEMS



Water Division/Drinking Water and Groundwater Bureau
Per- and Polyfluoroalkyl Substances
Remediation Loan Fund (PFAS RLF)

RSA 485-H/Env-Dw 1400

Instructions: The form below is a statement that the applicant has the financial capacity to support both the project loan repayment and continuing operation and maintenance.

Financial Certification Statement

The _____ hereby certifies that it has the financial capability to support both the
(TOWN/CITY/ENTITY)

project loan repayment and continuing operation and maintenance. The source of repayment of the loan is as follows (i.e. water rate revenue, etc.)

The _____ will conduct and report on a financial audit, including compliance and controls, in
(TOWN/CITY/ENTITY)

any calendar year it receives PFAS RLF funds in excess of \$500,000.

The _____ have existing debt held outside the NH Municipal
(TOWN/CITY/ENTITY) (DOES/DOES NOT)

Bond Bank.

(List Existing Debt) _____

(If so, is the debt rated and what is the rating) _____

The applicant hereby certifies that the signer has been duly authorized by the applicant to sign the application and that the information provided is true, complete, and not misleading to the knowledge and belief of the signer. The applicant further certifies that the applicant understands that any NHDES determination that the applicant and the applicant's project qualifies for funding from the PFAS RLF that is based on false, incomplete, or misleading information is subject to modification, up to and

including reversal, through an adjudicative proceeding conducted in accordance with applicable provisions of Env-C 200, and that the applicant and the signer are subject to the penalties specified in New Hampshire law for falsification in official matters, currently RSA 641.

Signature of Authorized Representative

Name & Title

Response: The Department agrees, and makes every effort to cite definitions as existing in statute whenever terms are similarly used in administrative rules.

Env-Dw 1402.43 re: definition of “project cost”

Comment: “Consider expanding on the term “services” to include assistance applying for loans, administration costs etc. If the intention is to pay for everything related to PFAS remediation, this intention should be explicitly clear. Consider explicitly aligning this definition with RSA 485-H:3 “remediation efforts” and 485-H:3, II “total cost of the project”.”

Response: The Department agrees and clarification is being proposed in Env-Dw 1402.09 “Construction costs” (previously Env-Dw 1402.43 “Project costs”), Env-Dw 1402.36 “Operation and maintenance” (previously Env-Dw 1402.35), Env-Dw 1403.01, and Env-Dw 1404.03(h)(3).

Env-Dw 1403 re: eligibility

Comment 1: “We understand there is an initial eligibility determination, followed by a detailed application once eligibility is determined. We are concerned that the initial eligibility determination is overly burdensome, since RSA 485-H:3 broadly states the department will provide low interest loans for remediation of water systems impacted in exceedance of MCLs. Given this threshold, it seems two criteria are required to determine eligibility: the system itself is eligible, and approved testing indicates exceedance of the MCLs.

Response 1: The Department agrees that system-specific eligibility and demonstrated maximum contamination level (MCL) exceedance are the two general criteria for eligibility, but notes that the requirements for demonstration of system-specific eligibility in Env-Dw 1403, are those necessary to sufficiently support an applicant’s demonstration of system-specific project eligibility. Clarification of this intent is being proposed in Env-Dw 1403.05 (previously Env-Dw 1403.04).

Comment 2: In addition, please clarify whether the MCL must be exceeded, or equaled, to trigger a regulatory response and eligibility for funding.

Response 2: RSA 485-H:3 states “The department shall provide low interest loans to community water systems and non-profit, non-transient public water systems whose testing of untreated source water shows **confirmed exceedance** of the state maximum contaminant level for PFAS, for remediation efforts begun after September 30, 2019.” (Emphasis added.) Based on this, the Department believes that if the MCL is equaled but not exceeded, the water system would not be eligible for funding from the PFAS RLF. The Department has included a reference to the rule that establishes how a determination is made that the MCL has been exceeded to Env-Dw 1403.01(a).

Comment 3: “We have some concern that there are no ranking criteria or application submittal schedules; rather that all applications will be reviewed in their order of receipt by DES. We understand that both the Legislature and the DES intend to fund all eligible projects. This intention, and the commitment to continued and ongoing funding, should be made explicit in Env-Dw 1400.”

