

COVER SHEET FOR FINAL PROPOSAL

Notice Number 2022-21

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:3, III, RSA 483-H:4, III and
RSA 485-H:9**

3. Federal Authority: N/A

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 **February 17, 2022**.

**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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2. RSA Authority: RSA 485-H:3, III, RSA
483-H:4, III and
RSA 485-H:9
3. Federal Authority: n/a
4. Type of Action:
Adoption _____
Repeal _____
Readoption X
Readoption w/amendment _____

5. Short Title: **Per and Polyfluoroalkyl Substances (PFAS) Remediation Grant and Loan Fund Programs for Certain Public Water Systems**

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

The proposed rules readopt in its entirety Chapter Env-Dw 1400. The initial rules were adopted effective, January 26, 2021, and various sections were readopted with amendment and renumbered as interim rules to implement Chapter 223 of the Laws of 2021, effective August 24, 2021, that amended RSA 485-H, Per and Polyfluoroalkyl Substances (PFAS) Fund and Programs (PFAS RLF). The interim rules were effective on October 30, 2021, and expire on April 28, 2022.

The initial rules implemented 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 were required to complete the application process as defined and explained in the initial rules.

Chapter 223 expanded the existing loan fund program to include municipalities; expanded community water system eligibility to include expanding a system to assist additional water users; provided NHDES with the authority to adopt rules and include conditions in loan and grant documents to ensure that applicants make all reasonable efforts to obtain and use funds from any liable or potentially liable third party; provided NHDES with the authority to adopt rules establishing criteria to ensure that applicants are not eligible to receive loans or grants to the extent that negligence of the applicant caused the contamination; and added a grant element to the program.

Readopting the entire chapter will reduce confusion for stakeholders and ensure that the expiration date of the entire chapter is synchronized.

There are not any proposed amendments to the rules.

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

The rules affect municipalities; community water systems; and non-profit, non-transient non-community water systems whose testing of untreated source water shows a confirmed exceedance of the state maximum contaminant level for PFAS.

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 Phone #: (603) 848-1372
 29 Hazen Drive; P.O. Box 95 Fax#: (603) 271-7053
 Concord, NH 03302-0095 E-mail: Amy.E.Rousseau@des.nh.gov

The rules also can be viewed in PDF at the Public Comment Opportunities section of the NHDES website at <https://www.des.nh.gov/public-comment-opportunities> and selecting “Rulemaking”

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 PM on Thursday, March 17, 2022**

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, March 10, 2022 at 1:00 PM**

Room 208C, DES Offices, 29 Hazen Drive, Concord NH

NOTE: NHDES security procedures require all visitors to sign in and present photo identification (such as a driver’s license). If you plan to attend the public hearing in person, please bring photo identification with you.

You also may attend the hearing via GoToWebinar, which can be accessed through the following link:

<https://attendee.gotowebinar.com/register/6951889187001901070>

Place: **Meeting number (access code):** After registering using this link, interested participants will be provided a confirmation email with information about joining the hearing remotely.

You also may join the meeting by phone:

Call in Number: 1 (914) 614-3321

Access Code: 848-974-415

Webinar ID: 265-712-099

If any questions or technical issues, please contact Amy Rousseau at 603-271-8801 or via email at Amy.e.rousseau@des.nh.gov

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant):

FIS # 22:013 , dated 01/26/2022 :

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

There is no difference in cost between the proposed rules and the existing 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):

None.

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

None.

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

The rules establish the procedures for applying for grants and 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.

Edit: Change to "Readopt with amendments" when changes are made.

Readopt Env-Dw 1400, effective 01-26-21 (Document #13164), as amended effective 10-30-21 (Document # 13289, Interim), to read as follows:

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

Statutory Authority: RSA 485-H:3, III, RSA 485-H:4, III, and RSA 485-H:9

Edit: Delete

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 municipalities and 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:

- (1) Municipality for municipal use;
- (2) Municipality for use to assist private well users including funds necessary to address the reasonable administrative costs of the municipality;
- (3) Community water system for use on an existing system or to expand a system to assist additional water users; and
- (4) Non-profit, non-transient non-community water system.

