



Clean Water and Drinking Water State Revolving Fund Programs:

Federal Fiscal Year 2022 Intended Use Plans

Comment and Response Document

INTRODUCTION

On June 4, 2022, the Pennsylvania Infrastructure Investment Authority (PENNVEST) and the Pennsylvania Department of Environmental Protection (DEP) published notice in the *Pennsylvania Bulletin* [52 Pa.B. 3300] of the availability for public comment on the Clean Water and Drinking Water State Revolving Fund Programs Intended Use Plans (IUPs) for Federal Fiscal Year (FFY) 2022. The IUPs demonstrate the Commonwealth's plan to utilize the State Revolving Funds (SRFs) and include detailed information that shows how the SRF program is intended to be implemented. These IUPs include a list of drinking water, wastewater treatment, nonpoint source, and pollution abatement projects to be considered for a design and engineering or construction loan or grant from funds the Commonwealth expects to receive from the United States Environmental Protection Agency (EPA) through the Drinking Water State Revolving Fund (DWSRF) and Clean Water State Revolving Fund (CWSRF) programs for FFY 2022. The DWSRF includes the Base Grant funds as well as new supplement grant funds made available through the FFY 2022 Federal appropriation, under the Federal Safe Drinking Water Act (42 U.S.C.A. §§ 300f—300j-27) including appropriate state match funds and principal, interest, and investment income. In addition, the DWSRF IUP also applies to the FFY 2022 Bipartisan Infrastructure Law (BIL) Grants—General Supplemental, Lead Service Line Replacement and Emerging Contaminants and the appropriate State match funds. The CWSRF includes the Base Grant funds as well as new supplement grant funds made available through the FFY 2022 Federal appropriation under Title VI of the Water Quality Act of 1987 including appropriate State match funds and principal, interest, and investment income. In addition, the CWSRF IUP also applies to the FFY 2022 BIL Grants—General Supplemental and Emerging Contaminants and the appropriate state match funds.

The projects to be considered for a loan or grant from the DWSRF and CWSRF programs must meet the Federal requirements for funding in accordance with the Federal Safe Drinking Water Act and the Federal Clean Water Act (33 U.S.C.A. §§ 1251—1388). Accordingly, the projects included in the IUPs are expected to meet the requirements applicable to the use of the DWSRF and CWSRF loan or grant funds. Projects listed in the FFY 2022 IUPs are on the Commonwealth's Project Priority Lists (PPLs) and are expected to proceed with design and engineering or construction within the next 2 years. A project must appear on a PENNVEST-approved IUP before it can receive a loan or grant from the SRF programs. A project's readiness to proceed and the reasonable availability of alternative funds also have a bearing on project selection for the IUPs. Consequently, the rank-ordered list of projects on the PPLs does not solely dictate the order in which projects will be chosen for inclusion in an IUP.

The DWSRF will be capitalized with an approximated maximum of \$199.8 million in Federal funds and \$12.3 million in State funds. Approximately \$54.0 million of these funds will be set aside for technical assistance to small systems, operator training and certification, and source water assessment and protection, as authorized under the Federal Safe Drinking Water Act. The DWSRF IUP also includes a narrative work plan that describes how these set-aside funds will be used. PENNVEST is also allocating \$8.5 million for administrative purposes. Finally, an approximated maximum of \$102.5 million may be set aside for additional subsidization to disadvantaged communities. The FFY 2022 DWSRF grant does not have a requirement to set aside funding for green infrastructure projects. However, the Commonwealth will continue to promote green infrastructure projects that meet the EPA criteria for green infrastructure and can fall into one or more of four categories: (1) water efficiency; (2) energy efficiency; (3) environmentally innovative; and (4) green stormwater infrastructure.

The CWSRF will be capitalized with an approximated maximum of \$137.1 million in Federal funds and approximately \$19.6 million in State funds. Approximately \$1 million will be set aside for the Onlot Sewage Disposal Program. Finally, an approximated maximum of \$69 million may be set aside for additional subsidization to disadvantaged communities and approximately \$6.3 million must be set aside for green infrastructure projects that meet the EPA criteria for green infrastructure and can fall into one or more of four

categories: (1) water efficiency; (2) energy efficiency; (3) environmentally innovative; and (4) green stormwater infrastructure.

A 30-day comment period was provided on the FFY 2022 CWSRF and DWSRF IUPs, and interested parties were directed to submit comments to DEP's eComment system or by e-mail to ecomment@pa.gov. The comment period ended on July 5, 2022.