Response 3: RSA 485-H:3, I sets clear eligibility requirements that do not include competitive ranking against other applicants nor does it impose artificial calendar delays in eligibility determination, and the Department does not intend to add such limitations in Env-Dw 1400. Env-Dw 1403.06(a) states that the Department shall consider each eligibility request in the order in which it is submitted. Regarding intentions, the Department cannot speak for the Legislature, and the Department will continue to administer the PFAS Remediation Loan Fund to the extent that appropriated funding is available. Clarification of this is being proposed in Env-Dw 1404.01(b)(4).

Env-Dw 1403.04(a)(6), (7), and (8) and (b) re: eligibility request information

Comment: “Loan amounts (6) and terms (7) require an understanding of the remediation system, which will require initial design work that takes expertise, time and money - a disadvantage to many likely-eligible systems. We suggest a much simpler determination, as outlined in our General comments [to Env-Dw 1403, above]. Section b also requires substantial information, but only as much “as practicable”. The DES should consider a) how to relieve this regulatory burden, and b) to define “practicable”. We recommend clear eligibility application requirements that do not contain subjective criteria.”

Response: The Department acknowledges that an understanding of the remediation system will require some initial work that will take some expertise, time and money. However, such an understanding is a necessary precursor to the applicant's demonstration that the proposed plan for remediation is the most cost-effective solution as required by RSA 485-H:3, I, and therefore, unavoidable in the eligibility determination. Further, information relative to water rates and median household income are used to determine eligibility for loan forgiveness, so is important to the process. If the applicant is at this point in the process, however, then they are most probably in violation of a PFAS MCL and already in communication with a project manager in the Department who will be able to assist and guide them through this application process in a manner appropriate to their specific issues.

Env-Dw 1403.06(a)(1) re: definition of "POC"

Comment: "Please define the acronym "POC" in this section."

Response: "POC" stands for "point of contact". Since this is the only place the acronym is used, the acronym has been replaced with the phrase.

Env-Dw 1404.05 re: report of environmental review

Comment: In (k), the applicant has to agree to publish a notice to initiate a comment period on the environmental report. Are there limitations on this?

Response: The Department has clarified that notice of a 30-day comment period is required.

From OLS:

Comment: OLS provided a "Note to JLCAR on Legis. Intent:" relative to the rulemaking public hearing being held as a remote public hearing accessed by GoToWebinar due to the pandemic, asserting that "RSA 541-A:11 appears to presume in-person hearings"

Response: The Department believes that nothing in RSA 541-A mandates that a hearing be held in person without the use of technology. Just because the statute does not explicitly allow such hearings does not automatically mean they are disallowed. RSA 541-A was enacted when electronic filings were not even contemplated, yet we have been allowed to file electronically since prior to the statute being amended to explicitly recognize it. Indeed, allowing hearings to be held remotely -- with or without a corresponding "in person" component -- is likely to increase public participation as it will be more convenient for persons who do not live in the area where the hearing is conducted. As noted above, the Department experienced no technical difficulties with the technology used. The Department believes that the spirit and intent of RSA 541-A relative to public participation in rulemaking proceedings has been met.

Env-Dw 1402.26 re: definition of "initiation of operation"

Comment: "**Unclear.** Initiation is not the date itself, but the act of placing the project into use. See Env-Dw 1403.02(c & d) on p. 5, which refer to a 'date of initiation of operation'." [Bold in original.]

Response: The Department has revised the definition to remove the reference to a date.

Env-Dw 1402.47 re: definition of "resident project representative"

Comment: "**Unclear.** Unclear who determines the person is qualified, and how that is determined what criteria govern the education and experience." [Bold in original.]

Response: This term with this definition has been used for years in the Drinking Water State Revolving Loan Fund (DWSRF) program without issue. Whether someone is qualified depends on the type and scope of the project being implemented. The Department has revised the definition to clarify that the recipient makes the determination in consultation with the Department.

Env-Dw 1402.48 re: definition of "responsible bidder"

Comment: "**Unclear.** This language is unclear because it doesn't provide any criteria to the reader on how 'good reputation' is determined by DES. At the least, if it is based upon whether a bidder has a good reputation as

generally known in the industry, then consider editing: ‘integrity, as generally known in the industry; and’. But if other criteria are used, those should be stated.” [Bold in original.]

