

**North Carolina
Bipartisan Infrastructure Law
Clean Water State Revolving Fund
Emerging Contaminants Funds
Intended Use Plan
Fiscal Years 2022 and 2023**

Original adopted in July 2023

**Revised Draft for Public Comment
5/28/2024**

The original IUP was approved after a public comment period in July 2023. Proposed amendments to the IUP and updated Project Priority List (Appendix A) in May 2024 are shown in this document using red font text. The Division is seeking public comments on those changes in red font text.

Division of Water Infrastructure

North Carolina Department of Environmental Quality

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1. Introduction

This **updated** Intended Use Plan (IUP) addresses the FY2022 and FY2023 Clean Water State Revolving Fund Emerging Contaminants (CWSRF-EC) funding made available through the Bipartisan Infrastructure Law (BIL). **The original IUP was approved in July 2023 after a public comment period. The proposed changes to the original IUP are indicated in red font text.**

North Carolina's FY2022 BIL CWSRF-EC capitalization grant allotment is \$1,688,000 and the FY2023 BIL CWSRF-EC grant allotment is \$3,838,000.

The Division of Water Infrastructure (Division) is part of the North Carolina Department of Environmental Quality (NCDEQ). The Division administers financial assistance programs to assist local government units (LGUs) and non-profit water/wastewater utilities¹ in constructing projects that both benefit water quality and improve the human environment.

In 2013 the North Carolina General Assembly created the State Water Infrastructure Authority (Authority) to determine the eligibility of projects for certain water infrastructure funding programs, including the Clean Water State Revolving Fund (CWSRF), consistent with federal law. The priorities reflected in this document have been approved by the Authority.

Specific to this document, the Division administers the federal-state CWSRF program as established by Title VI of the Federal Water Pollution Control Act (a.k.a. Clean Water Act) as amended in 1987. The CWSRF program offers loans to LGUs at interest rates lower than market rates for clean water infrastructure. As a LGU repays the loan, the monies are again loaned out, hence the revolving nature of the program. All loan repayments must go back into the CWSRF. The CWSRF-EC funds will, however, be offered entirely as principal forgiveness loans, meaning that the eligible recipients of the funds would not need to repay these loans. This Intended Use Plan explains how the FY2022 and FY2023 Bipartisan Infrastructure Law CWSRF Emerging Contaminants capitalization grants will be used and how the CWSRF-EC will operate.

The IUP is incorporated into the capitalization grant agreement and becomes the grant work plan. Combined, the operating agreement, grant agreement, IUP, Clean Water Act, Code of Federal Regulations, and state statutes set the program requirements for the BIL CWSRF-EC funds. The IUP identifies anticipated projects scheduled for funding commitments from the CWSRF-EC. It also explains how the BIL CWSRF-EC funds will utilize a priority rating system to identify those projects that will address the greatest need and/or provide the greatest positive environmental impact on the water resources in North Carolina.

2. Financial History

Congress appropriated funds to the CWSRF in the Infrastructure Investment and Jobs Act of 2021, commonly referred to as the Bipartisan Infrastructure Law (BIL). The BIL appropriated additional funds for five fiscal years (FY2022-FY2026) to address Emerging Contaminants (BIL CWSRF-EC Funds). The BIL also appropriated funds specifically to supplement the CWSRF funds, which is described in a separate IUP. This IUP will discuss the workplan for the BIL CWSRF-EC funds for the Fiscal Years 2022 and 2023. **North Carolina will receive a total of \$5,526,000 from the FY2022 and**

¹ For brevity, "LGUs" in this IUP refers to eligible entities, including local government units and non-profit utilities.

the FY2023 federal capitalization grants for the BIL CWSRF-EC funds. There is no state match required for these funds.

BIL CWSRF-EC funds will not be used to satisfy debt security requirements.

3. Programmatic Goals

Pursuant to the Clean Water Act, the State must identify the goals and objectives of its water pollution control revolving fund (i.e., the CWSRF). North Carolina has set its short- and long-term goals of this IUP to align with EPA's strategic goals and objectives FY2022-2026 EPA Strategic Plan, specifically Goal #5, to Ensure Clean and Safe Water for all communities and Objective 5.2 to Protect and Restore Waterbodies and Watersheds. The Office of Water has identified specific measures that address the strategic goals and objectives outlined by EPA in its strategic plan. A basis for each goal in this program IUP has been identified. These references ensure that all the specific commitments made by the State are properly correlated to the strategic goals and objectives of the Agency. The State has the following goals for its CWSRF program:

3.1. Overall CWSRF Program Goal

Provide funding for clean water infrastructure while advancing the NCDEQ's mission to provide science-based environmental stewardship for the health and prosperity of ALL North Carolinians and to advance the water quality goals of the Clean Water Act while targeting the systems with greatest needs.

3.2. Emerging Contaminants Funding Program Short-Term Goals

Goal #1: Inform local governments and non-profit wastewater utilities of the availability of funds, benefits of the CWSRF-EC program, and funding process.

Goal #2: Work closely with local governments and non-profit wastewater utilities to address contamination of the environment with PFAS (per- and polyfluoroalkyl substances).

3.3. Long -Term Goals

Goal #1: Support North Carolina Department of Environmental Quality's Strategic Goal to strengthen North Carolina's infrastructure through thoughtful, strategic, and equitable investments in communities.

Goal #2: Support North Carolina Department of Environmental Quality's Strategic Goal to protect North Carolinians from exposures to emerging compounds using a transparent and science-based decision-making process, with special emphasis on reducing health risks associated with PFAS.

Goal #3: Support North Carolina Department of Environmental Quality's Strategic Objective to ensure funding processes include equitable access for underserved communities.

Goal #4: Support U.S. Environmental Protection Agency's Strategic Goal 5 of ensuring clean and safe water for all communities.

