



**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY**
WASHINGTON, D.C. 20460



March 1, 2001

OFFICE OF
WATER

MEMORANDUM CWSRF-01-6

SUBJECT: Policy on Using the Clean Water State Revolving Fund to Finance §320 Comprehensive Conservation and Management Plan Projects

FROM: Sheila Platt, Acting Chief -s-
State Revolving Fund Branch (4204M)
Municipal Support Division

TO: Municipal Program Managers,
Regions I-X

Purpose

EPA issued Policy Memorandum CWSRF 00-4 on December 23, 1999 and CWSRF 00-4 Revised on January 11, 2000 to establish a policy for using the Clean Water State Revolving Fund (CWSRF) to finance the correction of nonpoint source (NPS) problems. In that policy, most of the discussion was of projects in §319 NPS management programs; however, projects in §320 Comprehensive Conservation and Management Plans (CCMPs) were also referenced because they contain NPS projects as well. After issuance of the Policy Memorandum, questions arose about funding other specific types of projects in §320 CCMPs. The purpose of this memorandum is to clarify how the CWSRF may be used to fund development and implementation of §320 CCMPs. Please refer to the above-cited policy memos as background information for this clarification memorandum.

Discussion

Section 212 is used to fund treatment works. Section 319 is used to fund NPS projects. Sometimes there is an overlap between these two categories, depending upon the control measures used. With the Policy Memorandum, as revised, EPA recognized States' broader latitude in funding NPS projects which had point source characteristics, as long as they were correcting NPS problems identified in the States' §319 NPS plans. However, since concentrated animal feeding operations (CAFOs) by law cannot be defined as NPS pollution, they cannot be funded as a NPS project. The same NPS restriction applies to storm water projects in municipalities which have been issued Phase I or II storm water permits.

Section 320 is not encumbered by such restrictions. Section 320 can fund a multitude of problems which include various types of projects that could be funded as either §212 or §319 projects. For instance, CCMPs may contain publicly owned treatment works (POTWs), agricultural best management practices (BMPs), and strictly estuary-type projects such as habitat restoration. The §320 CCMPs address estuary problems, and the CWSRF may be used to fund any or all of the projects identified in the plans to correct estuary problems. Examples of types of projects include wetlands purchase, septic system upgrades, storm water system enhancements, and agricultural waste management systems, including manure containment ponds, loading, spreading, and injection equipment. One notable exception which is consistent with the NPS policy memorandum, is the restriction on funding privately owned centralized treatment and collection systems (e.g., wastewater treatment plants). Those projects must still be funded as §212 projects and be publicly owned, in keeping with the statutory requirement for public ownership of wastewater treatment works and collection systems.

Legal Analysis

The same legal analysis set forth in the NPS policy memorandum is applicable to §320 CCMPs. The general authority for the CWSRF program is stated in §601(a):

“...a water pollution control revolving fund for providing assistance (1) for construction of treatment works (as defined in §212 of this Act) which are publicly owned, (2) for implementing a management program under §319 of this Act, and (3) for developing and implementing a conservation and management plan under §320 of this Act.”

This authority is restated in §603(c), where the uses of the fund are limited to:

“Providing financial assistance (1) to any municipality, intermunicipal, interstate, or State agency for construction of publicly owned treatment works (as defined in §212 of this Act), (2) for the implementation of a management program established under §319 of the Act, and (3) for development and implementation of a conservation and management plan under §320 of this Act.”

For ease of reference, these three options will be referred to as (1) §212 projects, (2) §319 projects, and (3) §320 projects.

The Clean Water Act language indicates that a project could be funded through the CWSRF under any of the three options that are cited above. In other words, the fact that a project is a “treatment works” does not mean the project could not also be funded under one of the other two categories. The three programs are listed conjunctively, “1, 2, and 3.” This inclusive wording indicates that as long as a project is fundable under any one of the three, it is fundable. If the project is a bonafide §320 project, included in a State’s approved §320 CCMP, it is eligible for CWSRF funding if the State so chooses, notwithstanding the fact that it would not be eligible as a §319 project or a §212 project. Estuary projects may be funded by the CWSRF even if the facilities are privately owned or require an NPDES permit, with the exception noted above for POTWs. That is where the ability to fund point source projects like

CAFOs and storm water projects (permitted) differs from eligibilities under §319 vs. §320.