DEP and PENNVEST received comments and questions from different individuals and organizations during the comment period. The purpose of this document is to present DEP's and PENNVEST's responses to these comments and to explain how the comments were considered in finalizing the CWSRF and DWSRF IUPs.

The names and, where available, addresses of individuals who submitted comments are identified in Attachment A, in no particular order. This document presents each comment received and identifies the commenter(s) by number in parentheses, corresponding to the list in Attachment A. Copies of all comments received during the public comment period are posted on the Department's eComment website at <https://www.ahs.dep.pa.gov/eComment/ViewComments.aspx?enc=DN064MT8R38NKyiRv2iU7Iw69HqO3YnNECH9r8ogPGE%3d>.

COMMENTS AND RESPONSES

Comments received on CWSRF and DWSRF IUPs

- 1. Comment:** "With increased policy emphasis from the IJIA on assisting disadvantaged communities, it would be helpful to better understand how PENNVEST defines them, and how disparities between census boundaries and system service territories would be reconciled. Maps designating such areas, and depicting results from PENNVEST's Affordability Analyses, would be immensely helpful to communities in advance of pursuing applications." **(1)**

Response: Both IUPs contain sections which explain how the term "disadvantaged" is defined and utilized within the funding programs by both DEP and PENNVEST. PENNVEST's project affordability analysis measures whether or not a project results in an applicant being considered "disadvantaged" for the purpose of project funding. As each applicant is required to complete a planning consultation, that is often the first opportunity for communities to better understand the financial capacity analysis and how their project/community would be impacted with PENNVEST funding. Hardship funding is made available to those systems whose affordability analysis shows that project affordability is a concern. In these cases, the project applicants are considered disadvantaged. The goal of the program is to provide incentives that can be used to enable infrastructure projects in disadvantaged communities that otherwise would not occur. In situations where a disadvantaged area is part of a larger system and the disadvantaged area has an identifiable census tract that is coincident with that area's demographics, the financial capacity analysis can be performed considering households within that tract. PENNVEST's technical assistance contractor, DEP's existing and new technical assistance staff, and EPA's partnership with states to stand up technical assistance hubs will also play a significant role in helping small, rural, and disadvantaged communities better understand the project development, implementation, and funding process. For the purpose of defining technical assistance eligibility, disadvantaged communities are those Environmental Justice (EJ) communities which are defined as: DEP-identified EJ Areas (see <https://www.dep.pa.gov/PublicParticipation/OfficeofEnvironmentalJustice/Pages/PA-Environmental-Justice-Areas.aspx>), and the areas defined by the White House Council on Environmental Quality (CEQ) and the CEQ's Climate and Economic Justice Screening Tool (see <https://screeningtool.geoplatform.gov/en>).

2. **Comment:** "...any opportunities to simplify the process, pre-identify areas meeting disadvantaged status or Affordability Criteria results, and streamline principal forgiveness as outright grants, would be welcomed and I believe lead to additional worthy applications." (1)

Response: PENNVEST is evaluating submissions for technical assistance outreach that can be used for this task. In addition, agency staff perform outreach and preliminary evaluations for communities as they consider implementation of water quality projects. However, grants carry greater federal requirements than principal forgiveness loans.

Comments received on DWSRF IUP

3. **Comment:** "The SDWA authorizes states to define a "disadvantaged community." Note that some states define a disadvantaged community to include a large public water system where a particular project within the system addresses a sub-set of the service area that meets affordability criteria. EPA has accepted this type of definition and believes that it is consistent with the definition of "disadvantaged community" at 42 U.S.C. §1452(d)(3) (Implementation Memo page 26)." (2)

Response: No response is offered since this appears to be background information for additional comments made by this commenter. However, see the response to Comment #1 for discussion about the definition of the term "disadvantaged" including discussion about financial capability analysis being performed for a disadvantaged area that is part of a larger system.

4. **Comment:** "Has PENNVEST made determinations on project eligibility for FY' 22 for all of the new BIL funds for that year?" (2)

Response: PENNVEST has made determinations on project eligibility for FFY 2022 for applications received to date. Additional PENNVEST Board meetings are scheduled which will provide additional opportunities for applications to receive consideration for funding. Funds may be drawn from base, general supplemental, and/or other supplemental grants as applicable.

5. **Comment:** "Does PENNVEST intend to open a new application round for the BIL eligible projects, with revised eligibility criteria for grants and loan forgiveness, for future fiscal years?" (2)

Response: PENNVEST has no plans to open a new application round, but the plan is to include BIL funding in with PENNVEST's regular quarterly application cut-off and Board meeting schedule.

