



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
WATER

October 10, 2001

DWSRF 02-01

MEMORANDUM

SUBJECT: Change in Agency Policy Concerning the Use of a Loan from a Drinking Water State Revolving Fund (DWSRF) as Part of the Local Match for EPA Appropriations Act Projects

FROM: Cynthia C. Dougherty, Director /s/
Office of Ground Water and Drinking Water (OGWDW)

Michael B. Cook, Director Richard T. Kuhlman for /s/
Office of Wastewater Management (OWM)

TO: Water Program Managers
Regions I - X

This purpose of this memorandum is to notify regions and states of a change in policy regarding the use of state Drinking Water State Revolving Fund (DWSRF) monies for providing local match for special projects authorized by Appropriations Acts. These special appropriation projects (SAPs) are funded from the Environmental Protection Agency's (EPA) State and Tribal Assistance Grant account. **This policy will allow state DWSRF programs to use the non-federal and non-state match share of DWSRF funds for match on these projects.** The Office of General Counsel (OGC) has indicated this interpretation is consistent with the Safe Drinking Water Act (SDWA) and our implementing regulations.

Because this memorandum modifies previous guidance issued on SAPs by the Office of Wastewater Management (OWM), it should be viewed as supplemental guidance to the February 21, 2001, memorandum signed by Michael B. Cook on the *Award of Grants and Cooperative Agreements for the Special Projects and Programs Authorized by the Agency's FY 2001 Appropriations Act and the FY 2001 Consolidated Appropriations Act* (see attached). However, the policy will apply to all new awards for eligible drinking water projects funded through Appropriations Acts since 1995.

BACKGROUND

The Agency manages two separate State Revolving Fund (SRF) loan programs, the Clean Water State Revolving Fund (CWSRF) and the DWSRF loan programs. Although the two programs were authorized by different statutes, many aspects of the two programs are similar. One of the similarities was a prohibition on using a loan from either SRF program as all or part of the 45 percent local match for special projects authorized by Appropriations Acts.

Implementing regulations for the CWSRF program include a requirement based on Section 603(h) of the Clean Water Act (CWA) which precludes the use of a loan from a CWSRF for providing all or part of the local share of EPA's grant-funded treatment works project. Consistent with the CWSRF regulations, the Agency's initial FY 1995 Guidance Memorandum concerning the award and management of the SAPs contained a provision that prohibited the use of a CWSRF loan as all or part of the 45 percent local matching requirement associated with those projects.

The SDWA, which established the DWSRF in 1996, does not have a statutory provision similar to Section 603(h) of the CWA. Additionally, DWSRF regulations do not specifically address the issue of using a loan from a DWSRF as a match for EPA grant-funded projects. However, the FY 1998 and subsequent Guidance Memorandums on how the Agency will award and administer the special projects authorized by Appropriations Acts included a provision prohibiting the use of DWSRF loans as a match for the special projects. The reason for establishing such a requirement was to provide consistency between the two SRF programs. However, the DWSRF prohibition was based on policy and not regulation.

RATIONALE FOR CHANGE TO DWSRF POLICY

Over the last several years, the Agency has been asked by a number of states to reconsider the prohibition against using loans from the two SRF programs as the match for the SAPs. States indicated that allowing DWSRF low interest loans would allow special projects for small, disadvantaged or financially depressed communities to proceed without overly stressing the resources of the community. Since DWSRF loans are restricted to projects that address present or prevent future violations of health-based standards (40 CFR 35.3520), the special projects that are coupled with a DWSRF loan would be restricted to projects with that purpose. The ultimate goal is to have DWSRF loans and SAP grants complement each other and provide for better projects and more efficient management of both the loan and grant programs.

Since the prohibition of using a DWSRF loan as a match for the SAPs is based on policy, this prohibition can be removed by revising the Agency's Guidance Memorandum that includes this restriction. This memorandum will supercede the information included in the Agency's Guidance Memorandums with respect to this issue. The Agency has also initiated efforts to revise the regulation that prohibits the use of non-federal CWSRF funds as the match for EPA grant-funded projects, other than Title II construction grant projects. In the interim, a class deviation issued on August 16, 2001, will allow states to use non-federal, non-state CWSRF funds to provide loans that can be used to satisfy the local matching requirement for most EPA grant funded treatment works projects, including SAPs.

POLICY

The Office of Management and Budget's (OMB) grants management common rule is reflected in specific regulations codified by individual federal agencies. EPA's codification of the OMB common rule can be found at 40 CFR Part 31, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." EPA's regulations indicate that funds received under one federal grant may not be used for the matching share required by another federal grant, unless provided for through federal statute [40 CFR 31.24(b)(1)]. The regulations also indicate that contributions that count towards satisfying the matching requirements of one federal grant may not be counted towards the matching requirements of other awards of federal funds [40 CFR 31.24(b)(3)].

Accordingly, this policy allowing the use of DWSRF funds to provide match on SAPs is limited to non-federal and non-state match funds within the program. Non-federal funds include repayments, earnings, bond proceeds and other state contributions (beyond the required 20 percent DWSRF state match).

The use of a loan from the DWSRF to provide part or all of the match for the SAPs is at the discretion of the state agency. However, the action must be consistent with established state policy, guidelines and procedures governing the use of DWSRF loans. Projects that receive assistance must also adhere to federal DWSRF program requirements relating to eligibility and prioritization within an Intended Use Plan (i.e., included on a fundable list that has been subject to public review).

The Office of Groundwater and Drinking Water (OGWDW) has made the determination that DWSRF funds used to provide the local match for SAPs cannot carry negative interest rates or take the form of principal forgiveness. Allowing states to provide "grants" using disadvantaged assistance through the DWSRF program would allow recipients to circumvent procedures currently in place to manage SAP grants. OWM has procedures in place to waive local match requirements for projects funded through special appropriations in order to address financial hardship.

Although SAPs that are co-funded with DWSRF monies can be managed by state DWSRF programs, they are still subject to other requirements (e.g., environmental review) included in the Agency's Guidance Memorandum for such projects.

If you have any questions related to this policy, the DWSRF or CWSRF programs, you may contact William Diamond, Director, Drinking Water Protection Division (OGWDW), or Richard Kuhlman, Director, Municipal Support Division (OWM), respectively.

Attachment

cc: Regional Coordinators for the DWSRF Programs and Special Appropriations Projects
Ken Redden, OGC
Howard Corcoran, OGD
Regional Grants Division Directors