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Adopt Env-Wq 2300 to read as follows:

CHAPTER Env-Wq 2300 CYANOBACTERIA MITIGATION FUND (CMF) PROGRAM FOR
ELIGIBLE PROJECTS

Statutory Authority: RSA 485-A:58, RSA 485-A:59, RSA 485-A:60, and RSA 485-A:61

PART Env-Wq 2301 PURPOSE; APPLICABILITY

Env-Wq 2301.01 Purpose. The purpose of this chapter is to implement RSA 485-A:58 and RSA 485-A:59 as to establish criteria and procedures for administering cyanobacteria loan and grant programs for eligible projects to assist with the cost of reducing the number of chronic and extended cyanobacteria blooms that the department considers to be a threat to the long term health of waterbodies.

Env-Wq 2301.02 Applicability. This chapter shall only apply to the following entities who apply for funding from the Cyanobacteria Mitigation Fund (CMF):

- (a) Municipalities;
- (b) Community and non-profit, lake or river watershed associations; and
- (c) Community water systems;

PART Env-Wq 2302 CHAPTER-SPECIFIC DEFINITIONS

Env-Wq 2302.01 “Administrative costs” means expenses associated with managing CMF 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-Wq 2302.02 “Allonge” means an amendment to initial loan documents in which the final project cost and repayment terms are established.

Env-Wq 2302.03 “Applicant” means an entity that files an application for financial assistance from the CMF.

Env-Wq 2302.04 “Application” means the written document(s), with attachments, through which financial assistance is requested.

Env-Wq 2302.05 “Authorized representative” means an individual authorized by the applicant to sign documents associated with applying for and receiving funds from the CMF.

Env-Wq 2302.06 “Best management practice” means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices intended to prevent, control, improve, or reduce the discharge of pollutants to surface waters of the state as defined in Env-Wq 2302.44, including requisite planning, land acquisition, design, permitting, and construction.

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Env-Wq 2302.07 “CMF 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-Wq 2302.08 “CMF 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-Wq 2302.09 “Community water system” means “community water system” as defined in RSA 485:1-a, I, reprinted in Appendix B.

Env-Wq 2302.10 “Construction” means the erection, building, acquisition, alteration, remodeling, improvement, or extension of any components of best management practices with the purpose of reducing the discharge of pollutants into surface waters of the state as defined in Env-Wq 2302.44.

Env-Wq 2302.11 “Costs” means the applicant’s total direct and incidental costs of a cyanobacteria mitigation project for which funding from the CMF is sought, including acquiring services such as design, engineering, implementation, permitting, and application preparation, acquiring materials and labor, and administrative costs.

Env-Wq 2302.12 “Cyanobacteria mitigation 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-Wq 2302.13 “Department” means the department of environmental services.

Env-Wq 2302.14 “Disbursement” means a transfer of funds from the CMF to a recipient.

Env-Wq 2302.15 “Eligible costs” means project costs that are eligible for funding from the CMF, in accordance with RSA 485-A:58 and RSA 485-A:59 and this chapter.

Env-Wq 2302.16 “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-A:58 and RSA 485-A:59.

Env-Wq 2302.17 “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-Wq 2302.18 “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.

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Env-Wq 2302.19 “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-Wq 2302.20 “Financial assistance” means funds provided from the CMF 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-A:58 and RSA 485-A:59.

Env-Wq 2302.21 “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 CMF. The term includes original loan agreements, supplemental loan agreements, initial loan documents, allonges, and grant agreements.

Env-Wq 2302.22 “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-Wq 2302.23 “Governmental entity” means any of the following:

- (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-Wq 2302.24 “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 CMF to the recipient and the recipient agrees to use the grant funds as specified in its application as approved by the department.

Env-Wq 2302.25 “Impairment” means conditions causing violations of applicable water quality criteria such that any existing or designated use is not met.

Env-Wq 2302.26 “Initial loan documents” means the initial financial assistance agreement between the state and a non-governmental recipient through which the state agrees to provide funds from the CMF to the recipient, and the recipient promises to use the funds as specified in its application and to repay the funds to the CMF.

Env-Wq 2302.27 “Initiation of operation” means a project that was funded in whole or in part using funds from the CMF is placed into use for the purposes for which it was intended.

