

Frequently Asked Questions

RE: American Reinvestment and Recovery Act of 2009 as it applies to public water systems

The American Reinvestment and Recovery Act of 2009 was passed by Congress and signed in to law on Tuesday, Feb. 17. The following questions and answers apply to the Drinking Water State Revolving Fund. These questions were raised either as a part of the UNC School of Government, Environmental Finance Center web cast (audio available from their Web site) or from questions the PWS Section's staff has received.

To find out the latest news regarding the American Reinvestment and Recovery Act of 2009, to the Public Water Supply Section's State Revolving Fund Web site at:

<http://www.deh.enr.state.nc.us/pws/srf/index.htm>, and then select News.

General Questions:

1. *How much money will be available for grants and for loans under the Stimulus?*

The Environmental Protection Agency has just announced the final state allotments. For North Carolina's drinking water program, the allotment is approximately \$65.6 million (\$65,625,000).

A provision in the Act requires states to provide at least 50 percent of the funds in the form of additional subsidization such as forgiveness of principal, grants or negative interest loans. Decisions about how North Carolina will provide additional subsidization have not yet been made. A decision has not been made on how to allocate stimulus funds among the different funding mechanisms.

The drinking water State Revolving Loan program has existing project caps. Consideration is being given to a per-community cap to ensure a broader distribution of funds to more communities.

2. *How does this amount compare with the amount requested in applications received so far?*

The Public Water Supply Section's application deadline is Feb. 27, so the PWSS staff will have to wait to see what applications are received. From applications received in advance of this deadline, plus applications from the 2008 DWSRF solicitation, PWSS already has more than \$66 million in requests.

In response to the PWSS' request for letters of intent, the section received \$2.2 billion in projects. Of these letters of intent, the number that will show up in applications for projects that can be called shovel ready and can meet subsequent deadlines is still unknown.

3. *What are the terms of the loans/grants/etc?*

The content of the Act has just been made available in its final form, and the final bill differed in key respects from earlier versions of the bill. As a result, the Department of Environment and Natural Resources is working with the Governor's new Office of Economic Recovery and Investment (directed by Dempsey Benton) to make final decisions about loan/grant terms and other implementation issues. The Department is also expecting some additional guidance from the EPA on some of the terms and conditions attached to use of stimulus funds.

The answer to this question should be posted on the PWSS Web site very shortly.

4. *What types of projects are going to be funded? What are the priorities?*

The priorities are based primarily on PWSS' existing 4 category system: consolidation of a failed system; projects to address compliance problems; projects to increase the capacity of the system; and all other eligible projects. Project requests based solely on growth, fire protection and economic development projects are ineligible. To streamline both the application and review process for drinking

water, bonus points will not be added and system population will be used as the tie breaker in each category, with the smaller population higher rated.

These priorities will be used to create a list of fundable projects; selection of projects for funding will require consideration of additional factors.

For example, the Act requires that 20 percent of the money be used to fund projects “to address green infrastructure, water or energy efficiency improvements or other environmentally innovative projects.” Projects that are fundable under the criteria described above will be marked as eligible or ineligible for consideration under the specific requirement. When it is time to make actual funding decisions, the Department will first evaluate the list, looking for green projects that are ready to proceed until the 20 percent requirement has been met. (Remaining green projects will still be eligible for funding as part of the larger application pool.) A similar process will be used for any other categories of special focus. Essentially, the Department will assess the list multiple times to identify the top-ranked projects that meet the established criteria.

Decisions regarding the targeting of funding based on other state priorities, such as drought response or aid to communities experiencing special hardship from the recession, will hopefully be made soon and posted on the PWSS Web site.

Finally, a key factor in project funding will be readiness. To receive funds, projects need to be ready for construction. That means that the project has completed all environmental reviews (if required); received necessary state and local permits; and has full project funding identified. We recognize that some projects that are not ready today can become ready within the timeframe for allocating the federal funds. Applicants need to be aware, however, that projects that are not ready for construction when funding decisions are made will have to be bypassed in favor of ones that are ready.

5. *Are there any other new provisions applicants should be aware of?*

There are three new requirements for DWSRF. They are as follows.

