

Guidance for potential ARRA Green Project Reserve Applicants in PA

Special Requirements
and
Questions and Answers
April 15, 2009

Notice: The guidance offered in this summary represents the best information available as of the date referenced. It is however subject to change based on advice from the U. S. Environmental Protection Agency (EPA). Caution should therefore be applied in its use. Please contact those listed below to see if any updates that may have been made.

Special Requirements

How do I satisfy the “American Iron, Steel and Manufactured Goods” requirement?

The ARRA requires that all of the iron, steel and manufactured goods used in projects be produced in the United States. You may therefore want to review the list of materials you plan to use in your project and identify any that are not readily available from U.S. sources, or that have U.S. sources but at a much higher cost. Waivers may be available, for example, if:

- Project costs increase by more than 25% because of using U.S sources; or
- The necessary “iron, steel and manufactured goods” are not available from U. S. sources;
or
- The requirement is inconsistent with the public interest.

If you believe you have a case which warrants a waiver please provide a detailed justification to PENNVEST as soon as possible. We will do our best to get you a decision quickly.

Domestic equipment manufacturers can be expected to be asked “does your equipment satisfy the ARRA requirement?” The answer is not necessarily obvious, because many U. S. based suppliers use foreign-produced parts or components in their finished products. Guidance on the subject is expected soon from EPA. For now, in Pennsylvania, you may wish to assume that products satisfy the test if they are assembled in the U. S.

If your application includes reimbursement for work done between October 1, 2008 and February 17, 2009 the requirement does not apply.

More guidance is expected on the subject from EPA.

What “environmental review” requirements must be satisfied?

The State Environmental Review Process (SERP) which has been applied for many years to “traditional” water and sewer projects will continue to apply to that kind of work. Traditional applicants work with staff in their DEP Regional Office to complete “categorical exclusions” (CE) and “environmental assessments” (EA). The completion of the process will be relevant to your readiness to proceed.

Given the short time-frame available, it may be difficult to complete the environmental review of a new project if it requires an EA. If however an EA is well along, it could well be completed in time. Traditional applicants are encouraged to work with the DEP Regional Office to complete their environmental review.

Traditional applicants who believe that their project may qualify for a CE should also work with their Regional Office. It is possible for CE's to be completed on new work.

Some GPR-eligible CWSRF work involves "non-traditional" non-point source (NPS) projects. Commonly referred to as Section 319 projects, such work is very different from traditional concrete-and-steel infrastructure projects. First, NPS projects in many cases, unlike point source projects, do not have a discrete discharge that would impact surface waters. Unlike point source discharges, no discharge permit is required even if a discharge does result from the installation of a NPS project. In fact, NPS best management practices (BMPs) are designed to reduce or prevent pollutants from entering a stream or lake.

Secondly, many NPS projects are small and cause minimal impact to the land surface. Projects like land management agricultural BMPs, stormwater infiltration areas, riparian buffers, green roofs, and dirt and gravel road BMPs have a low likelihood of negatively impacting sensitive resources and don't even require environmental permits.

Larger NPS projects like abandoned mine drainage (AMD) passive treatment systems, natural Stream Channel Design, stormwater detention basins or encroachments to streams typically need some type of earth disturbance or waterway encroachment permit. The size of the project (e.g acres disturbed or linear feet of a project) will determine the type of permit needed. The permitting process is designed to protect against significant impact to sensitive resources such as threatened and endangered species, historical resources, and environmentally important natural resources.

For NPS projects submitted for funding under the Clean Water State Revolving Fund, the Department will evaluate information submitted by the applicant addressing the following:

- Land Use
- Floodplains
- Wetlands
- Historic Resources
- Biological Resources
- Water Quality Issues
- Coastal Resources
- Socio-Economic Resources
- Air Quality
- Transportation
- Noise Abatement and Control
- Wild and Scenic Rivers

In addition, the applicant will be expected to describe the status of any permits that are required, and provide a map.

Upon review the Department will make a determination as to whether a detailed environmental assessment and report or a categorical exemption is applicable for the project. If a CE is appropriate, your environmental review will be complete.

How do I satisfy the “Prevailing Wages” requirement?

The federal Davis-Bacon Wage Act applies to all work funded with ARRA monies (See <http://www.dol.gov/esa/whd/contracts/dbra.htm>). Recipients are therefore required to pay rates in effect at the time of the procurement.

Satisfying this requirement will be your responsibility as a recipient. Your budget should be developed with these rates in mind. Contractors should be advised to develop proposals using the rates, and if the rates change prior to contract execution you and your contractor(s) must adjust the costs to be paid accordingly. Recipients must maintain records that demonstrate compliance.

How do I satisfy the Disadvantaged Business Enterprise (DBE) requirement?

The DBE program requires that you, as the recipient of funding, make a serious effort to encourage DBE¹ businesses to compete for any work that will be contracted. If your contractor(s) award subcontracts, the requirements must be met in the award of the subcontracts as well. Efforts to complete the six good faith efforts must be documented in detail by both the loan recipient and prime contractor(s) who participate in the project.