6. **Comment:** "If so, does PENNVEST intend to redefine "disadvantaged community" eligibility for DWSRF BIL funded programs using PADEP's final mapping tool (EJ Map) with anticipated release in the Summer of 2022?" (2)

Response: As noted in the response to Comment #1, for the purpose of defining technical assistance eligibility, disadvantaged communities include DEP-identified EJ Areas and areas defined by the White House Council on Environmental Quality (CEQ) and the CEQ's Climate and Economic Justice Screening Tool. These two areas will be used to identify EJ areas for tracking purposes and access to additional funding opportunities and technical assistance. As implementation of the BIL continues, changes may be made to the definition of EJ to address concerns as they arise.

7. **Comment:** "If yes, will PENNVEST follow EPA's suggested changes and hold that EJ area eligibility serve as an alternative to the complex system-wide financial eligibility criteria for grant and loan forgiveness eligibility?" (2)

Response: As noted in the response to Comment #1, hardship funding is made available to those systems where the affordability analysis shows that project affordability is a concern. The goal of the program is to provide incentives that can be used to enable infrastructure in disadvantaged communities that otherwise would not occur. In areas where a disadvantaged area of a larger system has an identifiable census tract that is coincident with that area's demographics, households within that tract can be used to perform the financial capacity analysis. PENNVEST and DEP are implementing BIL in accordance with the federal requirements and policy.

Comments received on CWSRF IUP

8. **Comment:** "Provide rationale in the final IUP that explains why certain criteria are applied to wastewater vs NPS, including: community health, aquatic habitat, public health, planning, and safety. Additionally, PENNVEST should explain the rationale for weighting differences between both categories." (3)

Response: In many ways, wastewater projects and nonpoint source (NPS) projects are different and should be compared by project type with a rating system that best compares one project against another. For example, prioritizing infrastructure health is more relevant to a wastewater project because in many cases infrastructure is being replaced. This may not be the case for a NPS project. In addition, wastewater projects go through a rigorous alternatives and cost-effectiveness analysis whereas NPS projects evaluation includes a benefit-to-cost evaluation. A NPS project may have multiple best management practices (BMP) that could be implemented to provide a solution to a problem. Therefore, the selected BMP is rated with a benefit-to-cost in mind. In addition, each rating system is reviewed and approved by EPA.

9. **Comment:** "Provide additional subsidy as grants: Disadvantaged communities, especially those that are small, are often challenged to find funding for the planning, administration, design, and permitting needed to develop a fundable project. We recognize that there are significant technical assistance offerings being developed to address this need, however, funding also needs to be made available to cover the effort of local staff involved in overseeing project development and applications for funding." (3)

Response: PENNVEST will be administering a portion of the program to provide Principal Forgiveness loans for those in Environmental Justice areas and disadvantaged communities. Technical assistance will be available for project development for those projects that could be approved for funding. Technical assistance for project development costs may be covered up front if PENNVEST's Technical Assistance contractor or DEP's technical assistance programs/staff are involved with a facility; otherwise, the eligible costs may be reimbursed at construction funding approval. This reimbursement is for project-related costs only and not for funding recipient payroll cost.

10. **Comment:** "Make additional subsidy available to small projects: We appreciate that the Small Projects Initiative simplifies the application process, however the lack of additional subsidy provided through this program may deter applicants. These projects should be eligible for the same additional subsidy as other larger projects, ideally as grants." (3)

Response: A project, regardless of size, is eligible to go through PENNVEST's quarterly application process for funding consideration. A funding offer may be a loan, principal forgiveness loan, or a combination of both. The term "grant" requires an applicant to meet stringent federal requirements. So,

principal forgiveness loans are offered to qualified applicants. The Small Project Initiative program is loan only as monies have been set aside with PENNVEST Board approval for this program. Over 40% of the existing program funding has been awarded to current EJ communities and this percentage going to EJ communities is expected to be maintained or expanded as a result of the infrastructure funding being made available and the changes being proposed.

- 11. Comment:** "Provide additional subsidy directly to non-municipal entities: If these grants were made available to non-municipal entities, they could support the capacity gap in small, rural, and otherwise disadvantaged communities. PENNVEST should require that any projects receiving these grants must support only disadvantaged communities and that the communities have a funded role in directing the work." (3)

Response: Additional subsidy is available to non-municipal entities based upon the financial capacity analysis. All funded projects both municipal and non-municipal are required to have planning sign-off from the appropriate local government.