- Projects funded under the stimulus package must use iron, steel and manufactured goods produced in the United States. The bill includes exceptions for circumstances in which enforcement of the “buy America” provision would not be in the public interest; sufficient quantities of American-made products are not available; or the requirement would increase project costs by more than 25 percent. Those exceptions are only available if the federal department or agency head approves a waiver.
- The bill extends the prevailing wage requirements of the Davis-Bacon Act to projects funded under the stimulus package.
- Reporting will be required on job creation. Award recipients will be required to obtain information from their engineers and contractors about jobs saved or created with the project funding, to be reported to PWSS for input into the federal tracking system. Future guidance is expected to include the required job creation reporting clause.

Application Process:

1. *Is any type of utility (public, private or nonprofit) eligible for stimulus funding?*

The funding is coming through the regular SRF programs, so the same eligibility criteria apply. Local governments and private not-for-profit water utilities whose only services are water or water and sewer are eligible.

2. ***How do communities apply for funds? Or, what is the minimum level of documentation you need for a complete application?***

In general, applicants should follow the standard SRF application process. A complete application should contain: the actual application form; pages 2, 3 and 4 (available from the PWSS Loans and Grants Web site); and the brief Preliminary Engineering Report with sufficient detail to allow PWSS staff to evaluate to which priority category the project should be assigned. Description and documentation related to projected need, cost information and any supporting documentation related to green infrastructure needs should also be included. Additional information typically required must be provided by March 31.

The application package received by **Feb. 27** needs to contain the following:

- Pages 2, 3 and 4 **only** of the “Application for DENR Funding Assistance for Wastewater and Drinking Water Projects” form in addition to a Preliminary Engineering Report (requirements of which are outlined below).
- A brief Preliminary Engineering Report including project description, alternatives analysis, cost estimate and any relationship of this project to water and energy efficiency or drought preparedness.

The remaining information that must be received no later than **March 31** should include:

1. Documentation of completed Environmental Review with a CE or FONSI;
2. The date and serial number for the approval of plans and specifications and the Authorization to Construct;
3. Governing Board Resolution/Certification; and
4. LGC 108C.

3. ***Do you have an affordability- eligibility criteria for applicants? Are you giving any kind of additional subsidization for communities with affordability issues?***

With a requirement for 50 percent additional subsidization, it is fair to assume that any community with affordability issues would be eligible for at least 50 percent subsidization in the form of principal forgiveness. The department is in discussions with both the Governor’s Office and Office of Economic Recovery and Investment to determine how this provision will be implemented.

4. ***What does “shovel ready” mean?***

Shovel ready will only be applied to a project that has submitted an application.

First, consider “ready to proceed.” A project must have completed all environmental review and shown its categorical exclusion or FONSI. It should have obtained all permits and the Authorization to Construct that it will need. It has secured commitment for all funding that would be needed in addition to the stimulus funding. All paperwork to seek Local Government Commission approval has been completed and is in hand. It has the resolution by the governing board and a certification statement. From the section’s standpoint, all of this would define it as ready to proceed. To then become “shovel ready,” the applicant has to receive approval from the

LGC, and be ready to go to bid and award contract. Deadlines in the Act for reversion of funds appear to be tied to readiness to award contract.

5. ***Can communities get some kind of variance on their applications to accelerate the process, or do they have to take all the usual steps?***

To help streamline the process, the PWSS staff has adjusted its applications to not require anything that is not directly needed to fund the project, such as bonus point considerations. Due to popular demand, the section split its application process into two steps. The application form and PER is due on Feb. 27. The PER will contain the description of need for the project, selection of the alternative presented including the no action alternative, and project cost plus any link to “green” projects. This is the fundamental information needed to be able to put the project on the fundable project list.

Projects can be grouped in one application assuming that they would meet the same review criteria and be rated the same. Therefore, projects in the same priority category can be grouped. If there is a project component that should be considered for the “green” projects, then separate cost information for the green and non-green parts needs to be included.

The rest of the information, including plan, specification approval and authorization to construct; environmental review; LGC forms; and the resolution by the governing board and certification, is needed no later than March 31.

6. ***Are there special kinds of projects which can be expedited?***

Projects that do not need plan and specification approval or that can get a categorical exclusion for environmental review will be the easiest projects to expedite. Fixing any failing component of the existing water system with a new part of the same make up does not require plan review. While under minimum requirements for state environmental review, all projects currently need the three categorical exclusion letters from commenting agencies in order to be eligible for federal funding. The PWSS staff is exploring if it can get categorical approvals from the federal commenting agencies for projects that clearly have no environmental impact, such as installing a mixing unit in a water storage tank. The PWSS is also evaluating a policy that would accept system notification of the proposed CE to the commenting agencies plus 30 days allowed for comment if no comment is received.

