

PREFACE

This supplement contains amendments to the environmental regulations adopted during the 2nd quarter of 2014 (April - June).

The amendments in this publication include the following:

Media	Rule Log #	Final Date
Part III. Air	AQ342	April 20, 2014
Part IX. Water Quality	WQ081	April 20, 2014

Log # Suffix Key:

- ft – Fast-Track Rule - Federal regulations promulgated in accordance with expedited procedures in R.S. 49:953(F)(3)
- F – Federal Language
- L – Louisiana Language
- S – Substantive Changes to Proposed Rule
- P – Rule resulting from a Petition for Rulemaking

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Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 3. Regulatory Permits

§311. Regulatory Permit for Stationary Internal Combustion Engines

A. Applicability

1. This regulatory permit authorizes the installation and use of stationary internal combustion engines, including, but not limited to, electrical power generators, firewater pumps, and air compressors, subject to the requirements established herein, upon notification by the administrative authority that the application (i.e., notification form) submitted in accordance with Subsection L of this Section has been determined to be complete. This regulatory permit also authorizes the associated fuel storage tank provided the capacity of the tank is less than 10,000 gallons.

2. This regulatory permit may be used to authorize the use of both permanent and temporary engines.

3. This regulatory permit does not apply to:

a. ...

b. *nonroad engines*, as defined in LAC 33:III.502.A.

4. This regulatory permit shall not be used to authorize use of an engine that combusts noncommercial fuels, including used crankcase oil or any other used oil, facility byproducts, or any other type of waste material.

5. This regulatory permit shall not be used to authorize use of an engine that, when considering potential emissions from the engine and potential emissions from the remainder of the stationary source, would result in the creation of a major source of criteria pollutants, hazardous air pollutants, or toxic air pollutants.

B. ...

* * *

C. Opacity

1. Limitations

a. *Smoke*. The emission of smoke shall be controlled so that the shade or appearance of the emission is not darker than 20 percent average opacity, except that the emissions may have an average opacity in excess of 20 percent for not more than one 6-minute period in any 60 consecutive minutes.

b. - c. ...

2. Monitoring and Recordkeeping for Emergency Engines

a. - d. ...

3. Monitoring and Recordkeeping for Nonemergency Engines

a. The permittee shall inspect each engine's stack for visible emissions no less than once each calendar week. If visible emissions are not detected during the initial six minutes of the inspection, the inspection may be concluded.

b. If visible emissions are detected for more than one six-minute period over a 60 consecutive minute test period using method 22 of 40 CFR 60, appendix A, the permittee shall conduct a 6-minute opacity reading in accordance with method 9 of 40 CFR 60, appendix A, within three calendar days.

c. If the shade or appearance of the emission is darker than 20 percent average opacity (per method 9), the permittee shall take corrective action to return the engine to its proper operating condition, and the 6-minute opacity reading shall be repeated in accordance with method 9. The permittee shall notify the Office of Environmental Compliance no later than 30 calendar days after any method 9 reading in excess of 20 percent average opacity or, for *Part 70 sources*, as defined in LAC 33:III.502.A, in accordance with Part 70 General Condition R of LAC 33:III.535.A. This notification shall include the date the visual check was performed, results of the method 9 testing, and a record of the corrective action employed.

d. Records of visible emissions checks shall be kept on-site and available for inspection by the Office of Environmental Compliance. These records shall include:

i. the engine's ID number;

ii. the engine's serial number;

iii. the date the visual check was performed;

iv. a record of emissions, if visible emissions were detected for more than one six-minute period;

v. the results of any method 9 testing conducted;

and

vi. a record of any corrective action employed.

4. This Subsection shall not apply to engines described in LAC 33:III.1107.B.1 and 2.

D. - D.2. ...

E. Operating Time of Emergency Engines

1. - 3. ...

F. Emission Standards

1. New Source Performance Standards

a. Each stationary compression ignition (CI) internal combustion engine (ICE) described in 40 CFR 60.4200(a) shall comply with the applicable provisions of 40 CFR 60, subpart III—Standards of Performance for Stationary Compression Ignition Internal Combustion Engines, unless the engine is exempted as described in 40 CFR 60.4200(d) or meets the conditions set forth in 40 CFR 60.4200(e).

b. Each stationary spark ignition (SI) ICE described in 40 CFR 60.4230(a) shall comply with the applicable provisions of 40 CFR 60, subpart JJJJ—Standards of Performance for Stationary Spark Ignition Internal Combustion Engines, unless the engine is exempted as described in 40 CFR 60.4230(e) or meets the conditions set forth in 40 CFR 60.4230(f).

2. National Emissions Standards for Hazardous Air Pollutants. Each stationary reciprocating ICE described in 40 CFR 63.6590 shall comply with the applicable provisions of 40 CFR 63, subpart ZZZZ—National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines, unless the engine is exempted as described in 40 CFR 63.6585(e) or identified in 40 CFR 63.6585(f).

3. Engines that are *affected point sources* as defined in LAC 33:III.2201.B shall comply with the applicable provisions of LAC 33:III.Chapter 22, Control of Emissions of Nitrogen Oxides (NO_x), including:

- a. the appropriate NO_x emission factor set forth in Table D-1A or Table D-1B of LAC 33:III.2201.D;
- b. the initial and continuous demonstrations of compliance required by LAC 33:III.2201.G and H; and
- c. the notification, recordkeeping, and reporting requirements of LAC 33:III.2201.I.

G. Performance Testing and Monitoring. The following performance testing and monitoring requirements shall apply to nonemergency engines with a manufacturer's horsepower rating of 500 or above and represented to operate more than 720 hours in any 6-month period on the application submitted in accordance with Subsection L of this Section.

1. No later than 180 days after the engine commences operation, the permittee shall conduct a performance test to determine NO_x and CO emissions using methods 7E (Determination of Nitrogen Oxides Emissions from Stationary Sources) and 10 (Determination of Carbon Monoxide Emissions from Stationary Sources) of 40 CFR 60, appendix A. Each test run shall be conducted within 80 percent of the engine's maximum rated capacity or within 10 percent of the maximum achievable load. Alternate stack test methods may be used only with the prior approval of the Office of Environmental Services.

a. The permittee shall notify the Office of Environmental Services at least 30 days prior to the performance test in order to provide the department with the opportunity to conduct a pretest meeting and/or observe the test.

b. The permittee shall submit the performance test results to the Office of Environmental Services no later than 60 days after completion of the test.

2. The permittee shall monitor NO_x, CO, and oxygen (O₂) concentrations in the engine's stack gas semiannually (6 months after the performance test or previous semiannual test, plus or minus 30 days) using a portable analyzer calibrated before each test using a known reference sample.

NO_x, CO, and O₂ concentrations may be monitored annually (12 months after the performance test or previous annual test, plus or minus 30 days) if the engine is equipped with catalytic controls.

3. Where monitoring of NO_x or CO is required by 40 CFR 60, subpart III; 40 CFR 60, subpart JJJJ; 40 CFR 63, subpart ZZZZ; or LAC 33:III.2201, the performance testing and monitoring requirements of this Subsection shall not apply for that pollutant.

4. This Subsection shall not apply to nonemergency engines identified as being temporary.

H. Temporary Engines

1. Records of each temporary engine brought on-site shall be maintained and made available for inspection by the Office of Environmental Compliance. These records shall include:

- a. the date the unit was delivered;
- b. the make and model;
- c. the manufacturer's rated horsepower;
- d. the fuel type; and
- e. the date the unit was removed from the site.

2. The authorization for the use of any engine identified as being temporary shall remain effective for 12 months following the date on which the administrative authority determines that the application submitted in accordance with Subsection L of this Section is complete. If the permittee determines that an engine originally identified as temporary will remain on-site longer than 12 months, a new application (i.e., notification form) shall be submitted in accordance with Subsection L of this Section prior to expiration of the authorization to operate under this regulatory permit as provided in this Paragraph.