Env-Wq 2302.28 “Materially or significantly affect project cost or estimated revenues” means a change in estimated costs or revenues of more than 10%.

Env-Wq 2302.29 “Materially or significantly affect project design” means a change that would:

- (a) Alter the project’s performance standards;

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(b) Alter the type of best management practice 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 for department approval under RSA 485-A:59, I(c)(2).

Env-Wq 2302.30 “Municipality” means a town, city, school district, or village district.

Env-Wq 2302.31 “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 CMF to the recipient and the recipient promises to repay the funds to the CMF.

Env-Wq 2302.32 “Person” means “person” as defined in RSA 485:1-a, XIII, reprinted in Appendix B.

Env-Wq 2302.33 “Planning” means preparing and evaluating reports and studies of alternative cyanobacteria mitigation solutions in order to select the most cost-effective feasible option.

Env-Wq 2302.34 “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 CMF.

Env-Wq 2302.35 “Project” means a cyanobacteria mitigation implementation project proposed to be completed with CMF funding, including any or all aspects of the project that are necessary to meet the objectives of RSA 485-A:58 and 485-A:59.

Env-Wq 2302.36 “Recipient” means an applicant that receives financial assistance from the CMF.

Env-Wq 2302.37 “Repayment” means the payment of principal or interest, or both, on funds received as a loan by a recipient from the CMF.

Env-Wq 2302.38 “Resident project representative” means an individual who is qualified to the satisfaction of the recipient, in consultation with the department, by reason of education and experience to inspect construction projects.

Env-Wq 2302.39 “Scheduled completion date” means the date stated in the original loan agreement, initial loan documents, or grant agreement on which the construction project that received CMF funds is intended to be placed into use for the purposes for which it was intended.

Env-Wq 2302.40 “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-Wq 2302.41 “State” means the state of New Hampshire.

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Env-Wq 2302.42 “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-Wq 2302.43 “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-Wq 2302.44 “Surface waters of the state” means perennial and seasonal streams, lakes, ponds, and tidal waters within the jurisdiction of the state, including all streams, lakes, or ponds bordering on the state, marshes, water courses, and other bodies of water, natural, or artificial.

Env-Wq 2302.45 “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-Wq 2302.46 “Watershed management plan” means a document that describes the water resource assessments, management strategies, and restoration and protection plans to guide efforts to protect and restore water quality. These plans contain an emphasis on controlling external and internal nutrient loads to meet surface water quality standards.

Env-Wq 2302.47 “Water system” means “public water system” as defined by RSA 485:1-a, XV, reprinted in Appendix B.

PART Env-Wq 2303 ELIGIBILITY; APPLICATION REQUIREMENTS

Env-Wq 2303.01 Eligible Projects and Costs.

(a) The eligible entities listed in Env-Wq 2301.02 shall be eligible to apply for financial assistance from the CMF:

- (1) For mitigation projects in watersheds that have surface waters that have chronic and extended cyanobacteria blooms that the department considers to be a threat to the long term health of waterbodies; or
 - (2) That have a department-approved watershed management plan specifying sources of nutrient loading.
- (b) All applications for projects proposed for financial assistance shall demonstrate that:
- (1) The proposed project is the most cost-effective solution;
 - (2) Alternative low or no-cost solutions are neither viable nor effective; and
 - (3) The project is or was necessary to reduce nutrient pollutant loading identified in a watershed management plan.

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Env-Wq 2303.02 Additional Eligibility Criteria for CMF-Funded Projects. In order to be eligible for financial assistance from the CMF:

- (a) All proposed projects shall:
 - (1) Comply with applicable federal requirements;
 - (2) Comply with state permitting as specified in Env-Wq 300 or any other applicable state permitting program; and
 - (3) Propose an achievable water quality target that is expected to reduce the likelihood of or the occurrence of chronic and extended cyanobacteria blooms that the department considers to be a threat to the long term health of waterbodies; and
- (b) For projects with a department-approved watershed management plan targeting external nutrient loading, the following criteria shall be met:
 - (1) The project shall have a 20-year life expectancy of the practice from the estimated date of initiation of operation;
 - (2) The project shall reduce the external nutrient load towards achieving the desired surface water conditions;
 - (3) The waterbody of interest is listed as an impaired waterbody or an impairment listing is imminent as determined by the department based on the available water quality information on the waterbody;
 - (4) The project has an emphasis on controlling external nutrient loads, to the extent possible and reasonable, prior to or in conjunction with efforts to reduce internal nutrient loads necessary for achieving the desired surface water conditions;
 - (5) The project has a commitment to address external and internal nutrient loads that includes the specific projects identified in the watershed management plan required to achieve the surface water conditions;
 - (6) The project demonstrates participation and commitments to external nutrient load reductions from stakeholders, landowners, other agencies, organizations, and/or municipalities; and
- (c) For projects intended to reduce in-lake sources of nutrients, the following criteria shall be met:
 - (1) The project shall reduce the internal nutrient load towards achieving the desired surface water conditions;
 - (2) The project has a watershed management plan that addresses external nutrient loading;
 - (3) The waterbody of interest is listed as an impaired waterbody or an impairment listing

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is imminent as determined by the department based on the available water quality information on the waterbody;

(4) The watershed management plan contains an emphasis on controlling external nutrient loads, to the extent possible and reasonable, as determined by the department, prior to, in conjunction with, or within a reasonable timeframe after efforts to reduce internal nutrient loads;

(5) The project minimizes the risk of environmental harm to aquatic plants and animals and will not cause or contribute to additional water quality impairments of the waterbody over the long term; and

(6) In cases where nutrient load reduction is the focus of the proposed project, the estimated in-lake nutrient load is greater than 20% of the total nutrient loading described in the watershed management plan; and

(d) The applicant demonstrates that the project is ready to be implemented upon receipt of approved funding.

Env-Wq 2303.03 Application Procedures. Any entity meeting the eligibility requirements of Env-Wq 2303.01 and Env-Wq 2303.02 that requests to receive financial assistance from the CMF for a cyanobacteria mitigation project shall file an application by:

(a) Completing an application for a loan or grant or both to reduce the occurrence of cyanobacteria as described in Env-Wq 2303.04;

(b) Signing and certifying the application as described in Env-Wq 2303.05; and

(c) Submitting the completed, signed eligibility request:

(1) Electronically to the CMF Program Supervisor; or

(2) In writing, by US Postal Service mail, private delivery service, or other in-hand delivery to:

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

Env-Wq 2303.04 Application Information for Cyanobacteria Mitigation Projects. To be processed as provided in Env-Wq 2303.06(a), the applicant shall provide the following information to the department:

(a) The organization name and the town or city in which it is located;

(b) The name, title, email address, affiliation, street address, city, state, zipcode, and daytime telephone number of the applicant's point of contact for the application;

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- (c) The project title;
- (d) The authorized representative name, title, and affiliation;
- (e) The towns or cities in which the project is located;
- (f) The waterbody affected by the project;
- (g) A project location map showing the watershed of the waterbody and relevant project site locations;
- (h) A concise description of the proposed project and of the need for the proposed project, including how it will address cyanobacteria, together with a brief description of the alternatives that have been considered and a demonstration of how the eligibility requirements of Env-Wq 2303.01 and Env-Wq 2303.02 are met;
- (i) A statement relative to the transmittal of the application to the department dated and signed by the applicant's authorized representative with his or her name and title printed;
- (j) A description of how the project implements actions from the watershed management plan;
- (k) A description of how the project is or was necessary to reduce nutrient loading identified in the watershed management plan, as specified in RSA 485-A:59, I(c)(1);
- (l) A summary of the existing conditions;
- (m) The basis of design for the project, which may include but is not limited to flows, dosing, and construction plans, and the necessary information to develop the most current cost estimate, as described in Env-Wq 2303.03(n);
- (n) The most current estimate of the total project costs itemized and including an explanation of the basis of the cost estimates and a statement of all assumptions made in developing the cost estimate;
- (o) The date the applicant received governing body approval to borrow funds for the project or the date the applicant anticipates receiving such approval;
- (p) The anticipated date that the project will start and be completed;
- (q) A project schedule with a list and descriptions of project milestones and target dates to achieve each milestone;
- (r) The source of other funding contributing to the project, if any, and for each source the amount and status of the funding;
- (s) A summary of the nutrient load reduction actions and estimated nutrient load reductions completed at the time of the application;

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(t) A description of the participation and commitments to reducing external nutrient loads expected and on-going from stakeholders, landowners, other agencies, organizations, and municipalities, as applicable;

(u) A list including a timeline of the external nutrient load reduction actions identified in the watershed management plan that will be completed and the estimated nutrient load reductions for each action, including the project;

(v) The amount of loan or grant requested; and

(w) The loan term requested, which shall be 5, 10, 15, or 20 years, provided the loan term shall not exceed the design life of the project for which the loan is being requested.