- Goal #5: Integrate the funding process with other CWSRF funding processes and continue to streamline them to ensure the funds are used in an expeditious and timely manner in accordance with §602(b)(4) of the Clean Water Act.
- Goal #6: Ensure the technical integrity of CWSRF projects through diligent and effective planning, design, and construction management.
- Goal #7: Ensure the Priority Rating System reflects NCDEQ's and the Authority's goals.
- Goal #8: Aid compliance with state and federal water quality standards by all funded publicly-owned wastewater treatment works.

4. Information on Activities to be Supported

North Carolina's CWSRF program will continue to be one of low-interest loans, supplemented with principal forgiveness as allowed by §603(i)(3) of the Clean Water Act. The BIL CWSRF-EC funds will be entirely funded as principal forgiveness loans. ~~The State intends to access 4% of the capitalization grants (\$67,520 for FY2022 and \$153,520 for FY2023) for the administrative costs associated with running the program. These costs include application preparations and outreach, application review, engineering report and environmental document review, design review, loan processing, construction inspection, and disbursement processing and accounting for funded projects.~~

~~In addition to funding infrastructure projects, the CWSRF also allows the use of 2% of the capitalization grant funds for technical assistance.~~

The Division does not intend to use ~~technical assistance~~ any set-asides from the BIL CWSRF-EC funds. ~~All of the capitalization grants will be used to fund projects.~~ Funding for program administration and for technical assistance on emerging contaminants can be covered by set-asides from the base CWSRF and BIL CWSRF General Supplemental capitalization grants, as described in a separate Intended Use Plan. The Division reserves the right to use unused portions of the ~~technical assistance~~ set asides at a later date.

The Division reserves the authority to transfer BIL Emerging Contaminants funds between the DWSRF-EC and CWSRF-EC from these years' capitalization grants at a later date and apply it to a future year's capitalization grant. ~~Any requests for transfer will be notified in writing to EPA.~~

The following table provides a summary of the projected funds available as a result of the Federal capitalization grant.

Sources and Uses for the Life of the Program (updated May 2024)

Historic Sources and Uses									
	Revenues					Expenditures		Net	
FY	Federal Cap	State Match	Repayments Principal	Repayments Interest	Interest Earned	Project Disbursements	Set-Asides	Net For FY	Cumulative Net
2022	\$1,688,000	N/A					\$0	\$1,688,000	\$1,688,000
2023	\$3,838,000	N/A					\$0	\$3,838,000	\$5,526,000
Totals	\$5,526,000	\$0					\$0	\$5,526,000	
Projected Uses beyond FY 2023 (based on Availability Model)						\$5,526,000	\$0	\$(5,526,000)	\$0

Update in May 2024: by eliminating the original IUP's 4% set-asides for administrative costs from the FY2022 and FY2023 capitalization grants, funds available for project disbursements increase from \$5,304,960 to \$5,526,000.

5. Criteria and Methods for Distributing Funds

5.1. Eligible Projects

For FY2022 and FY2023 CWSRF-EC capitalization grants, eligible projects must address any perfluoroalkyl and polyfluoroalkyl substances (PFAS) contaminants in publicly owned treatment works and/or publicly owned landfills.

Only projects successfully claiming 2.H.3 or 2.H.4 points will be eligible for BIL CWSRF-EC funding. Only the portion of the project costs associated with the project activities that address PFAS will be eligible for BIL CWSRF-EC disbursements.

5.2. Project List and Prioritization

The Intended Use Plan Project Priority List may be supplemented or replaced based on applications received as a part of future funding cycles (see 5.3 below). Applications that are received in one funding cycle and are not selected for funding will be reconsidered in one more cycle (the next one) for funding.

Projects eligible for CWSRF-EC funds will be prioritized using a Priority Rating System consisting of elements of the Priority Rating System that are specific to the CWSRF-EC funding as approved by the State Water Infrastructure Authority (see Appendix C). Applications will be ranked based on the following scores, in the following order: 1) total application score (points) of the Priority Rating System relevant for CWSRF-EC, 2) project purpose points, 3) project benefit points, and 4) affordability points.

The Priority Rating System considers four elements of a project: (1) project purpose, (2) project benefit, (3) system management, and (4) affordability.

For project purpose, CWSRF-EC specific Priority Rating System places higher priority on construction projects over evaluation and assessment projects, and on projects with greater proportions of costs dedicated to addressing PFAS contamination. An application will only receive priority points for one project purpose. To be eligible for CWSRF-EC funds, it is not necessary that the project should successfully claim PFAS-related project purpose points, 1.J.1- 1.J.3. Having no project purpose points will not negatively affect CWSRF-EC funding eligibility or CWSRF-EC principal forgiveness eligibility.

For project benefits, CWSRF-EC specific Priority Rating System places higher priority on projects that address contamination exceeding proposed MCL and Hazard Index for drinking water standards. Additional prioritization is provided to regionalization projects to incentivize regional approaches to addressing PFAS. To be eligible for CWSRF-EC funds the project must successfully claim points under line items 2.H.3 or 2.H.4.

In addition to correcting water quality issues, the Priority Rating System supports those LGU systems that seek to be proactive in their system management, including prioritization points for having implemented asset management plans and appropriate operating ratios.

The Priority Rating System also takes into account the ability of the applicant to afford projects. For example, those applicants who have a high poverty rate, high utility bills, lower population growth, lower median household incomes, and higher unemployment receive higher priority. Projects that primarily benefit disadvantaged areas also receive additional priority points.

The State Water Infrastructure Authority may adjust the rank of any application based on its analysis of a proposed project's value that is consistent with, but not evident in, the Priority Rating System, provided it is consistent with federal law.

5.3. Application and Project Deadlines

The CWSRF program operates on a priority basis and accepts funding applications semi-annually. Projects are allocated funding in priority order (as noted above) and within special reserve requirements (e.g. Emerging Contaminants, etc. as described herein) until available funds are exhausted. Funding availability is determined based on the capitalization grants. Results will be posted on the Division's website.