I. Permanent Engines. Permanent engines authorized by this regulatory permit shall be included in the next renewal or modification of the facility's existing permit.

J. Gasoline storage tanks associated with an engine and with a nominal capacity of more than 250 gallons shall be equipped with a submerged fill pipe.

K. Emissions Inventory. Each facility subject to LAC 33:III.919 shall include emissions from all engines, including temporary units, authorized by this regulatory permit in its annual emissions inventory.

L. Notification Requirements. Written notification describing the planned activity shall be submitted to the Office of Environmental Services using the appropriate form provided by the department. A separate notification shall be submitted for each engine.

M. In accordance with LAC 33:III.Chapter 2, the fee for this regulatory permit is \$713. In accordance with LAC 33:III.209 and 211, the annual maintenance fee associated with this regulatory permit shall be \$143. Applicable

surcharges as described in LAC 33:III.211.A shall also be assessed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:459 (March 2009), amended LR 37:3221 (November 2011), amended by the Office of the Secretary, Legal Division, LR 40:780 (April 2014).

Title 33

ENVIRONMENTAL QUALITY

Part IX. Water Quality

Subpart 1. Water Pollution Control

Chapter 21. Clean Water State Revolving Fund

Subchapter A. Clean Water State Revolving Fund

§2101. Introduction to the Clean Water State Revolving Fund (CWSRF)

A. The 1972 amendments to the Federal Water Pollution Control Act of 1956, commonly referred to as the Clean Water Act, provided for a strong federal role in the construction of publicly owned wastewater treatment works by increasing the level of federal aid and expanding the federal grant share to 75 percent in an effort to increase the pace of wastewater treatment facility construction and eliminate the backlog of needed facilities. Congress intended that states and municipalities eventually assume full responsibility for financing, building, operating, maintaining, and replacing their treatment facilities.

B. The 1977 amendments to the Clean Water Act began shifting responsibility to state and local governments by authorizing the U.S. Environmental Protection Agency (EPA) to delegate most of its construction grants management functions to the states. The 1981 Amendments further reduced the federal role by reducing the annual federal authorization by half, reducing the federal grant share, narrowing the eligible funding categories, and reducing the eligible treatment capacity to that required to meet existing needs.

C. The 1987 amendments to the Clean Water Act set forth a schedule and mechanism for completing the transition to full state and municipal responsibility. The EPA continued to have the authority to allot funds to states for the award of grants to municipalities to construct wastewater treatment facilities through Federal Fiscal Year (FY) 1990. A new authority was created in the amendments that allowed EPA to make grants to capitalize clean water state revolving funds (CWSRFs), the primary purpose of which is to provide loans and other financial assistance to municipalities for the construction of wastewater treatment facilities. Beginning in FY 1987, states were able to exercise an option to use a portion of their annual construction grants allotments for the capitalization of CWSRFs. The last year in which funds were appropriated for direct project funding through construction grants was FY 1990. Separate appropriations for CWSRF capitalization grants were authorized from FY 1989 through FY 1994. Although Congress has continued to provide funding beyond FY 1994 at its discretion, the funding for CWSRFs may stop.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 13:742 (December 1987), repromulgated LR 14:862 (December 1988), amended by the Office of the Secretary, Legal Division, LR 40:767 (April 2014).

§2103. Authority

A. Act 349 of the 1986 Regular Session of the Louisiana Legislature enacted R.S. 30:2011(D)(4), 2074(A)(4) and (B)(6), and 2078 relative to the Louisiana Environmental Quality Act. Those subsections were amended by Act 296 in the 2010 Regular Session of the Louisiana Legislature. Together, Acts 349 and 296 established the CWSRF; authorized the administrative authority of the Department of Environmental Quality to apply for and accept certain grants for the CWSRF; provided for matching funds; required that money received through such grants and state matching funds be deposited into the CWSRF; provided for the use, capitalization, investment, and disposition of the funds; provided for an exemption to certain public bond trust restrictions; and provided for related matters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 13:742 (December 1987), repromulgated LR 14:862 (December 1988), amended by the Office of the Secretary, Legal Division, LR 40:767 (April 2014).

§2105. Definitions

Act—Act 349 of the 1986 Louisiana Legislature enacting R.S. 30:2011(D)(4), 2074(A)(4) and (B)(6), and 2078 relative to the Louisiana Environmental Quality Act, and/or Act 296 of the 2010 Regular Session of the Louisiana Legislature, amending R.S. 30:2011(D)(4), 2074(A)(4) and (B)(6), and 2078.

Administrative Authority—the secretary of the department or his/her designee.

Allowable Cost—those project costs that are eligible, reasonable, necessary, and allocable to the project; permitted by the appropriate federal cost principles, and approved in the loan agreement.

Applicant—any political subdivision, agency, commission of the state, or private entity allowed by federal act or federal regulation, that submits an application for financial assistance in accordance with these regulations.

* * *

Cost—the cost of acquisition and construction; the cost of all land, rights-of-way, property rights, easements, franchise rights and interests required by the department for such acquisition and construction; the cost of all machinery, furnishings, and equipment; all financing charges, and interest prior to and during construction; the cost of all engineering services and all expenses of research and development with respect to eligible projects; the cost of all

legal services and expenses; the cost of all plans, specifications, land surveying and estimates of cost and revenues; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquisition or construction of any such project; all administrative expenses and such other expenses as may be necessary or incident to the acquisition or construction of the project, the financing of such acquisition or construction, including the amount authorized in the resolution of the department providing for the issuance of revenue bonds to be paid into any special funds from the proceeds of such bonds; and the financing of the placing of any such project in operation.

* * *

Eligible Recipient—a political subdivision, public trust, agency or commission of the state, or a private entity as allowed by the federal act and/or federal regulations.

* * *

Federal Act—the Federal Water Pollution Control Act Amendments of 1972, known as the Clean Water Act, as amended, 33 U.S.C. § 1245 et seq. (1972).

* * *

Financial Capability—the applicant shall demonstrate an unencumbered and sufficient future revenue stream to meet the annual debt service of the loan being provided by the CWSRF as determined by the administering authority. Sufficiency of a future revenue stream may be determined by examining audited financial statements, review of future net income based on increased user fees, and/or approval of the funding by the Louisiana State Bond Commission.

Initiation of Operation—for wastewater treatment projects, the date operations of the treatment works are initiated or are capable of being initiated, whichever is earlier.

* * *

Loan Program Agreement—a contractual arrangement by and between a municipality and the state acting by and through the department, providing for loans to such municipality for the purpose of paying the cost of construction of eligible projects.

Municipality—a city, town, village, district, parish, Native American tribe, or an authorized Native American tribal organization, or public body having jurisdiction over transport, treatment, and/or disposal of sewage, industrial waste, other waste.

* * *

Person—Repealed.

Pollution—

1. the discharge, release, escape, deposit or disposition, directly or indirectly, of treated or untreated sewage, industrial wastes or other wastes, of whatever kind or character, in or near any water of the state, in such condition, manner or quantity, as does, will, or is likely to contaminate or substantially contribute to the alteration of the physical, chemical or biological properties of any such waters, if such contamination or alteration where an *applicant* only contributes thereto, is to such an extent as to make any of such waters:

1.a. – 2. ...

Program Loans—loans made to an applicant by the state which are required to be repaid pursuant to a loan program agreement.

Project Completion—the date a project is complete and accepted by the owner. For wastewater treatment projects, the project completion is the initiation of operation date.

Replacement—obtaining and installing equipment, accessories, or appurtenances which are necessary during the useful life of the treatment works to maintain the capacity and performance for which such works were designed and constructed.

Secretary—Repealed.

* * *

User Charge—a charge levied on users of a treatment works for the cost of operation and maintenance, including replacement or loan payment.

