

**COMMONWEALTH OF PENNSYLVANIA  
PA INFRASTRUCTURE INVESTMENT AUTHORITY  
and  
PA DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**CLEAN WATER STATE REVOLVING FUND INTENDED USE PLAN**

**ASSOCIATED WITH FFY2022 FEDERAL APPROPRIATIONS:**

**SFY22-23 CWSRF CAPITALIZATION GRANT – BASE**

**AND**

**BIPARTISAN INFRASTRUCTURE LAW:**

**SFY22-23 CWSRF CAPITALIZATION GRANT – GENERAL SUPPLEMENTAL**

**SFY22-23 EMERGING CONTAMINANTS GRANT**

*Draft May 2022*

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***Attachments:***

1. Project Priority List for Wastewater Projects
2. Project Priority List for Nonpoint Source Projects
3. Wastewater Project Ranking Criteria
4. Nonpoint Source Project Ranking Criteria
5. Stormwater Project Ranking Criteria
6. Nonpoint Source Pollution Control Funding Program Design Manual
7. Policy Statement – Definition of Treatment Works
8. Architectural & Engineering (A&E) Procurement Requirements Help Guide
9. CWSRF Sources and Uses
10. PENNVEST Sublevel Revolving Loan Program (SLRLP)

# Clean Water State Revolving Fund Intended Use Plan SFY22-23 Multiple Federal Grants

## I. Introduction

When discussing the Intended Use Plan and the federal grants to which it applies the following acronyms will be used:

Federal Water pollution Control Act (**FWPCA**), aka Clean Water Act (**CWA**)  
Infrastructure Investment and Jobs Act (**IIJA**)  
Bipartisan Infrastructure Law (**BIL**)  
Build America Buy America Provisions of IIJA (**BABA Act**)  
Federal Fiscal Year October 1, 2021 – September 30, 2022 (**FFY2022**)  
State Fiscal Year July 1, 2022 – June 30, 2023 (**SFY22-23**)  
Intended Use Plan (**IUP**)  
Clean Water State Revolving Fund (**CWSRF**)  
CWSRF Capitalization Grant – Base (**Base Grant**)  
CWSRF Capitalization Grant – BIL Supplemental (**General Supplemental Grant**)  
BIL – Emerging Contaminants Grant (**Emerging Contaminants Grant**)

Pennsylvania herewith submits its Intended Use Plan (IUP) for use of all Clean Water State Revolving Fund (CWSRF) monies awarded or available through September 30, 2022 under Title VI of the Water Quality Act of 1987 (Act) including appropriate state match funds and principal/interest/investment income. In addition, this IUP also applies to the FFY2022 BIL Grants – General Supplemental and Emerging Contaminants and the appropriate state match funds. See Table 1 below for the FFY2022 CWSRF appropriations and planned usage of these funds.

BIL provides the authority for the states to utilize a new allowance under the CWSRF program. The 2% allowance provides technical assistance to small, rural systems. Pennsylvania plans to utilize this allowance from the Base Grant and the General Supplemental Grant.

As part of Act 13 of 2012, a fee is now being charged for the extraction of oil and gas. This fee is being allocated to numerous funds for different purposes. The Pennsylvania Infrastructure Investment Authority (PENNVEST) will receive annual amounts from the “Unconventional Gas Well Distribution fund” to use as grants for projects. Some of these funds may be used to supplement the SRF program funding.

PENNVEST has developed a comprehensive cash flow projection model to determine the optimal annual project approval funding. This model incorporates both state and federal loan funding, as well as state grant availability.

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<b>Table 1: FFY2022 PA CWSRF Base Appropriation and BIL Appropriations for Pennsylvania</b>					
	Base Grant	BIL General Supplemental	BIL Emerging Contaminants	BIL Total	BIL Plus Base Total
2022 Appropriation	\$45,833,000	\$70,500,000	\$3,704,000	\$74,204,000	120,037,000
State Match	\$9,166,600	\$7,050,000	\$0	\$7,050,000	16,216,600
Total	\$54,999,600	\$77,550,000	\$3,704,000	\$81,254,000	136,253,600
Allowances Available					
4%	\$1,833,320	\$2,820,000	N/A	\$2,820,000	\$4,653,320
2%	\$916,660	\$1,410,000	N/A	\$1,410,000	\$2,326,660
Total	\$2,749,980	\$4,230,000	N/A	\$4,230,000	\$6,979,980
Allowances Utilized From Grant					
4%	\$1,833,320	\$2,820,000	N/A	\$2,820,000	\$4,653,320
2%	\$916,660	\$1,410,000	N/A	\$1,410,000	\$2,326,660
<b>Allowances Utilized From Grant Total</b>	<b>\$2,749,980</b>	<b>\$4,230,000</b>	<b>N/A</b>	<b>\$4,230,000</b>	<b>\$6,979,980</b>
Capital for Projects					
2022 Appropriation	\$43,083,020	\$66,270,000	\$3,704,000	\$69,974,000	\$113,057,020
State Match	\$9,166,600	\$7,050,000	\$0	\$7,050,000	\$16,216,600
Unutilized Allowances From Grant					
4%	\$0	\$0	N/A	\$0	\$0
2%	\$0	\$0	N/A	\$0	\$0
<b>Projects Total</b>	<b>\$52,249,620</b>	<b>\$73,320,000</b>	<b>\$3,704,000</b>	<b>\$77,024,000</b>	<b>\$129,273,620</b>
Additional Subsidy	10% Minimum	49%	100%		
	\$4,583,300	\$34,545,000	\$3,704,000		
	30% Maximum				
	\$13,749,900				
<b>Additional Subsidy Total*</b>	<b>\$4,583,300</b>	<b>\$34,545,000</b>	<b>\$3,704,000</b>	<b>\$38,249,000</b>	<b>\$42,832,300</b>

\*A minimum 10% Additional Subsidy up to a maximum of 30% will be used from the Base Grant.

The CWSRF program is an essential component of the Commonwealth's efforts to improve the quality of life of the citizens of Pennsylvania by protecting the water and environment, promoting community revitalization, and supporting economic development. To this end, PENNVEST and the Department of Environmental Protection (DEP) work closely together

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and with other state and federal agencies to identify opportunities for funding specific projects and to coordinate funding efforts. These efforts are instrumental in achieving the requirements of the Federal Clean Water Act.

### **II. Project Funding**

Under this SFY22-23 IUP Pennsylvania intends to show it has enough projects to apply for full allotment of the Base Grant and General Supplemental Grant. Under the current plan we are demonstrating that 100% of the CWSRF Emerging Contaminants Grant can be transferred to the DWSRF Emerging Contaminants Grant. We would like to reserve this option for the future. Projects have been identified to show 100% usage of this grant. Please see Table 1 and Attachment 9 Sources and Uses for details.

Pennsylvania will be using both the 4% Administration and 2% Technical Assistance allowances from the Base Grant and General Supplemental Grant. The IUP also includes projects associated with funds received from loan repayments and interest earnings. Please refer to Attachment 9 CWSRF Sources and Uses for details.

Ten percent of the Base Grant and General Supplemental Grant has been reserved for allocation to “Green Infrastructure” projects consistent with the EPA Guidance, “2012 Clean Water and Drinking Water State Revolving Fund 10% Green Project Reserve: Guidance for Determining Project Eligibility” dated April 2012. The additional subsidy requirement for each grant will be met the quantities of which are identified in Table 1. Furthermore, projects funded with the FFY 2022 CWSRF Capitalization Grant must still be consistent with program revisions established by the federal Water Resources Reform and Development Act (WRRDA) passed in June 2014.

