

**Title 10—DEPARTMENT OF
NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 4—Grants and Loans**

10 CSR 20-4.050 Environmental Review

PURPOSE: As required by the provisions of Section 602(b)(6) of the Federal Clean Water Act, the department will conduct an interdisciplinary environmental review consistent with the National Environmental Policy Act of the project proposed for funding through the State Revolving Fund. This rule establishes the procedures for these environmental reviews.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) General. The environmental review will ensure that the project will comply with the applicable local, state and federal laws and commission rules relating to the protection and enhancement of the environment. Based upon the staff's review, the director of staff will make formal determinations regarding the potential social and environmental impacts of the proposed project. As necessary, the determination will include mitigative provisions as a condition of the provision of financial assistance for building and no financial assistance will be provided until a final environmental determination has been made. Nothing in these rules shall prohibit any public, private or governmental party from seeking administrative or legal relief from the determinations of the director of staff.

(A) Basic Environmental Determinations. There are three (3) basic environmental determinations that will apply to projects proposed to be implemented with assistance from the fund. These are a determination to categorically exclude a project from a formal environmental review, a finding of no significant impact/environmental assessment (FNSI/EA) based upon a formal environmental review and a determination to provide or not provide financial assistance based upon a record of decision (ROD) following the preparation of an environmental impact statement (EIS). The appropriate determination will be based on the following criteria:

1. The categorical exclusion (CE) determination applies to categories of projects that have been shown over time not to entail significant impacts on the quality of the human environment.

A. Projects which meet either of the following criteria may be categorically excluded from formal environmental review requirements:

(I) The project is directed solely toward minor rehabilitation of existing facilities, functional replacement of equipment or toward the construction of related facilities adjoining the existing facilities that do not affect the degree of treatment or the capacity of the works. Examples include infiltration and inflow correction, rehabilitation of existing equipment and structures and the construction of small structures on existing sites; and

(II) The project is in a community of less than ten thousand (10,000) population and is for minor expansions or upgrading of existing treatment works or on-site disposal systems are proposed.

B. CEs will not be granted for projects that entail--

(I) The construction of new collection lines;

(II) A new discharge or relocation of an existing discharge;

(III) An increase of more than thirty percent (30%) in the volume or loading of pollutants;

(IV) Provision of a capacity for a population thirty percent (30%) or greater than the existing population;

(V) Known or expected impacts to cultural resources, threatened or endangered species, or other environmentally sensitive areas; and

(VI) The construction of facilities that are known or expected to be not cost-effective or are likely to cause significant public controversy;

2. The FNSI/EA will be based upon an environmental review by the staff supported by an environmental information document (EID) prepared by the applicant in conformance with guidance developed by the commission. If a FNSI/EA is not appropriate, a public notice noting the preparation of an EIS will be required. The director of staff's issuance of a FNSI/EA will be based upon documentation that the potential environmental impacts will not be significant or that they may be mitigated without extraordinary measures; and

3. The ROD may only be based upon an EIS in conformance with the format and guidelines described in subsection (2)(C). An EIS will be required when the director of staff determines any of the following:

A. The project significantly will affect the pattern and type of land use or growth and distribution of the population;

B. The effects resulting from any structure or facility constructed or operated under the proposed action may conflict with local or state land use plans or policies;

C. The project may have significant adverse impacts upon--

(I) Wetlands;

(II) Floodplains;

(III) Threatened and endangered species or their habitats;

(IV) Cultural resources including parklands, preserves, other public lands or recognized scenic, recreational, prime farmlands, archeological or historic value; and

(V) Prime farmland;

D. The project will displace populations or significantly alter the characteristics of existing residential areas; and

E. The project directly or indirectly (for example, through induced development) may have significant adverse effect upon local ambient air quality, local noise levels, surface and groundwater quantity or quality, fish, shellfish, wildlife or their natural habitats.

(B) Other Determinations That Are Required of the Director of Staff.