The PWSS will be putting an immediate priority for plan review for stimulus projects. Applicants who mark plans very noticeably as a “STIMULUS PROJECT” will help us provide a priority review. The section is committed to directing resources as needed to help ensure projects can become eligible.

7. ***If you did not submit a letter of intent, can you still submit an application?***

Yes, if it is received by Feb. 27.

8. ***Will you update Web site to indicate that the PER and application pages 2, 3 and 4 are due Feb. 27?***

The PWSS and its SRF program Web sites have been updated with this information. Any additional information will be posted as it is made available.

9. ***Could previously-submitted letters of intent for additional projects be modified?***

Yes, but there is no advantage in doing so. Project applications need not have a link to any letter of intent. The focus now needs to be on the application itself.

10. ***Must we already have our Authorization to Construct (AtoC) to apply in this cycle?***

No, nor are projects that miss the March 31 deadline for AtoC then deemed ineligible. The PWSS staff expects that there will be sufficient numbers of projects that are ready to proceed when the money becomes available from the EPA that projects that are not ready will be bypassed in favor of projects that are ready.

11. ***What are the additional reporting requirements for the stimulus funds? I believe there were four mentioned.***

The EPA guidance on implementation has not yet been received. The new reporting elements will relate to the requirement to Buy American, to Davis Bacon prevailing wage requirements, and to the requirement to track job creation. It is expected that all of these will be provisions in PWSS contracts with loan recipients, and recipients will need to require it in turn in their contract or purchase agreements to fulfill the reporting requirement to the state.

12. ***Many small and rural communities have documented needs but have not been able to design projects due to lack of funding. The noted method of distribution appears to lock out those type projects and communities. Is there any thought to meeting these needs with some of the funding? It seems projects that were already going forward will receive funding in some cases instead of projects with more need. This would eliminate additional jobs to the economy by using the funds for projects that would have been completed anyway.***

Planning loans have always been an eligible project under the DWSRF for this precise reason. The intent of these stimulus funds is to fund projects that are serious and needed enough to be shovel ready. Congress was providing funds for a back log of construction projects. The timelines have allowed a brief opportunity for states to amend their project list to add new projects, thus the supplemental application period.

13. ***What if your project cost falls below LGC threshold for products or hardware, and requires no Environmental Review?***

Applicants need to communicate with the PWSS as soon as possible if they believe that any part of the application package, such as plan and specification approval or completion of environmental review, is not applicable to obtain state concurrence. It is important to note that for Environmental Review that projects below state minimum criteria are not exempt from federal environmental review. Federal money requires meeting of federal requirements. See the PWSS Web site for more information on the federal CE.

14. ***Will the ranked projects list be available to the applicants when it is submitted to the EPA?***

The project list will be posted to the PWSS Web site and highlighted in newspapers prior to submittal to the EPA.

Terms of Awards:

1. ***In order to distribute funds to as many communities as possible, would the PWSS consider reducing the maximum of \$3 million to say \$1 million?***

The \$3 million cap per pass through of the funding list is in the current rules. See 15A NCAC 01N .0701 for the bypass procedures. There have not been discussions to date about lowering the cap. There is ongoing discussion about both setting a per applicant cap and delaying the date that the bypass procedure on a second pass is implemented.

2. ***Can these funds be used to match existing awarded grants or as a local match?***

There is no local match required to accept these funds. Applicants always have the opportunity to combine funding from multiple sources as long as they can demonstrate commitment of funds for the entire project.

3. ***Is the cap \$3 million per applicant or per project?***

The current regulatory cap is per project. Discussions about what changes might be desirable to caps on a per applicant or per project basis are ongoing.

4. ***Will the SRF fee of 2 percent be applicable, and does this need to be filled in on the application form?***

We anticipate that the 2 percent fee will apply, and it should be completed on the application form.

Timeline:

1. ***What is the timeline for stimulus awards after the application package?***

A schedule has not been received from EPA Region 4 yet; however, the PWSS staff does expect that it should have funding available and will start awarding stimulus funding as soon as April 20. After the March 31 deadline, the staff will be forwarding funding packages to the LGC for their review and approval with the intent that projects can bid shortly after April 20. Please keep in mind that PWSS approval of Disadvantaged Business Enterprise outreach must be obtained before awarding contracts. See the DBE fact sheet on the PWSS SRF Web site.