EPA provided further guidance on these program revisions in the document, “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”, dated January 6, 2015 and subsequent appendices and question and answer documents (WRRDA Guidance). Among these program revisions include the requirement for all Section 212 Treatment Work projects to:

1. Pay their workers the federal Davis-Bacon wage rates for their job classification.
2. Ensure that certain aspects of the project are constructed with American made iron and steel products as defined by the EPA Guidance, “Implementation of American Iron and Steel Provisions of P. L. 113-76, Consolidated Appropriations Act, 2014” dated March 20, 2014, and
3. Develop a Fiscal Sustainability Plan to include:
  - (a) an inventory of critical assets that are part of the treatment works.
  - (b) an evaluation of the condition and performance of inventoried assets or asset groups.
  - (c) a certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan; and
  - (d) a plan for maintaining, repairing, and, as necessary, replacing the treatment

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works and a plan for funding such activities.

In the WRRDA Guidance, EPA further states that, “states should use best professional judgment to determine whether or not a project is a Section 212 treatment work...”

Attachment 7 is Pennsylvania’s definition of a Section 212 treatment work, along with a flow chart and the logic behind this definition. Attachment 7 will be used by DEP and PENNVEST to determine whether a project meets the definition of a Section 212 project and apply the necessary WRRDA requirements accordingly.

Attachment 1 and Attachment 2 are Pennsylvania’s project funding list. The sources for these projects are contained in Attachment 9.

### **III. Short- and Long-Term Goals**

The Mission of PENNVEST and the Program is to protect the quality of life for Pennsylvania residents by providing financing for facilities and other improvements that provide for a clean, safe, and healthy environment, support economic development and community revitalization. To accomplish this, PENNVEST has established the following short- and long-term goals.

#### **A. Short-Term Goals**

1. Achieve a 98 percent fund utilization rate (cumulative loan agreements to the cumulative funds available for projects) for SFY2022.
2. Increase the availability, quality, and reliability of information available to stakeholder parties via the web and other electronic means.
3. Continue to improve coordination of CWSRF financial assistance, planning, permitting and enforcement activities as well as nonpoint source management activities among DEP, PENNVEST and other agencies, including the Public Utility Commission.
4. Develop markets and coordinate technical/funding efforts for the on-lot program, brownfields, abandoned mine drainage, greyfields, and other nonpoint source related activities.
5. Promulgate revised Chapter 963 PENNVEST regulations and eliminate Chapters 961 and 965.
6. Continue to ensure compliance with federal requirements including Disadvantaged Business Enterprise (DBE) solicitation, Davis-Bacon wage rates usage, American Iron and Steel procurement, and Architectural & Engineering (A&E) procurement, as defined by WRRDA.
7. Ensure compliance with BABA Act where applicable.
8. Continue to enhance the results of the Pennsylvania Gap Study by merging the

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results of this study with future Clean Watershed Needs Survey to further enhance the estimation of total infrastructure financing needs in the Commonwealth.

9. Implement a federal trust indenture that will allow for the issuance of revenue bonds, commercial paper, and implementation of a loan/bond guarantee program. It will be cross collateralized with the DWSRF.
10. Expand outreach to provide technical assistance to communities, with a focus on underserved areas to help determine possible projects and feed the pipeline of future construction projects.
11. Evaluate fund allocation to the DWSRF from the CWSRF eligibilities under the BIL and make the necessary modification for effective implementation.
12. Explore options to provide necessary security for marginal or at-risk loan recipients.

### **B. Long-Term Goals**

1. Provide funding that will enable publicly owned wastewater systems to achieve and/or maintain compliance with state and federal water quality standards.
2. Administer the CWSRF to issue loans, loan guarantees, and insurance, at fees commensurate with risk, such that the revolving nature of the CWSRF is assured in perpetuity.
3. Ensure accounting, audit and fiscal procedures conform to accepted governmental accounting standards are implemented.
4. Support and implement infrastructure sustainability initiatives to protect public health and the environment in accordance with “EPA’s Clean Water and Drinking Water Infrastructure Sustainability Policy” dated October 1, 2010.
5. Continue to develop and expand the nutrient trading and auction program in support of reductions of nutrients to the Chesapeake Bay.
6. Continue to pursue opportunities to participate in nontraditional projects and other best management practices in the Clean Water State Revolving Fund Programs.

### **IV. Allocation of Funds**

Allocation of funds for eligible traditional and nonpoint source projects is based on a three-step process:

1. Determine the eligibility and amount of financial assistance needed for each community.
2. Identify the funding sources and spending limits for all CWSRF funds.



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3. Allocate the CWSRF project funds such that grant and loan availability are not exceeded while meeting the financial assistance of each funded project.

Information pertinent to each CWSRF project is contained in the PPLs and the appropriate grant application meeting the requirements of Section 606(c)(3) of the FWPCA (CWA).

**A. Criteria and Method of Distribution of Funds**

The following approach was used to develop Pennsylvania's proposed distribution of its funding:

- Analyze the type of communities served and financial assistance needed.
- Identify the sources and funds.
- Develop a payment schedule which will provide for making timely binding commitments to the projects selected for CWSRF assistance; and
- Develop a disbursement schedule to pay the project costs as incurred.

***Bypass Procedures***

The projects designated for funding fall under the eligible need Categories. Projects on Chart 1 of Attachment 1 satisfy all the enforceable requirements of the Act.

In the event that projects identified for funding in the IUP are unable to proceed, these delayed projects will be bypassed and other projects from the PPL will be funded based on the project priority ratings, the criteria identified in Section 10(b) of Act 16 and Section 963.8 of the PENNVEST regulations.

A project may also be bypassed if PENNVEST determines that provision of funds from the CWSRF will be used to replace or supplant other funds reasonably available for the project. Further, PENNVEST reserves the right to provide funding for only a portion of the total costs of a project or only a portion of the amount requested where the municipality can, based on its ability to pay, obtain other affordable financing for the remainder of the project.

A project may be bypassed if Pennsylvania determines that a different project should be funded due to an emergency condition that can only be addressed in an immediate time frame. The final IUP and PPL lists will reflect the changes caused by the emergency.

Bypassed projects that retain their priority rating will be subject to the same eligibility and funding considerations from future allotments as other fundable projects.

**B. Types of Projects to be Funded**

***Project Development***

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Each project is reviewed by the regional DEP staff for cost-effectiveness, including the sizing of proposed facilities. Approved projects must be designed to meet only existing needs and future needs based on reasonably expected growth. Where project cost estimates include excess capacity for service beyond normal growth, project approval is based solely on that portion of the project needed to eliminate the public health or compliance concerns for the existing and reasonably expected future customers.

Although the project applicant may receive a DEP permit to construct whatever size facility it deems appropriate and which meets DEP design standards, the awarding of PENNVEST CWSRF funding is limited to those costs, which meet these criteria.

All CWSRF projects are ranked and funded based upon the rating criteria agreed upon by Pennsylvania and EPA. Some projects may obtain an updated rating based upon information provided by the project sponsor at the time of application. Pennsylvania has state funds that may be used for projects as well. If a project is included on the original IUP as CWSRF-eligible, and the review and ranking process concludes that it is not CWSRF-eligible, it will be bypassed and potentially funded through non-CWSRF funding sources. Other CWSRF-eligible and ranked projects would move onto the IUP to fill any resulting gaps. A brief description of each project on the IUP list is included following the list.