Wastewater—any water containing sewage, industrial wastes, or other wastes or contaminants derived from the prior use of such water, and shall include without limiting the generality of the foregoing, surface water of the type storm sewers are designed to collect and dispose of.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 13:742 (December 1987), repromulgated LR 14:862 (December 1988), amended by the Office of the Secretary, Legal Division, LR 40:768 (April 2014).

§2107. Eligibility for Participation in Program

A. Loans may be made only to *eligible recipients* as defined in LAC 33:IX.2105 for the construction of *wastewater facilities* as defined in LAC 33:IX.2105 necessary to serve the population designated in the approved planning area for the *municipality* as defined in LAC 33:IX.2105, or to an *applicant* as defined in LAC 33:IX.2105 to implement an approved nonpoint source management plan. Loans to applicants may be used to

develop and implement estuary conservation and management plans.

B. Not every *cost* as defined in LAC 33:IX.2105 associated with an applicant's wastewater treatment project may be an *allowable cost* as defined in LAC 33:IX.2105 for loan participation. Allowable cost determinations are based on applicable law and regulations. Allowable costs may include those listed in LAC 33:IX.2121 of these rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 13:742 (December 1987), repromulgated LR 14:862 (December 1988), amended by the Office of the Secretary, Legal Division, LR 40:769 (April 2014).

§2109. Priority System

A. The state's *priority system* as defined in LAC 33:IX.2105 and the criteria contained therein will be used to generate an annual project priority list. The project priority list will consist of an ordered listing of all projects submitted by applicants that qualify for participation in the CWSRF program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 13:742 (December 1987), repromulgated LR 14:862 (December 1988), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2550 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2508 (October 2005), LR 33:2164 (October 2007), amended by the Office of the Secretary, Legal Division, LR 40:769 (April 2014).

§2111. Application Process for Funding

A. Any potential applicant applying for a project loan shall first submit a completed preapplication form and associated documentation to the department. All qualified projects for which a preapplication is submitted shall be included on the next fiscal year's project priority list in accordance with the S.T.E.T. priority system.

B. Applicants selected by the department to be tentatively funded for loan assistance in the current fiscal year shall be notified in writing.

C. An applicant notified by the department for tentative funding shall submit a completed application package to the department for review and approval. The contents of the application shall be consistent with the information detailed in the preapplication form. The application package shall include all application forms and schedules required by the department and documents necessary to demonstrate the necessity, and benefits, and costs associated with the project. Supporting documents may include, but are not limited to, the following:

1. feasibility studies, engineering reports, and environmental impact evaluations required by LAC 33:IX.2125;

2. project plans and specifications;

3. financial information (possibly including project schedules, financial audits, copies of ordinances, State Bond Commission approval, and other required forms); and

4. other documents that may be deemed necessary by the department.

D. Once all required information is received and approved by the department, a loan may be awarded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 13:742 (December 1987), repromulgated LR 14:862 (December 1988), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2550 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2508 (October 2005), LR 33:2164 (October 2007), amended by the Office of the Secretary, Legal Division, LR 40:769 (April 2014).

§2113. Loans

A. Loans shall be made only to eligible applicants that:

1. meet the requirements of *financial capability* as defined in LAC 33:IX.2105 set by the department to assure sufficient revenues to operate and maintain the facility for its useful life and to repay the loan;

2. possess an acceptable source of revenue for repayment of the loan. Acceptable sources of revenue for municipalities may include; *charges* as defined in LAC 33:IX.2105, sales taxes, property taxes, other sources of revenue that may be legally dedicated, and revenue that is deemed acceptable by the department;

3. agree to operate and maintain the wastewater facility so that the facility will function properly over the design life of the facility, which shall not be less than the term of the loan;

4. agree to properly maintain financial records, to allow an audit of the project's financial records by a certified public accountant, and to make these records available to the department upon request;

5. provide a written assurance, signed by an attorney, that the applicant has proper title, easement and right-of-way to the property upon or through which the project is to be constructed or extended; and

6. agree to provide a written notice to the department of completion of the project; and

7. ensure that the expenditure of funds by loan recipients for *construction* as defined in LAC 33:IX.2105 or other eligible project costs shall begin within six months after entering into a binding commitment or on a more stringent time frame as may be required by financing agreements. Failure by the loan recipient to start the expenditure of funds within one year after entering into a binding commitment will result in the withdrawal of all financial assistance from the CWSRF.

B. Loans shall be made for a period of time not to exceed 30 years.

C. Loan repayments of the principal and interest installments will be set by the department in the executed loan agreement. Interest payments on the amount drawn shall begin within one year following the loan closing. Principal repayments shall begin within one year following completion of the project, but no later than three years after the loan closing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 13:742 (December 1987), repromulgated LR 14:862 (December 1988), amended by the Office of the Secretary, Legal Division, LR 40:769 (April 2014).

§2115. Project Construction

A. The applicant shall comply with all state and federal laws, rules and regulations related to construction of the project. These items shall include, but shall not be limited to:

1. – 3. ...
4. Davis-Bacon Act (40 U.S.C. § 3141 et seq.) and related acts (if applicable);
5. performance and payment *bonds* as defined in LAC 33:IX.2105;
6. noncompetitive procurement; and
7. ...

B. Any project constructed in whole or in part with funds obtained with a loan through the CWSRF shall be constructed in accordance with the plans and specifications approved by the department. Any deviation from the approved plans and specifications shall be approved by the department separately through the use of addenda and/or change orders.

1. The applicant may issue, prior to bid opening, addenda to correct errors, to clarify information in bidding documents or to incorporate the current wage rate determination. The addenda shall be issued in a reasonable time prior to the deadline for the receipt of bids and the applicant shall insure that the addenda have been issued to each bidder.

2. The applicant shall be responsible for negotiation of construction contract change orders. During negotiations with the contractor, the applicant or, if authorized, his engineer shall:

- a. – c. ...
- d. submit to the department all change orders for review and approval.

C. The applicant shall submit to the department for review a complete statement of work to be performed, the terms and conditions of the proposed contract to be awarded, a clear explanation of the methods of bidding and of

evaluating bid prices and the limits of work for each item on the proposal form.

D. From the time of first submission of the loan application, throughout all stages of construction, and at any time while financial assistance from the CWSRF to the applicant is outstanding, the department, through its duly authorized representative, shall have the right to inspect any and all projects, and any and all incidental works, areas, facilities and premises otherwise pertaining to the project for which the application is made. The department shall further have the same right of inspection to inspect any and all books, accounts, records, contracts or other instruments, documents or information possessed by the applicant or entity representing the applicant which relate to the receipt, deposit and/or expenditure of financial assistance funds or to the planning, design, construction and operation of any facilities which may have been constructed as a result of such financial assistance. By submittal of a loan application to the department, the applicants shall be deemed to consent and agree to the right of reasonable inspection and all applicants shall allow the department all necessary and reasonable access and opportunity for such purposes.

E. The applicant shall provide the department with a written notification upon completion of any project for which financial assistance is provided through the CWSRF. The department shall conduct a final on-site inspection of the project and an audit of any and all financial assistance furnished to the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 13:742 (December 1987), repromulgated LR 14:862 (December 1988), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2551 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2508 (October 2005), LR 33:2164 (October 2007), amended by the Office of the Secretary, Legal Division, LR 40:770 (April 2014).

§2119. Miscellaneous

A. The department shall have an annual audit conducted of the fiscal operation of the CWSRF for submission to the governor and the legislature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 13:742 (December 1987), repromulgated LR 14:862 (December 1988), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2551 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2508 (October 2005), LR 33:2164 (October 2007), amended by the Office of the Secretary, Legal Division, LR 40:770 (April 2014).

§2121. Allowable Costs

A. *Allowable costs* as defined in LAC 33:IX.2105 may include, but may not be limited to, the following:

1. – 3. ...