1. Recognizing that a project may be altered at some time after an environmental determination on the project has been issued, the director of staff will provide that, prior to approval, the plans and specifications, loan application and related documents will be examined for consistency with the environmental determination. If inconsistencies are found, the director of staff may revoke a CE and require the preparation of an FNSI/EA or an EIS, consistent with the criteria of subsection (1)(A) of this rule, or require the preparation of amendments to an FNSI/EA or supplements to an EIS, as appropriate. Based upon the staff's review of the amended project, the director of staff will--

A. Reaffirm the original environmental determination through the issuance of a public notice or statement of finding;

B. Issue a FNSI for a project for which a CE has been revoked or issue a public notice that the preparation of an EIS will be required;

C. Issue an amendment to a FNSI/EA or revoke a FNSI and issue a public notice that the preparation of an EIS will be required; or

D. Issue a supplement to a ROD or revoke a ROD and issue a public notice that financial assistance will not be provided.

2. When five (5) or more years have elapsed between the last environmental determination and the submittal of an application to the fund, the director of

staff will reevaluate the project, environmental conditions and public views and, prior to approval of the application, proceed in accordance with subsection (3)(A).

(C) Other Determinations That Are Available to the Commission.

1. An applicant may request advance authority to construct part of the proposed wastewater treatment project prior to completion of the necessary environmental review when the part of the project will--

A. Remedy a severe public health, water quality or environmental problem immediately;

B. Not preclude any reasonable alternatives identified for the complete system;

C. Not cause significant direct or indirect environmental impacts including those which cannot be acceptably mitigated without completing the entire project; and

D. Not be highly controversial.

2. Based upon the review of the information required by section (2) of this rule, the director of staff will issue a FNSI/EA so conditioned as to prohibit construction of the remainder of the project until a complete environmental review has been performed and a subsequent environmental determination has been issued.

(2) Environmental Information Required by the Commission. A minimum of three (3) copies of all information required in this section shall be submitted to the commission.

(A) Applicants seeking a CE will provide the director of staff with sufficient documentation to demonstrate compliance with the criteria of subsection (1)(A). At a minimum, this will consist of a--

1. Brief, complete description of the proposed project and its costs;

2. Statement indicating that the project is cost-effective and that the applicant is financially capable of constructing, operating and maintaining the facilities; and

3. Plan map(s) of the proposed project showing--

A. The location of all construction areas;

B. The planning area boundaries; and

C. Any known environmentally sensitive areas.

(B) An EID must be submitted by those applicants whose proposed projects do not meet the criteria for a CE and for which the director of staff has made a preliminary determination that an EIS will not be required. The director of staff will provide guidance on both the format and contents of the EID to potential applicants prior to initiation of facilities planning.

1. At a minimum, the contents of an EID will include:

A. The purpose and need for the project;

B. The environmental setting of the project and the future of the environment without the project;

C. The alternatives to the project as proposed;

D. A description of the proposed project;

E. The potential environmental impacts of the project as proposed including those which cannot be avoided;

F. The relationship between the short-term uses of the environment and the maintenance and enhancement of long-term productivity;

G. Any irreversible and irretrievable commitments of resources to the proposed project;

H. A description of public participation activities conducted, issues raised and changes to the project which may be made as a result of the public participation process; and

I. Documentation of coordination with appropriate governmental agencies.

2. Prior to the applicant's adoption of the facilities plan, the applicant will hold a public hearing on the proposed project and the EID, and provide the director of staff with a verbatim transcript of the hearing. The director of

staff will provide guidance to the applicant regarding the contents of the hearing notice and of the hearing. The hearing will be advertised at least thirty (30) days in advance in a local newspaper of general circulation. Concurrent with the advertisement, a notice of the public hearing and availability of the documents will be sent to all local, state and federal agencies and public and private parties that may have an interest in the proposed project. Included with the transcript will be a list of all attendees with addresses, any written testimony and the applicant's responses to the issues raised.