Project funding for construction projects is contingent on adherence to the schedule below in accordance with §159G-41 (times listed are measured from Letter of Intent to Fund except as noted otherwise):

- 5.3.1. Funding application and supporting information must be received by the application deadline to be considered for any given funding cycle.
- 5.3.2. After the Authority provides final project rank eligibilities, the CWSRF program will issue Letters of Intent to Fund (LOIF) based on the projects' prioritization and the amount of funds being made available in the cycle.
- 5.3.3. Within four months of the issuance of the LOIF, a complete Engineering Report / Environmental Information Document must be submitted to the CWSRF program.
- 5.3.4. Within nine months, the Engineering Report / Environmental Information Document must be approved.
- 5.3.5. Within 15 months, complete plans and specifications must be submitted with copies of all required permits, encroachments, etc., or evidence that applications for

remaining required permits have been submitted to the respective permitting agency. Complete Operations and Maintenance (O&M) Plan must be submitted.

5.3.6. Within 19 months, the plans/specifications and all required permits must be approved/issued.

5.3.7. Within 23 months, the following events/items must be completed/received:

5.3.7.1. Advertise the project for bids

5.3.7.2. Receive bids

5.3.7.3. Submit bid information to CWSRF staff

5.3.7.4. Obtain the Division's Authority to Award Construction Contracts.

5.3.8. Within 24 months, construction contracts must be executed.

The milestones in the timeline above are absolute for all projects in a particular cycle and will not be extended except based upon a demonstrated need for extension by the LGU. Projects may be able to meet these milestones ahead of schedule. However, in the event that any milestone noted above is not met, work by the CWSRF staff may be suspended and all documents returned to the Applicant until the proposed project is resubmitted for consideration during a future cycle.

If an Applicant desires CWSRF funding and the Applicant's project requires an Environmental Impact Statement (EIS), Division staff will manage the environmental review process. However, a funding application for the project will not be accepted in any funding cycle until a draft EIS has been sent to the State Clearinghouse (SCH). In the event that a fundable project is in process and the environmental review completed within the timeline results in the conclusion that an EIS is required, then the milestone deadlines for the project will be suspended until a draft EIS has been sent to the SCH. After the draft EIS is sent to the SCH, the project must adhere to the same time frames specified above.

5.4. Detailed Project Funding Criteria

5.4.1. General

- 5.4.1.1. To be eligible for CWSRF-EC funding, a project must be on the Intended Use Plan Project List and successfully claim points under line items 2.H.3 or 2.H.4.
- 5.4.1.2. Funding can be provided for any eligible projects (that address PFAS) as provided for in the Clean Water Act and NCGS 159G, including wastewater treatment facilities, collection systems, landfill leachate treatment, etc. that improve water quality.
- 5.4.1.3. Funding will be provided in priority order based on project score, Authority determination, and the amount of funds made available. Projects cannot be substantively changed once funding is allocated.
- 5.4.1.4. CWSRF-EC funds will be offered as 100% principal forgiveness.
- 5.4.1.5. **Evaluation/Assessment Project Reserve: At least 50% of the CWSRF-EC funds available for projects will be reserved for projects to evaluate alternatives to address PFAS (i.e. pilot scale treatment studies, assessments and evaluations, etc.). If there are not enough eligible applications for evaluation projects to award at least 50% of the project funding, the remainder of this reserve will be made available to other CWSRF-EC eligible projects in priority order. Funding may bypass a higher priority project to satisfy the Evaluation/Assessment Project Reserve. Any such bypassing will be shown in the Intended Use Plan Project Priority List.**
- 5.4.1.6. **The maximum CWSRF-EC funding amount for evaluation projects will be established at \$500,000 per applicant per year.**
- 5.4.1.7. **Division reserves the right to borrow from future capitalization grants to meet the demand as and when needed.**

5.4.2. Principal Forgiveness

CWSRF-EC funding will be provided with 100% principal forgiveness for the entire FY2022 and FY2023 capitalization grants ~~less the amounts used for set-asides and administrative costs~~. Total amounts available for principal forgiveness is ~~to be~~ **estimated to be \$1,688,000 for FY2022 and \$3,838,000 for FY2023 capitalization grants.**

5.4.3. Miscellaneous Criteria/Provisions:

- 5.4.3.1. Davis-Bacon prevailing wage rates apply to loans as required by funding agreements/conditions.
- 5.4.3.2. American Iron and Steel provisions will apply to loans as required by Federal mandates.
- 5.4.3.3. Build America, Buy America requirements will apply to loans as required by US EPA and by Federal mandates.
- 5.4.3.4. Brooks Act requirements will be applied to projects in a dollar amount equal to the capitalization grant.
- 5.4.3.5. Funding conditions for projects with capital improvements will include the requirement to develop an Operations and Maintenance (O&M) Plan to plan for adequate long-term operations of the assets, including plans for covering the operating costs and technical capacity of staff to operate and maintain the assets.
- 5.4.3.6. Funding conditions will specify that project costs that are paid by an identified Responsible Party are not eligible for CWSRF-EC funds and will be refunded to the Department.
- 5.4.3.7. Approval of a repayable loan (not principal forgiveness) that may supplement a CWSRF-EC award is contingent on approval by the Local Government Commission (LGC).
- 5.4.3.8. A 2% fee is required. The fee cannot be financed by the CWSRF-EC fund.

6. Programmatic Conditions

6.1. Assurances and Specific Proposals

Pursuant to §606(c)(4) of the Clean Water Act, the State of North Carolina certifies that:

- 6.1.1. The State will enter into binding commitments for 100% of the amount of each payment received under the capitalization grant within one year after receipt of each payment.
- 6.1.2. The State will expend all funds in the CWSRF-EC in an expeditious and timely manner.
- 6.1.3. The State will conduct environmental reviews of treatment works projects according to procedures set forth in its Operating Agreement between the State and US Environmental Protection Agency.