Response: The Department has made the suggested edits.

Env-Dw 1403.03 re: eligibility request procedures

Comment 1: “**Unclear.** This [reference to paragraph (a) of Env-De 1403.01] is unclear because both requirements in (a) and (b) as well as the requirements of Env-Dw 1403.02 must be met.” [Bold in original.]

Response 1: The Department has revised the cross-reference to include all of Env-Dw 1403.01 and Env-Dw 1403.02.

Comment 2: “[reference to “electronically” in subparagraph (c)(1) is] **Unclear.** This is unclear because a person reading this rule won’t know where to send the information electronically. The Department could provide the general email address for the program or advise people to contact the program for the email address. ‘request or to the PFAS RLF program directly at ...’” [Bold in original.]

Response 2: The rule already states that the instructions for filing the form electronically are provided in the form itself. The Department has not revised this rule in response to this comment.

Comment 3: “[reference to “eligibility request” in subparagraph (c)(1) is] **Unclear.** Is eligibility request form meant?” [Bold in original.]

Response 3: The Department has inserted the word “form”.

Env-Dw 1403.04 re: eligibility request information

Comment 1: “[reference to eligibility request form is] **Unclear.** Please provide the paper-based and electronic form (mock-up is sufficient) for OLS to review.” [Bold in original.]

Response 1: All forms are being filed with the final proposal. Note that the “paper” form is just a print out of the on-line form, so there is only one version.

Comment 2: “[reference in (a)(7) to disadvantaged system” is] **Unclear.** Is this a designation determined by the Department? Is there a statute on point? Is it a statutorily defined term?” [Bold in original.]

Response 2: Env-Dw 1402.13 (previously 1402.11) defines “disadvantaged affordability criteria”, and the specific criteria are listed in Env-Dw 1405.02. This rule has been revised to refer to a system serving a community that meets the disadvantaged affordability criteria established in Env-Dw 1405.02.

Env-Dw 1404.01 re: final application requirements and procedures

Comment: “[reference to application is] **Unclear.** Please provide the form for OLS to review. (electronic screenshots or pdf).” [Bold in original.]

Response: All forms are being filed with the final proposal.

Env-Dw 1404.02 re: conditions arising from application; no impact on other authority

Comment 1: “[“the applicant shall be deemed to have agreed” is] **Unclear.** In Env-Dw 1407.03(c)(6) on p. 22 and Env-Dw 1407.09(a) on p. 25 the applicant is required to allow inspections, not ‘deemed’ to agree.” [Bold in original.]

Response 1: Env-Dw 1404.02 establishes the conditions that arise as a consequence of applying for funding from the PFAS Remediation Loan Fund. The introductory language in (a) simply identifies what the applicant has agreed to without requiring an affirmative act on the applicant’s behalf. This language has been used for many years in the DWSRF program without issue.

Comment 2: “**Unclear.** See comments on Env-Dw 1407.03(c)(6) on p. 22 and Env-Dw 1407.09(a) on p. 25 on when inspections shall take place.” [Bold in original.]

Response 2: See responses below at Env-Dw 1407.03(c)(6) and Env-Dw 1407.09(a).

Comment 3: “[“periodic site visits to confirm that the project is functioning as intended” is] **Unclear**. The inspections in (1)a. and b. and (2) have different standards, so it is unclear what the applicant is agreeing as to scope of inspections when financing is applied for.” [Bold in original.]

Response 3: There are different types of inspections for different purposes, which are spelled out in this rule. The applicant is deemed to have agreed to all of them.

Env-Dw 1404.03 re: information required for final application

Comment: “[reference to disadvantaged system in paragraph (j) is] **Unclear**. Is this a designation determined by the Department? Is there a statute on point? Or a definition to be cited?” [Bold in original.]

Response: Env-Dw 1402.13 (previously 1402.11) defines “disadvantaged affordability criteria”, and the specific criteria are listed in Env-Dw 1405.02. This rule has been revised to refer to a system serving a community that meets the disadvantaged affordability criteria established in Env-Dw 1405.02. The same change has been made in Env-Dw 1405.11(c).