(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 1402.05 “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.

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 1402.30.

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 in the form of loan or grant, or a combination thereof, to pay, in whole or in part, eligible costs for a project, in any of the formats allowed by RSA 485-H:34 through RSA 485-H:6.

Edit: Remove annotations

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, allonges, and grant agreements.

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 “Grant agreement” means the financial assistance agreement between the state and a recipient through which the state agrees to provide grant funds approved by the department from the PFAS RLF to the recipient and the recipient agrees to use the grant funds as specified in its application as approved by the department.

Env-Dw 1402.26 “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 1402.27 “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 1402.28 “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 1402.29 “Land acquisition” means the purchase of an interest in land that is needed to complete an eligible project, whether in fee or by easement. The term includes associated professional services such as appraisals, title searches, title opinions, and title insurance.

Env-Dw 1402.30 “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

← Edit: "11"

Env-Dw 1402.31 “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 1402.32 “Materially or significantly affect project cost or estimated revenues” means a change in estimated costs or revenues of more than 10%.

Env-Dw 1402.33 “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.

← Edit: Insert comma

Env-Dw 1402.34 “Municipality” means a town, city, school district ~~or~~ village district.

Env-Dw 1402.35 “Non-profit entity” means an entity that qualifies as non-profit organization under the U.S. internal revenue code.

Env-Dw 1402.36 “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 1402.37 “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 1402.38 “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 1402.39 “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.

Env-Dw 1402.40 “Person” means “person” as defined in RSA 485:1-a, XIII, reprinted in Appendix B.

Env-Dw 1402.41 “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 1402.42 “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 1402.43 “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 1402.44 “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 1402.45 “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 1402.46 “Recipient” means an applicant that receives financial assistance from the PFAS RLF.

Env-Dw 1402.47 “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 1402.48 “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 1402.49 “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 1402.50 “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.

Edit: Remove annotations

Env-Dw 1402.51 “Scheduled completion date” means the date stated in the original loan agreement, ~~or~~ initial loan documents, or grant agreement 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 1402.52 “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 1402.53 “State” means the state of New Hampshire.

Env-Dw 1402.54 “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 1402.55 “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 1402.56 “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 1402.57 “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) Municipalities, community water systems and non-profit, non-transient non-community water systems whose testing shows exceedance of the PFAS drinking water standards as established in RSA 485:16-e 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 and II, 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.

(d) The applicant shall demonstrate that reasonable efforts were made to obtain and use funds for any project costs or portion of project costs from any liable or potentially liable third party prior to receiving financial assistance from the PFAS RLF.

(e) The applicant's demonstration of reasonable efforts pursuant to (d) above, shall include, but is not limited to:

- (1) Maintaining and making available to the department any records the applicant has that are related to the liability or potential liability of any party;
- (2) Responding to inquiries from the department related to identification of any liable or potentially liable party unless doing so would violate or waive a privilege;
- (3) Answering questions and providing sworn testimony if requested by the department, or the N.H. department of justice, in any action to receive compensation from or pursuing any other remedy against any liable or potentially liable party, unless doing so would violate or waive a privilege;
- (4) Provide the department with all settlement communications between the applicant and a liable or potentially liable third party, provided that doing so would not waive confidentiality;
- (5) Providing the department with an opportunity to participate in settlement discussions with any liable or potentially liable third party, provided that doing so would not waive confidentiality; and

Edit: "Agency"

(6) If the department or the U.S. Environmental Protection Agency identifies an entity as a responsible party (RP) or potentially responsible party (PRP), the applicant shall contact the RP or PRP in writing and request payment for, at a minimum, any costs for which the applicant requests from the PFAS RLF.