3. The department will provide copies of the FNSI/EA to all federal, state and local agencies and others with an interest in the project.

(C) The format of an EIS will encourage sound analyses and clear presentation of alternatives, including the no-action alternative and the selected alternative and their environmental, economic and social impacts. The following format must be followed by the applicant unless the director of staff determines there are compelling reasons to do otherwise:

1. A cover sheet identifying the applicant, the project(s), the program through which financial assistance is requested and the date of publication;

2. An executive summary consisting of a five to fifteen (5--15) page summary of the critical issues of the EIS in sufficient detail that the reader may become familiar with the proposed project and its cumulative effects. The summary will include:

A. A description of the existing problem;

B. A description of each alternative;

C. A listing of each alternative's potential environmental impacts, mitigative measures and any areas of controversy; and

D. Any major conclusions;

3. The body of the EIS which will contain the following information:

A. A complete and clear description of the purpose and need for the proposed project that clearly identifies its goals and objectives;

B. A balanced description of each alternative considered by the applicant. The descriptions will include the size and location of the facilities and pipelines, land requirements, operation and maintenance requirements and construction schedules. The alternative of no action will be discussed and the applicant's preferred alternative(s) will be identified. Alternatives that were eliminated from detailed examination will be presented with the reasons for their elimination;

C. A description of the alternatives available to the commission including:

(I) Providing financial assistance to the proposed project;

(II) Requiring that the proposed project be modified prior to providing financial assistance to reduce adverse environmental impacts or providing assistance with conditions requiring the implementation of mitigative measures; and

(III) Not providing financial assistance;

D. A description of the alternatives available to other local, state and federal agencies which may have the ability to issue or deny a permit, provide financial assistance or otherwise affect or have an interest in any of the alternatives;

E. A description of the affected environment and environmental consequences of each alternative including secondary and cumulative impacts. The affected environment on which the evaluation of each alternative will be based includes, as a partial listing, hydrology, geology, air quality, noise, biology, socioeconomics, land use and cultural resources of the facilities planning area. The department will provide guidance, as necessary, to the applicant regarding the evaluation of the affected environment. The discussion will present the total impacts of each alternative in a manner that will facilitate comparison. The effects of the no-action alternative must be included to serve as a baseline for comparison of the adverse and beneficial impacts of the other alternatives.

A description of the existing environment will be included in the no-action section to provide background information. The detail in which the affected environment is described will be commensurate with the complexity of the situation and the significance of the anticipated impacts;

4. The draft EIS will be provided to all local, state and federal agencies and public groups with an interest in the proposed project and be made available to the public for review. The final EIS will include all objections and suggestions made before and during the draft EIS review process along with the issues of public concern expressed by individuals or interested groups. The final EIS must include discussions of any comments pertinent to the project or the EIS. All commenters will be identified. If a comment has led to a change in either the project or the EIS, the reason should be given. The department will always endeavor to resolve any conflicts that may have arisen, particularly among permitting agencies, prior to the issuance of the final EIS. In all cases, the comment period will be no less than forty-five (45) days;

5. Material incorporated into an EIS by reference will be organized into a supplemental information document and be made available for public review upon request. No material may be incorporated by reference unless it is reasonably available for inspection by interested persons within the comment periods specified in paragraph (2)(C)4. and subparagraph (2)(C)7.C.;

6. When an EIS is prepared by contractors, either in the service of the applicant or the department, the department will independently evaluate the EIS prior to issuance of the ROD and take responsibility for its scope and contents. The staff who undertake this evaluation will be identified under the list of preparers along with those of the contractor and any other parties responsible for the content of the EIS; and

7. The public participation required for an EIS is extensive but, depending upon the nature and scope of the proposed project, should be supplemented by the applicant. The following requirements represent the minimum allowable:

A. Upon making the determination that an EIS will be required of a proposed project, the department will distribute a notice of intent to prepare an EIS;