4. facilities planning directly related to a treatment works;
5. – 11. ...
12. a reasonable inventory of laboratory chemicals and/or other supplies necessary to initiate operation of the project;
13. start-up services for new treatment works, in accordance with guidance issued by the department;
14. project identification signs, if necessary;
15. development of a municipal pre-treatment program and purchase of monitoring equipment and construction of facilities to be used by the municipal treatment works in the pre-treatment program; and
16. costs of complying with procurement requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 13:742 (December 1987), repromulgated LR 14:862 (December 1988), amended by the Office of the Secretary, Legal Division, LR 40:770 (April 2014).

Subchapter B. Clean Water State Revolving Fund Priority System

§2123. Introduction to the Clean Water State Revolving Fund (CWSRF) Priority System

A. Introduction

1. On October 18, 1972, the Federal Water Pollution Control Act Amendments became Public Law 92-500. PL 92-500 was amended by PL 95-217, the Clean Water Act of 1977, PL 97-117, the Municipal Wastewater Treatment Construction Grant Amendments of 1981, and by PL 100-4 (Water Quality Act of 1987).

2. The primary aim of the *federal act* as defined in LAC 33:IX.2105 is to “restore and maintain the chemical, physical, and biological integrity of the nation’s water.” The federal act states the goal of suitable water quality for recreational contact, and for protection and propagation of fish and wildlife. In addition, the federal act emphasizes the need for controlling or eliminating discharges of toxic pollutants through the control of point and nonpoint sources of *pollution* as defined in LAC 33:IX.2105. A permit program has been established to restrict pollutant discharges from factories, municipalities, and large agricultural operations. The permit program has been expanded to include pollutants entering the nation’s water through nonpoint sources, including stormwater runoff from municipalities, factories, agricultural operations, and other sources that do not require NPDES permits.

3. The Water Quality Act of 1987 added Title VI to the Clean Water Act, which provided for a program of low interest loans. Section 603(c) of the federal act states that the amounts of funds available to each state water pollution

control revolving fund shall be used only for providing financial assistance:

a. to any *municipality* as defined in the LAC 33:IX.2105, intermunicipal, interstate, or state agency for *construction* as defined in the LAC 33:IX.2105 of publicly owned treatment works as defined in section 212 of the Clean Water Act;

b. for the implementation of a management program established under section 319 of the Clean Water Act; and

c. for development and implementation of a conservation and management plan under section 320 of the Clean Water Act.

4. Section 603(g) of the federal act states that the state may provide financial assistance with the state revolving loan fund only if a construction project as described in subsection (c)(1) is on the state’s priority list under section 216 of the federal act. Assistance may be provided regardless of the rank of a project on the list. Section 603(g) of the federal act does not require that a project for the implementation of a management program established under section 319 of the federal act, and for development and implementation of a conservation and management plan under section 320 of the federal act shall be on the state’s priority list to receive financial assistance. These projects shall be included on the priority list and assigned priority ratings in accordance with LAC 33:IX.2123.C.7.

5. Section 603(c) of the federal act states that after public comment and review, each state shall prepare an annual plan identifying the intended uses of the money to its revolving loan fund.

6. The department has established the state of Louisiana CWSRF priority system due to the federal requirements of the program.

7. This system provides a priority list of publicly owned treatment works projects that meet the definition in section 212 of the federal act, and provides for the selection of eligible projects to be included on the annual intended use plan (IUP) for each year.

B. List of Stream Subsegments and Subsegment Priority Numbers

1. The priority of the program’s management is to give more importance to the areas where significant problems occur.

2. The state of Louisiana is divided into 12 water quality management basins which exhibit distinct hydrologic characteristics. Each designated basin is divided into stream segments and subsegments which exhibit common reactions to stresses (e.g., pollutants). The stream segmentation for Louisiana is contained in the area-wide *water quality management plans* as defined in LAC 33:IX.2105 and submitted under section 303(e) of the federal act.

3. In order to direct the water quality management effort, each stream subsegment is ranked according to its designated uses and the degree to which they are supported.

The values from each of the category classifications, from Table B-1 of this Section, are multiplied together to produce a stream subsegment priority number. If a subsegment has multiple designated uses, the single highest product of a designated use and degree of support shall be utilized as the stream subsegment priority number.

4. Information on designated uses and degree of support is taken from the latest approved Louisiana water quality inventory integrated report, which may be found on the department's website.

5. The stream priority list is used as the base for the later determination of the project priority ratings.

Table B-1: Subsegment Priority Ranking Multipliers	
Designated Uses	Multiplier
Shellfish Propagation	20
Sole Source Drinking Water Supply	15
Outstanding Natural Resource	10
Primary Contact Recreation	5
Secondary Contact Recreation	5
Fish and Wildlife Propagation	5
Agriculture	5
Limited Aquatic Wildlife Use	2
Degree of Support	Multiplier
Not Supported	5
Partially Supported	4
Fully Supported but Threatened	3
Fully Supported	2
Formula:	
Designated Uses X Degree of Support = Stream Subsegment Priority Number	

C. List by Priority Rank

1. In conjunction with the priority of the stream subsegments of the state of Louisiana, each municipality that requests consideration for funding is rated by its ability to comply with the federal act.

2. The priority rating for each municipality being considered for a loan is composed of the stream subsegment priority rating and the municipality factor. These numbers are added together to form the basic project priority rating.

3. The municipality factor is the summation of the category factor and the pollution reduction factor. The category factor depends on the age of a particular treatment or collection system within a project area.

a. The category factor value for treatment system only projects shall be obtained from Table C-1 of this Section.

b. The category factor value for collection system projects shall be obtained from Table C-2 of this Section.

c. The category factor value for treatment and collection system projects shall be the higher values from Table C-1 or C-2 of this Section and shall be used to calculate the municipality factor.

d. The pollution reduction factor value is an indication of the ability to reduce the pollution discharged into the receiving waters, and shall be obtained from Table C-3 of this Section.

Table C-1 Treatment System Category Factor				
Age of Treatment Plant	Type of Treatment Plant			
	Mechanical Plant	Aerated Lagoon	Stabilization Pond	Other
0 - 5 years	2	1	0	0
6 - 10 years	4	2	1	0
11 - 15 years	6	4	2	1
16 - 20 years	8	5	3	1
Over 20 years	10	7	4	2

Table C-2 Collection System Category Factor	
Age of Collection System	Points
0 - 10 years	2
11 - 20 years	4
21 - 30 years	6
31 - 40 years	8
Over 40 years	10

Table C-3 Pollution Reduction Factor				
Present Treatment Level	Future Level of Treatment			
	Secondary	Advanced (BOD≥20)	Advanced (20>BOD≥10)	Advanced (BOD<10)
Raw (from existing outfall)	80	90	90	100
Less than Secondary	60	70	80	90
Secondary	20*	60	70	80
Advanced (BOD≥20)	N/A	20*	60	70
Advanced (20>BOD≥10)	N/A	N/A	20*	60
Advanced (BOD<10)	N/A	N/A	N/A	20*
Unsewered (no outfall)	30	40	50	60
N/A- No reduction in pollution discharge anticipated				20
* If no change to treatment, but increase in capacity, change 20 to 40 Formula: Category Factor + Pollution Reduction Factor = Municipality Factor				

4. A separate municipality factor shall be determined for each treatment facility and the collection system within its service area. When two or more treatment facilities are included in a single project, the municipality factor for the project will be the weighted average, according to population served for all treatment facilities included in the project regardless of whether they are in the same or different municipalities.

$$\text{Basic Project Priority Rating} = \text{Stream Subsegment Priority Rating} + \text{Municipality Factor}$$

5. The priority rating for a municipality may be reconsidered and adjusted when new information is made available. Information may result from water quality analysis, facility planning, etc.