(f) In order to ensure that an applicant does not receive loans or grants for any project or portion of a project proposed to remediate contamination caused by the negligence of the applicant, the applicant shall, at a minimum, provide to the department the following:

- (1) Any documents or other information resulting from an audit, consultant report, investigation, or otherwise within the possession of the applicant indicating that the applicant caused or may have caused the PFAS contamination that the project is intended to address;
- (2) Copies of any lawsuits, orders, allegations, complaints, or other documents asserting that the applicant caused the PFAS contamination that the project is intended to address; and;
- (3) Any other documentation or information related to PFAS requested by the department.

Edit: "might"

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.

Edit: This should be 11 pt. font.

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 that is available on the department’s website at www.des.nh.gov; 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

Env-Dw 1403.05 Eligibility Request Information for Construction Projects.

(a) To be processed as provided in Env-Dw 1403.07(a), the applicant shall provide the following information to the department on an “Eligibility Request” form, NHDES-W-03-257, January 2022, 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:

- (1) The water system’s name and the town or city in which it is located;
- (2) The water system’s PWS identifier; **Edit:** "and whether it is municipal or private"
- (3) The name, title, email address, and daytime telephone number of the applicant’s point of contact for the eligibility request; **Edit:** "and how it will address public health protection"
- (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 and II are met;
- (6) The amount of loan or grant requested, of which the amount or proportion of grant shall not exceed the limit stated in RSA 485-H:11, I, reprinted in Appendix C;
- (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.

(b) The applicant 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.

(c) The applicant shall provide a statement or documentation to the department outlining efforts to obtain and use funds for any project costs or portion of project costs from any liable or potentially liable third party pursuant to Env-Dw 1403.01(d), Edit: "(d)-(e)"

Edit: "might"

(d) The applicant shall provide documentation to the department demonstrating that the applicant caused or ~~may~~ have caused the PFAS contamination that the project is intended to address pursuant to Env-Dw 1403.01(e), Edit: "(f)" ~~if applicable.~~

Env-Dw 1403.06 Eligibility Request Signatures and Certifications.

Edit: There is not a designated space to print the person's name on the form. Although, they could still do this without a designated line, it may be more user friendly to update the form with a space for this.

(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 best 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

(3) The signer is subject to the penalties specified in New Hampshire law for falsification in official matters, currently RSA 641.

(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. Reserved

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

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

(a) An applicant whose construction project is determined by the department to meet the criteria in Env-Dw 1403 who wishes to obtain funding shall submit a "Final Grant and Loan Application", NHDES-W-03-258, August 2021, 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) For loans, confirmation of the applicant's authority to borrow as specified in Env-Dw 1404.04;
 - (3) For grants, confirmation of the applicant's authority to accept grant funds as specified in Env-Dw 1404.05;
 - (4) Information regarding the environmental review required by Env-Dw 1406, as specified in Env-Dw 1404.06;
 - (5) The bank information specified in Env-Dw 1404.07;
 - (6) A planning document as specified in Env-Dw 1404.08; and
 - (7) Verification of a revenue program as specified in Env-Dw 1404.09.
- (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 1403.07(b); or
 - (4) Insufficient funds remain in the PFAS RLF account to execute the loan or grant.
- (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 agrees 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, as provided in Env-Dw 1407.09(a) and Env-Dw 1407.14:
 - a. The project site 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:

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Edit: Insert comma

- (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 ~~and~~ or grant being requested, of which the amount or proportion of grant shall not exceed the limit stated in RSA 485-H:11, I, reprinted in Appendix C; Edit: Remove annotation
- (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;
- (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;
- (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.

(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, January 2021, 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:

(1) Authorizes the applicant to:

Edit:
"www.des.nh.gov"

- 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:

- 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;

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

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

(5) Is signed and certified as provided in Env-Dw 1404.10.

(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, January 2021, 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:

- 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;
 - (5) Binds the applicant to operate and maintain all facilities constructed or modified with the funds received in accordance with all applicable requirements; and
 - (6) Is signed and certified as provided in Env-Dw 1404.10.
- (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.

Env-Dw 1404.05 Applicant's Authority to Accept Grant Funds.