6.2. Federal Requirements

- 6.2.1. The State will ensure that all federal requirements are met as noted in the CWSRF Operating Agreement between the State and US Environmental Protection Agency and the Grant Agreement, including Single Audit, Disadvantaged Business Enterprise compliance, federal environmental crosscutters, and Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.
 - 6.2.2. The State will enter all required reporting information at least quarterly into respective federal databases including FFATA and the SRF Data System.
 - 6.2.3. The State will ensure that all applicants to the CWSRF program certify that they meet the fiscal sustainability planning requirements. Such certifications will be received by the time of loan offer.
- 6.3. Transfer between CWSRF-EC and Drinking Water State Revolving Fund-EC
- Transfer of funds between the CWSRF-EC and the BIL Drinking Water State Revolving Fund Emerging Contaminants funding are authorized by federal statutes. This IUP does not propose any such transfer of funds. However, the Division reserves the ability to make transfers in managing cash flow. If such transfer takes place, a subsequent transfer will be made by transferring that amount back from the receiving fund to the providing fund (i.e., no permanent transfers) as soon as possible. **Any requests for transfer will be notified in writing to EPA.**

7. Program Evaluation Report

CWSRF anticipates receiving and responding to the Program Evaluation Report (PER) for FY2024 funding in calendar year 2025, during and following the Annual Review. The Division participated in the EPA FY2023 Annual Review, which was kicked off on February 27-28, 2024. The State didn't have any audit findings during FY2023.

8. Public Review and Comment

A draft IUP and proposed draft Priority Rating Systems were published for public review for a 30-day period starting on June 1, 2023 and ending on June 30, 2023. Public comments related to the CWSRF-EC program and corresponding staff responses are summarized below.

At the time of public comments, the proposed Priority Rating Systems used by the Division for multiple programs included a line item 2.H.5, which is referenced in the comments and responses below. Line item 2.H.4 was proposed for projects addressing PFAS compounds exceeding a proposed MCL (10 points), and line item 2.H.5 was proposed for projects addressing PFAS compounds exceeding the Hazard Index (10 points). Since the public comment period, line items 2.H.4 and 2.H.5 have been merged into one line item (projects addressing PFAS compounds exceeding a proposed MCL or Hazard Index) for 10 points, to simplify the PRS. References to line item 2.H.5 below can be equated to new line item 2.H.4 in the Priority Rating System in Appendix C.

The original IUP was adopted in July 2023. In May 2024, the IUP and the included Project Priority

List (Appendix A), was updated. Changes from the original IUP are shown in red font text. The Division is seeking public comments on the changes in red font text during a 15-day period. Public comments related to this review will be addressed as part of the final IUP.

Public comments and responses related to the original public comment period (June 2023) are:

Priority Rating System

Comment: In Section 4 (Affordability), Line Items 4.C.1-4.C.3 gain points with LGU indicators being worse than the state benchmark in increments of one. Sometimes individual indicators do not clearly show the nature of the local government unit and could be skewed. Please clarify why the threshold should incrementally increase by one when the accuracy could be distorted in one indicator.

Response: Staff recognize that individual LGU indicators by themselves may not always accurately reflect the conditions of the LGU. However, the five LGU indicators as a whole provide a strong indication of a LGU's general economic conditions, which affects its ability to afford the proposed project. It is reasonable to provide more priority to LGUs with more indicators reflecting worse than the benchmark values. Staff will continue to evaluate LGU indicators and the Affordability Criteria and make recommendations to the Authority as needed. **Staff recommend no change to the PRS.**

Comment: Line Item 4.C.4 is awarded less priority points than Line Items 4.C.1-4.C.3. Since only one of the Line Items in 4.C can be awarded to an applicant, we recommend changing the priority points awarded for Line Item 4.C.4 to 7 points in order to treat the line items similarly.

Response: The Affordability Criteria's Local Government Unit Indicator metrics (4.C.1 - 4.C.3) are intended to evaluate the community's ability to afford the intended project and are indications of the entire utility being disadvantaged. At least three out of five LGU indicators must be worse than the state benchmark in order to gain priority points, ranging from 3 to 7 points. To qualify for priority points for benefiting disadvantaged areas (line item 4.C.4), the project must benefit a subsection of the service area that is disadvantaged, and that area may only meet one or potentially even none of the LGU indicator metrics. Line item 4.C.4 provides 5 points, which is equivalent to a LGU having four out of five LGU indicators worse than the state benchmark. It is the intent for the PRS to provide higher priority to projects in communities where all five LGU indicator metrics are worse than the state benchmarks. **Staff recommend no change to the PRS.**

Comment: We believe the priority rating systems for SRF and EC funding should be merged for several reasons. From the perspective of an applicant, learning one priority rating system and application process per funding source is easier, especially for a jurisdiction that might be submitting multiple applications. We also expect that a streamlined and uniform process will benefit the Division when evaluating applications. Additionally, a merged priority rating system will allow for these Emerging Contaminant line items to

be considered even after the IJJA-specific funding for Emerging Contaminants runs out (if the EC line items will be kept in the priority rating system).

Response: Staff recommends that for application submittal purposes, the PRS for the base SRF and EC funding be combined into one, similar to how the DWSRF, CWSRF, Green Project Reserve, and CDBG-I rating systems are combined into one rating system, yet only certain priority line items would be applicable to certain types of funding programs, including for the EC funding. **Staff recommends that when considering eligible applications for the EC funds, applications will be scored and ranked considering only the relevant priority line items for the EC program, i.e. line items 1.J.1 - 1.J.3, 2.F.2, 2.H.3 - 2.H.5, 3.A, 3.B, and 4.A - 4.C.** This would accomplish the goal of focusing the scoring of applications for EC funding only on items relevant to PFAS projects, while simplifying the application process for the Applicant and the ability to consider an application for multiple sources of funding.