6. Any municipality may request a reconsideration of its priority rating. Such a request shall include the reason(s) the municipality believes the priority rating is incorrect.

7. Projects for the implementation of a management program established under section 319 of the Federal Act, and for development and implementation of a conservation and management plan under section 320 of the Federal Act, shall be assigned a stream subsegment priority number based on the most impacted by the project. These projects shall also be assigned an additional factor based on the ability of the project to reduce pollution in receiving waters. This factor shall be assigned by the department based on evaluation of individual project applications and shall not exceed 100 points. The basic priority rating for projects under sections 319 and 320 of the Federal Act are detailed in the equation below.

$$\text{Basic Project Priority Rating} = \text{Stream Subsegment Priority Rating} + \text{Additional Assigned Factor}$$

D. CWSRF Priority List

1. Upon receipt of a request by the authorized representative of an applicant, the basic priority rating will be determined and the proposed project shall be placed on the CWSRF priority list.

2. For public entities only, requests for inclusion on the CWSRF priority list shall include:

- a. a resolution from the governing authority designating a project representative and authorizing him/her to submit preapplication material;
- b. a completed preapplication; and
- c. a map of the proposed planning area.

3. It is the responsibility of each authorized project representative to maintain current and accurate information for his/her project, and to submit any revised or updated project information to the department each year. The information will be used to prepare the CWSRF priority list.

4. The loan amount shown on the list shall be the estimated amount of the items eligible for loan assistance. Eligibility of specific items shall be based on the latest federal requirements in effect at the time the list is prepared. Should these requirements be changed subsequent to preparation of the list, all projects on the list shall be adjusted accordingly. The monetary amount of each item shall be based on the latest information supplied by the authorized project representative in accordance with Paragraph D.2 of this Section.

5. Projects normally proceed by facility planning, design, and construction. Projects that have completed facility planning and design, and are ready to begin construction may be considered for funding. Projects shall be awarded points in addition to the basic priority rating based on the readiness to proceed to construction in accordance with the Table D.1 of this Section.

Table D-1	
Milestone	Points
Project has completed facility planning and planning documents have been approved	1000
The plan and design for the project has been completed, and the specifications have been approved	2000

6. Assistance may be offered in several phases to large projects upon request by the authorized project representative. Assistance is based on a comparison of project cost and funds available, or other factors that may require delayed funding for portions of a project. Each phase of a project shall be listed separately on the CWSRF priority list. All phases shall have the same basic priority rating, but each phase will have its own points awarded based on readiness to proceed.

7. The CWSRF priority list shall include all projects that have requested funding assistance, ranked in priority order, regardless of the amount of funds available. The priority list shall be used for the later preparation of the CWSRF Intended Use Plan.

8. Projects on the CWSRF priority list shall be selected to receive funds from the amount expected to be available in accordance with Paragraph E.2 of this Section, less any reserves established in accordance with Subsection F of this Section.

9. The department shall provide public notice of the CWSRF priority list by publishing the availability of the list in the official state journal and by placing the notice on the DEQ website. The public shall have 30 days from the publication date of the notice to provide written comments to the department. After the end of the 30 day comment period, the department shall hold a public hearing on the CWSRF priority list. The department shall consider all comments received and make any changes deemed necessary. Afterwards, the department shall submit the CWSRF priority list to the EPA.

10. Any project or project phase shall be removed from the CWSRF priority list once funding for the project or project phase has been provided through the CWSRF. The project or project phase shall be removed after it been constructed using another source of funds.

11. Any project request without written communication with the department and no presentation of progress toward prerequisites to funding for a period of five years shall be deemed to be an inactive project and may be removed from the CWSRF priority list. Prior to removal of an inactive project from the CWSRF priority list, the department shall

contact the project representative in writing to inform him/her of the impending removal.

12. The CWSRF priority list is divided into the fundable portion and the future funding portion. The fundable portion includes those projects expected to be awarded assistance during the fiscal year in which the list was prepared. The future funding portion includes those projects expected to receive funding in future fiscal years.

13. A project may be moved from the fundable portion to the future funding portion of the list, if the department determines that the project will not be ready to proceed during the funding year. The department shall contact the project representative in writing to advise him/her of the impending decision to move the project to the future funding list. The applicant shall have 30 days to present updated information to avoid being moved to the future funding list.

14. Projects from the future funding portion of the list that have completed the priority list public participation requirements may advance to the fundable portion of the list if program funding allows, or if additional funds are available. Individual projects shall advance in accordance with the provisions of Paragraph D.8 of this Section, until the available federal funding is consumed if additional funds are available.

15. If the actual amount available during the year is less than the projected amount expected to be available in accordance with Paragraph E.2 of this Section, and it is not possible to fund all projects on the fundable portion of the priority list, then those projects selected last for inclusion on the priority list will be moved from the fundable portion of the list to the future funding portion until the remaining projects can be funded with the available funds.

16. If granting the additional funds would result in insufficient funds for the remaining projects on the fundable portion, the additional funds shall not be granted. The project contact may request that additional funds be added to the future funding portion of the project.

E. Intended Use Plan (IUP)

1. An is prepared for each state fiscal year (SFY), and it details the intended use of amounts expected to be available to the CWSRF during the SFY. These intended uses shall include loans for projects and other allowable uses of the fund. This includes, but is not limited to, repayment of *bonds* as defined in LAC 33:IX.2105 issued by the fund, loan guarantees, insurance for local obligations, and payment of allowable costs of administering the fund. The priority list from Subsection D of this Section is an integral component of the IUP.

2. On July 1 of each year the *administrative authority* as defined in LAC 33:IX.2105, or his/her designee, shall determine the loan amount expected to be available for projects in the current SFY.

3. Of the amount expected to be available in accordance with Paragraph E.2 of this Section, certain

amounts shall be reserved in accordance with Subsection F of this Section.

4. Projects shall be included on the current CWSRF priority list that have met public participation requirements and have been submitted to the EPA in order to be selected for the IUP. Projects on the proposed CWSRF priority list may be selected for the proposed IUP, provided that both the proposed priority list and IUP meet public participation requirements and are accepted by the EPA.

5. The department shall provide a CWSRF IUP public notice by publishing it in the official state journal and by placing the notice on the DEQ website. The public shall have 10 business days from the publication of the notice to provide written comments to the department. After the end of the 10 business-day comment period, the department may hold a public hearing on the CWSRF IUP. The department shall consider all comments received and make any changes deemed necessary.

6. The CWSRF IUP shall be submitted to the EPA for review and approval after the public comment period has expired.

F. Reserves Related to the IUP

1. Reserves for State Management Assistance

a. The state may set aside a portion of the total funds available during each SFY for use by the department in fulfilling its obligations to manage the CWSRF program.

b. The reserve shall be limited to the amount authorized by federal law as a percentage of each federal capitalization grant.

2. Reserve for Loans for Facilities Planning and Design

a. The state may set aside a portion of the total funds available during the SFY for loans to applicants for facilities planning and design.

b. The reserve is limited to applicants who meet all of the following conditions.

i. The construction portion of the project shall appear within the five year planning portion of the IUP.

ii. The loan shall be used to perform facility planning or design work that has not been previously funded.

iii. The applicant certifies that it does not have the financial capability to complete facility planning and design work without financial assistance.

c. The reserve shall be implemented only to the extent that the department deems necessary to provide assistance to applicants who are unable to complete facilities planning and design work without assistance. Applicants are expected to receive assistance for construction when facility planning and design work are completed. This reserve shall not exceed 10 percent of the funds available, in accordance with Paragraph E.2 of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 17:342 (December 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2551 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2508 (October 2005), LR 33:2164 (October 2007), amended by the Office of the Secretary, Legal Division, LR 40:771 (April 2014).