Env-Dw 1404.04 re: applicant’s authority to borrow

Comment: “[reference to template is] **Unclear**. Please provide the forms that the Department shall provide to applicants who want to submit the information using the Department’s forms rather than submitting the information in its own format.” [Bold in original.]

Response: Requirements to use the Department’s forms have been incorporated into paragraphs (a) and (c), so this paragraph has been deleted. All forms are being filed with the final proposal.

Env-Dw 1404.09 re: signatures and certifications for final application

Comment: “[reference to applicant using the web-based application is] **Unclear**. Is there a website that the applicant shall use to obtain and submit the electronic form?” [Bold in original.]

Response: The URL for each form is now included with the reference to the form. Note that the links are not yet active. A general response applicable to the forms is provided on page 6, below.

Env-Dw 1405.0405 re: interest rates established

Comment 1: “**Unclear**. It is unclear what is meant by ‘shall establish ... as the 11-Bond Index published online.’ It appears that the interest rate will be set in the first Thursday in August at whatever is in the 11-Bond Index (i.e. Bond Buyer Index) in the Bond Buyer published the week before. But seems like an incorporation by reference.” [Bold in original.]

Response 1: There has to be a way to establish interest rates for loans from the PFAS Remediation Loan Fund. The Department has chosen to establish the rate for these loans once each year, as described in the rule. The Department believes that this does not constitute an incorporation by reference. Note that Env-Dw 1405 in the initial proposal had two sections “.02” and two sections “.05”; the numbering has been corrected in the final proposal.

Comment 2: “**Authority**. If there is a federal law on point, how does the Department have the authority to decide that the provisions do not apply?” [Bold in original.]

Response 2: The Department has revised the paragraph to clarify what is intended.

Env-Dw 1407.03 re: construction contract documents

Comment: “See comment to Env-Dw 1402.02(a)(1) on p. 8” “[‘during normal business hours’ is] **Unclear**. This is inconsistent with language in Env-Dw 1407.09 on p. 25, which allows for inspection at any time.” [Bold in original.]

Response: The Department has changed “at any time” to “during normal business hours” in Env-Dw 1407.09(a).

Env-Dw 1407.09 re: department inspections during construction

Comment 1: “**Authority**. RSA 485-H does not grant inspection authority. Does the authority reside elsewhere?” [Bold in original.]

Response 1: Since these are public water systems, the Department has inspection authority under RSA 485:41, V. In any event, since the Department is lending money, the Department can establish the terms under which the money is lent -- including requiring an agreement to let the Department inspect what is being built with PFAS RLF money while it is being built.

Comment 2: “[“at any time” is] **Unclear**. This is inconsistent with language in Env-Dw 1407.03(c)(6) on p. 22, which allows for inspection during normal business hours.” [Bold in original.]

Response 2: The Department has changed “at any time” to “during normal business hours” in Env-Dw 1407.09(a).

Comment 3: “[d] is] **Unclear**. It is unclear what the contractor and recipient are actually being required to do in this context.” [Bold in original.]

Response 3: The contractor and recipient are required to accommodate the Department’s inspections. What is required specifically will vary depending on the nature and scope of the project and the timing of the inspection. The phrase “provide ... with such accommodations as are needed ...” was worked out in the context of the DWSRF rules.

Env-Dw 1408.05 re: criteria for waivers

Comment: “[b] is] **Unclear**. RSA 485-H should be included since it is the originating statute for this program.” [Bold in original.]

Response: The Department has inserted RSA 485-H and deleted RSA 486.

General comments on forms

As stated in the responses above, all of the forms are being provided with this final proposal. Please note that the forms are complete in substance, but that we must make adjustments to conform to the Americans with Disabilities Act, prior to publishing the forms to the State’s Online Forms System. Typical adjustments include: increasing the size of the logo and seal; not full-justifying the text; and eliminating the text boxes. We will provide the published forms to the Committee.

Edits: Env-Dw 1402.05; 1402.09; 1402.13; 1402.25; 1402.28; 1403.01(a); 1403.03(a); 1403.04(a)(8), (b)(1) [deleted]; 1403.05(c); 1403.06(b); 1404.01(b)(3); 1404.04(a), (b)(2)a.; 1404.09(c); 1405.04(d); 1405.14(g)