### ***IUP and PPL Amendment Process***

Annually, as part of the CWSRF Annual Report, DEP/PENNVEST will submit to EPA one PPL and one IUP/fundable list for EPA's review and approval of all projects that have been approved for funding during the prior year. This post approval amendment process will allow for multiple PENNVEST board meetings and amendments throughout the year and is based on the experience that has been developed over the years. Additionally, a brief description of the environmental or public health concerns and descriptions of all new projects will be included. EPA will review and approve these revisions as part of its annual review process.

Should a project be approved by PENNVEST and included on the IUP/PPL that subsequently is found to not be an eligible project, it will be removed and any funds that have been expended will be reimbursed to the fund.

The economic impact of COVID-19 on the availability of state revenues and special funds is being monitored closely. Any future impacts that are identified may result in changes to the IUP. Pennsylvania plans to apply for any additional stimulus funding that may be appropriated by Congress for FFY2022. Projects may be added to the IUP from the PPL in priority order, subject to readiness-to-proceed and bypass procedures.

### ***Project Classification Process***

With the passage of WRRDA and the development of revisions to PENNVEST regulations, it became evident that a clear process for the classification of wastewater, stormwater, and nonpoint source projects was needed. This classification process:

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1. Facilitates the application of the appropriate federal requirements, including those established under WRRDA. This is especially important for Section 212, Treatment Works projects. Pennsylvania has determined these projects include wastewater projects only. The logic behind this definition is described in Attachment 7, Policy Statement – Definition of Treatment Works.
2. Separates stormwater projects from nonpoint source projects for the purpose of ranking, reviewing, and project management.
3. Further defines which projects are categorically green under the criteria for “green infrastructure” as defined by the EPA Grant Guidance, “2012 Clean Water and Drinking Water State Revolving Fund 20% Green Project Reserve: Guidance for Determining Project Eligibility” dated April 2012.

This classification process is illustrated in the flowchart in Attachment 7. It is based on the problem being solved and the types of practices being used to solve the problem. DEP will use this flow chart to define each project as part of the application review process before the project is ranked and recommended for funding.

### ***Wastewater Projects***

Attachment 1 - Project Priority List for Wastewater Projects identifies the applicants and projects expected to need CWSRF funds within the next twelve to eighteen months. Project ranking follows Attachment 3 - Wastewater Project Ranking Criteria, the criteria identified in Section 10(b) of Act 16 of 1988 and in Title 25, Section 963.8 of the PENNVEST regulations. Projects included in the IUP are selected from the PPL.

### ***Green Infrastructure Projects***

Pennsylvania proposes to utilize at least 10% of the Base Grant and 10% of the General Supplemental Grant to fund green infrastructure projects as defined by EPA to include the following categories:

1. Water efficiency
2. Energy efficiency
3. Green Infrastructure (Nonpoint Source Projects)
4. Environmentally innovative

Procedures for determining which projects are categorically green will be implemented consistent with the EPA Grant Guidance, “2012 Clean Water and Drinking Water State Revolving Fund 20% Green Project Reserve: Guidance for Determining Project Eligibility” dated April 2012. The PPL will identify which projects are “green” and which green category the project addresses. This will be posted on the DEP website on the Bureau of Clean Water Infrastructure Finance page.

### ***Nonpoint Source Projects***

The 1994 CWSRF Grant Application included funding for the Pennsylvania On-lot Sewage

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Program for repairing and replacing individual on-lot systems. Under this IUP, Pennsylvania will continue to allocate capitalization grant funds to implement its On-lot Sewage Disposal System Loan Program. As with previous capitalization grants, the allocation will be equal to the amount expected to be utilized during the year. The loans are used to repair or replace malfunctioning on-lot sewage disposal systems or install/replace private laterals and the necessary connections into an existing wastewater treatment system, eliminating related groundwater and stream contamination problems. This program is a cooperative effort among PENNVEST, the Pennsylvania Housing Finance Agency (PHFA), DEP, and local financial institutions to provide funding to address the public health and environmental needs which result from malfunctioning on-lot systems in areas where public collection and treatment facilities are not currently practical. Eligible costs include all testing, design, permits, and construction costs associated with the repair, rehabilitation, improvement, expansion or replacement of an existing individual on-lot sewage disposal system or all costs associated with the installation of all necessary pipes and appurtenances outside of the home to convey the individual homeowners sewage to an existing wastewater treatment system. This program will complement other state sourced efforts to aid in nonpoint source pollution reduction. As of December 31, 2021, a total of \$19,681,238 has been set aside for the on-lot loan program. As of December 31, 2020, \$14,497,316 in on-lot loans has been settled, in cooperation with Pennsylvania Housing Finance Agency.

In this application Pennsylvania proposes to use a portion of the CWSRF capitalization grant to fund the Nonpoint Source Program that was created in 2010. This program will be implemented in accordance with Attachment 6 - Nonpoint Source Pollution Control Funding Program Design Manual dated June 2016. Projects designed to address the three top sources of nonpoint source pollution, as identified in the Commonwealth's approved Section 319 Nonpoint Source Management Program Plan; resource extraction, agriculture, and urban runoff, will be implemented through this program. Attachment 4 is the ranking framework used to prioritize these projects.

Pennsylvania also plans to use a portion of the CWSRF funds to assist with groundwater cleanup and site remediation efforts under the Commonwealth's Land Recycling Program, commonly referred to as the "Brownfields" program. The DEP Bureau of Land Recycling and Waste Management oversees the implementation of the Land Recycling Program. The Bureau currently maintains an inventory of more than 1,000 sites in the Commonwealth, which serves as the basis for prioritizing and scheduling site assessments and cleanups. Brownfield projects supported with these funds are consistent with Pennsylvania's approved Section 319 Nonpoint Source Management Program as defined in the Nonpoint Source Management Plan.

In addition, PENNVEST had allocated CWSRF funds to the DWSRF program for lead line removal under the Water Infrastructure Funding Transfer Act (WIFTA).

### ***Stormwater Projects***

In 1992, PENNVEST began utilizing state funds to provide low interest loans to construct, improve and rehabilitate public stormwater facilities to address urban runoff. Facilities eligible for this funding are: (1) new or updated storm sewer systems to reduce stormwater flooding or to separate stormwater from sanitary sewers and (2) detention basins to control

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stormwater runoff. Consistent with PENNVEST statute, Pennsylvania’s stormwater management regulations, and the addition under WRRDA of eligible activities for CWSRF funding to “manage, reduce, treat, or recapture stormwater or subsurface drainage water”, investment in the construction of the more traditional “bricks and mortar” type projects may be necessary. Attachment 5 is the ranking framework for these projects.

### ***PA State-Level Riparian Buffer Program***

DCNR and a broad partnership of public and nonprofit partners are developing a state-level riparian buffer program as an additional tool to encourage landowners to voluntarily install buffers along creeks to improve water quality. The program will encourage broader participation than is currently active in the state through wider landowner eligibility, greater design flexibility, and – most importantly – added incentives for participating landowners to generate income from their buffer plantings beyond a 15-foot minimum “natural buffer” zone. DCNR’s goal is to help the state meet its Chesapeake Bay goal of 95,000 acres of new riparian forested buffers by 2025. PENNVEST grant funding at first, and investment funds later, would be used to cover the cost of plant materials, installation, and three (3) years of maintenance. The purpose of the grant funding is to support platform set up, and to development a business plan for future investment. A portion of the annual income produced by the buffers will be used to provide capital payback over a set time period. DCNR will contract these funds to third-party conservation groups to do the outreach, installation, and maintenance, with DCNR’s forestry staff providing technical assistance. Landowner agreements will define minimum establishment periods for the buffers and the pay-back mechanisms, while DEP will oversee acreage reporting and verification. Program evaluation, verification and reporting is ongoing.