Env-Wq 2303.05 Application Signatures and Certifications.

(a) The date the application 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 applicant that:

(1) The information provided is true, not misleading, and as complete as practicable, to the best knowledge and belief of the applicant; and

(2) The applicant understands that any department determination that the applicant and the applicant's project qualifies for funding from the CMF 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.

Env-Wq 2303.06 Department Processing of Applications.

(a) The department shall consider each application in the order in which the applications were received if:

(1) The application contains all of the information required by Env-Wq 2303.04 and is therefore complete;

(2) The applicant is an eligible entity as specified in Env-Wq 2301;

(3) The proposed project meets the criteria specified in Env-Wq 2303.01 and Env-Wq 2303.02; and

(4) There are sufficient funds available in the CMF.

(b) The department shall notify the applicant in writing within 30 days of receipt of the application if it determines that the application is not complete pursuant to (a)(1) above and shall notify the applicant of the deadline for submitting the required information;

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(c) The department shall notify the applicant in writing within 60 days of receipt of a complete application of whether the application is approved or denied.

(d) If the department determines that the application meets the criteria in (a), above, the department shall provide written notice of the amount of grant, loan, or combination awarded for the project and instructions for filing additional documents required by the department as described in Env-Wq 2304.01, including the applicant's and department's agreed-to deadline for filing the additional documents.

(e) If the department determines that the application does not meet the criteria in (a), above, the department shall notify the applicant of the reason(s) for the determination in.

PART Env-Wq 2304 PROCEDURES FOR RECEIPT OF CYANOBACTERIA MITIGATION LOAN AND GRANT FUNDS

Env-Wq 2304.01 Requirements and Procedures.

(a) An applicant whose cyanobacteria mitigation project is determined by the department to meet the criteria in Env-Wq 2303.06(a) and who wishes to obtain funding shall submit to the department the following:

- (1) The information specified in Env-Wq 2304.03;
- (2) For loans, confirmation of the applicant's authority to borrow as specified in Env-Wq 2304.04;
- (3) For grants, confirmation of the applicant's authority to accept grant funds as specified in Env- Wq 2304.05;
- (4) The bank information specified in Env-Wq 2304.06; and
- (5) For loans, verification of a revenue program as specified in Env-Wq 2304.07.

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

- (1) The department receives additional information supporting that the project is ineligible pursuant to Env-Wq 2303;
- (2) The applicant informs the department in writing that it does not intend to pursue financial assistance from the CMF;
- (3) The applicant does not submit the information to request funding by the agreed-to deadline stated in the instructions sent pursuant to Env-Wq 2303.06(b); or
- (4) Insufficient funds remain in the CMF account to execute the loan or grant.

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

Env-Wq 2304.02 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 design and implementation, and at any other time while any assistance from the CMF to the applicant is outstanding, the recipient shall allow the department to inspect, as provided in Env- Wq 2307.03 and Env-Wq 2307.07:

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 for the period of time indicated in the grant or loan agreement.

(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-Wq 2304.03 Information Required to Request Funding. The applicant shall provide the following information for a request for funding for a cyanobacteria mitigation project:

(a) The applicant's name, mailing address, including street name and number or post office box number, city or town, and zip code including 4-digit extension;

(b) Whether the applicant is a governmental or non-governmental eligible entity;

(c) The name, title, email address, and daytime telephone number including area code of the applicant's contact for:

(1) Questions regarding the request for funding; and

(2) Repayment billing;

(d) A short title for the project;

(e) The primary location where the project is proposed to be implemented;

(f) An estimate of the following project costs:

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- (1) Estimated cyanobacteria mitigation project costs;
 - (2) A contingency of 10%;
 - (3) Estimated planning, design, 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; and
 - (5) The total estimated costs;
- (g) The amount of the loan or grant being requested;
- (h) The loan term requested, which shall be 5, 10, 15, or 20 years, provided the loan term shall not exceed the design life of the best management practice for which the loan is being requested;
- (i) The tentative project schedule, including:
- (1) The actual or anticipated date the applicant was or will be authorized by its governing body to borrow or receive funds for the project;
 - (2) The actual or anticipated date the project was or will be started;
 - (3) The anticipated date the project will be completed;
- (j) A state vendor code number obtained pursuant to the vendor code requirements established by the New Hampshire department of administrative services, Adm 603;
- (k) The name and title of the individual authorized by the applicant to sign the application on behalf of the applicant;
- (l) 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;
- (m) For non-governmental applicants, documentation of the extent of the applicant's existing debt; and
- (n) A copy of the applicant's latest annual report or financial statements.

Env-Wq 2304.04 Applicant's Authority to Borrow.

(a) For a governmental applicant, the confirmation required by Env-Wq 2304.01(a)(2) shall consist of proof that the applicant's governing body passed or approved a valid warrant article or resolution, as applicable, that:

- (1) Authorizes the applicant to:

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- a. Raise, appropriate, and spend the amount of funds to be requested for the identified project;
 - b. Apply for funding from the CMF for the identified project; and
 - c. Enter into a binding financial agreement 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-Wq 2304.08.
- (b) For a non-governmental applicant, the confirmation required by Env-Wq 2304.01(a)(2) shall consist of proof that the applicant's governing body passed a valid resolution that:
- (1) Authorizes the applicant to:
 - a. Apply for funding from the CMF 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;

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- (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-Wq 2304.08.
- (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-Wq 2304.05 Applicant's Authority to Accept Grant Funds.

(a) For a governmental applicant, the confirmation required by Env-Wq 2304.01(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 CMF for the identified project.

(b) For a non-governmental applicant, the confirmation required by Env-Wq 2304.01(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 CMF 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-Wq 2304.06 Bank Information. The bank information required by Env-Wq 2304.01(a)(4) shall be as follows:

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- (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 shall 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 shall be the contact for audits;
- (e) The name, mailing address, and main telephone number including area code of the recipient's financial institution;
- (f) The name, title, daytime telephone and fax numbers including area code, and email address of the recipient's point of contact at the financial institution;
- (g) The recipient's financial institution's ABA routing number for ACH transactions;
- (h) The name on the account and the type of account, for example checking or savings; and
- (i) The account number.

Env-Wq 2304.07 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 CMF.
- (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-Wq 2304.01(a)(5) shall be made by providing the following information:
 - (1) Certification that the applicant has the financial capability to support both the project loan repayment;
 - (2) Identification of the source of repayment;

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(3) Affirmation that the applicant will conduct and report on a financial audit, including compliance and controls, in any calendar year it receives CMF funds in excess of \$500,000;

(4) A statement 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) Signature certifying the verification information, as provided in Env-Wq 2304.08.

(e) For an applicant that is a non-governmental entity, the verification required by Env-Wq 2304.01(a)(5) shall be made by providing the following information:

(1) Identification of the source of repayment;

(2) Certification that the applicant:

a. Has the financial capability to support both the project loan repayment and continuing operation and maintenance where appropriate, as determined by the department for the funded improvements; and

b. Will conduct and report on a financial audit, including compliance and controls, in any calendar year it receives CMF funds in excess of \$500,000; and

(3) Signature certifying the verification information, as provided in Env-Wq 2304.08.

Env-Wq 2304.08 Signatures and Certifications for Requests for Funding and Associated Documents.

(a) The applicant's authorized representative shall sign and date the request for funding as follows:

(1) If the applicant uses a paper-based submittal, 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 submits electronically, the date the submission is received by the department shall constitute the date of the request for funding.

(b) Submission of the request for funding, 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; and

(3) The applicant understands that any department determination that the applicant and the applicant's project qualifies for funding from the CMF that is based on false, incomplete, or misleading information is subject to modification, up to and including

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reversal, through an adjudicative proceeding conducted in accordance with applicable provisions of Env-C 200.

Env-Wq 2304.09 Processing for Receipt of Funds.

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

- (1) All or a portion of the proposed project is within the scope of eligible projects identified in Env- Wq 2303;
- (2) The applicant has submitted all information and documents required by Env-Wq 2304.01; and
- (3) The applicant has signed the application as required by Env-Wq 2304.08.