Subchapter C. State Environmental Review Process

§2125. Introduction to the State Environmental Review Process

A. The state environmental review process (SERP) provides the policy for conducting environmental reviews of construction projects that are funded by federal funds in Louisiana's CWSRF. The reviews shall be consistent with the requirements of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 et seq., as implemented by the Council on Environmental Quality (CEQ) NEPA Regulations (40 CFR Parts 1500-1508). Pursuant to the 1987 Amendments to the Clean Water Act, the United States Environmental Protection Agency (EPA) specified that state agencies may either develop or revise their own environmental review methods. They may also adopt and apply the procedures of 40 Code of Federal Regulations (CFR) part 6. The CWSRF has adopted the procedures as outlined in 40 CFR part 6, *Procedures for Implementing the National Environmental Policy Act and Assessing the Environmental Effect Abroad of EPA Actions*.

B. All terminology used in this document is consistent with the terms defined in 40 CFR part 1508 (CEQ NEPA Regulations). The following definitions are provided for clarity.

Environmental Information Document (EID)—any written analysis prepared by an applicant, or their authorized representative, describing the environmental impacts of a proposed project. This document shall be of sufficient scope to enable the CWSRF to identify potentially significant environmental concerns and the associated potential impacts of the proposed project.

Environmental Review—the process whereby an evaluation is undertaken by the CWSRF to determine whether a proposed project may have a significant impact on the environment.

Preliminary Engineering Report (PER)—any written study prepared by an applicant, or their authorized representative, describing the need and recommendations for new, expanded, or upgraded wastewater facilities. The documents shall include a study of any socioeconomic, environmental, or other unique features. It shall include; a forecast of planning area future conditions a detailed economic analysis for each principal alternative, and a description of the process, design flow, effluent limits, cost,

and plan for implementation of the proposed wastewater treatment works.

C. The department shall conduct a NEPA-type review of construction projects proposed for funding through the CWSRF, if required. This review shall be conducted as early as possible in project formulation to ensure that all projects comply with applicable local, state, and federal laws, and departmental rules relating to the protection and enhancement of the environment. Based upon the department's review, it shall make a formal determination regarding the potential social and environmental impacts of the proposed project. The determination shall include any necessary mitigation measures as a condition of financial assistance. No financial assistance shall be provided until a final environmental determination has been made. Any public, private, or governmental entity shall be allowed to seek any administrative or legal review provided by law from the department determinations. Applicants to the CWSRF shall obtain guidance from the department regarding the scope of the environmental review to be conducted, and the environmental information the applicant is required to submit in support of the proposed project. Applicants are strongly encouraged to consult with the department in the early stage of project formulation. This consultation is to determine whether a project is eligible to be categorically excluded from a substantive environmental review, determine alternatives to the proposed project for evaluation, and/or identify potential environmental issues which may impact its application.

1. The determinations that will apply to construction projects proposed to be implemented include a determination to:

- a. issue a categorical exclusion (CE);
 - b. issue a finding of no significant impact (FONSI);
- or
- c. require an environmental impact statement (EIS).

2. A project may be categorically excluded from a substantive environmental review if the project fits within a category of actions identified in Subparagraph C.2.c of this Section that are eligible for exclusion and the project does not involve any extraordinary circumstances identified in Subparagraph C.2.d of this Section. Applicants are not required to prepare an environmental information document (EID) or Preliminary Engineering Report (PER) for projects that are being considered for CE. An environmental assessment (EA) is not required if the project is categorically excluded.

a. If a project is determined to be categorically excluded, a written CE determination shall be prepared by the department and published in the official parish journal at the location of the project. The CE determination constitutes a final decision of the administrative authority.

b. The department may identify categories of actions that do not individually, cumulatively over time, or in conjunction with other actions, have a significant effect on the quality of the human environment. These do not include

projects that provide a capacity to serve a population 30 percent greater than the existing population, that directly or indirectly involve upgrading, or that extend infrastructure systems primarily for the purposes of future development.

c. Department-identified CEs include, but may not be limited to:

i. actions at facilities involving routine facility maintenance, repair, and groundskeeping; minor rehabilitation, restoration, renovation, or revitalization of existing facilities; *replacement* as defined in LAC 33:IX.2105, of equipment; acquisition and installation of equipment (including equipment needed solely for purposes of emergency preparedness); or construction of new minor ancillary facilities adjacent to or on the same property as existing facilities;

ii. actions relating to existing infrastructure systems (i.e., sewer systems, drinking water supply systems, and stormwater systems that include combined sewer overflow systems) that involve minor upgrading, minor expansion of system capacity or rehabilitation (i.e., functional replacement) of the existing system and system components, (i.e., sewer collection network and treatment system; the system to collect, treat, store, and distribute drinking water; and stormwater systems, including combined sewer overflow systems) or construction of new minor ancillary facilities adjacent to or on the same property as existing facilities. This category does not include actions that:

(a). involve new or relocated discharges to surface or ground water;

(b). will likely result in the substantial increase in the volume or the loading of pollutant to the receiving water;

(c). will provide capacity to serve a population 30 percent greater than the existing population;

(d). are not supported by the state, other regional growth plan, or strategy; or

(e). directly or indirectly involve or relate to upgrading or extending infrastructure systems primarily for the purposes of future development; and

iii. actions in unsewered communities involving the replacement of existing on-site systems, providing the new on-site systems do not result in substantial increases in the volume of discharge, or the loadings of pollutants from existing sources, or relocating an existing discharge.

d. Extraordinary circumstances that would preclude issuance of a CE include, but are not limited to, the following:

i. the proposed project is likely to have potentially significant environmental impacts on the quality of the human environment either individually or cumulatively over time;

ii. the proposed project is likely to have disproportionately high and adverse human health or environmental effects on any community including minority

communities, low income communities, or federally-recognized Native American tribal communities;

iii. the proposed project is likely to significantly affect federally listed, threatened, endangered species, or their critical habitat;

iv. the proposed project is likely to significantly affect national natural landmarks or any property with nationally significant architectural, historic, prehistoric, archeological, or cultural value, including but not limited to, property listed on or eligible for the National Register of Historic Places;

v. the proposed project is likely to significantly affect environmentally important natural resource areas such as wetlands, floodplains, significant agricultural lands, aquifer recharge zones, coastal zones, barrier islands, wild and scenic rivers, and significant fish or wildlife habitat;

vi. the proposed project is likely to cause significant adverse air quality effects;

vii. the proposed project is likely to have a significant effect on the pattern, type of land use (i.e., industrial, commercial, agricultural, recreational, or residential), growth and distribution of population including altering the character of existing residential areas, or not consistent with state government, local government, or federally-recognized Native American tribe approved land use plans, or federal land management plans;

viii. the proposed project is likely to cause significant public controversy about a potential environmental impact of the proposed project; and

ix. the proposed project is likely to conflict with federal, state, local government, federally-recognized Native American tribe, federal environmental, resource protection, or land use laws or regulations.

e. A CE determination shall be rescinded if:

i. the proposed project no longer complies with the applicable 40 CFR part 6 criteria for CE due to project changes, or

ii. new information involves or relates to at least one of the extraordinary circumstances, or otherwise indicates serious environmental issues exist.

f. When the department has determined that a CE is to be rescinded based upon this criteria, the department shall prepare a notice of intent (NOI) to rescind the CE previously applied to the project and require the preparation of an EID or EIS.

3. A FONSI may be prepared based on a proposed project's EA, which will be prepared based on a substantive environmental review conducted by the department and supported by an EID prepared in conjunction with the facility plan (FP) prepared by the applicant. If the EA supports the finding that the proposed project will not have a significant effect on the human environment or includes any commitments to mitigation that render the impacts of the proposed project insignificant, then the administrative

authority will issue a FONSI. If the EA does not support a FONSI, then an EIS shall be prepared.