### ***Small Projects Initiative***

While PENNVEST’s traditional assistance programs meet the needs of most potential funding applicants, many lower cost projects in small communities are presently not accessing the PENNVEST program for funding, in part due to the expense in complying with additional terms tied to the funds and the time delay between application and funding offer. To address these issues, effective July 1, 2020, the PENNVEST Board allocated \$15,000,000 to the Small Project Initiative (SPI) program. Here, capital projects less than \$1,000,000 in total project costs can receive up to \$500,000 of PENNVEST funding.

Program authorization by the PENNVEST Board has generally authorizing staff to conduct an expedited review on the applications and make the funding awards. The SPI funding awards are in the form of low interest loans only, no extended term bond purchases, grants, or principal forgiveness loans. The reviews and approvals are expedited at the staff level reducing the time it takes to receive an award. As of April 20, 2022, PENNVEST has approved five CWSRF Small Projects totaling \$2,301,000.

### ***Development of a Sublevel Revolving Loan Program***

In an effort to expand access to funding for smaller projects that have a water quality impact and are otherwise eligible under PENNVEST’s Clean Water State Revolving Fund (CWSRF)

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program to more communities across the Commonwealth, including rural and smaller communities, the PENNVEST Board of Directors approved PENNVEST Board Resolution 2022-3, authorizing PENNVEST to establish a PENNVEST Sublevel Revolving Loan Program (SLRLP) which is further described in Attachment 10. Under Resolution 2022-3, the PENNVEST Board made \$50M available to PENNVEST as an investment in the program, subject to the approval of the investment by the State Treasurer, in accordance with Section 751.5(b) of the PENNVEST Act, 35 P.S. §751.5(b), and subject to the approval of the program by the United States Environmental Protection Agency (EPA).

Under the SLRLP, counties, municipal authorities, council of governments, or other regional entities, can apply for ‘seed’ funding to establish a revolving loan program to fund eligible clean water projects at the sub-state level. The thought is that regional entities will have staff that are better situated to reach potential funding recipients in their areas who have smaller projects eligible for funding by PENNVEST. These types of networks and personal connections are instrumental in expanding program outreach to small, rural, and disadvantaged communities.

### ***Programmatic Financing***

Many large government-owned and private drinking water and wastewater utilities use the tax-exempt market to fund infrastructure projects identified in their comprehensive capital improvement plans (CIP). A CIP includes projects the utility intends to implement over the next few years. Governmental utilities sell general obligation or revenue bonds to fund their projects whereas the private utilities use an asset backed security. In all cases the cost of borrowing at market interest rates is passed on to the customer through the rate structure. Project by project funding through either Pennsylvania or the market often results in a sudden spike to the user rate to accommodate the debt repayment.

Programmatic Financing (“Pro Fi”) is better aligned with Pennsylvania’s funding with the needs of the utilities. In brief, Pro Fi shifts the traditional project-specific lending strategy to one that is more congruent with the utility planning model, matching the funding approval to the annual (or multi-year) cash flow needs of the utility. Instead of issuing a binding commitment for a certain amount of dollars for a single project, a Pro Fi funding package funds a CIP (in entirety or in part) for a group of drinking water projects so long as each individual project is eligible and prepared in compliance with program requirements. This helps develop strong lasting relationships with the larger private and government owned utilities as repeat borrowers, allows Pennsylvania to extend the subsidies of the program to the benefit of the residential customers, and ensure funding is available to facilitate timely replacement of deteriorating infrastructure.

### **C. Determination of Financing Rates**

Pennsylvania uses a financial capability analysis to determine the funding amount, loan interest rate, repayment period and/or any principal forgiveness. A further description of this analysis is below.

All projects are new; therefore, we do not anticipate using refinancing provisions under the

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CWSRF this year.

### *Affordability Criteria*

The following is a description of PENNVEST’s “affordability” methodology that is currently used to determine where to place available principal forgiveness, or state sourced grant funding to make otherwise prohibitively expensive projects affordable to their users. This same approach also determines the interest rates that we charge on our loans, the loan repayment period and, in some cases, the amount of funding that PENNVEST offers applicants.

The general philosophy that lies behind the affordability methodology is that the ultimate determinant of a community’s ability to pay for a project hinges on the ability of the project’s users to pay for the services they receive (i.e. the drinking water, wastewater or stormwater services provided by a PENNVEST-funded project). PENNVEST adjusts the financial assistance that is offered to a community to make the project affordable for its users. Adjustments can take the form of reduced interest rates on the loans, extended loan payback periods, principal forgiveness or grants (or some combination of the options). To decide if any adjustments are necessary, the first step is to define what we mean by “affordable.”

Each applicant is evaluated with regards to several demographic factors to measure the local economic circumstances of the community. Most of these factors are derived from the most recent U.S. Census available on a Census Tract or Block Level basis from the Pennsylvania State University Data Center. The specific data used includes:

- Median Household Income – for this factor, the most recent Census data is updated by changes in the Consumer Price Index to get an estimate of the current income level
- the percentage of the population over age 64
- the percentage of the population below the poverty line
- the rate of population change in the community between census data collection

A measure of local economic well-being constructed by the Department of Community and Economic Development (DCED) and used in its Financially Distressed Municipalities Matching Assistance Program is also used. The Early Warning System measure is constructed from nineteen variables that measure the financial condition of each municipality in the Commonwealth.

All these measures are used together to construct a “target percentage” for an applicant community. This is the percentage of annual income that the users of a project are reasonably expected to be able to pay for either drinking water, wastewater, or stormwater service. This percentage is constrained to be between 0.5 and 1.5 percent of the adjusted median household income. The relationships between each of the above factors and an applicant’s target percentage are:

- Median household income – direct relationship (the lower the median household income, the lower the target percentage)

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- The percentage of the population over age 64 – inverse relationship (the higher the percentage of the population over age 64, the lower the target percentage)
- The percentage of the population below the poverty level – inverse relationship (the higher the percentage of the population below the poverty line, the lower the target percentage)
- The rate of population change between the most recent census – direct relationship (if population declined the target percentage is reduced)
- Early Warning System measure of economic distress – inverse relationship (the more distressed a community is, the lower the target percentage).

The calculated target percentage is then used to derive the target user rate for an applicant community. This target rate is simply the product derived from multiplying the target percentage by median household income. It is this target rate that PENNVEST tries to achieve by manipulating the terms of the financial assistance offered to applicants. In doing so the target user rate is compared to the actual rate that project customers will have to pay after the project being funded by PENNVEST has been completed. This estimate considers all costs borne by these users, not just those associated with the project PENNVEST is funding.