(b) The department shall notify the applicant in writing of its project 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 shall reconsider the determination if the applicant submits modified or supplemental information at the request of the department.

(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.

PART Env-Wq 2305 FINANCIAL ASSISTANCE; PAYMENTS; ACCOUNTING

Env-Wq 2305.01 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; or
- (4) A combination of a grant, a loan, and loan forgiveness.

(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

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request for funding;

- (2) Principal and interest payments shall commence within one year of substantial project completion for cyanobacteria mitigation projects;
 - (3) The recipient shall establish a dedicated source of revenue for repayment of the loan in accordance with Env-Wq 2304.07;
 - (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-Wq 2305.02 Original Loan Agreements (OLAs) for Governmental Entities.

(a) Following acceptance of a request for funding 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 cyanobacteria mitigation project costs, 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) A requirement for the recipient to develop and adhere to an operation and maintenance plan where appropriate and as determined by the department for the funded improvements which may include long-term monitoring of an in-lake treatment; 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.

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(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-Wq 2305.03 Initial Loan Documents (ILDs) for Non-Governmental Entities.

(a) Following acceptance of a request for funding from a non-governmental entity and upon determining that funds are available, the department shall send the applicant's financial information to the CMF financial advisor for review.

(b) If the department determines, based on the assessment provided by the CMF 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 cyanobacteria mitigation project costs, 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) A requirement for the recipient to develop and adhere to an operation and maintenance plan where appropriate and as determined by the department for the funded improvements which may include long-term monitoring of an in-lake treatment;

(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 CMF attorney and to the applicant for review and comment.

(d) If the applicant agrees to the terms of the ILD and the CMF attorney does not identify issues that could cause the ILD to not be enforceable, the department shall submit the unsigned ILD to

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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 CMF 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 CMF financial advisor, and the CMF attorney.

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

Env-Wq 2305.04 Grant Agreement (GA) Documents.

(a) Following acceptance of a request for funding for a grant and upon determining that funds are available, 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 grant 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) A requirement for the recipient to develop and adhere to an operation and maintenance plan where appropriate and as determined by the department for the funded improvements which may include long-term monitoring of an in-lake treatment;

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- (6) Any other provision(s) required by the department, such as submittal of plans, specifications, and contract documents, or contract bidding requirements; 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 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-Wq 2305.05 Interest Rates Established.

- (a) The interest rate charged on the outstanding balance of disbursed funds prior to the scheduled completion date or substantial completion date for a cyanobacteria mitigation project 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 cyanobacteria mitigation project 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-Wq 2305.02(b) or Env-Wq 2305.03(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) Provisions of federal law that apply when federal funding is received shall not apply to CMF-funded projects unless the project receives federal funding from another source.

Env-Wq 2305.06 Accrual of Interest Charges.

- (a) Interest on any loan funds disbursed to the recipient shall begin to accrue on the date of each disbursement of such funds by the state.
- (b) The recipient shall pay interest charges incurred on disbursed funds by choosing to pay:
 - (1) Prior to the commencement of the loan repayment;
 - (2) At the time of the first repayment;

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- (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-Wq 2305.07 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.
- (f) If the recipient shows that the delay in expending funds was based on an excusable delay, the department shall not cancel the grant or loan, as applicable.

Env-Wq 2305.08 Disbursement Requests.

- (a) To obtain a disbursement for eligible costs from the funds awarded for a cyanobacteria mitigation project, the recipient shall submit a written disbursement request to the department by mail or email.
- (b) The written request shall include the following, as applicable to the request:
 - (1) A written request for disbursement that includes the information specified in (c), below, and is signed as specified in (c)(10), below; and

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- (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 CMF 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 CMF eligible, the amount included in previous requests, and the amount of the current request, as applicable:
 - a. Administrative costs;
 - b. Pre-cyanobacteria mitigation costs;
 - c. Cyanobacteria mitigation project implementation costs;
 - d. Project 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;

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

Env-Wq 2305.09 Disbursements.

(a) The department shall approve a request submitted as specified in Env-Wq 2305.08 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 CMF, subject to Env-Wq 2305.10.

