



A
STATE ENVIRONMENTAL REVIEW PROCESS
FOR
PENNSYLVANIA
DRINKING WATER PROJECTS

Drinking Water State Revolving Fund Program

Pennsylvania Infrastructure Investment Authority

&

Pennsylvania Department of Environmental Protection
Bureau of Point & Non-Point Source Management
Division of Technical & Financial Assistance

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Disregard previous versions

TABLE OF CONTENTS

Introduction

- A. Legal Foundation
- B. Interdisciplinary Approach
- C. Decision Documentation
- D. Public Notice and Participation
- E. Alternatives Consideration

APPENDICES

Appendix A - Federal Environmental Cross-Cutters

Appendix B - Guidelines for the Uniform Environmental Review Process in
Pennsylvania (DEP Document 381-5511-111)

Appendix C – Environmental Assessment Template (DEP Form 3800-FM-BPNPSM0498)
Categorical Exclusion Template (DEP Form 3800-FM-BPNPSM0497)

**STATE AND FEDERAL PLANNING REQUIREMENT CONSISTENCY
AND AN
ENVIRONMENTAL ASSESSMENT STRATEGY
FOR
PENNSYLVANIA’S DRINKING WATER STATE REVOLVING FUND PROGRAM**

Introduction

The Pennsylvania Infrastructure Investment Authority (PENNVEST), Drinking Water State Revolving Fund (DWSRF) uses federal grant allotments to capitalize the program. The fund is used to finance drinking water infrastructure improvement projects across the Commonwealth.

States must have a State Environmental Review Process (SERP) to review these drinking water projects that applies rules similar to those in the National Environmental Policy Act (NEPA). In order to receive a DWSRF capitalization grant, states must submit documentation of their NEPA-like process. The state agency primarily responsible for the implementation of the SERP is the Department of Environmental Protection (Department).

Pennsylvania has a method for conducting environmental reviews that generally conforms to the requirements of NEPA. The procedural and substantive framework flows from Article I, Section 27 of the Pennsylvania Constitution. This gives the Department broad authority to require a detailed environmental review and analysis to protect natural resources. This is enhanced by the Pennsylvania Safe Drinking Water Act (PA SDWA) and the Pennsylvania Infrastructure Investment Authority Act (PIIA). The PA SDWA establishes a water supply facilities planning and permitting program.

The federal regulations, 40 CFR Part 35 Subpart L (§35.3535) authorize and define a number of set-aside activities. Further 40 CFR 35.3580(b) provides that all of these set-aside activities are excluded from the environmental review process, except those activities involving source water protection. Projects relating to source water protection activities must include an environmental review unless the activities solely involve administration, such as personnel, equipment or travel; or technical assistance. Pennsylvania does not intend to use these set-aside funds for any other purpose. However, if this changes, the same State Environmental Review Process (SERP) described below will be followed.

The federal regulations, 40 CFR 35.3580(c), go on to define the five elements that the SERP must address in order to be approved by EPA as meeting the federal requirements for a NEPA-like process. These elements are:

- A. Legal Foundation -- The state must have the legal authority to conduct environmental reviews of projects and activities receiving DWSRF assistance. Such authority and supporting documentation must specify:
 1. The mechanisms to implement mitigation measures to ensure that a project or activity is environmentally sound.

2. The legal remedies available to the public to challenge environmental review determinations and enforcement actions.
 3. The State agency primarily responsible for conducting environmental reviews.
 4. The extent to which environmental review responsibilities will be delegated to local recipients and will be subject to oversight by the primary State agency.
- B. Interdisciplinary Approach -- The State must employ an interdisciplinary approach for identifying and mitigating adverse effects including, but not limited to, those associated with other cross-cutting Federal environmental authorities.
- C. Decision Documentation -- The State must fully document the information, processes and premises that influence the decision to:
1. Proceed with a project or activity contained in a finding of no significant impact (FONSI) following documentation in an environmental assessment (EA).
 2. Proceed or not proceed with a project contained in a record of decision (ROD) following preparation of a full environmental impact statement (EIS).
 3. Reaffirm or modify a decision contained in a previously issued categorical exclusion (CE), EA/FONSI, or EIS/ROD following a mandatory 5 year environmental reevaluation of a proposed project or activity.
 4. If a State elects to implement processes for either partitioning an environmental review or categorically excluding projects or activities from an environmental review, the State must similarly document these processes in its proposed SERP.
- D. Public Notice and Participation -- The State must:
1. Provide public notice when a CE is issued or rescinded, a FONSI is issued but before it becomes effective, a decision issued 5 years earlier is reaffirmed or revised, and prior to initiating an EIS. This requirement was amended in 40 CFR 6.204(a)(1) on September 9, 2007 to require public notice of CE determinations only upon request.
 2. Provide a formal public comment period during which no action on a project will be allowed for all FONSI actions and prior to initiating an EIS.
 3. Hold a public hearing or meeting for all projects except those having little or no environmental effect.
- E. Alternatives Consideration -- The State must have evaluation criteria and processes which allow for:
1. Comparative evaluation among alternatives including the beneficial and adverse consequences on the existing environment, the future environment and individual sensitive environmental issues that are identified by project management or through public participation.
 2. Devising appropriate near-term and long-range measures to avoid, minimize, or mitigate adverse impacts.