If the actual resulting user rate exceeds the target rate, there are several options:

1. Reduce the interest rate on the loan, down to a minimum of 1.0 percent.
2. Substitute grant or principal forgiveness loan funds for loan funds. Typically, this is constrained in the following ways:
  - No grant or principal forgiveness loan funds will be invested into a project if the resulting user rate reduction is less than \$15 on an annual basis.
  - Grants or principal forgiveness loans are prorated over eligible recipients. That is, once the projects to be funded and the amount of available grant/principal forgiveness funds are identified for a particular meeting, the available grant/principal forgiveness loan funds are pro-rated to the eligible projects in proportion to the unconstrained amounts that the affordability analysis determines for each recipient.
3. Extend the term (i.e. repayment period) of the loan to more than twenty years. The loan term will not be extended:
  - If not supported by evidence that the useful life of the facilities is sufficient
4. A start-up system with a user rate that exceeds twice the target user rate after being extended to a 30-year loan is eligible to have the loan term extended enough to bring the user rate down to twice the affordable rate. However, the term will not extend past 40 years

**Stormwater Projects:** Some communities implementing stormwater-related projects have decided to charge a stormwater fee to help cover related costs, while others have opted to pay for stormwater facilities out of their general fund. The PENNVEST review considers the fees generated when they are in place but will look at the general fund revenues and



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expenditures for communities with no fees. Typically, the general fund review will result in a grant allocation while those communities that look to fees to help cover the costs of improvements often result in a loan. This has resulted in a disincentive for communities to implement a stormwater fee. Based upon staff research and review of existing stormwater systems, we have determined that it is reasonable to assume that communities can afford to provide ¼ of a percent of the community's median household income to cover the cost of debt service related to stormwater project implementation. We will apply this standard based upon the community's most current posted US Census information relative to the number of households and MHI.

In some cases, PENNVEST may offer partial funding, particularly if there is a much greater demand for funding than we can meet. This can occur when the actual user rate that will result from a project is below the affordable rate, even assuming that the maximum interest rates for a twenty-year loan are charged. In such cases, typically 50 percent of the needed funding is offered, and the borrower is expected to obtain the other 50 percent from some other source (e.g. a bank or a bond issue). The resulting user rate that is calculated and compared with the affordable rate includes the debt service on this other borrowing.

The latest tool available to applicants is Loan Guaranty. In cases where the program can only offer partial direct loan funding, or, due to fund capacity, no direct loan funding, PENNVEST now has the option to provide a loan guaranty for those projects in order to mitigate the costs associated with project implementation. In these cases, the community/system would be able to take advantage of private sector borrowing to complete their funding package, using PENNVEST and its bond rating as security, reducing their overall cost of borrowing.

**Nonpoint Source (NPS) Projects:** These projects are evaluated based upon the landowner/project benefactor's capacity to cover debt service. Public or private entities may directly apply for nonpoint source water quality projects.

The capacity of the benefactor is evaluated with a review of audited financial statements, personal financial statements, tax returns and/or other information depending upon how they are structured.

**Private-for-Profit Projects:** PENNVEST utilizes tax returns and personal financial statements of the land owner, typically a farmer, but could also be a developer or farm-service, related industry, to evaluate availability of operating revenue and cash flow analysis to cover debt service on a loan. A four-prong approach to this review is used:

1. If the average gross revenues for the most recent three years are equal to or greater than \$1 million the funding is offered as a loan.
2. If the average gross revenues for the most recent three years is less than \$1 million, but the average cash flow before taxes is greater than \$100,000 and this average net cash flow exceeds the projected PENNVEST debt service, the funding is offered as a loan.
3. When average gross revenues for the most recent three years is less than \$1 million and the average cash flow before taxes is less than \$100,000 but the PENNVEST debt service is less than 15% of the consolidated personal cash flow of entities' owners, the funding offered is loan.

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4. Should the entity not meet any of the above criteria – funding offer is grant or principal forgiveness loan.

**Municipally Sponsored and Not-for-Profit Sponsored Projects:** PENNVEST evaluates the capacity of the entity as follows:

- Not-for-Profit – Tax returns, financial statements, or other information as necessary. The intent is to reach through to owners/benefactors to evaluate capacity to cover debt service.
- Public – Audited financial statements, DCED reports or other information such as related to the general fund or sewer fund revenues, as may be necessary to evaluate ability to handle debt. When a county or regional governmental unit is sponsoring a funding request, the capacity evaluation is based upon the municipality where the facilities/improvements are being constructed. Both cash flow and cash available are evaluated.

Test 1: Do the unrestricted cash and investments equal or exceed last year’s cash operating expenses (including cash paid for debt service) plus the amount of requested PENNVEST funding?

Test 2: Does the average cash flow before debt service for the last three years equal or exceed two times the total projected debt service (existing plus new PENNVEST loan)?

If they pass both tests, the funding is offered as a loan.

If they pass one test but fail the other the funding offer is ½ loan, ½ grant or principal forgiveness loan.

If they fail both tests the funding offer is all grant or principal forgiveness loan.

***Disadvantaged Communities***

PENNVEST utilizes a financial capability analysis that compares various community specific demographic data to similarly situated communities across the Commonwealth to determine a percent of the community’s adjusted median household income (MHI) that should be available to pay for sewer service. The amount that should be available to pay for sewer service by residential customers will range from one to two percent of the community’s adjusted MHI dependent upon the specific socio-economic factors that are provided by the Pennsylvania Department of Community and Economic Development. This process aids in an equitable distribution of residential user rates.

PENNVEST will offer a term extension from the normal 20 years up to but not to exceed 30 years repayment of principal and interest if necessary for “disadvantaged” systems. These extended term projects are funded with a bond purchase agreement with the funding recipient, whereas, our projects with a term of less than 20 years are loan agreements.

Systems qualifying for term extensions must exceed the user rate(s) found in similar systems according to the PENNVEST financial capability model. The terms will be extended to a point that will allow the residential user rate to fall to a level equal to similar system’s cost

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of water service, as determined by the demographic analysis and financial capability analysis.

In considering projects where there are no immediate users, such as many stormwater and nonpoint projects, the above-described methodology will be modified. In such cases PENNVEST will look to the applicant's financial capability to repay a loan. If there is no reasonable expectation that this capability will be present, then PENNVEST could determine that the applicant fits the definition of a disadvantaged system.

Additionally, any community identified as disadvantaged using the Council on Environmental Quality (CEQ) Climate and Economic Justice Screening Tool or located in a Pennsylvania defined Environmental Justice Area will be considered a disadvantaged system for purposes of applications relating to design and engineering projects with the financial capability analysis being performed on the service area impacted by the proposed project instead of system wide.

### ***Financing Rates***

The Pennsylvania CWSRF loan program is required by state law to make loans with a minimum interest rate of one percent. This requirement ensures the growth of the CWSRF fund in future years.

### **D. EPA Sustainability Policy**

Pennsylvania is committed to promoting the long-term sustainability of the state's wastewater treatment systems while protecting public health, water quality and the environment. To further promote elements of EPA's Policy, PENNVEST has incorporated the following elements into the CWSRF Program:

1. Fix-it-first projects – “Fix-it-first” concepts are an important feature of the SRF programs. These concepts include:
  - Replacing existing infrastructure.
  - Augmenting infrastructure capacity to meet the needs of currently served areas.
  - Repairing or replacing existing on-lot wastewater systems (generally septic) or individual household water systems (generally wells). Please note that individual wells are not DWSRF or CWSRF eligible but that should not impact the selection of whatever is the most cost-effective solution for a community.
  - Creating cluster systems to address localized individual home drinking water or wastewater needs, thus avoiding the alternative of running service lines through undeveloped land.

Examples that would run contrary to a fix-it-first approach:

- Extending service to an unserved or undeveloped area.
- Upsizing existing infrastructure capacity to accommodate connection of currently unserved or undeveloped areas.