- 12. Comment:** "Additionally, please clarify which communities are proposed to receive additional subsidy in this IUP and the amounts per project." (3)

Response: PENNVEST staff cannot identify the additional subsidy until the financial information is provided by applicants in order to perform the necessary financial capacity review. Once an application is received and a funding offer is made, the subsequent year's sources and uses detail chart for the IUP is updated, identifying loan and additional subsidy for each project.

- 13. Comment:** "in an effort to increase natural infrastructure investment, a straight-forward interest rate reduction for nature-based project types that result in health, affordability, and/or resilience outcomes should be offered regardless of the applicant, with higher rate reductions for projects that improve conditions for downstream disadvantaged communities. This could look like a simple 0-1% interest rate on any project that meets Green Project Reserve or natural infrastructure targets." (3)

Response: PENNVEST's enabling legislation (Act 16 of 1988) does not provide for an interest rate less than 1%, and specifically separates project ranking (priority) from financial support based upon fiscal capacity of the recipient. Applicants proposing Green Project Reserve (GPR) projects are encouraged to apply.

- 14. Comment:** "We propose that PENNVEST evaluate user experience of their website to optimize access to information, describe how the program will assess whether it is achieving its long and short term goals set out in this IUP, and altogether make information of loan recipients (past, and proposed) available to the public. Additionally, there are numerous terms used to describe disadvantaged entities including "Disadvantaged communities", "underserved areas", "distressed communities". Please provide the clear definitions of these terms and how these are identified." (3)

Response: PENNVEST provides an annual report identifying impacts on its measurable goals. This can be found on the PENNVEST website (<https://pennvest.pa.gov>) under About Us / Publications. Furthermore, a listing and map of all approved projects by project type can be found on the PENNVEST website under Information / Approved Projects.

The term underserved is a term used by the EPA that seems to point to areas that historically may not have received SRF funding or that continue to be out of compliance with water standards. These areas may lack the technical, financial, and/or managerial skills to effectively operate and manage their system,

which may leave those who rely on the water and wastewater services in an underserved position. Distressed communities are those considered by PENNVEST to have residential user fees greater than other similarly situated systems. The Pennsylvania Department of Community and Economic Development (DCED) defines distressed communities as those communities on the Act 47 list. The term disadvantaged has specific meaning as it relates to the SRF program. EPA has encouraged the states to focus technical assistance on small, rural, and disadvantaged systems. For the purposes of technical assistance, disadvantaged systems already do, and will continue to receive priority. In terms of determining funding to an eligible recipient, PENNVEST relies on the affordability analysis to determine the funding offer provided to an applicant, whereby they are continuing to help those disadvantaged systems through project funding. Also see the response to Comment #1.

- 15. Comment:** "This IUP should state clearly how the Commonwealth will increase its own staffing for administration of these funds and clarify whether these staff members will provide direct assistance to prospective borrowers, including community engagement and prioritization of water infrastructure needs. Additionally, this IUP should state how much the Commonwealth proposes to allocate in contract technical assistance and the general intended nature of this procurement—notably, whether the Commonwealth intends to solicit traditional engineering support only. If the state proposes not to use these funds for community engagement and watershed purposes, we strongly requests identifying these loan eligible project management costs as 100% principal forgiveness for those communities meeting the affordability criteria. Finally, this IUP should offer additional technical assistance for support to access financing in addition to engineering and technical support." (3)

Response: PENNVEST has selected a technical assistance contractor through a competitive request for proposals (RFP) process. The contractor will provide a variety of technical assistance to potential project sponsors with an emphasis on providing technical assistance to small, rural, and disadvantaged communities. The technical assistance provided will be funded out of the SRF dollars and will provide planning-level technical assistance to help communities understand their problems and evaluate options to address these problems, and to work with communities to implement a solution. This will help to bridge the gap between disadvantaged communities and project implementation. The technical assistance, coupled with PENNVEST's and DEP's efforts to keep projects moving through the process, will result in successful project implementation. DEP's existing and new technical assistance staff, EPA's partnership with states to stand up technical assistance hubs, and EPA's various other technical assistance efforts will provide additional technical assistance to communities. In addition, PENNVEST is considering the possibility of making available design advance funding for those areas considered Environmental Justice or otherwise disadvantaged in order to move projects toward implementable construction projects.

