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**Agencies**

- Charles River Pollution Control District
- City of Haverhill
- City of Holyoke
- City of Marlborough
- City of New Bedford
- South Essex Sewerage District
- Springfield Water and Sewer Commission
- Town of Concord
- Town of Framingham
- Town of Franklin
- Town of Jaffrey, NH
- Town of Medfield
- Town of Milford
- Town of North Reading
- Town of Northbridge
- Town of Southbridge
- Town of Yarmouth
- Upper Blackstone Water Pollution Abatement District

**Affiliates**

- Cherry Valley Sewer District
- City of Beverly
- City of Chicopee
- City of Peabody
- City of Salem
- City of Worcester
- Town of Bellingham
- Town of Danvers
- Town of East Longmeadow
- Town of Marblehead

**Corporate**

- AECOM
- CDM
- Kleinfelder/SEA Consultants
- Weston & Sampson

**Legal**

- Anderson & Kreiger LLP
- Bowditch & Dewey

January 13, 2011

Steven McCurdy, Director  
Division of Municipal Services  
Massachusetts Department of Environmental Protection  
One Winter Street - 5th floor  
Boston, MA 02108

**RE: Clean Water State Revolving Fund Interest-Free Loans Comments**

Dear Mr. McCurdy:

On behalf of the Massachusetts Coalition for Water Resources Stewardship (MCWRS) and our 34 member communities and companies, I am submitting the following comments on the Massachusetts Department of Environmental Protection’s (MassDEP) proposed changes to the Clean Water State Revolving Fund (SRF) program. While MassDEP’s proposed regulations are in keeping with the law passed in 2008 (Section 5 of Chapter 312 of the Acts of 2008; “the O’Leary Bill”), we have several comments outlined below.

**General Comments**

1. MCWRS is fully supportive of efforts to provide interest-free SRF loans to communities for water, wastewater and stormwater projects. We believe the Legislature, Governor, Secretary of EEA and MassDEP should work together to expand the availability of such loans to support environmental initiatives in more communities, especially during these difficult fiscal times.
2. While the O’Leary Bill originated in response to the needs of Cape Cod communities, numerous cities and towns in eastern, central and western Massachusetts are struggling with nutrient issues. The proposed regulations do not limit interest-free loans to Cape communities. However, in implementing this change MassDEP should assure that this new program does not become a Cape Cod initiative but is applied equitably across the Commonwealth.
3. It is our understanding that SRF funds can finance stormwater projects. However, these revised regulations appear to be focused on wastewater projects only as evidenced by the eligibility criteria. A community seeking to address stormwater related nutrient issues is unlikely to prepare a comprehensive wastewater management plan and would thus be ineligible for interest-free SRF

loans. At a time when stormwater issues and regulations have become a primary focus of the regulatory agencies and add a tremendous financial burden to municipalities, opportunities for interest-free SRF funds for stormwater projects need to be created. Perhaps that is an issue that the legislature must act on but in the interim MassDEP should investigate the possibility of expanding these regulatory changes to include appropriate eligibility for stormwater projects.

#### **Section 44.04: Eligible Projects**

We have great concerns about the limitations these requirements place on determining eligible projects. The requirements severely restrict potential projects to a small sub-set of those being planned throughout the Commonwealth. This seems **counter to MassDEP's goal of helping communities move forward with projects to address nutrients**. Our points are outlined below. We suggest reconsideration and expansion of the eligibility requirements to capture a larger portion of nutrient related projects. Eligibility concerns include:

**44.04(2)(a): The local government unit must not be currently subject to an enforcement order, administrative consent order or unilateral administrative order due to a violation of a nutrient-related TMDL or other nutrient based standard.** Many communities are currently under some form of administrative consent or enforcement order to upgrade wastewater treatment plants. This requirement would eliminate a significant number of projects from consideration that would provide nutrient reduction benefits. As recent actions demonstrate, virtually any community could be subject to EPA enforcement actions at any time making them ineligible for this new financing program.

**44.04(2)(b): The local government has a CWMP that has been approved by the Department.** Many communities are currently in the process of developing a Comprehensive Wastewater Management Plan (CWMP), or are preparing to begin one. CWMPs can take years, sometimes a decade or more, to complete and be approved by MassDEP. This requirement would eliminate a significant number of projects from consideration that would provide nutrient reduction benefits. Also, as noted previously, a community trying to address stormwater related nutrient issues would not be investing in a CWMP. Perhaps an equivalent stormwater management plan should be part of the eligibility requirements.

**44.04(2)(d): The local government demonstrates that it has adopted land use controls that ensure the overall wastewater flow amount in the community will not increase as a result of sewerage beyond the flow amount authorized under the land use controls that were in effect on the date of the MEPA certificate for the CWMP.**

1. If a community has based its build-out projections in the CWMP on existing zoning, then adhering to those build-out flow numbers would not require implementing additional zoning controls.

2. The Massachusetts Housing Board and MassDEP requirements currently conflict. The Board has not ruled in favor of communities contesting 40B projects on the basis of inadequate sewer capacity because the communities' CWMPs did not adequately account for affordable housing. However, the need to develop growth neutrality in the CWMP using zoning restrictions does accommodate Chapter 40B projects that can get around local zoning bylaws. Communities would benefit from more guidance on how to handle these apparently conflicting goals.
3. Land use changes should not be made without a comprehensive study being conducted for that purpose. A study of this type could take months or even years.
4. This requirement is also wastewater-centric and not applicable to a community trying to address stormwater issues. An equivalent stormwater eligibility requirement might be adoption of low impact development (LID) bylaws/ordinances.

**44.04(3)(a) and (b): Method 1 Presumptive Determination of Flow Neutrality and Method 2 Non-Presumptive Determination of Flow Neutrality.**

The Watershed Benchmark Flow should be more fully defined in order to make it clear what flow condition is to be used. The current definition does not provide enough information to decide whether the "existing" flow is a permitted condition or an actually experienced condition, nor does it indicate whether the condition is an average over a particular period of time. Assuming the intent of the benchmark is to establish an annual average condition (as opposed to a minimum or peak condition) it would seem logical that the benchmark flow would be the current permitted design annual average flow for the facilities in question, based on the planning period.

It is recognized that the proposed regulations are in response to specific legislation that was adopted in 2008. It may not be possible for MassDEP to propose regulations that go beyond the legislative directive but MCWRS believes it is necessary for agencies of the Commonwealth to explore these possibilities. Doing so would create a stronger program that advances sound environmental improvement in a manner considerate of local costs.

We appreciate the opportunity to submit comments on the Clean Water SRF interest-free loan proposed regulations. Please do not hesitate to contact me with any questions. I can be reached at 508-799-1430 or at [moylanr@worcesterma.gov](mailto:moylanr@worcesterma.gov).

Sincerely,  
MASSACHUSETTS COALITION FOR WATER RESOURCES STEWARDSHIP, INC.



Robert L. Moylan, Jr., P.E., President  
Commissioner, Worcester Department of Public Works and Parks

Cc: MCWRS Board of Directors  
Commissioner Kenneth L. Kimmell, MassDEP