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2. Asset Management – To promote the development and implementation of an asset management plan ensuring the long-term operation and maintenance of infrastructure constructed using PENNVEST funds, PENNVEST will pay up to \$25,000 for the development of an asset management plan as part of any wastewater treatment system project.
3. Project Ranking Criteria – Attachment 3, “Wastewater Project Ranking Framework” was revised to promote the implementation of sustainability principals for asset management and energy efficiency in 2008. These criteria were revised further to clarify how these concepts should be considered. The revised ranking criteria was reviewed and approved by the PENNVEST Board and EPA in April 2014.

**E. Additional Subsidy**

In the FFY2022 appropriations of Base, General Supplemental, and Emerging Contaminants Grants, Congress has required states to provide additional subsidies to disadvantaged communities. These additional subsidies can be seen in Table 1. Pennsylvania plans to provide at least the minimum 10% required from the Base Grant.

**V. Financial Management**

**A. Source of State Match**

State match will come from the state fund loan repayments, general obligation (GO) bond proceeds, and/or state match revenue bonds.

**B. Program Administration**

Pennsylvania reserves the authority to decide what methodology to use to determine future administrative fund requirements.

**C. Anticipated Cash Draw Ratio**

PENNVEST is anticipating drawing all state match funds first before drawing the federal funds.

**D. Transfer of Funds**

Pennsylvania continues to reserve the authority to transfer funds between the DWSRF and CWSRF using the Base Grant at some time in the future, up to the maximum of 33% of the cumulative capitalization grants awarded. Pennsylvania also reserves the authority to transfer funds between the DWSRF and CWSRF using the BIL General Supplemental Grant. A 100% transfer of the CWSRF BIL Emerging Contaminants Grant is currently necessary for Pennsylvania to receive full allotment of this Grant. Pennsylvania reserves the authority to transfer some or all of these funds back to the CWSRF program at some time in the future, if necessary.

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### **E. Estimated Sources and Uses**

When discussing the sources (funds) and uses (projects) it is important to keep in mind that this is a work plan. Eligible projects have been identified to demonstrate Pennsylvania's ability to spend all the source funds as a requirement for grant award. However, lack of identification on a draft IUP does not preclude one from future funding consideration. PENNVEST reviews and approves project funding on a quarterly basis.

The CWA, as amended has established that certain amounts of CWSRF funds must be used to meet various requirement limits (see Table 1). These limits were calculated before any allocations were made to projects.

The project funding sources are summarized in Table 1 while the uses are identified in the PPLs. Further details associated with each grant can be found in Attachment 9 CWSRF Sources and Uses. Besides the FFY2022 Base, General Supplemental, Emerging Contaminants Grants, and associated state match requirements, other funding sources exist within the program. These include bond proceeds and repayments the uses of which are also the projects on the PPLs.

### **F. Financial Management Strategies**

PENNVEST has established a Federal Trust Indenture to cover the CWSRF disbursements to the funding recipients more quickly than going through Treasury. Included in the indenture is the authority to issue commercial paper (CP), revenue bonds, and guarantees. The intent is to pay down the CP balance with a draw on the CWSRF program funds and state match when the cap grants are awarded, as well as the use of recycled loan repayments and issuance of revenue bonds. PENNVEST may opt to use State Match revenue bonds for the State Match portion. If PENNVEST decides to do this, documents will be provided to EPA for review as they are drafted.

#### ***Market Loan Rate***

Based on Pennsylvania's financial assistance policy as noted above and an analysis of communities' ability to repay loans, PENNVEST will charge interest on all CWSRF loans in accordance with the following:

1. The minimum interest rate allowable for any loan is 1%. Maximum interest rates are determined by comparing the unemployment rate of the county in which the project is located to the statewide average unemployment rate. The figures used for unemployment rate comparison are the rates from the previous calendar year as reported by the Pennsylvania Department of Labor and Industry. For projects that serve multiple counties, the highest unemployment rate of the counties involved shall be used. For projects located within municipalities for which unemployment rates exist which would qualify the project for lower interest rates than if the relevant county unemployment rate were used, the unemployment rate of that municipality may be used in determining the interest rate of the loan. If the county unemployment rate exceeds the statewide average unemployment rate by 40% or more, the maximum interest rate allowable for projects

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in that county is 1% for the first five years of the term, and 25% of the interest rate the Commonwealth must pay for the bonds it has issued to finance the program for the remainder of the term.

2. For projects in counties where the unemployment rate exceeds the statewide average rate, but by less than 40%, the maximum interest rate is 30% of the state bond issue rate for the first five years of the term, and 60% of the state bond issue rate for the remainder of the term. Projects in counties whose unemployment rate is equal to or below the statewide average rate receive maximum interest rates of 60% of the bond issue rate and 75% of the bond issue rate for the first five years and the remainder of the term, respectively.
3. Interest rates may be set lower than the maximum if the PENNVEST Board determines that the community is so financially distressed that repayment of the loan is unlikely if the project were financed at the interest rate caps. If the Board determines that the community may not be able to repay the loan even if it were offered at 1%, the Board may offer the community a supplemental grant from a totally state-funded account managed by the Board.
4. These reduced interest rates will allow many communities to undertake badly needed sewerage improvement projects that may not be financially feasible otherwise. These projects will ultimately benefit the health and safety of the residents while allowing for continued economic growth in the community.

The Brownfield funded projects interest rates will be at county cap rates, with a maximum 20-year loan term.

### ***Automated Clearinghouse (ACH)***

Pennsylvania utilizes a state ACH program to electronically debit borrowers for debt service on their loans. The participation in the ACH program is a loan requirement. The ACH program ensures the receipt of loan repayments on a timely basis. Additionally, PENNVEST offers the option to use the ACH program to electronically deposit disbursements into a loan recipient's bank account.

### ***Leveraging of Funds***

In 2018, PENNVEST issued leveraged revenue bonds to capitalize its Clean Water and Drinking Water SRF Loan Programs. The proceeds of the leveraged bonds are deposited in the Authority's SRF accounts to provide financial assistance for participants' eligible project expenses. Financial assistance is provided in the form of loans, subject to the terms of a financial assistance agreement by and between an eligible participant and PENNVEST:

1. The monies used for security will primarily consist of all loan repayments, including principal and interest, as well as any debt service reserve funds, to the extent funded. The Clean Water and Drinking Water cash flows are calculated separately for both debt service sufficiency and coverage (perpetuity); however, the bonds are issued on a combined basis.

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2. As described above, the primary source of payment for Clean Water and Drinking Water portions of the revenue bonds are from the revenues related to the respective programs, and in the event of loan defaults, the debt service coverage available in each respective program will be the first monies used to pay debt service. In the event that the applicable program's revenues are insufficient, the excess revenues (coverage) of the other program will be used to assure debt service sufficiency.
3. The bond documents provide that, in the event monies of one program (i.e., Clean Water) are used to pay debt service on the revenue bonds related to the other program (i.e., Drinking Water), the first available excess funds, either from recovered loan defaults or future revenue coverage on the Drinking Water program, will be used to "repay" the Clean Water fund. Thereafter, recovered loan defaults or excess coverage will be used to replenish the Drinking Water program's equity. In this manner, it is unlikely that the funding capacity of either program will be affected by defaults in the other, cross-collateralized program.
4. Revenue Bonds may be issued to repay a portion of any outstanding commercial paper that is issued under the indenture and outstanding.