Comment: We support the Priority Rating System for Emerging Contaminants funding being incorporated, similar to the Green Project Reserve energy efficiency funding for wastewater treatment plants, into the Drinking Water State Revolving Fund's PRS. Additionally, if a rehabilitation of aging infrastructure project is eligible for Emerging Contaminant funding and receives project benefit line items 2.H.1-2.H.5 points, the project may score higher than if line item 1.J.1 or 1.J.2 is selected for project purpose. Propose to increase the Project Purpose points for line items 1.J.1 – 1.J.3 to make them competitive with rehabilitation applications and more appealing.

Response: **Staff recommends that for application submittal purposes, the PRS for the base SRF and EC funding be combined into one, but eligible applications for the EC funds will be scored and ranked considering only the applicable priority line items for the EC program (see above).** The Division still wants to support much needed replacement/rehabilitation of old infrastructure projects. If those projects also address contaminants including PFAS, they will score the same as 1.J.1 projects that also receive 2.H points. However, only projects with 1.J.1, 1.J.2 or 1.J.3 will be eligible to get BIL EC funding. It is the Division's intent to keep a rehab project addressing primary contaminants at a similar level as a project whose primary purpose is to address PFAS. **Staff do not recommend changes in priority points for line items 1.J.1 and 1.J.2.**

Comment: If the Emerging Contaminants funds will not fully fund the project and additional SRF funds are requested, will applicants have to complete two separate funding applications, or will this Priority Rating System be incorporated with the DWSRF Priority Rating System? We recommend requiring only one application for the project.

Response: **Staff recommends that for application submittal purposes, the PRS for the base SRF and EC funding be combined into one, but eligible applications for the EC funds will be scored and ranked considering only the applicable priority line items for the EC program (see above).** This would allow applicants to submit only one application and claim all of the PRS line item points that apply for the regular SRF funding, while only the EC-related line items will be scored when being considered for BIL EC funding. **Staff recommend no changes to the Priority Rating System.**

Comment: The Division also explicitly asks for input on increasing the point values for line items 1.J.3 (evaluating alternatives to address emerging contaminants) and 2.H.3 (project addresses any PFAS exceeding 10ppt). We recommend increasing both of these line items from two to five points.

Response: **Staff recommends increasing line item 1.J.3 and 2.H.3 each to 5 points.**

Comment: Line Item 2.H.3 should not be increased to 5 points. Utilities should be incentivized to implement measures that fully address the issue to an EPA-required level, as half-measures or limited investment is more likely to require subsequent additional investment, which is not a cost-effective approach to maintaining treatment standard compliance in the long run.

Response: We received comments both recommending to increase and not to increase line item 2.H.3. points. This line item addresses PFAS compounds exceeding 10 ppt but without a proposed MCL or Hazard Index and is recommended for increasing to 5 points as DEQ is potentially planning to establish water quality standards for wider range of PFAS compounds and would like to encourage projects addressing PFAS compounds other than those with proposed MCL or Hazard Index. **Staff recommends increasing line item 2.H.3 from 2 to 5 pts.**

Comment: Line Item 1.J.3 should be increased to 5 points to incentivize studies to be applied for to make use of the Emerging Contaminant funds allocated for such efforts.

Response: **Staff recommends increasing line item 1.J.3 from 2 to 5 points.**

Comment: For Line Item 1.J.3, we recommend increasing the line item points and defining “main.” Please clarify if 100% of the project costs have to address emerging contaminants or if this could be a portion of another project.

Response: Yes, 100% of the project costs for line item 1.J.3 must be for planning how to address PFAS contamination. **This will be clarified in IUP in Section 5.1 and the Guidance. Staff recommends increasing line item 1.J.3 to 5 points.**

Comment: Category 1 Project Purpose suggests receiving line item 1.J.1 points if 100% of the project costs are associated with addressing emerging contaminants, versus 75% of the project costs which would earn 1.J.2 points. The percentages are so close we propose revising line item 1.J.2 to 50% of project costs and also changing the word “main” to “sole” in line item 1.J.1.

Response: **Staff recommends changing the word “main” to “sole” in line items 1.J.1 and 1.J.3.** The BIL Implementation Memo from EPA requires that the *primary* purpose of the projects receiving BIL EC funding must be to address emerging contaminants. Line item 1.J.2 requires that at least 75% of the project costs are associated with addressing emerging contaminants to ensure that that primary purpose of the project is to address PFAS. **Staff does not recommend reducing the 75% project cost requirement to qualify for line item 1.J.2.** In addition, **the Division will add a statement to Section 5.1 in the**

Intended Use Plan to clarify that only the portions of the project costs associated with the project activities that address PFAS will be eligible for BIL EC disbursements.

Comment: Recommend adding a lesser priority line item that states the project will address emerging contaminants without qualifying a percentage of project costs addressing emerging contaminants. For example, if only 40% of the project costs are addressing Emerging Contaminants, a local government should be eligible to receive the emerging contaminants funding.

Response: EPA's BIL Implementation Memo requires that the primary purpose of the projects receiving EC funding must be to address emerging contaminants, and that only the costs associated with addressing emerging contaminants are eligible for BIL EC disbursements. Projects that address multiple purposes are eligible for regular SRF funds as well as other Division grant and loan funding programs and will also rank high with line items 1.C/1.C.1 and relevant 2.H project benefit points (which do not require "primary purpose" to be to address emerging contaminants). Since EC funds are limited, the BIL EC funds will be administered only on projects with a primary purpose or sole purpose of addressing PFAS contamination. **Staff recommends no changes to the PRS.**

Comment: It appears if line items 2.H.3 or 2.H.4 points are claimed, the application automatically receives 2.B.1 points. If not, please confirm how these line items are different.

Response: Line item 2.B.1 is claimed when the project addresses contamination of the source of a public water system. The Division was considering also applying the line item to addressing elimination of individual wells with PFAS contamination, but staff do not recommend this change. A project receiving 2.H.3 or 2.H.4 points will not necessarily receive 2.B.1 points. In order to score projects addressing emerging contaminants in individual wells similarly to addressing emerging contaminants in public water systems and not to provide an advantage of one over the other. Further, the Guidance will be updated to state that only projects that score 2.H.1 or 2.H.2 points may be eligible for line items 2.B.1 points. **Staff recommends that line item 2.B.1 not be considered when scoring eligible applications for BIL EC funding.**

Comment: In the proposed Priority Rating System, is it possible for a well system to get points for PFAS contamination in both line items 1.B and 1.J.1? If so, that seems like an unfair advantage to well systems. Please consider clarifying the criteria to ensure that points for the same issue can only be claimed in one category.