- 16. Comment:** "PEC requests that a specific grant-only program be established by PENNVEST that provides a clear, simple, and transparent process for disadvantaged and environmental justice communities to apply for these PENNVEST Clean Water subsidized funds. We request that this grant-only process be separate from the more complex affordability steps that PENNVEST takes during each round of funding decisions. We recommend that such a grant program be explained to potential applicants in advance of and during the Planning Consultation Meeting..." (4)

Response: Two of the program funding sources provide for principal forgiveness only; the balance of the program is to be run through the State Revolving Loan Fund. The program focuses on community capacity to handle debt service and prioritizes additional subsidy on those most needy areas. Please contact your regional PENNVEST project specialist to review grant eligibility. A list of PENNVEST project specialists can be found on the PENNVEST website (<https://pennvest.pa.gov>) under Services / Regional Assistance Map.

17. Comment: "PEC supports the commitment to fund green infrastructure projects, but we request that the 10% be a minimum allocation target rather than a maximum allocation target." (4)

Response: Thank you for your support. Pennsylvania proposes to utilize at least 10% of the CWSRF Base Grant and 10% of the CWSRF General Supplemental Grant to fund green infrastructure projects. There is no maximum allocation target.

18. Comment: "PEC requests that PENNVEST clarify how much of the service area impacted by the proposed project needs to be in an environmental justice area to consider the applicant a disadvantaged community." Background - "PENNVEST allows the use of maps provided by the Council on Environmental Quality Climate and Economic Justice Screening Tool and the Pennsylvania Defined Environmental Justice tool as a method of identifying disadvantaged communities, noting that the service area impacted by the project is considered rather than the entire water system. What does this mean? How will applicants evaluate their own eligibility?" (4)

Response: See the response to Comment #7.

19. Comment: "PEC recommends that PENNVEST allow for the funding of project planning and design costs for disadvantaged and environment justice community using PENNVEST Clean Water grants" (4)

Response: PENNVEST is considering the possibility of making available design advance funding for those areas considered Environmental Justice, or otherwise disadvantaged in order to move projects toward implementable construction projects.

20. Comment: "PEC recommends that PENNVEST increase the priority rating factor for environmental justice communities (currently receives 2 points) and the additional rating factor for distressed communities (currently receives 10 points). These two factors collectively now represent just 7 percent of the maximum total score of 175 points. We also recommend that the rating factors both be of equal value, rather than valuing environmental justice communities less than distressed communities." (4)

Response: It has been many years since PENNVEST has had to defer a project to the next PENNVEST Board meeting due to demand outpacing supply of funds. However, if this becomes an issue, PENNVEST will consider increasing the additional points for projects located in an environmental justice community. Project ranking has no bearing on the financial package offered by PENNVEST.

21. Comment: "The EDCSC communities find the uncertainty of a loan (that may be forgiven later) versus a known grant to be a hinderance in seeking PennVest funding. While PennVest does have staff to provide assistance the overall lack of a clear, simple, and transparent process creates hurdles for disadvantaged and environmental justice communities to apply for these PENNVEST Clean Water subsidized funds. These complicated processes deter participation particularly in the very communities being targeted...those with few resources and limited staff capacity. Predictability and less complexity will enable more funds to reach disadvantaged and environmental justice communities such as those in the EDCSC and throughout PA. The EDCSC requests that this grant-only process be separate from the more complex affordability steps that PENNVEST takes during each round of funding decisions. We recommend that such a grant program be explained to potential applicants in advance of and during the Planning Consultation Meeting..." (5)

Response: Project funding will be made available with an upfront determination on loan or principal forgiveness loan. The process and preliminary estimates are provided at the planning consultation. Please

contact your regional PENNVEST project specialist to review grant eligibility. A listing of the PENNVEST project specialist can be found on the PENNVEST website (<https://pennvest.pa.gov>) under Services / Regional Assistance Map.

ATTACHMENT A
LIST OF COMMENTERS

- (1) Patty Elkis, Delaware Valley Regional Planning Commission, 190 N Independence Mall West, 8th Floor, Philadelphia, PA 19106-1520
- (2) Honorable Danene Sorace, Mayor's Office - City of Lancaster, 120 North Duke Street, P.O. Box 1599, Lancaster, PA 17608
- (3) Lia Mastropolo, American Rivers, 5138 Locust Street, Philadelphia, PA 19139
- (4) Susan Myerov, Pennsylvania Environmental Council, 1315 Walnut Street, Suite 532, Philadelphia, PA 19107
- (5) Jamie Anderson, Eastern Delaware County Stormwater Collaborative, P.O. Box 315, Morton, PA 19070