4. An EIS may be required based on a proposed project's EA, which will be prepared based on a substantive environmental review conducted by the department and supported by an EID prepared in conjunction with the PER prepared by the applicant. An EIS may also be required without an EA when the proposed project is deemed a major action significantly affecting the quality of the human environment. A project normally requires an EIS if the administrative authority determines:

a. the project will significantly affect the pattern and type of land use (i.e., industrial, commercial, recreational, or residential), or growth and distribution of the population;

b. the proposed project is inconsistent with federal, state, local government, federally-recognized Native American tribe, or federal environmental, resource protection, or land-use laws and management plans for protection of the environment;

c. the project is likely to significantly affect environmentally important resources such as:

- i. wetlands;
- ii. significant agricultural lands;
- iii. aquifer recharge zones;
- iv. threatened and endangered species or their habitats;
- v. coastal zones;
- vi. barrier islands;
- vii. wild and scenic rivers;
- viii. significant fish or wildlife habitat;
- ix. national natural landmarks; and/or
- x. any property on or eligible for the National Register of Historic Places; or

d. the project is likely to directly or indirectly, through induced development, involve uncertain environmental effects, produce significant cumulative impacts in conjunction with other government projects, or have significant adverse effects upon local ambient air quality, local noise levels, surface water reservoirs, or navigation projects.

5. Amended Projects, Previous Environmental Determinations, and Usage of Other Relevant Environmental Documents by the Department

a. In the event that changes are made to a project after an environmental determination has been issued, the administrative authority shall, prior to approval, examine the plans and specifications, loan application, and related documents for consistency with the environmental determination. Based upon the department's review of the amended project, the administrative authority shall:

i. reaffirm and amend, as necessary, the original determination through the issuance of a statement of findings;

ii. rescind a CE and issue a NOI that the preparation of an EID or an EIS will be required;

iii. revise a FONSI and make available to the public;

iv. rescind a FONSI and issue a NOI that the preparation of an EIS will be required;

v. revise a record of decision (ROD) associated with an EIS and make available to the public; or

vi. rescind a ROD via the issuance of a NOI that financial assistance will not be provided.

b. The administrative authority may accept and adopt previous NEPA environmental determinations (i.e., CE, EA/FONSI, and EIS/ROD) issued within the last five years with the submittal of an application to the CWSRF. Acceptance of previous environmental determinations shall be affirmed through the issuance of a statement of findings. Otherwise, the administrative authority shall re-evaluate the project, environmental conditions, public views, and may reaffirm the original environmental determination, or have a new environmental review conducted in accordance with Subsection A of this Section.

c. The administrative authority may review relevant planning, decision making, and/or environmental review documents to determine if the proposed project or any of its alternatives have previously been considered. The department may adopt the existing document, or incorporate by reference, any pertinent part of that document.

6. Construction Prior to Environmental Review

a. An applicant may, at the applicant's risk, commence construction of part of the proposed project prior to completion of the necessary environmental review when that part of the project will:

i. immediately remedy a severe public health, water quality, or environmental problem;

ii. not preclude any identified reasonable alternatives;

iii. not cause significant direct or indirect environmental impacts including those which cannot be acceptably mitigated without completing the entire project;

iv. not be significantly controversial concerning a potential environmental impact; and

v. all other parts of the proposed project remain subject to the completion of the environmental review process prior to construction.

b. The administrative authority shall make a determination of eligibility for work performed under Subparagraph C.6.a of this Section after submittal, approval of the PER, and completion of the environmental review.

There is no guarantee that work undertaken prior to the loan award will be eligible for funding.

D. Environmental Information Requirements

1. A minimum of one copy of the information required in this Subsection shall be submitted to the department by the applicant.

a. Categorical Exclusions (CE). Applicants seeking a CE shall provide the department with sufficient documentation to demonstrate compliance with the criteria listed under Subparagraph C.2.c. of this Section. If requested by the administrative authority the applicant shall submit additional information to support the application of a CE to the applicant's project and/or whether any extraordinary circumstance applies. At a minimum, additional information consists of:

- i. a brief description of the proposed project, including maps and drawings;
- ii. a brief description of the no action alternative;
- iii. a statement specifying the department-identified CE, as listed in Subparagraph C.2.c of this Section which applies to the proposed project; and
- iv. a statement that no extraordinary circumstances, as identified in Subparagraph C.2.d of this Section, apply to the proposed project.

b. Environmental Information Documents (EID). An EID is not required when the project is categorically excluded and does not involve extraordinary circumstances, or when the project has already been determined to require the preparation of an EIS. Otherwise, the applicant shall submit an EID that provides sufficient information for the administrative authority to undertake an environmental review and prepare either an EA/FONSI and/or request the preparation of an EIS for the project. The EID may be incorporated into the PER or submitted separately, and the administrative authority shall provide guidance to applicants on both the format and contents of the EID.

i. Contents. At a minimum the contents of the EID shall include:

- (a). the purpose and need for the project;
- (b). the existing environmental setting of the project;
- (c). the alternatives to the project, including the no action alternative;
- (d). a description of the proposed project;
- (e). the potential environmental impacts of the proposed project, including those which cannot be avoided;
- (f). a description of public participation activities conducted, issues raised, and changes to the project which may be made as a result of the public participation process; and
- (g). documentation of coordination with appropriate governmental agencies.

ii. Availability to the Public. At least 30 days in advance of submittal and availability of the PER and EID, the applicant shall provide a public notice of the availability of the PER and EID for public review and comment in a newspaper of general circulation in the project area. The applicant shall make the PER and EID available to all federal, state, local agencies, the affected public, and others that may have previously expressed an interest in the project. A public hearing may be required by the department if there is substantial public interest in conducting a hearing, or a hearing is requested by another agency with jurisdiction over the proposed project. In the event that a public hearing is required, the administrative authority shall provide guidance to the applicant regarding the contents of the public hearing notice and of the public hearing. The public hearing and the availability of the PER for public review shall be advertised by the applicant at least 30 days in advance in the newspaper of general circulation in the project area. Following the public hearing the applicant shall provide the department with a verbatim transcript of the hearing, a copy of the public hearing notice with proof of publication, a list of all applicants and agencies notified of the public hearing, a list of all attendees, and responses to any substantive comments received.

c. Environmental Impact Statements (EIS). In the event that an EIS is required, the applicant shall provide sound analysis and clear presentation of alternatives, including the no action alternative, the selected alternative, and their environmental, economic, and social impacts. The administrative authority may request the applicant to prepare an EIS without first undertaking an EA. The EIS format shall be followed by the applicant unless the administrative authority determines otherwise. The EIS format shall include:

- i. a cover sheet identifying the applicant, the project(s), and the program through which financial assistance is requested; and
- ii. an executive summary of the critical issues of the EIS in sufficient detail that the reader may become familiar with the proposed project and its cumulative effects. The summary shall include:
 - (a). a description of the existing problem;
 - (b). a description of each alternative, including the no action alternative;
 - (c). a listing of each alternative's potential environmental impacts, mitigation measures, and any areas of concern; and
 - (d). any conclusions.
- iii. The body of the EIS shall contain the following information:
 - (a). a complete and clear description of the purpose and need for the proposed project that clearly identifies its goals and objectives;
 - (b). a discussion of alternatives including, but not limited to:

(i). a balanced description of each alternative considered by the applicant including the no action alternative;

(ii). description including the size and location of the facilities, water lines, land requirements, and construction schedules; and

(iii).the preferred alternative identified, and any alternatives that are eliminated from examination along with the reasons for their elimination;

(c). a description of the alternatives available to the department including:

(i). providing financial assistance to the proposed project;

(ii). requiring that the proposed project be modified prior to providing financial assistance with conditions requiring the implementation of mitigation measures; and

(iii).not providing financial assistance to the proposed project;