Response: Applications can only claim one project purpose line item (either 1.B or 1.J). EC-funded projects are not eligible for line item 1.B points. Line item 1.B will no longer apply to projects addressing PFAS contamination in private wells, since that prioritization now exists in new line items 1.J.1 and 1.J.2. **Staff recommends no changes to the PRS.**

Project eligibility

Comment: While treating PFAS at a wastewater treatment plant might be a necessary use of CWSRF-EC funding, we strongly encourage the Division and DEQ more generally to rely

on pretreatment methods to stop PFAS at the source and prevent its entrance into public facilities. The concept of “polluter pays” is a bedrock principle of state and federal environmental law. The value of public health necessitates public investment in drinking water protection. When it comes to controlling pollution upstream, it is much harder to see why the general public should pay to remove PFAS from a water discharge, rather than having that burden fall on the polluter who is choosing to use and release PFAS as a part of their production process. Investments that support vigorous local pretreatment programs—through better monitoring, enforcement, or process changes by significant industrial users—can remove PFAS at lower cost and without imposing costs on a utility’s general ratepayers. Therefore, we recommend that the Division prioritize PFAS spending on drinking water treatment and wastewater pretreatment, rather than treatment of municipal wastewater. With respect to the CWSRF emerging contaminant funding, this could be done with priority points given to applicants proposing PFAS-specific pretreatment programs.

Response: The Division agrees that there is great value to addressing pollution at the source. However, under the Bipartisan Infrastructure Law, BIL CWSRF-EC funds are eligible only for uses under section 603(c) of the Federal Water Pollution Control Act that address emerging contaminants. These, unfortunately, do not include addressing pretreatment. EPA has also confirmed to States that projects to address pretreatment and source identification projects are not eligible for CWSRF or CWSRF-EC funds. **No change to the IUP.**

Comment: With the proposed prominent focus on PFAS compounds, other potentially harmful Emerging Contaminants have taken a back seat. While the current Project Benefit criteria accounts for "an emerging contaminant without an MCL", and 2.H of the PRS is proposed to expand to 5 subparts, none of the proposed subparts address emerging contaminants generally, but only specific contaminants that either have a Hazard Index or proposed MCLs. This defeats the purpose of the benefits of tackling Emerging Contaminants and focuses inordinately on specific contaminants. Should another Emerging Contaminant become problematic to a similar degree as PFAS (or even somewhat less so) there is no incentive for a water utility to address this issue proactively and protect its customers, as is supported by the current IUP. The DWSRF program (and especially the DWSRF-EC should that IUP be implemented) should maintain its general focus on Emerging Contaminants and not devalue other potential risks in deference to the most prominent current concerns. The IUP should therefore remain flexible to changing conditions and ensure appropriate value is reflected in the PRS.

Response: EPA’s March 8, 2022 memo titled *Implementation of the Clean Water and Drinking Water State Revolving Fund Provisions of the Bipartisan Infrastructure Law* is clear that a primary purpose for the BIL Emerging Contaminants funds is to focus on reducing people’s exposure to perfluoroalkyl and polyfluoroalkyl substances (PFAS). The Department feels that addressing PFAS compounds is the major need for North Carolina at this time. Note that all PFAS compounds, and not just those with proposed MCLs or Hazard Index, are eligible for EC funding and are prioritized in the PRS in line items 2.H.3

- 2.H.5. Projects addressing other emerging contaminants, such as 1,4 Dioxane or Manganese, could qualify for PRS line item 2.H.2 points and are eligible for base SRF funds, although they would not be eligible for BIL EC funds. While the BIL DWSRF-EC funds and BIL CWSRF-EC funds will be limited only to addressing PFAS compounds, projects addressing other emerging contaminants can be funded from the base/BIL General Supplemental Drinking Water /Clean Water State Revolving Funds. Current IUP only addresses FY 2022 and 2023 BIL EC funds and the SRF program, and Priority Rating Systems and IUPs can be modified for future fiscal years if the need arises for other emerging contaminants to be considered. The eligibility for DWSRF-EC and CWSRF-EC funding for FY2022 and FY2023 will remain for projects that address PFAS. **No change to the IUP.**

Administering the DWSRF-EC and CWSRF-EC funding alongside regular SRF funding

Comment: A separate priority rating system, or even a separate IUP, is not needed. Both proposed PRSs remove the general focus on Emerging Contaminants and instead utilize criteria designed to specifically address PFAS compounds. Second, the IUPs should be developed with an eye toward accommodating likely or potential future changes, such as final USEPA MCL standards for PFAS and other Emerging Contaminants. Third, having separate IUPs causes confusion on the appropriate method to apply for projects, especially those that may only partially relate to PFAS mitigation (e.g., a treatment plant rehab that addresses multiple issues at once, including PFAS). If a project meets the current Project Benefits criteria in 2.H, it can be eligible for Emerging Contaminant funds, but is otherwise available for base or supplemental DWSRF funds, and therefore segregating the criteria unnecessarily obscures the goals and benefits of a particular project. Consolidating the determination of eligibility by including multi-pronged projects that may be eligible for an array of funding minimizes the duplication of effort by applicants and processing by DWI, and ultimately is likely to lead to increased applications as there is a greater opportunity to be awarded funds of one form or another. Recommend maintaining the existing criteria in 2.H, as well as adding the proposed subparts, as opposed to removing existing criteria and replacing with PFAS-specific criteria. Suffice to say, PFAS is not the only Emerging Contaminant currently being monitored or that may arise in the near future.