Below is a discussion of Pennsylvania's process relative to each of these elements.

A. Legal Foundation

Mechanisms to Implement Mitigation Measures

The Pennsylvania Constitution gives broad environmental rights to the people of the Commonwealth. These include a right to clean air, pure water and to the preservation of the natural, scenic, historic and aesthetic values of the environment. As a trustee of these resources, the Commonwealth has authority to conserve and maintain them for the benefit of all the people.

The specific language in the Constitution at Section 27 is:

*“Natural resources and the public estate.
The people have a right to clean air, pure water and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people. (May 18, 1971, P.L.769, J.R.3)”*

The PA SDWA (35 P.S. §§ 721.1 - 721.17) and the regulations at 25 Pa. Code Chapter 109 provide process details for the comprehensive planning, permitting, and regulation of drinking water facilities.

The fundamental objectives of the PA SDWA and Chapter 109 are to protect the public health and safety by assuring that public water systems provide a safe and adequate supply of water for human consumption. Section 721.7(j) of the PA SDWA requires the Department to determine, before granting any permit, that the proposed project is not prejudicial to public health, complies with the PA SDWA and regulations, and complies with all other applicable laws, such as the Clean Streams Law (35 P.S. § 691.1 *et seq.*), administered by the Department. Also, 25 Pa. Code § 109.503(d)(6) requires the Department to consider project compliance with Federal environmental statutes or regulations.

To accomplish this, the safe drinking water regulations outlined in 25 Pa. Code Chapter 109 establish drinking water quality standards (Subchapters B and C), permit requirements (Subchapter E), design and construction standards (Subchapter F), system management responsibilities (Subchapter G), and requirements for public notification (Subchapter D).

The PIIA Act (35 P.S. §§ 751.1 -751.20) and its implementing regulations at 25 Pa. Code Chapter 963, provide for the awarding of financial assistance to wastewater, drinking water, storm water and nonpoint source projects. The statute and regulations establish application procedures and applicant and project evaluation criteria when considering project applications for financial assistance. This process provides for comprehensive planning and feasibility assessments of all projects including an environmental review.

The fundamental objectives that guide project selection are (a) Compliance with all applicable statutory and regulatory planning and permitting requirements and (b) Project benefits including long-term improvements to public health, public safety, and the environment.

The regulations at 25 Pa. Code Chapter 109 and the PA SDWA detail both drinking water facility and Departmental responsibility for drinking water facility planning and permitting in Pennsylvania. An environmental review is integral to the permitting process. The regulations require that a person may not construct, modify, and/or operate a public water system without first having obtained a permit from the Department. The drinking water facility must prepare and submit a detailed permit application to include plans, specifications, and engineer's reports. The regulations define acceptable design standards for drinking water facilities. Furthermore, Subchapter E provides that the Department must review and either grant or deny a permit. [See 25 Pa. Code § 109.503(d).]

Legal Remedies Available to the Public

The public may challenge any Department environmental review determination, final decision or enforcement action to the Environmental Hearing Board (EHB) (See the Environmental Hearing Board Act, 35 P.S. §§ 7511-7516). The EHB is an independent, quasi-judicial agency vested with the power and authority to hear appeals of Department actions. Appeals from the EHB may be taken to the Pennsylvania Commonwealth Court.

Delegation of Environmental Review Responsibility

The local applicant for DWSRF funds, including a public or private entity, municipality etc. is responsible for the completion of either the CE or EA process as delineated in the Department Guidelines for Uniform Environmental Review in Appendix B. The Department will review and approve the applicant's effort in accordance with Standard Operating Procedures put in place for the PENNVEST Program. The Department's decision process and approval is documented on the CE or EA template in Appendix C.

B. Interdisciplinary Approach

In the implementation of the SERP for the DWSRF program, the Department employs an interdisciplinary approach for identifying and mitigating adverse environmental effects in the implementation of the following processes; (1) the completion of the environmental review process for the federal environmental cross-cutters as identified in Appendix B: Guidelines for the Uniform Environmental Review Process in Pennsylvania (381-5511-111); and (2) the issuance of permits needed for DWSRF projects.