- (a) For a governmental applicant, the confirmation required by Env-Dw 1404.01(a)(3) shall consist of proof that the applicant's governing body passed or approved a valid warrant article or resolution, as applicable, that authorizes the applicant to accept grant funds either in general or specifically from the PFAS RLF for the identified project.
- (b) For a non-governmental applicant, the confirmation required by Env-Dw 1404.01(a)(3) shall consist of proof that the applicant's governing body passed a valid resolution that authorizes the applicant to accept grant funds either in general or specifically from the PFAS RLF for the identified project.
- (c) A non-governmental applicant shall submit with the proof required by (b), above, copies of the approved minutes of the meeting at which the resolution provided pursuant to (b), above, was approved.
- (d) The proof required by (a) or (b), above, shall be in a written document that is certified by:
 - (1) The town clerk or equivalent for a governmental entity; or
 - (2) The board secretary or comparable official for a non-governmental entity.

Env-Dw 1404.06 Report of Environmental Review. The applicant shall provide the following information on the "Environmental Review" form, NHDES-W-03-261, January 2021, 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 1404.01(a)(3) relative to providing information on the environmental review required by Env-Dw 1406.”

Edit: "(4)" This also needs to be corrected on the form.

- (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;
- (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 1404.07 Bank Information. The bank information required by Env-Dw 1404.01(a)(4) shall be as follows:

Edit: "(5)"

- (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.

Edit: "(6)"

Env-Dw 1404.08 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
- (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 1404.09 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.

Edit: "(7)"

(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.

(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, January 2021, 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) Certifying that the applicant has the financial capability to support both the project loan repayment and continuing operation and maintenance of its water system;
- (2) Identifying the source of repayment;
- (3) Affirming that the applicant 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; and

(4) 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

(5) Signing and certifying the certification as provided in Env-Dw 1404.09.

Edit: "10"

Edit: "(7)"

(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, January 2021, available at <https://onlineforms.nh.gov/?FormTag=NHDES-W-03-263> or via the department's web site at www.des.nh.gov, by:

Edit: "Private Entities"

(1) Identifying the source of repayment;

(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; and

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(3) Signing and certifying the certification as provided in Env-Dw 1404.09.

Env-Dw 1404.10 Signatures and Certifications for Final Applications and Associated Documents.

(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.

(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 1404.11 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

← Edit: "10"

(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 1404.12 Final Application Requirements and Procedures for Costs of O&M. Reserved

Env-Dw 1404.13 Information Required for Final Application for Costs of O&M. Reserved

Env-Dw 1404.14 Final Application Processing for Costs of O&M. Reserved

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 grant;
- (2) A loan;
- (3) A combination of a grant and a loan;
- (4) A combination of a grant, a loan, and loan forgiveness;
- (5) A combination of a grant, a loan, and contingent reimbursement; or
- (6) A combination of a grant, 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 1404.09;
- (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).
- (c) Grants awarded by the department shall be made with the following conditions:
 - (1) The recipient has completed all necessary documentation and agreements required by the department to issue a grant; and
 - (2) The grant has been approved by the G&C.

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 shall 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:5, III.
- (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.
- (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 Grant Agreement (GA) Documents.

- (a) Following acceptance of an application for a grant, the department shall prepare a grant agreement (GA) that contains the following provisions:
- (1) The grant amount;
 - (2) Project scope and budget;
 - (3) Grant payment terms;

- (4) Authorization for representatives of the department to examine any of the loan recipient's records that pertain to transactions relating to the grant agreement, construction contracts, engineering contracts, or other consulting contracts for the purpose of inspection, audit, and copying during normal business hours;
 - (5) For construction projects, a requirement for the recipient to develop and adhere to an asset maintenance and renewal plan for the funded improvements; and
 - (6) Any other provision(s) required by state or federal law in order for the agreement to be valid.
- (b) The department shall transmit the GA to the recipient for review. If the recipient agrees with the terms, the recipient shall sign and date the GA and return the signed GA to the department.
- (c) Upon receipt of a signed GA, the department shall sign the GA and submit the GA to the G&C for approval.
- (d) If approved by the G&C, then:
- (1) The GA shall be effective upon approval; and
 - (2) The department shall send a copy of the approved GA to the recipient.