### ***Loan Portfolio Management***

Pennsylvania uses a comprehensive loan monitoring program (LMP) for loan portfolio management. The LMP includes risk definition, monthly and annual payment review, annual financial statement review, and ongoing management analysis. The LMP is a proactive management tool to protect the integrity of the loan portfolio.

### ***Small Community Focus for Repayment of Funds***

Pennsylvania intends to utilize money from the state program and the CWSRF repayment funds to focus on providing relief to as many federal requirements as possible, i.e. Single Audit while still meeting the cumulative equivalency requirement. By focusing the repayment funds to these communities, we expect that we may be able to help those communities better meet their funding needs and contribute to a better overall financial package that will lower soft costs and reduce the impact on the residential user rate of having to finance these project costs. Pennsylvania's tracking system will adequately document the flow of funds to eligible communities.

### ***Management of Unliquidated Obligation of Federal Funds***

PENNVEST intends to either disburse the federal and state match to payment requests beginning as soon as the award is made until all program funds are disbursed; or, if we have issued commercial paper in the Federal program, pay down the commercial paper balance with federal and state funds upon award. There are sufficient 4% Administrative allowance funds to cover costs. However, Pennsylvania reserves the authority to decide what methodology to use to determine the amount of Administrative funds in the future, including funds that are being requested from the 2022 capitalization grant. Please see Table 1 for the source of the 4% Administration funds.

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### *Use of Investment Funds to Further Water Quality*

PENNVEST has partnered with PA Treasury in a program known as the Keystone HELP program. This program aids homeowners in the purchase of energy efficient appliances to reduce energy usage and create a positive impact from reduced atmospheric pollution falling into the waterways, thus improving overall water quality. PENNVEST has invested capital in this program through a series of public – private partnerships that provide low cost financing. To date, PENNVEST has invested a total of \$4,800,000 into this program with the hope that expected loan repayments will be self-sustaining.

PENNVEST has partnered with PA Department of Conservation and Natural Resources (DCNR) for investment in a riparian buffer program. Through the partnership, DCNR has requested that PENNVEST transfer \$1 million in grant funds to them in each of the next three fiscal years. The purpose is to fund the installation of riparian buffers to reduce nutrient run-off into streams, primarily, but not exclusively, in the Chesapeake Bay watershed, and to determine if investing in the installation of these riparian buffers would generate revenues. If the program proves to be successful, PENNVEST would have a basis for investing in riparian buffers in the future, which would provide significant assistance with finding a reliable funding mechanism to further Pennsylvania’s commitment to Chesapeake Bay clean-up. To date, PENNVEST has invested a total of \$2,005,350 into this program.

PENNVEST has partnered with The Partnership for the Delaware Estuary, Inc. to construct a hatchery for freshwater mussels, as well as at mussel ponds and farms where the mussel seed produced in the hatchery will mature before being disbursed into streams in both the Susquehanna and Delaware River Watersheds to cleanse the water and reduce nutrients (in particular nitrogen) in both the Chesapeake Bay Watershed and the Delaware Estuary. The total investment into the project will be \$7,934,000. The business case for this investment provides for 4.3 million mussels into the two watersheds at the end of year thirty, which will remove slightly more than one million pounds of nitrogen at a cost of 18 cents per pound removed compared to riparian buffers, which cost between five dollars and twenty dollars per pound of nutrient reduction at today’s rates.

Staff continues to explore opportunities to use investments to benefit water quality.

## **VI. Program Management**

### **A. Assurances and Specific Proposals**

PENNVEST will provide the necessary assurances and certifications as identified in the Operating Agreement (OA). The OA was amended and submitted with the FFY2016 Drinking Water State Revolving Fund capitalization grant application. The OA includes, and will continue to include, as it relates to this capitalization grant application, the requirements of the following sections of the law:

#### 1. 602(a) - Environmental Reviews

DEP will conduct environmental reviews as specified in “A State Environmental Review



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Process for Pennsylvania Wastewater Projects” approved by EPA 2/23/2016.

2. 602(b)(3) - Binding Commitments

PENNVEST will enter binding commitments for 120% of each quarterly payment within 1 year of receipt of that payment.

3. 602(b)(4) - Expeditious and Timely Expenditures

PENNVEST will expend all funds in the CWSRF in a timely and expeditious manner, as outlined in the CWSRF financial plan.

**B. Federal Requirements**

Besides federal requirements associated with using federal funds for treatment works projects and government projects, many other federal requirements apply to projects in an amount equal to the capitalization grant. These requirements are:

- Single Audit Act (OMB-A-133)
- Disadvantaged Business Enterprise Compliance (DBE)
- Federal environmental crosscutters
- Socio-economic crosscutters
- Federal Funding Accountability and Transparency Act (FFATA) reporting
- Signage
- Architectural and Engineering Contract Procurement (unless state or local funds are used)

A complete listing of current projects selected for compliance with these requirements is available in Attachment 9 CWSRF Sources and Uses. Compliance with these requirements will be maintained in the project files as the projects are implemented.

Now that WRRDA requires federal procurement procedures to be followed for all architectural and engineering contracts issued or amended after October 1, 2014, these costs will be covered by state or local funds, where possible. If these costs cannot be separated for a specific project and a new contract is issued for these services, DEP will review the procurement process followed by the applicant to ensure compliance with the federal procurement requirements.

***Financial Status***

Pennsylvania agrees to submit to EPA a Federal Financial Status Report -Standard Form 425 within 90 days after the end of each state fiscal year during the term of the capitalization grant agreement.

**C. Davis-Bacon Prevailing Wage Rates**

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WRRDA requires the application of Davis-Bacon prevailing wage rates to all Section 212 treatment work projects funded as part of the CWSRF program. Attachment 7 is a policy statement defining what Pennsylvania considers to be a Section 212 Treatment Work Project. To ensure compliance with these requirements, DEP will review and approve the wage rates defined by the grant or loan recipient's project engineer. PENNVEST, as part of the oversight and auditing procedures, will ensure compliance with the remaining Davis-Bacon requirements including the submittal of certified wage payroll forms on a weekly basis by the project contractors, the conducting of random interviews of workers on-site by the grant or loan recipient, and the posting of the Davis-Bacon wage rates to be paid in a prominent location at the job site.

**D. Disadvantaged Business Enterprise Compliance**

To ensure compliance with this requirement, DEP will review and approve the DBE solicitation efforts of the borrower / borrower's engineer for prime contractors as well as the efforts of the subcontractors associated with each selected prime contractor.

**E. American Iron and Steel**

WRRDA requires CWSRF funding assistance recipients for Section 212 Treatment Works Projects (See Attachment 7 for Pennsylvania's definition) to use iron and steel products made in the United States for clean water projects where the project has approved plans and specs dated after January 17, 2014. A waiver was provided for projects if the plans and specs were submitted before January 17, 2014 and approved by April 15, 2014. To ensure these projects are constructed with American made iron and steel products as defined by the EPA Guidance, "Implementation of American Iron and Steel Provisions of P. L. 113-76, Consolidated Appropriations Act, 2014" dated March 20, 2014 the following steps will be taken:

1. PENNVEST will include language requiring implementation of this requirement in the loan agreement at settlement
2. Using the EPA guidelines as an example, standard language for the manufacturer or contractor certification that the materials used in the project are made in the United States and a template for the documentation of "de minimis" materials are posted on the DEP website for use by project recipients.
3. Signoff by the licensed professional engineer for the project will be required with each payment indicating the compliance with these requirements. The applicant will be responsible for keeping all documentation.
4. DEP project manager will verify AIS compliance during interim and final inspections.
5. PENNVEST will include review of this requirement in the random project audits they perform.
6. DEP will review all waiver requests to ensure compliance with EPA guidelines and submit them to EPA Region 3 Headquarters for review and approval. DEP will serve as

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the point of contact for questions regarding waivers and the waiver process.