Response: **Staff recommends that for application submittal purposes, the PRS for the base SRF and EC funding be combined into one, but eligible applications for the EC funds will be scored and ranked considering only the applicable priority line items for the EC program (see above).** Separate IUPs are used for the BIL Emerging Contaminant funds to clearly communicate how those funds will be allocated, principal forgiveness amount, maximum award amount, disadvantaged area allocations and set-aside percentages that are different from the base/BIL General Supplemental DWSRF and CWSRF funds. The Division is recommending using one Priority Rating System, but applying specific line items in scoring applications for BIL DWSRF-EC and BIL CWSRF-EC funding as stated above. The IUPs for DWSRF-EC and CWSRF-EC will continue to be separate from the IUPs for the regular DWSRF and CWSRF at least for FY2022 and FY2023 in order to clearly

identify how the EC funds will be administered. One of the program requirements for Emerging Contaminants funds is that primary or sole purpose of the project is to address PFAS. Having a separate Project Purpose line item to identify projects that are solely or primarily addressing PFAS (i.e. line items 1.J.1 - 1.J.3) will help determine which applications may qualify for EC funding. **The IUP for BIL DWSRF-EC will be changed in Section 5.4.1.2 to specify that for a drinking water project to be eligible for EC funding, the application must successfully claim points under line items 1.J.1 - 1.J.3 and successfully claim points under line items 2.H.3- 2.H.5.** This will ensure that EC funds are spent on projects whose primary or sole purpose is to address PFAS. Please note that existing line items 2.H.1 and 2.H.2 are maintained in the Priority Rating System, and only line item 2.H.3 (and the new line items 2.H.4 and 2.H.5) has been changed to focus only on PFAS. Other contaminants, such as Manganese and 1,4 Dioxane, can claim line item 2.H.2 points. The eligibility for EC funding for FY2022 and FY2023 will remain for projects that address PFAS. This is in line with the needs and goals of the Department, since there is a high demand for funding specifically to address PFAS contamination. Projects that address multiple purposes but are not primarily or solely to address PFAS may gain other Project Purpose points and still qualify for line items 2.H.3 - 2.H.5, but will not be considered for BIL EC funding. This will ensure that the limited BIL EC funding available will only be applied to projects that are solely or primarily to address PFAS. Only project costs related to addressing emerging contaminants (PFAS) will be eligible for BIL EC funding. **However, line items 1.J.1-1.J.3 is not required for clean water projects to be eligible for BIL-EC funds. CWSRF-BIL-EC IUP is updated to reflect this change.**

Comment: Based on the information provided, it is unclear how the Division plans to administer the base SRF funds along with the Emerging Contaminants funding. Since there is limited Emerging Contaminants funding, we request that Division consider offering 0% interest loans or a loan with an interest rate reduction from the base SRF programs to complete the applicant's funding request when the BIL Emerging Contaminant funding cap is met.

Response: If an application scores in the funding range for the BIL EC funding and in the funding range for the regular SRF funding, the application can receive both BIL EC funding (per the Intended Use Plan for BIL DWSRF-EC or BIL CWSRF-EC) and an SRF loan (per the Intended Use Plan for the base/BIL General Supplemental SRF program). BIL EC funding is 100% principal forgiveness up to the relevant cap. Base/BIL General Supplemental SRF funding is a loan with possibilities for principal forgiveness and targeted interest rates, as defined in those IUPs. The existing Affordability Criteria and Disadvantaged Area methodology used to identify projects eligible for a targeted interest rate (as explained in the IUPs for the regular SRF funds) are intended to provide support to communities and systems most in need for financial support. **No change to the IUPs.**

Funding Limits

Comment: Section 5.4 in the BIL CWSRF-EC Intended Use Plan does not include a funding cap. Please confirm there is no funding cap for this program.

Response: BIL CWSRF-EC funds are very limited and hence no funding cap is proposed. Funding will be limited to the available BIL CWSRF-EC funds. **No change was suggested to the IUP.**

Comment: Section 5.4.3 in the BIL CWSRF-EC Intended Use Plan references Green Projects and interest rate reductions. The Emerging Contaminants funding is all 100% principal forgiveness funds; therefore, interest rate reductions would be irrelevant for this funding source. Additionally, Section 5.4.3.4 states principal forgiveness is not available for Green Projects. Please confirm there will be no interest rate reductions as this funding is 100% principal forgiveness and revise the section.

Response: BIL CWSRF-EC funds are 100% principal forgiveness and no interest rates apply. **The unintended language on interest rates has been removed from the IUP. Green Project Reserve projects funded from BIL CWSRF-EC will be offered at 100% principal forgiveness.**

9. Budget and Project Periods

- 9.1. The budget and project periods being requested for the capitalization grants are shown in Appendix B and on EPA Form SF 424.
- 9.2. Fees (2% of the funding award) on funding from the grant will be deposited into separate account centers. Fees will be used to administer the program. In addition, fees considered non-program income will also be used for other water quality purposes within the Divisions of Water Resources and Water Infrastructure, including funding for positions.
- 9.3. **In order to reduce and minimize federal unliquidated obligations and undisbursed non-federal cash balances, the state will draw down on the capitalization grants in the order it was received, fully spending on each year's capitalization grant fund types before drawing down from the next year's capitalization grant.**

Appendix A

Draft - Intended Use Plan Project Priority List for BIL CWSRF-EC Funds

The Intended Use Plan Project Priority List may be supplemented or replaced based on applications received as a part of future funding cycles.

The Project Priority List, updated in May 2024, presented below is based on applications received and funding awards made by the State Water Infrastructure Authority in February 2024.

This project priority list itemizing the output/outcomes of the policies and procedures outlined in this Intended Use Plan for the FY2022 and FY2023 funds. Projects selected for FY2022 and FY2023 BIL CWSRF-EC funding, have received Letters of Intent to Fund and are awaiting agreement execution.