B. As soon as possible after the notice of intent has been issued, the director of staff will convene a meeting of the affected federal, state and local agencies, the applicant and other interested parties to determine the scope of the EIS. A notice of this scoping meeting may be incorporated into the notice of intent or prepared as in paragraph (2)(B)2. of this rule except that in no case will the notification period be less than forty-five (45) days. As part of the scoping meeting, the director of staff at a minimum will--

(I) Determine the significance of issues and analyze in depth the scope of those significant issues in the EIS;

(II) Identify the preliminary range of alternatives to be considered;

(III) Identify potential cooperating agencies and determine the information or analyses that may be needed from cooperating agencies or other parties;

(IV) Discuss the method for EIS preparation and the public participation strategy;

(V) Identify consultation requirement of other laws and regulations; and

(VI) Determine the relationship between the preparation of the EIS and the completion of the facilities plan and any necessary arrangements for coordination of the preparation of both documents; and

C. Following the scoping process, the director of staff will begin the identification and evaluation of all potentially viable alternatives to adequately address the range of issues developed in the scoping. A summary of this, including a list of the significant issues identified, will be provided to the applicant and other interested parties. Preparation of the EIS will be done at the discretion of the commission: directly, by the staff; by consultants to the commission; or by a consultant contracted by the applicant subject to approval by the commission. In the latter two (2) cases, the consultant will be

required to execute a disclosure statement prepared by the department signifying they have no financial or other conflicting interest in the outcome of the project. Both the draft EIS and final EIS will be distributed and made available for public review in a fashion consistent with the requirements of paragraph (2)(B)2. of this rule except that the advertisement and comment period for the public participation will be no less than forty-five (45) days. The department will publish in a newspaper of general circulation in the project area, a notice of availability of the EIS giving locations at which it will be available for public review at least forty-five (45) days prior to making any environmental determination.

(3) Environmental Review.

(A) When the director of staff has determined that an applicant's proposed project may be excluded from a formal environmental review, the director of staff will prepare a public notice of the determination to categorically exclude the project and the availability of supporting documentation for public inspection. The notice will be published in a local newspaper of community-wide circulation by the applicant. The director of staff, concurrent with the publication, will distribute the notice to all interested parties.

(B) An environmental review of the proposed project, supported by the applicant's EID, will be conducted by the director of staff to determine whether any significant impacts are anticipated and whether any changes may be made in the proposed project to eliminate significant adverse impacts. As part of this review, the director of staff may require the applicant to submit additional information or undertake additional public participation and coordination to support its environmental determination. Based on the environmental review, the director of staff will prepare a FNSI/EA describing--

1. The purpose and need for the proposed project;
2. The proposed project including its costs;
3. The alternatives considered and the reasons for their rejection or acceptance;
4. The existing environment;
5. Any potential adverse impacts and mitigative measures; and
6. Any proposed conditions to the provision of financial assistance and any means provided for the monitoring of compliance with the conditions.

(C) The FNSI/EA will be distributed to all parties, governmental entities and agencies that may have an interest in the proposed project. No action regarding approval of the facilities plan or the provision of financial assistance will be taken by the director of staff for at least thirty (30) days after the issuance of the FNSI/EA.

(D) Public participation requirements for an EIS are detailed in paragraph (2)(B)2. except the ROD and final EIS shall have a forty-five (45)-day period of notice.

(E) In accordance with paragraphs (1)(B)1. and 2. and subsection (1)(C), the director of staff will conduct environmental reviews and issue public notices or amended determinations as appropriate.

4. The director of staff may, on a case by case basis, accept the environmental reviews, consistent with the National Environmental Policy Act completed by other state and federal agencies.

AUTHORITY: section 644.026, RSMo Supp. 1993.* Original rule filed Sept. 13, 1988, effective Feb. 14, 1989.

*Original authority 1972, amended 1973, 1987, 1993.