

Pennsylvania Policy Statement Project Classification & Definition

Purpose

The purpose of this policy statement is to:

1. Comply with the EPA Interim Guidelines by providing a methodology for consistently determining whether or not a project meets the definition of a *treatment works*. This policy statement will take the place of documentation placed in every project file.
2. Provide a framework for the classification of eligible projects that is consistent with the Pennsylvania Infrastructure Investment Authority (PENNVEST) enabling legislation, as amended and the federal requirements under the drinking water and clean water state revolving funds. The Department of Environmental Protection (DEP) will use this policy and framework to classify, rank and recommend all future projects for PENNVEST funding. Based on this classification, PENNVEST will be able to define what state and federal requirements the project will need, or not need, to implement.

Background

With the passage of the Water Resources Reform and Development Act (WRRDA) in June, 2014, Congress expanded the eligibility of projects for funding from the Clean Water State Revolving Loan Fund and applied additional requirements including the following to just those projects defined in the 1972 Federal Clean Water Act as a *Section 212 Treatment Work Project*:

1. The National Environmental Policy Act (NEPA) – requires an environmental review to ensure the constructed project will not have a detrimental environmental impact.
2. The Davis-Bacon Act – requires the establishment of prevailing wages consistent with wages defined by the US Department of Labor and Industry.
3. The development and implementation of a fiscal sustainability plan that includes an inventory of critical assets that are part of the treatment works, an evaluation of the condition and performance of inventoried assets, a certification that the recipient has evaluated and will be implementing water and energy conservation efforts and a plan for maintaining, repairing and, as necessary, replacing those assets.
4. The American Iron and Steel Act – requires iron and steel products used in the construction of the project to be produced in the United States of America.

Section 212 of the 1972 Federal Clean Water Act defines *treatment works* as:

(A) any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 201 of this act, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and acquisition of the land that will be an integral part of the treatment process (including land use for the storage of treated wastewater in land treatment systems prior to land application) or will be used for ultimate disposal of residues resulting from such treatment and acquisition of other land, and interests in land, that are necessary for construction.

(B) In addition to the definition contained in subparagraph (A) of this paragraph, “treatment works” means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems..

In January, 2015 EPA published, “Interpretive Guidance for Certain Amendments in the Water Resources Reform and Development Act to Titles I, II, V, and VI of the Federal Water Pollution Control Act.” There was a significant amount of discussion if this definition should now, for the first time, be expanded to include other stormwater runoff projects not associated with municipal sewage or industrial wastes; based on a re-interpretation of the definition of *treatment works* done by EPA. After all this discussion, EPA resolved the issue by stating in this guidance document that, “states should use best professional judgment to determine whether or not a project is a treatment work...In cases where a project is determined to not be a treatment work, states should document the decision in the project file along with the reason for the determination.”

In 2013, the PENNVEST enabling legislation was amended to define four categories of projects as follows:

The eligible costs associated with the acquisition, construction, improvement, expansion, extension, repair, rehabilitation or security measures of all or part of any facility or system, whether publicly or privately owned:

- (1) for the collection, treatment or disposal of wastewater, including industrial waste;*
- (2) for the supply, treatment, storage or distribution of drinking water;*
- (3) for the control of pollution associated with storm water, which may include, but need not be limited to, the transport, storage and the infiltration of storm water; or*
- (4) for the best management practices to address pollution including innovative techniques developed to comply with the Act of June 26, 1937 (P. L.1987, No. 394) known as the Clean Streams Law or identified in the county-prepared watershed plans pursuant to the act of October 4, 1978 (P.L.864, No. 167) known as the Storm Water Management Act, or as identified in Pennsylvania’s Nonpoint Source Management Program Update, as required under section 319(b) of the Federal Water Pollution Control Act.*

The main purposes for these PENNVEST amendments was to expand the eligibility of privately owned projects for funding and to apply stormwater planning requirements as an eligibility criteria only where it made sense and was practical to do so.