Fall 2023 Application Round – Awards Made by the State Water Infrastructure Authority in February 2024

Applicant Name	Project Name	NPDES Permit Number	County	Notes	Total Funding Request	Notes	BIL CWSRF-EC Funding	Priority Points	Estimated Binding Commitment
Cumberland County	Landfill Leachate Treatment and PFAS Removal	N/A	Cumberland		\$15,303,886	Partially funded; eligible for reconsideration for additional funds	\$5,304,960	52	Jan 2025
Lumberton, City of	PFAS Wastewater Treatment Plant		Robeson		\$500,000	Evaluation/ Assessment Project	\$500,000	24	Jan 2025
Total					\$15,803,886		\$5,804,960		

TOTALS

	FY2022 CWSRF-EC	FY2023 CWSRF-EC	Total Over Two Cap Grants	Funding Pending FY 2024 CWSRF-EC Cap Grant Application
Total Awarded	\$1,688,000	\$3,838,000	\$5,526,000	\$278,960
Availability (excl. set-asides)	\$1,688,000	\$3,838,000	\$5,526,000	

Appendix B

2022 and 2023 BIL CWSRF-EC Proposed Payment Schedule

(Dependent on timing of state match and award of federal grant)

<u>Payment Quarter</u>	<u>2022 EC Payment Amount</u>	<u>2023 EC Payment Amount</u>
April 1, 2023 – June 30, 2023		
July 1, 2023 - September 30, 2023		
October 1, 2023 - December 31, 2023	\$1,688,000	\$3,838,000
January 1, 2024 - March 31, 2024		
April 1, 2024 - June 30, 2024		
July 1, 2024 - September 30, 2024		
October 1, 2024 - December 31, 2024		
Total	\$1,688,000	\$3,838,000

Appendix C

PRIORITY RATING SYSTEM for CWSRF-EC Projects

2023 PRIORITY RATING SYSTEM for CWSRF-EC Projects Only			
<p>Instructions: For each line item, mark "X" to claim the points for that line item. Be sure that your narrative includes justification for every line item claimed. At the end of each category, provide the total points claimed for each program in the subtotal row for that category. Then add the subtotals from each category and enter the Total of Points for All Categories in the last line. Note that some categories have a maximum allowed points that may be less than the total of individual line items.</p>			
Line Item #	Category 1 – Project Purpose (Points will be awarded for <u>only one</u> Project Purpose)	Claimed Yes/No	Points
1.A-1.E	Reserved for other wastewater projects (not to be used for CWSRF-EC funds)		
1.F	Reserved for other programs		
1.G – 1.I	Reserved for other wastewater projects (not to be used for CWSRF-EC funds)		
1.J.1	Sole purpose of the project is to address Emerging Contaminants (construction projects) where 100% of the costs are associated with this purpose OR		20
1.J.2	At least 75% of the project costs are to address Emerging Contaminants (construction projects) OR		15
1.J.3	Sole purpose of the project is to evaluate alternatives to address Emerging Contaminants (may include pilot scale treatment study)		5
Maximum points for Category 1 – Project Purpose			20
Subtotal claimed for Category 1 – Project Purpose			
Line Item #	Category 2 – Project Benefits	Claimed Yes/No	Points
2.A – 2.B	Reserved for other programs		

2023 PRIORITY RATING SYSTEM for CWSRF-EC Projects Only			
2.C – 2.F.1	Reserved for other wastewater projects (not to be used for CWSRF-EC funds)		
2.F.2	Project includes system regionalization and/or system partnerships		5
2.G – 2.H.2	Reserved for other programs		
2.H	Project addresses contamination ¹		
2.H.3	Project addresses any PFAS compounds exceeding 10 ppt or State-established regulatory standards or limits OR		5
2.H.4	Project addresses PFAS exceeding proposed MCL or Hazard Index		10
2.I	Reserved for other wastewater projects (not to be used for CWSRF-EC funds)		
2.J – 2.M	Reserved for other programs		
2.N – 2.R	Reserved for other wastewater projects (not to be used for CWSRF-EC funds)		
2.S	Reserved for other programs		
Maximum points for Category 2 – Project Benefits			15
Subtotal claimed for Category 2 – Project Benefits			
Line Item #	Category 3 – System Management	Claimed Yes/No	Points
3.A	Capital Planning Activities		
3.A.1	Applicant has implemented an Asset Management Plan as of the date of application OR		10

2023 PRIORITY RATING SYSTEM for CWSRF-EC Projects Only			
3.A.2	Applicant has a current Capital Improvement Plan (CIP) that spans at least 10 years and proposed project is included in the plan		2
3.B	System Operating Ratio is greater than or equal to 1.00 based on a current audit, or is less than 1.00 and unit cost is greater than 2.5% of MHI		5
3.C – 3.E	Reserved for other programs		
Maximum points for Category 3 – System Management			15
Subtotal claimed for Category 3 – System Management			
Line Item #	Category 4 – Affordability	Claimed Yes/No	Points
4.A	Residential Connections		
4.A.1	Less than 10,000 residential connections OR		2
4.A.2	Less than 5,000 residential connections OR		4
4.A.3	Less than 1,000 residential connections		8
4.B	Current Monthly Combined Utility Rates at 5,000 Usage		
4.B.1	Greater than \$79 OR		4
4.B.2	Greater than \$90 OR		6
4.B.3	Greater than \$107 OR		8
4.B.4	Greater than \$129		10
4.C	Local Government Unit (LGU) Indicators		
4.C.1	3 out of 5 LGU indicators worse than state benchmark OR		3

2023 PRIORITY RATING SYSTEM for CWSRF-EC Projects Only			
4.C.2	4 out of 5 LGU indicators worse than state benchmark OR		5
4.C.3	5 out of 5 LGU indicators worse than state benchmark OR		7
4.C.4	Project benefits disadvantaged areas		5
4.D – 4.G	Reserved for other programs		
Maximum points for Category 4 – Affordability			25
Subtotal claimed for Category 4 – Affordability			
Total of Points for All Categories			