(d). a description of the alternatives available to other local, state, and federal agencies which may have the ability to issue or deny a permit, provide financial assistance, or otherwise affect or have an interest in any of the alternatives; and

(e). a description of the affected environment and environmental impacts of each alternative, including, but not limited to:

(i). The alternative evaluation of the affected environment, which shall be based on, but not be limited to: hydrology, geology, air quality, noise, biology, socioeconomic factors, land use, and cultural resources of the planning area;

(ii). analysis of the total impact of each alternative in a manner that will facilitate comparison;

(iii).the effect of the no action alternative to serve as a baseline for comparison of the adverse and beneficial impacts of the other alternatives; and

(iv).description of the existing environment in the no action section for background information;

iv. the draft EIS shall be public noticed for a period of 30 days. The final EIS shall include a list of comments, a list of commenters, a commenter key, responses, and the final decision(s) of the department on any such comments pertinent to the project or the EIS;

v. material incorporated by reference into an EIS shall be organized to the extent possible into a supplemental information document and be made available for public review upon request. No material may be incorporated by reference unless it is reasonably available for inspection by interested applicants within the comment periods specified in Clause D.1.c.iv of this Section and Subclause D.1.c.vii.(b.) of this Section;

vi. when an EIS is prepared by contractors either for the department or the applicant, the department shall independently evaluate the EIS prior to issuance of the record of decision and take responsibility for its scope and contents. The department staff who reviews this evaluation shall be identified under the list of preparers, along with those of the contractor, and any other parties responsible for the content of the EIS;

vii. public participation required for an EIS shall be conducted by the department, but may be supplemented by the applicant depending upon the nature and scope of the proposed project. The following requirements represent the minimum allowable to the applicant and the department;

(a). as soon as practicable, and in accordance with Subparagraph E.2.c of this Section, the department shall convene a scoping meeting of the affected federal, state, and local agencies; the applicant; and other interested parties to determine the scope of the EIS after a determination has been made that an EIS is required. As part of the scoping meeting the department shall, at a minimum:

(i). determine the significant issues and the scope of analysis required of those issues in the EIS;

(ii). identify the preliminary range of alternatives to be considered;

(iii).identify potential cooperating agencies and determine the information or analyses that may be needed from cooperating agencies or other parties;

(iv).discuss the method of EIS preparation and the public participation strategy;

(v). identify consultation requirements of other laws and regulations; and

(vi).determine the relationship between the preparation of the EIS and the completion of the PER, and any necessary arrangements for coordination of the preparation of both documents;

(b). following the scoping process the administrative authority shall begin the identification and evaluation of all potential available alternatives to adequately address the range of issues developed in the scoping process. A summary, including a list of the significant issues identified, shall be provided to the applicant and other interested parties. Preparation of the EIS shall be done at the discretion of the department, by the staff, consultants to the department, or a consultant contracted by the applicant subject to approval by the department. When a consultant is used for the preparation of the EIS, the consultant shall be required to execute a disclosure statement signifying it has no financial or other conflicting interest in the outcome of the project. Both the draft EIS and the final EIS shall be distributed and made available for public review in a manner consistent with the requirements of Clause D.1.b.ii of this Section. The department shall publish, in the *Louisiana Register* and a newspaper(s) of general circulation in the project area, a notice of availability of the final EIS giving locations at which it will be available for public

review for at least 30 days prior to making the decision to provide or deny financial assistance to the proposed project;

(c). at the time of its decision to provide or deny financial assistance to the proposed project, the administrative authority shall prepare a concise public ROD that shall:

(i). include a brief description of the proposed project and all alternatives considered in the EIS, specifying the alternative that was considered to be environmentally preferable;

(ii). clearly state the decision being made and provide an explanation behind the decision; and

(iii). identify, if necessary, any commitments to mitigation.

E. Environmental Reviews and Determinations

1. A substantial environmental review resulting in the preparation of an EA is required for proposed projects that are expected to result in environmental impacts and where the significance of the impacts is not known. An EA is not required if the proposed project is categorically excluded, or if the administrative authority has determined that an EIS is required. The environmental review, supported by the applicant's EID and PER, shall be conducted by the administrative authority to determine whether any significant environmental impacts are anticipated and whether any changes may be made to the proposed project in order to eliminate significant adverse environmental impacts. As part of the review, the administrative authority may require the applicant to submit additional information or undertake additional public participation and coordination to support its environmental determination. Based on the environmental review, the administrative authority shall prepare an EA that provides sufficient information and analysis for determining whether to issue a FONSI or require the preparation of an EIS. The EA shall include:

- a. a brief discussion of the:
 - i. need for the proposed project;
 - ii. alternatives considered, including the no action alternative;
 - iii. existing environment; and
 - iv. environmental impacts of the proposed project;
- b. identification and description of any mitigation measures considered, including any mitigation measures that shall be adopted to ensure the action will not have significant impacts; and
- c. incorporation of documents by reference, if appropriate, including the EID and PER for the proposed project.

2. Based on the EA, the administrative authority shall issue a FONSI or a NOI to prepare an EIS.

- a. The FONSI shall include a brief description of:
 - i. the proposed project;

ii. any mitigation measures required of the applicant as a condition of its receipt of financial assistance; and

iii. a statement to the effect that comments supporting or opposing with the FONSI may be submitted for consideration by the department.

b. The FONSI and EA shall be distributed to all public and private parties, governmental entities, and agencies that have previously expressed an interest in the proposed project. The availability of the FONSI and EA shall be public noticed in a newspaper of general circulation in the project area and invite the affected public to review and provide comments. The public notice initiates the required 30-day public comment period. No action regarding approval of the PER or the provision of financial assistance shall be taken by the department until the end of the public comment period.

c. The NOI to prepare an EIS shall include a brief description of the:

- i. proposed project and possible alternatives;
- ii. department's proposed scoping process (see Clause D.1.c.vii of this Section) including an invitation for comments and suggestions on the scope of the EIS, if available, when, and where any scoping meeting will be held; and
- iii. name and contact information for the applicant's representative designated by the department to answer questions about the proposed project and the EIS.

d. The NOI to prepare an EIS shall be public noticed in a newspaper of general circulation in the project area and shall be distributed to all public and private parties, governmental entities, and agencies that have previously expressed an interest in the proposed project. Distribution of the NOI begins the scoping process for the EIS, which shall allow for a public comment period of 30 days. The department shall announce the location, date, and time of any scoping meetings in the NOI, or by other appropriate means, at least 15 days before the scoping meeting is held.

F. Cross-Cutting Environmental Laws

1. All projects receiving funding from the CWSRF shall comply with the following nonexclusive applicable laws respecting the human environment:

- a. Archeological and Historic Preservation Act, as amended;
- b. Clean Air Act, as amended;
- c. Clean Water Act, as amended;
- d. Coastal Barrier Resources Act, as amended;
- e. Coastal Zone Management Act, as amended;
- f. Endangered Species Act, as amended;
- g. Environmental Justice, Executive Order 12898, as amended;

- h. Farmland Protection Policy Act, as amended;
- i. Fish and Wildlife Coordination Act, as amended;
- j. Floodplain Management, Executive Order 11988, as amended;
- k. National Historic Preservation Act, as amended;
- l. Protection of Wetlands, Executive Order 11990, as amended;
- m. Safe Drinking Water Act, as amended;
- n. Demonstration Cities and Metropolitan Development Act, as amended;
- o. Wild and Scenic Rivers Act, as amended; and
- p. Wilderness Act, as amended.

2. Because particular federal, state, and/or local agencies are charged with enforcement and/or permitting required under these laws, applicants shall be provided guidance regarding agency contact information and consultation. The department shall require appropriate coordination and project planning with these agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 14:862 (December 1988), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2551 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2509 (October 2005), LR 33:2165 (October 2007) amended by the Office of the Secretary, Legal Division, LR 40:774 (April 2014).