Uniform Environmental Review Process

The cross-cutters listed in Appendix A reflect the federally-required scope of environmental responsibility which must be satisfied in the DWSRF program. The process used to evaluate the cross-cutters on a project level is in Appendix B: Guidelines for the Uniform Environmental

Review Process in Pennsylvania (381-5511-111). These guidelines identify all the elements that must be considered by the local applicant in the completion of the environmental review and the other local, state and federal agencies that must be included in the evaluation. A list of other agencies and contact information is provided to ensure completion of each element.

Permit Review Process

Many projects and activities require more than one permit or review of the permit application by multiple programs within the Department or other local, state and federal agencies. To ensure consistent and expeditious review of these permits, the Department follows the process in the guidance document, “Policy for Implementing the Department of Environmental Protection (Department) Permit Review Process and Permit Decision Guarantee,” Document Number 021-2100-001 and “Policy for Permit Coordination,” Document Number 021-2000-301.

To facilitate public participation in the permit review process, a second guidance is followed, “Policy on Public Participation in the Permit Review Process,” Document Number 012-09002-003. The policy affords not only the general public but other local governmental organizations the opportunity to review and comment on any permit before that permit is issued.

C. Decision Documentation

Findings of No Significant Impact Following an Environmental Assessment

The Uniform Environmental Review (UER) Process described in “Guidelines for the Uniform Environmental Review Process in Pennsylvania” (Department Document 381-5511-111) in Appendix B also describes the process to follow in the completion of an EA. The final report is submitted to the Department for review and approval. Records of the review performed by the Department are documented using the Environmental Assessment Template (Appendix C) before final recommendation for funding. The final template is then filed in the official project file.

Environmental Impact Statement (EIS) and Record of Decision (ROD)

In most cases, if an EA shows significant adverse environmental effects from project implementation the project will need to be funded by other means, abandoned or satisfactorily changed. If it is determined that the only option is to complete an EIS, the Department will consult with EPA to develop a financial and technical plan to accomplish the EIS. Further discussion as to how to record and document the ROD for that project will be defined on a case by case basis at that time.

Reaffirmation or Modification of a Decision After Five Years

The environmental review process is redone for DWSRF projects with Categorical Exclusions and Environmental Assessments if construction is not commenced within five years of the decision regarding the prior review.

Categorical Exclusion (CE)

The Uniform Environmental Review (UER) Process described in “Guidelines for the Uniform Environmental Review Process in Pennsylvania” (Department document 381-5511-111) in Appendix B describes eligibility criteria for a CE. Should an applicant believe a CE is warranted, a written request is submitted to the Department. The request must include a description of the work. If the Department agrees the eligibility criteria are met, the applicant must then publish a notice in a newspaper of general circulation in the project area. The notice must include the name and type of project, location, any impact on user fees, the location where the supporting documents are available for review, and where the public can submit any written comments during the 30-day comment period. A statement that the project is being considered for an environmental review categorical exclusion should also be included. The purpose of the comment period is to ensure that there are no exceptional circumstances unknown to the Department or applicant that should result in a more complete environmental review.

After the comment period is over, the Department reviews the submitted Public Notice with the written public comments and responses. The applicant will then be asked to address any concerns that were raised. An environmental assessment (EA) will be required if there are legitimate concerns. If no significant adverse comments are received and the review of the proposal confirms that the project will not individually, cumulatively, or in conjunction with other federal, state, local or private actions have a significant effect on the environment, the Department will notify the applicant in writing that the project has been categorically excluded from the environmental review process. The Categorical Exclusion Template (Appendix C) is completed documenting the decision making process by the Department before final recommendation for funding. The final template is then filed in the official project file.

D. Public Notice and Participation

The Department publishes a notice in the *Pennsylvania Bulletin* (*PA Bulletin*) of public water system construction permit applications submitted under 25 Pa. Code Section 109.503(a) or a major permit amendment submitted under Section 1009.503(b)(1) or permits for innovative technology submitted under Section 109.507. [See 25 Pa. Code § 109.503(d)(1)]. The notice provides at least 30 days for public comment from the date of publication. Notice is also provided in the *PA Bulletin* of all final actions taken by the Department on PA SDWA permit applications.

The Uniform Environmental Review (UER) Process described in “Guidelines for the Uniform Environmental Review Process in Pennsylvania” (Department document 381-5511-111) in Appendix B also requires the final environmental report to include a description of all the steps taken to ensure public participation in the planning and implementation of the project; including any public meetings, newspaper advertisements, etc. Any comments received must be documented, complete with a response.

Department Issuance or Rescission of a CE

Once the review process described above under Section C, Decision Documentation, for a CE is completed, the Department notifies the applicant in writing of the decision to issue the CE. The federal regulations governing EPA's NEPA procedures for CE determinations in 40 CFR 6.204(a)(1) were amended on September 19, 2007 (72 FR 53652) to require public notice of CE determinations only upon request. As a result of this modification, and as authorized under 40 CFR 35.3580, no further public notice of the Department's approval is done. However, a copy of the letter of approval sent to the applicant will be provided to any member of the public upon request.