Env-Dw 1405.06 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 loan agreement is transmitted to the recipient pursuant to Env-Dw 1405.03(b) or Env-Dw 1405.04(c), as applicable.
- (c) The department shall establish the interest rates for all loans annually on the first Thursday in August based on the 11-Bond Index published the last week of July in The Bond Buyer, as provided by the New Hampshire treasury department.
- (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 1405.07 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 1405.08 Timely Use of Funds.

(a) A recipient shall begin to expend funds within 6 months of the effective date of the grant agreement, 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 or grant should not be cancelled.

(c) The department's request shall:

(1) Be in writing;

(2) Specify a date by which the recipient shall 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.

(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.

Env-Dw 1405.09 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:

(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 or grant.

Edit: Insert comma

Env-Dw 1405.10 Disbursements.

- (a) The department shall approve a request submitted as specified in Env-Dw 1405.09 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 1405.11.

Env-Dw 1405.11 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 1405.19 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 1405.12 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 1405.13 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 1405.14 Supplemental Loan Agreement for Loans to Governmental Recipients for O&M Costs. Reserved

Env-Dw 1405.15 Allonge for Loans to Non-Governmental Recipients for O&M Costs. Reserved

Env-Dw 1405.16 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.

(h) Any money received from a liable or potentially liable third party prior to or after receiving a loan from the PFAS RLF shall be applied to early repayment of the loan.

Env-Dw 1405.17 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 1405.18 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 1407.03.

Env-Dw 1405.19 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;
- (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 1407.05, 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 and grants greater than \$100,000, general and supplemental conditions for the construction of the project, including provisions requiring the contractor to obtain and maintain 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 1404.087.

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(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:
 - (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 1403; 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 and grants 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.

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 access to all areas of the project site, including moving materials and equipment if necessary, as needed for the department to determine whether the work as performed is in accordance with the requirements and intent of the contract.

(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.

Edit: "Safe Drinking Water Act (SDWA)"

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:

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.

(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.

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.

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;

(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.

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.

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

485-H:1 Purpose Statement. – Communities across the state have been impacted by perfluorochemical contamination, largely through no fault of their own. Perfluorochemicals are a class of chemicals that are part of a larger group of chemicals called per and polyfluoroalkyl substances (PFAS). 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 established pursuant to RSA 485:16-e.

IV. "PFAS loan 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. –

I. The department shall provide low-interest loans and grants for the purpose of addressing exceedances of PFAS drinking water standards to:

(a) Municipalities for municipal use;

(b) Municipalities for use in assisting private well users including funds necessary to address the reasonable administrative costs of the municipality;

(c) Community water systems for use on an existing system or to expand a system to assist additional water users; and

(d) Non-profit, non-transient non-community water systems.

Such loans and grants shall be provided for the projects described below begun after September 30, 2019.

II. The department shall provide the loans and grants described in paragraph I for projects needed to meet a PFAS drinking water standard if the applicant demonstrates, and the department agrees, that the project is the most cost-effective way to meet PFAS drinking water standards and if the project meets the other provisions of this chapter and department rules adopted pursuant to this chapter.

III. The department shall adopt rules, and include conditions in loan and grant documents, to ensure that the applicant has made and will make reasonable efforts to obtain and use funds from any liable or potentially liable third party prior to and after taking a loan from the PFAS loan fund or receiving a grant, and that any money received from a liable or potentially liable third party after the loan is provided is applied to early repayment of such loan to the extent reasonable. In addition, the department shall adopt rules establishing criteria to ensure that an applicant shall not be eligible for loans or grants for any project or portion of a project to the extent the negligence of the applicant caused the contamination that resulted in the exceedance of a PFAS drinking water standard.

IV. If the department forgives any part of a loan or provides a grant related to costs for a project for which a third party might otherwise be liable, the right to recover payment from such third party shall be subrogated to the department to the extent of such forgiveness or grant. Any money recovered by the department from such third party shall be deposited in the PFAS loan fund.