Policy Statement

DEP will use the attached “Project Definition Flow Chart” for the classification of all projects for PENNVEST funding. DEP will provide this classification to PENNVEST as part of the project planning and development process before the applicant has submitted a final application to PENNVEST for review.

This flow chart provides a clear definition of which of the four categories the project falls under as defined by PENNVEST state statute by starting with consideration of whether or not the project is designed to provide a water quality and environmental benefit by addressing a water quantity or water quality problem. The project is then further classified as to which category it falls under by considering the types of infrastructure improvements or best management practices used to address the problem.

This flow chart also identifies those projects that are defined as a Section 212 *treatment works* projects for the purpose of applying the additional federal Clean Water Act requirements listed above. The Section 212 *treatment works* definition will be limited to domestic and industrial wastewater projects. Project to address stormwater will not be considered treatment works except if the project also involves the treatment of municipal sewage such as in projects at treatment plants with combined sewage and storm systems. The reasons for limiting this to domestic and industrial wastewater projects are as follows:

1. The established view since 1972 of this definition is to consider treatment works as a municipal wastewater treatment system, including the plant (clarifiers, digesters, sludge drying beds, etc.), any pump stations and all collection lines.
2. Expanding the definition to include projects that treat storm water runoff separately is a grammatical read of the Clean Water Act that could be read any number of ways. It could just as easily be read to mean that the phrase “including storm water runoff” is applicable only to the practice of “disposing” and therefore its inclusion as part of “municipal waste” pertains only to that practice. The most common practice for “disposing” of storm water runoff that is associated with municipal waste is to pipe it to the treatment plant as part of the collection system.
3. Although there was some national discussion among EPA and States during the development of the final WRRDA guidance regarding expanding the definition of treatment works to include all stormwater projects, no such expansion was included in the final WRRDA guidance.
4. The drafters of WRRDA listed treatment works, storm water, decentralized wastewater treatment systems and other types of projects as different types of projects that were now eligible for assistance under section 603(c). If the drafters of the WRRDA had intended to include storm water and similar projects under “treatment works”, then they would not have listed them as separate categories.
5. The *treatment works* definition needs to be read with a goal of understanding the intent of Congress at the time it was written (1972). At that time there was no intent to fund non-point source projects. That did not arise until 1987, with the introduction of Sections 319/320. In 1972 Congress was concerned with the cleanup of POTW’s in the Construction Grants program. With that thought in mind, they realized that wastewater includes varying amounts of stormwater. Wastewater systems receive stormwater into both sanitary sewers (inflow) and combined sewers (storm inlets). They had to mention stormwater so that the eligibility of wastewater system repairs would not have to exclude the volume of wastewater that came from stormwater. This is further reinforced if the use of the term “treatment works” in the Clean Water Act itself is considered. In Section 216 for example, it describes the “needs categories” for treatment works. Those categories are secondary treatment, more stringent treatment, infiltration/inflow correction, sewer system rehabilitation, new collector sewers, new interceptors and combined sewers. All of those are relevant to wastewater treatment systems and are in no way related to stormwater runoff or non-point source projects.
6. WRRDA requires the development of a Fiscal Sustainability Plan and the application of American Iron and Steel Act and Davis-Bacon prevailing wage requirements for all “treatment works” projects. Many of the best management practices utilized for stormwater runoff and non-point source projects such as rain gardens, rain barrels and detention basins do not have infrastructure assets that would necessitate the development of such a fiscal sustainability plan, nor do they need the type of iron and steel products applicable to the American Iron and Steel Act provisions. In addition, in most cases, the types of workers who are hired to construct these projects do not fall in the labor categories defined for Davis-Bacon wages either. Applying

these requirements to these types of projects does not meet the intent of WRRDA. All it will result in is a paper exercise, resulting in fewer projects being constructed due to the difficulty in documenting compliance with these requirements.