

Carpenter, Emily

From: Jay Hoskins <jshosk@stlmsd.com>
Sent: Tuesday, May 26, 2015 2:09 PM
To: Carpenter, Emily
Cc: Bart Hager
Subject: Comments on SRF Affordability Criteria

Emily,

Representatives of MSD attended the May 20, 2015, MDNR stakeholder meeting on the Department's policy for Clean Water State Revolving Fund Affordability Criteria. At that meeting, you presented to us a draft memorandum for review and comment. (A copy is provided for reference.) MSD's comments on the draft memorandum are as follows:

- Missouri's Cost Analysis of Compliance. This section of the policy memorandum does not fully capture the state of the Department's practice for making a finding of affordability, as part of NPDES permitting, across Missouri. It is not a well-established process, in our opinion. For instance, the process has not been promulgated into Rule. Also, the Department has not made a finding of affordability that MSD has accepted, and this is also true for other urban areas in Missouri. We believe and the Department's staff have generally concurred that the methodology the Department has used for making a finding of affordability is insufficient for large service areas like MSD's. Department staff and stakeholders agree that this is something that is important to work through, and we also all agree that decisions about whether compliance is affordable, or not, should consider factors besides the applicant's median household income, percent unemployment, and percent population growth/decline. (As an example, it can be important to consider these same factors at the census block level, to more accurately capture disparity across the applicant's community.) MSD continues to believe that a finding of affordability should also look at the full cost of the permittee's compliance program, which may cover several types of permits and/or enforcement activities.

Accordingly, we request the policy be amended to provide an adequate basis for the implementation flexibilities, as described below.

- Implementation. The draft memo states, "Once a SRF application is received by the department, staff will determine whether a cost analysis of compliance will be performed based upon the condition that the proposed user charge is equal to or greater than 1.5 percent of the applicant's [median household income] MHI." We understood at the Department's meeting that this statement means that the comparison to MHI will be used to determine whether or not a community is eligible for a subsidy. Applicants whose cost of compliance is over 1.5 percent of MHI would be eligible, and those below would not.

Federal requirements indicate the Department is required to consider income and employment data, population trends, and other data determined by the state. However, we understand that the Department will primarily compare MHI data to a metric (1.5 percent, as proposed) in order to make a finding of affordability. This may not satisfy federal requirements, and more importantly would lead to inaccurate conclusions about affordability. The Cost Analysis of Compliance used in NPDES permitting doesn't use a certain percent of MHI as the only factor, rather it categorizes financial impact into "low, medium, and high" burden based on MHI and other factors. Recently, the comparison is but one line of evidence that should be used, and the policy should be amended to state such.

Please clarify and revise the policy, providing narrative that indicates there are flexibilities. We also suggest you take a look at the new definition of "affordability" in HB 92, passed by the Missouri General Assembly this past session.

- Under the Affordability Criteria, federal guidance requires that criteria include 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. This criterion is well established, supported by State programs such as Missouri Works, and the Mo. Department of Economic Development publishes the areas of the State which are considered economically distressed. It is a straight forward criterion that will not be a burden on MDNR staff to incorporate. We recommend that any project or activity carried out in an economically distressed area as identified by the Mo. Department of Economic Development, be defined as meeting the affordability criteria, and be eligible for grant funding, per federal guidance. Therefore, as an administrative benefit, no CAFCom would be required for such a project.

There may be other criteria that should be considered also, and we look forward to further discussion with the Department about them.

- Implementation. The policy should explain what is meant by a “complete” facility plan.

Our broader comment is that the policy is too narrowly focused on evaluating impacts to wastewater treatment facilities (see reference to “facility plan”), and fails to consider the broader scope of CWA requirements that an applicant may wish to apply to the SRF program for. The policy needs to be flexible to allow for the full use of SRF dollars across eligible programs.

Please feel free to contact Bart Hagar or I know if you have questions.

Thanks,

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