V. Loans may be made for up to the total cost of the project minus any contribution from a liable or potentially liable third party or any other portion deemed ineligible under this chapter and department rules.

VI. Municipalities may assist private well users impacted by PFAS contamination in a manner consistent with this chapter, may accept and expend grants and loans provided by the department pursuant to subparagraphs I(a) and (b), and may apply for and receive funds from the department necessary to cover reasonable administrative costs related to implementation of subparagraph I(b).

485-H:4 Implementation of Groundwater, Surface Water and Aquatic Life Protection. –

I. The department shall provide low interest loans and grants 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 applicable PFAS standards prior to discharge or disposal.

II. The department shall provide the loans and grants described in paragraph I if the applicant demonstrates, and the department agrees, that the project is the most cost-effective way to meet applicable PFAS standards and if the project meets the other provisions of this chapter and department rules adopted pursuant to this chapter. The applicant shall provide evidence in the application for funding that there is not a more cost-effective way to meet applicable PFAS standards.

III. The department shall adopt rules, and include conditions in loan and grant documents, to ensure that the applicant has made reasonable efforts to obtain and use funds from any liable or potentially liable third party prior to and after taking a loan from the PFAS loan fund or receiving a grant, and that any money received from a liable or potentially liable third party at a later time is applied to early repayment of the loan from the PFAS loan fund to the extent reasonable. In addition, the department shall adopt rules establishing criteria to

ensure that an applicant shall not be eligible for loans or grants for any project or portion of a project to the extent the negligence of the applicant caused the contamination that resulted in the exceedance of an applicable PFAS standard.

IV. If the department forgives any part of a loan or provides a grant related to costs for a project for which a third party might otherwise be liable, the right to recover payment from such third party shall be subrogated to the department to the extent of such forgiveness. Any money recovered by the department from such third party shall be deposited in the PFAS loan fund.

V. Loans may be made for up to the total cost of the project minus any contribution from a liable or potentially liable third party or any other portion deemed ineligible under this chapter and department rules.

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

I. The department shall forgive up to 10 percent of the loan principal to municipalities, 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.

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 drinking water and groundwater trust 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 and grant 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 PFAS drinking water standards or other applicable PFAS standards.

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

(c) Awarding loan funds to projects that meet the provisions of this chapter including the following criteria:

(1) The project is or was necessary to comply with a PFAS drinking water standard or other applicable 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 the project is the most cost-effective way to meet PFAS drinking water standards and other applicable PFAS standards.

(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 this chapter.

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 PFAS remediation loan fund in accordance with RSA 6:8. Any earnings on PFAS remediation loan fund moneys shall be added to the PFAS remediation loan fund. All moneys in the PFAS remediation loan 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 related to the PFAS remediation loan fund shall be credited to the PFAS remediation loan fund.

485-H:11 Grants. –

I. The department, to the limit of the funds appropriated to the department for this purpose through the actions of the fiscal committee established under RSA 14:30-a, shall provide grants to entities meeting the eligibility requirements of RSA 485-H:3 and RSA 485-H:4 for up to the greater of \$1,500,000 or 30 percent of the total eligible cost of the project.

II. In no instance shall the grant exceed the total eligible costs.

III. In no instance shall the sum of all department administered funding of the project, to include loans and grants, exceed the total eligible costs.

IV. If department administered funding had been secured prior to this grant being available, such that the addition of the grant would cause the sum of the funding to exceed the total eligible costs, then the department administered loan amounts shall be reduced on a prorated basis to the extent required to bring the sum of the funding equal to total eligible costs.

485-H:12 Statute of Limitations; Civil Actions; PFAS Exposure. – A civil action arising out of any harm or injury caused by a person or entity found legally responsible for or an action for any damages resulting from a PFAS exposure may be brought within the 6 years after the date the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, such harm, injury, or damages and the causal relationship of an act or omission to such harm, injury or damages. Nothing in this section shall be construed as limiting any action brought by the state.