Env-Wq 2305.10 Assurances for Cyanobacteria Mitigation Projects. The department shall not disburse any CMF funds for a cyanobacteria mitigation project until the recipient provides evidence of the following:

(a) Approved project plans and specifications, if applicable;

(b) A written agreement to maintain project financial accounts in accordance with Env-Wq 2305.16 and to maintain project accounts as separate accounts; and

(c) A written agreement to provide notice of initiation of operation to the department upon beginning operation of the project.

Env-Wq 2305.11 Supplemental Loan Agreement for Loans to Governmental Recipients.

(a) Upon completion of a 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-Wq 2305.12 Allonge for Loans to Non-Governmental Recipients for Construction Projects.

(a) Upon completion of a project by a non-governmental recipient, the department shall:

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- (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 CMF 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-Wq 2305.13 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 CMF established in RSA 485-A:61.

(c) The loan repayment shall:

- (1) Not exceed the loan term established in the SLA or allonge;
- (2) For governmental recipients, 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:
 - 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.

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

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

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- (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.

(f) 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.

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

Env-Wq 2305.14 Use of Funds; Return of Funds.

(a) The recipient shall use and expend financial assistance provided from the CMF solely and exclusively for the payment of authorized eligible project costs, as applicable, for which the financial assistance was approved.

(b) If the recipient uses any funds provided from the CMF 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-Wq 2305.15 Retainage.

(a) The recipient may withhold a percentage of all partial payments to contractors on a 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-Wq 2307.01.

Env-Wq 2305.16 Accounting. Each recipient shall:

(a) Use generally accepted accounting principles;

(b) Place all funds received from the CMF in a project account for the sole purpose of planning, designing, and constructing or implementing the project, as applicable, as approved by the department;

(c) Use all funds received from the CMF for the sole purpose of planning, designing, and implementing the cyanobacteria mitigation project, 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 CMF funds in a calendar year; or
- (2) In response to a department request for an audit based on a reasonable suspicion of

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fraud or misuse of CMF funds;

(e) 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 CMF in consultation with the department;

(f) 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-Wq 2306 RESERVED

PART Env-Wq 2307 IMPLEMENTATION OF CYANOBACTERIA MITIGATION PROJECTS

Env-Wq 2307.01 Consulting Contracts for Expenditures of CMF Funds.

(a) For all projects funded from the CMF 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-Wq 2307.02 Recipient's Obligations for Inspections During Project Implementation.

(a) During the implementation 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 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 scientific and engineering principles and practices.

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Env-Wq 2307.03 Department Inspections During Project Implementation.

(a) The recipient shall allow the department to inspect the project during normal business hours in order to confirm that the project is being implemented 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 manager 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-Wq 2307.04 Limitations on Project Modifications; Requests for Approval.

(a) After project implementation has commenced, the recipient shall not make, allow, or authorize any changes, modifications, or amendments to, or any departures from, the approved plans

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and specifications that would materially or significantly affect project cost, estimated revenues, or project design 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 project;
- (2) The project number;
- (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.

Env-Wq 2307.05 Approval of Project Modifications.

(a) Subject to (b) and (c), below, the department shall approve a request submitted pursuant to Env-Wq 2307.04 if:

- (1) The scope of the project as modified is consistent with the original intent of the financial assistance;
- (2) If additional CMF funds are requested, then:
 - a. The increased cost is approvable under the criteria established in Env-Wq 2307.04(b); 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) The amount of funding provided from the CMF shall be increased only by a formal amendment in writing with the department, with governor and executive council approval.

Env-Wq 2307.06 Project Completion Submittals. The recipient shall submit to the department:

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

Env-Wq 2307.07 Final Inspection and Review of Records.

- (a) Upon completion of any project for which financial assistance from the CMF has been

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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 or grant 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 CMF.

PART Env-Wq 2308 WAIVERS

Env-Wq 2308.01 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 CMF.

Env-Wq 2308.02 Procedures.

(a) Any applicant or recipient who is or would be directly and adversely affected by the strict application of a rule in Env-Wq 2300 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-Wq 2308.03 and be signed as required by Env-Wq 2308.04.

Env-Wq 2308.03 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;

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(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-Wq 2308.05.

Env-Wq 2308.04 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; and

(2) The signer understands that any waiver granted based on false, incomplete, or misleading information is subject to revocation.

