

STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES

Jeremiah W. (Jay) Nixon, Governor • Sara Parker Pauley, Director

www.dnr.mo.gov

September 22, 2015

Ms. Susan M. Myers, General Counsel
Metropolitan St. Louis Sewer District
2350 Market Street
St. Louis, MO 63103

RE: Clean Water State Revolving Fund (SRF) Additional Subsidization Affordability
Analysis, Public Notice Comments and Response

Dear Ms. Myers:

Thank you for your letter received August 4, 2015 in which you commented on the public notice of the draft Clean Water SRF Additional Subsidization Affordability Analysis. The Department of Natural Resources will address your comments in the order presented in your letter:

1. The policy as drafted considers the entire [Metropolitan St. Louis Sewer District] MSD service area as a whole and does not allow for a method to accommodate the socio-economic variability that is evident with the District's residential customer base. This effectively eliminates the District and its customers from consideration for additional subsidization for the foreseeable future. The District serves approximately one fourth of the population residing in Missouri. MSD recommends that the Missouri Department of Natural Resources redraft the policy so that additional subsidization is made available to MSD and approximately one fourth of the State's citizens that reside within the District.

Response:

The Federal Water Pollution Control Act (FWPCA) section 603(i)(1)(A)(ii) does allow a municipality to demonstrate a specific residential user rate class will experience a significant hardship from the increase in user rates. Similarly, state regulation 10 CSR 20-4.040(17)(B) allows for Clean Water SRF assistance recipients to establish lower user rates for low income residential users. The department may elect to allow Clean Water SRF recipients to receive additional subsidization for this purpose in future years (though, it is not proposed for fiscal year 2016). To advocate for this allocation of grant funding, the department would encourage you to comment on the draft Intended Use Plan.

As a practical matter, the department does not have evidence that these different residential user rate classes are commonly used by Missouri municipalities.

2. The MSD service area includes areas that are economically distressed. The policy, as currently drafted, provides provisions to note if a project is located in a Federally Distressed Area, or if an applicant is a Missouri Distressed Community, but does not use these factors to determine eligibility. MSD recommends that if a project's area is located in a Federally Distressed Area or Missouri Distressed Community, and the project benefits that community, that it be deemed eligible for additional subsidization, regardless of the other factors.

Response:

FWPCA 603(i)(2)(A)(ii) states, “[t]he criteria under clause (i) shall be based on income and unemployment data, population trends, and other data determined by the State, including whether the project or activity is to be carried out in an economically distressed area, as described in section 301 of the Public Works and Economic Development Act of 1965 (42 U.S.C 3161).

The Environmental Protection Agency (EPA) has put no import on federally distressed areas in verbal discussions with the department or in their two national guidance documents issued on September 18, 2014 and January 6, 2015. As we understand, the EPA interprets the federally distressed areas as optional to each State and referred to in law as an example of other data States may utilize.

In the Clean Water SRF Additional Subsidization Affordability Analysis policy, the department provides the federally distressed area and Missouri distressed community evaluation as information only. The federal and Missouri definitions of “distressed” are not equivalent and are evaluated separately. Using the 2013 American Community Survey data, 74.5 percent of Missouri cities are considered a federally distressed area based on a per capita income of 80 percent or less of the national average. Missouri distressed communities are identified by the Missouri Department of Economic Development (DED) based upon the 2010 census data. The DED lists 242 cities (or 23.4 percent) as a Missouri distressed community.

Lastly, the criteria to determine affordability must be based on income, unemployment data, and population trends. The federally distressed area assesses per capita income and unemployment, but not population. The Missouri distressed community only evaluates median household income. Therefore, the recommendation to provide additional subsidization to projects located in a federally distressed area or Missouri distressed community regardless of other factors does not meet the requirements of FWPCA 603(i)(2)(A)(ii).

3. MSD also request that additional subsidization, when available, be allocated throughout the State using the same formula as the Allocation of Available Loan Funding contained in the State's Intended Use Plan, with the provision that available subsidization be transferred between the categories if a certain category is unable to utilize its allocation in a given fiscal year (matching how loan allocation currently occurs). These categories currently are: 40% Outstate Missouri; 30% Large Metropolitan Areas and Districts; 15% Combined Sewer Overflows; and 15% Department Initiatives. It is MSD's belief that additional subsidization should always be reallocated and made available annually to those applicants able to utilize it, when other applicants are unable to. Unused subsidization does not benefit the environment or the citizens of the State of Missouri.

Response:

The annual Clean Water State Revolving Fund Intended Use Plan presents the department's policy decisions with regards to grant funding availability and eligibility.

The department appreciates your comments on the draft policy and hopes this letter adequately responds to your concerns. If you have any further questions, please contact the Department of Natural Resources, Water Protection Program, P.O. Box 176, Jefferson City, MO 65102-0176 or via email at DNR.SRFPublicNotice@dnr.mo.gov. Thank you.

Sincerely,

WATER PROTECTION PROGRAM



Emily T. Carpenter
Financial Assistance Center

ETC/cs

- c: Mr. Bart Hager, Metropolitan St. Louis Sewer District
Mr. Eric Crawford, Director, Water Protection Program, Financial Assistance Center