### **F. Build America, Buy America (BABA) Act**

When required by the identified funding source, each PENNVEST funding agreement contains language requiring compliance with the BABA Act. DEP will create guidance and a review process similar to the AIS compliance requirement.

### **G. Civil Rights Civil Rights Laws (Federal Super Crosscutters)**

Each PENNVEST funding agreement contains language requiring compliance with the Civil Rights Laws. EPA's nondiscrimination regulations prohibit recipients of EPA financial assistance from taking actions in their programs or activities that are intentionally discriminatory and/or have a discriminatory effect based on race, color, national origin (including limited English proficiency), age, disability, or sex.

### **H. Federal Environmental Crosscutters**

To ensure compliance with this requirement, the DEP project manager will review the environmental report for each project as per the federally approved state environmental review process (SERP) and complete the environmental review template for projects qualifying for a categorical exclusion as well as an environmental assessment.

### **I. Fiscal Sustainability Plans**

In accordance with provisions in WRRDA, recipients of loan funding for the construction of a Section 212 Treatment Works Project (See Attachment 7 for Pennsylvania's definition) will be required to develop a fiscal sustainability plan for the project. This plan provides provisions for the following:

1. An inventory of critical assets that are a part of the treatment works.
2. An evaluation of the condition and performance of inventoried assets or asset groups.
3. A certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan; and
4. A plan for maintaining, repairing, and, as necessary, replacing the treatment works and a plan for funding such activities.

DEP will work with the recipient to ensure this plan is completed before project close-out. An example template and informational document with instructions is available on DEP's website, as well as a checklist for DEP program staff to use in the review and approval of these plans.

### **J. Audits and Reporting**

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Pennsylvania is committed to transparency and accountability. All program information including the intended use plans, annual reports, and other program materials are posted on either the DEP's or PENNVEST's website.

An independent audit is conducted annually by an auditing firm under contract to PENNVEST.

Project milestones and information are reported through EPA's Clean Water Benefits Reporting (CBR) database. Pennsylvania commits to entering benefits information on all projects into the CBR database by the end of the quarter in which the assistance agreement is signed.

An Annual Report will be done that includes information regarding key project characteristics, milestones, and environmental/public health protection results. Content of the Annual Report will include a description of progress made in the achievement of short- and long-term goals established in the Intended Use Plan and compliance with the Green Project Reserve and additional subsidization requirement.

### **K. EPA Signage Policy**

PENNVEST will ensure compliance with the EPA Signage policy through the press release after each PENNVEST Board meeting. The projects approved by the PENNVEST Board at the meeting funded with CWSRF funds will be highlighted in this press release.

### **L. Architectural & Engineering (A&E)**

WRRDA requires the application of Architectural & Engineering (A&E) procurement requirements to all Section 212 treatment work projects funded with equivalency as part of the CWSRF program. Attachment 7 is a policy statement defining what Pennsylvania considers to be a Section 212 Treatment Works Project. To ensure compliance with these requirements, DEP will review and approve the Architectural & Engineering (A&E) procurement.

Applicants must solicit a minimum of three firms using the six good faith efforts outlined in DBE regulations 40 CFR 33.301 unless all pre-design, design, and construction services performed by the A&E firm are paid for with state funds. All efforts made have been properly documented as outlined in Attachment 8, "Architectural & Engineering (A&E) Procurement Requirements Help Guide." All documentation will be retained in accordance with applicable record retention requirements under the financial assistance agreement for the project.

### **M. 2% Technical Assistance Allowance**

BIL provides that:

*(k) Additional Use of Funds.--A State may use an additional 2 percent of the funds annually awarded to each State under this title for nonprofit organizations (as defined in section 104(w)) or State, regional, interstate, or municipal entities to provide technical assistance torural, small, and tribal publicly owned treatment works (within the meaning of section*

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*104(b)(8)(B) in the State.*

The 2% allowance is intended to assist rural and small publicly owned treatment works. The uses of fund include, but is not limited to, community outreach, technical evaluation of wastewater solutions, preparation of applications, preliminary engineering reports, and financial documents necessary for receiving SRF assistance. This provision applies to the base program, the general supplemental, and emerging contaminants funds.

Technical assistance will be provided in a variety of ways. In the short term, PENNVEST will be soliciting a contractor to provide technical assistance to small, rural systems with the goal of helping systems put themselves in a position to move forward with an application for funding to the SRF. The contractor will be used as a supplement to DEP developed technical assistance program. DEP intends to build technical assistance capacity internally by hiring staff to a new Technical Assistance Section. Details on staff are still under development. The intent is to model CWSRF technical assistance after the Drinking Water Technical Assistance program. As DEP continues to develop the Technical Assistance program, DEP will provide EPA with updates. Please see Table 1 for the source of the 2% Technical Assistance Allowance funds.

### **VII. Public Review and Comment**

PENNVEST conducts outreach for its programs on a continuous basis throughout the year. These outreach efforts include conducting one-on-one sessions with potential applicants and consultants, participating in various webinars sponsored by other partners or groups involved in water quality improvement, participation with organizations at their annual conferences, as well as PENNVEST specific outreach events that are hosted across the state annually or virtually to promote programs and new funding opportunities while seeking input to continuously grow program access and delivery. Specific events participated in to date include the Pennsylvania State Association of Township Supervisors Annual Conference, Pennsylvania Rural Water Annual Conference, Pennsylvania Municipal Authorities Association Annual Conference, Women for a Healthy Environment, Lower Susquehanna Source Water Partnership Meeting, Grant Equity Interagency Workgroup, Small Water Company Task Force, and the Environmental Protection Agency's Mid-Atlantic Conference. Future events include a PENNVEST webinar series, Pennsylvania State Association for Boroughs Annual Conference, and a County Commissioners' Association of Pennsylvania meeting. Finally, the Intend Use Plan is published in the Pennsylvania Bulletin for a 30-day public comment period.

The PENNVEST Board schedules four project review and approval meetings each state fiscal year. The Board meets in January, April, July, and October to review and approve funding for projects. These projects are subject to the provisions included in the public comment periods for the IUP and PPL.

On June 4, 2022, a notice was published in the *Pennsylvania Bulletin* regarding public comments. The 30-day public comment period expires July 5, 2022.

Any electronic comments (eComments) or written comments are addressed in a publicly

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accessible comment and response document located on the DEP's Infrastructure Finance webpage:

<https://www.dep.pa.gov/Business/Water/CleanWater/InfrastructureFinance/Pages/State-Revolving-Fund.aspx> .

Electronic comments received through eComments during the open comment period are as follows:

Written comments received during the open comment period are as follows:

Copies of the IUP and the PPL are available upon request from the PA Department of Environmental Protection, Division of Municipal Facilities or through the DEP website at <https://www.dep.pa.gov/Business/Water/CleanWater/InfrastructureFinance/Pages/State-Revolving-Fund.aspx> . The link to these documents is on the right-hand side of the page under "State Revolving Fund Intended Use Plan."