(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-Wq 2308.05 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 CMF 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-A:58 through 61; and

(3) Strict adherence to the rule would not be in the best interest of the public, the environment, or the CMF.

(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-A, unless such statute or grant expressly provides that the requirement may be waived or modified.

Env-Wq 2308.06 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.

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(b) The department shall include such conditions in a waiver as are necessary to ensure that the criteria specified in Env-Wq 2308.05 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-Wq 2300 (also see specific part below)	RSA 485-A:58; RSA 485-A:59; RSA 485-A:60; RSA 485-A:61
Env-Wq 2308	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.

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.

RSA 485-A:2

XIV. "Surface waters of the state" means perennial and seasonal streams, lakes, ponds, and tidal waters within the jurisdiction of the state, including all streams, lakes, or ponds bordering on the state, marshes, water courses, and other bodies of water, natural or artificial.

APPENDIX C: REFERENCED STATUTE

13856, (eff 1-25-24)

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RSA 485-A:58 Establishment and Implementation of Cyanobacteria Mitigation Loan Program. –

I. There is established in the department of environmental services the cyanobacteria mitigation loan program. The program shall provide low interest loans to:

(a) Municipalities, community water systems and non-profit lake and river watershed associations whose testing shows confirmed and chronic exceedances of the state health advisory for cyanobacteria, for remediation efforts begun after September 30, 2023.

(b) Publicly-owned and non-profit lake or river watershed associations that have a watershed management plan which specifies sources of phosphorus loading approved by the department of environmental services.

II. Projects shall only be financed after the applicant's proposed mitigation plan or watershed management plan demonstrates that such plan is the most cost-effective solution, as reviewed and approved by the department of environmental services. The applicant shall provide evidence in the application for funding that there are no no-cost or low-cost efforts that would result in a substantial decrease in external phosphorus loading. The applicant shall also show that there is no responsible party identified by department of environmental services or that the responsible party, potentially including the applicant, has provided their appropriate share of the funding for the proposed project.

III. Loans or grants may be made for up to the total cost of the project, after any responsible party's contribution, addressing the contamination.

IV. The cyanobacteria mitigation program shall forgive up to 10 percent of the loan principal to community water systems, publicly owned or non-profit lake or river watershed associations using the same qualifying standards for forgiveness used in the drinking water state revolving loan program established under RSA 486:14.

V. Total loan forgiveness under this section shall not exceed \$1,000,000 in a fiscal year.

RSA 485-A:59 Duties. –

I. The department of environmental services shall:

(a) Administer the cyanobacteria mitigation loan and grant program to assist municipalities; community and non-profit, lake and river watershed association; with the cost of reducing the number of chronic and extended cyanobacteria bloom that the department considers to be a threat to long term health of water bodies. For purposes of this subparagraph, administration includes oversight of the grant or loan expenditures to ensure they are not misused.

(b) Administer a loan forgiveness program to assist municipalities, community, and non-profit, lake and river watershed association with loan repayment.

(c) Award loan or grant funds to projects that meet the following criteria:

(1) The project is or was necessary to reduce phosphorus loading identified in an accepted watershed management plan and the applicant for funding is a municipality, a community water system, or a non-profit, lake or river watershed association.

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

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

II. Every year beginning December 1, 2024, the department of environmental services shall prepare and file a report with the general court evaluating the progress made relative to mitigating cyanobacteria blooms, 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 cyanobacteria blooms.

13856, (eff 1-25-24)

INTERIM EXPIRES: 7-23-24

RSA 485-A:60 Rules. – The department of environmental services shall adopt rules, under RSA 541-A, relative to administering cyanobacteria loan and grant programs for eligible projects.

RSA 485-A:61 Cyanobacteria Mitigation Loan and Grant Fund Established. – There is hereby established in the department of environmental services the cyanobacteria mitigation loan and grant fund which shall be maintained by the state treasurer in distinct and separate custody from all other funds. The state treasurer may invest the fund in accordance with RSA 6:8. Any earnings on fund moneys shall be added to the fund. All moneys in the fund shall be nonlapsing and continually appropriated to the department of environmental services. The cyanobacteria mitigation loan and grant fund shall be used to fund loans, grants, and reimbursements in accordance with this subdivision. Funds from any bond proceeds, grants, loan repayments, legislative appropriations, donations, and other funds shall be credited to this fund.