Practical Applications

While the Clean Water Act clearly makes development and implementation of estuary plans eligible for CWSRF assistance, in keeping with the policy and guidance established in the *Funding Framework* (EPA 832-B-96-005, <http://www.epa.gov/owm>), any proposed non-traditional project, e.g., those whose primary purpose is not water quality related, is subject to a State's integrated planning and priority setting process. The Funding Framework policy established voluntary guidelines for funding traditional CWSRF projects and set national policy for states that wish to use their CWSRF to fund innovative, non-traditional projects. The focus of the Funding Framework is the use of integrated planning and priority setting systems to establish relative funding priorities among point, nonpoint source, and estuary projects and to clarify their water quality benefits. Under this estuary financing policy, the portion of a project which is deemed related to achieving water quality or estuary protection/restoration would be eligible for CWSRF assistance.

CAFOs, while not fundable by CWSRFs as NPS projects in §319 management plans, due to the statutory definition of a CAFO as a point source, could be funded by a CWSRF as a §320 project. In a circumstance where CAFO-related water pollution is addressed in a §320 CCMP, then those CAFO projects within the geographic boundaries of that CCMP study area would be eligible to receive financial assistance from the state's CWSRF. The statutory language clearly states that any activity required to develop or implement an estuary plan is eligible to receive assistance, with no mention of ownership or type of project. Thus, the fact that a CAFO is defined as a point source elsewhere in the statute does not make a CAFO project in a designated national estuary ineligible to receive financial assistance from the CWSRF. In the case of CAFO projects, ownership may be private, since the restrictions in §603(c) concerning public ownership are limited to §212 "treatment works." Smaller animal feeding operations projects (AFOs) may be funded with loans under both §319/320 authority.

CWSRF financing of storm water runoff controls as part of a §320 CCMP is also permissible. As part of a §320 program, municipalities as well as private land developers and industrial facilities may use CWSRF loans to finance a number of best management practices and other stormwater runoff control projects. In a §320 program, controlling impacts of development through sediment controls such as filter fences, storm drain inlet protections, and temporary mulching and seeding of exposed land areas could be CWSRF financed. Similarly, as part of a §320 program, CWSRF loans may be used to protect operations from storm water exposure at industrial facilities by covering operations with potential to impact water quality under a storm resistant shelter, even if that operation has been issued a permit. Again, this differs from what is allowed under §319 authority and the implementing regulations for the storm water control program, which allows only municipalities to access CWSRF loans, if the community has been issued a Phase I or II storm water permit. Storm water is treated as a point source discharge, similar to the designation of CAFOs as point sources, making those projects ineligible for funding as NPS projects. Again, estuary projects are not encumbered by such restrictions.

Implementation

Implementation of this policy will begin with the issuance of this policy memorandum. EPA Regions are expected to work with their state partners, and after appropriate public input, make necessary changes to any existing approved CWSRF estuary financing programs, operating agreements, intended use plans, priority ranking systems, and project funding lists.

States may consult with EPA CWSRF Regional Coordinators and Headquarters staff regarding other types of estuary projects not explicitly addressed in the above examples. As other projects are funded, we encourage before and after monitoring of environmental conditions to enable assessment of environmental benefits and development of case studies for posting on our web site to facilitate replication and further experimentation by other states.

cc: CWSRF Coordinators, Regions I-X
CWSRF Branch Chiefs, Regions I-X
Mike Cook, OWM
Bob Wayland, OWOW
Bill Diamond, OGWDW
Chuck Sutfin, OWOW
Veronica Blette, DWSRF
Dov Weitman, OWOW/NPS
Darrell Brown, OWOW/NEP
Ken Redden, OGC
Richard Kuhlman, MSD
Elaine Brenner, PD

bcc: I-Team, HQ
E-Team, HQ
Pat Hirsch, OGC