A CE may be rescinded if information comes to the Department's attention that warrants such action. Additional action will be taken to remedy any environmental impact resulting from the issuance of the CE on a case-by-case basis, as appropriate.

Issuance of a FONSI with a Public Comment Period

Once the review process described above under Section C, Decision Documentation, for an EA is completed, the Department will complete the technical review of the project and recommend it for funding to PENNVEST. A public notice for the *PA Bulletin* is prepared at least five weeks in advance of the PENNVEST Board meeting where the project will be considered for funding. The bulletin notice will contain a list of the projects, the name of the applicant, a brief description and the total amount of funding requested. This bulletin notice will allow for a 30-day comment period, upon which the EA is considered approved. If significant comments are received the project will be deferred until such time as the comments are addressed.

Public Meetings

Once a technical and administrative review of every project is completed by PENNVEST and Department staff; those projects recommended for funding are presented to the members of the PENNVEST Board at a public meeting for discussion and action. The dates, times and locations of all PENNVEST Board meetings are advertised on the PENNVEST website. The PENNVEST Board makes all final determinations regarding the projects at these public meetings.

In addition, as part of the EPA Capitalization Grant application process, PENNVEST and the Department hold a public meeting to solicit comments on the grant application. The Intended Use Plan, complete with a list of projects to be funded with the grant funds as well as a comprehensive Project Priority List is part of this application. Drafts of these documents are posted on the Department website for comment during the 30-day comment period for the grant application. Once the comment period is over, a summary of written comments, along with any verbal comments received during the public meeting is provided to EPA as part of the grant application. In addition the Intended Use Plan and Project Priority Lists are finalized and re-posted to the Department website upon EPA approval of the capitalization grant.

E. Alternatives ConsiderationComparative Evaluation Among Alternatives

PENNVEST requires all applicants to demonstrate that the project they wish to fund represents the most cost-effective, environmentally sound alternative. The applicant is directed to consider all feasible alternatives to address the environmental and public health issues at their facility, including the use of “green infrastructure” alternatives. The most feasible alternatives are analyzed using standard “engineering economics” principles that combine capital cost and operations & maintenance costs to provide a “total present worth” or “average annual equivalent” cost. The resulting cost-effectiveness analysis allows projects with varying capital and operations & maintenance costs to be compared on an equal footing. In completing the analysis, applicants must evaluate impacts resulting from the entire project, even if it is to be built in phases. The planning area is delineated to include all of the service area of the final project once it has been fully constructed.

Avoidance or Mitigation of Adverse Impacts

Adverse impacts are mitigated, or if they cannot be mitigated, they result in the choice of an alternative solution. If an applicant refuses to mitigate adverse impacts, PENNVEST funding is not offered.

APPENDIX A: Federal Environmental Cross-Cutters

Archaeological and Historic Preservation Act of 1974, 16 USCS §469a-1 *et seq.*, (P.L. 86-523, as amended)

Protection and Enhancement of Cultural Environment, (Executive Order 11593)
National Historic Preservation Act of 1966, 16 USCS §470, (P.L. 89-665, Section 106, as amended)

Clean Air Act of 1955, USCS §7401 *et seq.*, (P.L. 84-159, as amended)

Coastal Barrier Resources Act, 16 USCS §3501 *et seq.*, (P.L. 97-348)

Coastal Zone Management Act of 1972, 16 USCS §1451 *et seq.*, (P.L. 92-583, as amended)

Endangered Species Act of 1973, 16 USCS §1531 *et seq.*, (P.L. 93-205, as amended)

Fish and Wildlife Coordination Act, (P.L. 85-624, as amended)

Floodplain Management, (Executive Order 11988, as amended by Executive Order 12148)

Environmental Justice, (Executive Order 12898)

Protection of Wetlands, (Executive Order 11990)

Farmland Protection Policy Act, 7 USCS §4201 *et seq.*, (P.L. 97-98)

National Environmental Policy Act of 1969, (P.L. 91-190)

Safe Drinking Water Act of 1974, (P.L. 93-523, Section 1424(e), as amended)

Wild and Scenic Rivers Act of 1968, 16 USCS §1271 *et seq.*, (P.L. 90-542, as amended)

APPENDIX B: Guidelines for the Uniform Environmental Review Process in Pennsylvania
(Hard Copy attached)

APPENDIX C: Environmental Assessment Template (DEP Form 3800-FM-BPNPSM0498)
Categorical Exclusion Template (DEP Form 3800-FM-BPNPSM0497)
(Hard Copy attached)