2. ***Will there be another opportunity to apply for stimulus funds after Feb. 27?***

Applicants should not count on any subsequent round of funding at this time and should make every effort to meet the deadlines if they would like stimulus funding.

However, there are some discussions as to the value holding back some of the money and having a second round of applications. The decision is, of course, the balancing of the need and desire to move the money into the economy quickly with the interest in adding additional time for both the state and applicants to target certain types of projects. That decision may be made after we see how many systems are able to make the announced deadlines. The primary objective of the Act is to put the money to work in the economy as quickly as possible. If there is a second round, it would not lag far behind the first round, maybe only a month or two.

Our commitment is to process every application that meets the Feb. 27 and March 31 deadlines. Applications that are received late will still be accepted but will be reviewed on a time available basis. If there was a second round, the applications would be in hand.

It is also important to remember that we are still being provided the EPA funding for our standard DWSRF loan program and should be receiving about \$28 million more this summer. The low interest loans available through the program should be of interest to all eligible applicants looking for project funding.

3. *What is the projected turnaround time once you have a complete package?*

The PWSS anticipates that the final priority list will be due to the EPA on April 17. Assuming a quick review by the EPA, funds could be available for projects that are shovel ready as early as April 20.

4. *Do the commenting agencies have the capacity to issue the CE letters by March 31?*

The disbursement of these funds is a critical national priority. While the PWSS staff has no control over the priorities or schedules of federal agencies, it is expected that all agencies will afford projects related to this economic stimulus package an extremely high priority. If applicants are having difficulties with the federal agencies, it is recommended they notify both the PWSS and the new Office of Economic Recovery and Investment for assistance in receiving more timely response.

5. *When does the LGC need to be notified in relation to PWSS?*

If applying for funding, the PWSS staff strongly recommends that applicants communicate their intent to the LGC right away, such that any issues of concern have ample time to be addressed.

Green Projects:

1. *What do you consider to be a “green project,” and how will those be specially rewarded with stimulus money?*

The PWSS staff is waiting for guidance from the EPA on how to interpret the requirement that 20 percent of the funds should go to what are called “green projects.”

However, it is known that water and energy efficiency are specifically mentioned as being eligible under the category. Saving water, energy and chemicals used all promote green concepts and efficiency. It is expected that projects related to issues raised in last year’s drought legislation

would be included. This would include metering, fixing leaking water lines and interconnections between systems. In addition to the direction that the EPA issues, there is an opportunity for any applicant to make a case for how their project promotes and supports green or innovative concepts.

The way these type of projects will be rewarded is that they may be funded over another project that is not “green” to make ensure the section meets its 20 percent green requirement.

2. ***Are water meter replacements in need of an environmental review process? Also, what is the ready to proceed requirement for a meter replacement program?***

Any Environmental Review will, at worst, be the Categorical Exclusion process discussed on the Web site. The PWSS staff is seeking concurrence from the EPA of the opinion that the CE does not need to be routed through the federal review agencies for replacement in kind projects such as this. Given the time constraints for applicants, for replacement in kind or other *de minimus* projects that PWSS believes can appropriately use the CE, it is expected that the PWSS will either have a general approval letter from the agencies for these projects or have a policy that will accept the notification to the agencies of the CE being issued with 30 days for them to have responded is sufficient. Projects where no impact on the federal commenting agencies can be imagined will not be denied funding due to lack of response from those agencies if 30 days have passed.

3. ***With an emphasis on water, energy and chemical treatment efficiency (aka "green projects") and the need for "shovel ready" status, can applicants anticipate some preference for projects involving leak detection and repair?***

Projects will be ranked within existing priority categories. Leak repair projects would fit under the green project concept as well as priority category 4. North Carolina and thereby the PWSS will need to ensure that at least 20 percent of the funding goes to projects that fall under the “green” status. There is no additional preference granted.

4. ***Would you consider a guaranteed energy savings contract that has a separate LGC approval process (LGC form 108F) as shovel ready if the application is ready to go to LGC for final approval?***

Projects must meet all applicable ready to proceed criteria to go to the LGC. If an applicant wants to suggest that some aspect of readiness to proceed is not applicable to their project, it is recommended they communicate with the PWSS staff as soon as possible for concurrence.