You satisfy the requirement by applying the “Six Good Faith Efforts” as follows:

1. Make DBE firms aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities.
2. Make information on forthcoming opportunities available to DBE firms in a way that encourages and facilitates participation by DBE firms in the competitive bid process.
3. Consider dividing total contract requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBE firms in the competitive bid process.
4. Encourage contracting with a group of DBE firms in a combined effort to meet project requirements when a contract is too large for one of these firms to handle individually.
5. Perform the direct search for potential DBE firms using the website services of Pennsylvania Unified Certification Program (PA UCP). Visiting www.paucp.com and performing keyword searches for project needs will generate a list to be printed and used to

¹ A “Disadvantaged Business Enterprise” is defined by the U.S. EPA as an entity owned and/or controlled by a socially and economically disadvantaged individual .

contact potential DBE firms. For prime contracts keyword searches are more general (i.e., water construction, engineering, etc.) and for subcontractors they are more specific (i.e., ductile iron pipe, trucking, etc.). All contact with firms must be documented; phone calls are not an acceptable form of documented contact.

6. If the prime contractor awards work to subcontractors, require the prime contractor to follow the five steps above.

Advice is available from the Department of Environmental Protection (DEP), Division of Technical and Financial Assistance, 717-787-0122.

Questions and Answers

I. Readiness-To-Proceed

- Q What does it mean that “work must be ready to proceed upon award of the funding?”
- a EPA guidance on ARRA requires that all work funded with ARRA monies be under contract or under construction by February 17, 2010. States therefore must only consider providing funding to applicants which clearly demonstrate that their projects are ready to go.

The PENNVEST electronic application will ask you a series of questions intended to establish readiness-to-proceed. You should answer those questions fully, and also provide any additional information that will demonstrate a “shovel-ready” project. If your project is selected for funding you should then act promptly to complete whatever processes are needed to get underway. PENNVEST has established October 1 as a required date for being under contract or under construction. The reason a date has to be set before February 17 is that if we waited until February 17 it would be too late to assign the money to other projects, and the money would be lost to Pennsylvania. If you do cannot meet the October 1 date, you should assume that your funding will be revoked and awarded to another party who will satisfy the February 17 requirement.

- Q How soon does the work need to be finished?
- a The guidance from EPA does not specify a particular point in time by which all funds have to be expended. Given however that a major purpose of the funding is to stimulate the economy in the short-term, your application should demonstrate that you plan to get the work done as soon as is feasible given the nature of your project.

II. Programmatic Requirements

- Q What does it mean to “sponsor” a project and how does that impact the “own or operate” requirement?
- a A project may be sponsored by an entity that meets the established eligibility requirements. The “sponsor” becomes the funding recipient and will be required to fulfill all requirements (i.e. “own or operate” etc).
- Q Related to the “own or operate” requirement, please clarify what is required for “distributed” projects (i.e. rebates and purchases of homeowner fixtures, disconnection of downspouts, installation of agricultural BMPs etc).

- a An application will need to provide a list of participating homeowners/landowners. If funding is offered, the applicant will then need to provide an agreement for each homeowner/landowner documenting that the activity will be completed and maintained. This agreement could be similar to the landowner-grantee agreement that is used as part of the Growing Greener Grants.
- Q Would a formal easement or an agreement to maintenance rights be acceptable to fulfill the “own or operate” requirement?
 - a It is up to the applicant to specify the method or arrangement that will be used to fulfill the “own or operate” requirement.
- Q Can “design build” projects be submitted for funding consideration?
 - a Yes, if an applicant can clearly articulate how the “design build” project will meet DBE, Davis Bacon, complete the necessary Environmental Reviews and provide a timeline for project completion.
- Q What is meant by “job creation”?
 - a In the context of ARRA, the applicant will need to show what jobs will be created through the construction of the project.
- Q What does it mean to be “under contract or under construction”?
 - a Under contract means that the recipient has a binding agreement with another entity to complete the work of the project. Under construction means that the work is physically being completed.
- Q How do I “describe the purpose of the project”?
 - a Most projects solve a specific local problem which you can describe. Provide whatever information is relevant to help the reviewer understand the impact of the problem on public health and the environment or other measure as appropriate. Describe how the project will benefit water quality or public health. Indicate if there is a mandate to resolve the problem.
- Q How do I “describe how the project will serve that purpose”?
 - a Provide a detailed description of what the funds will be used for. Include information like location, methods, materials, capacities, relationship to related functions, cost effectiveness, ownership, operations & maintenance and timing.

III. Financial Assistance

- Q Is funding to be provided in the form of grants, or in loans that have to be repaid?
 - a It can be provided either way. The electronic application process on the PENNVEST webpage will ask you about your financial needs and PENNVEST will make judgments on the use of its available grant and loan monies based on what is received from applicants.
- Q How much can I request?
 - a There is no minimum or maximum.
- Q How much money is available?
 - a A minimum of 20% of the total available \$220 M (\$155M water quality, \$65M drinking water) or \$44 Million.

- Q 20% of the \$220 million PA ARRA is for GPR, how is that broken out between DWSRF and CWSRF?
- a The GPR will be at least \$13 million for DWSRF and at least \$31 million for CWSRF.
- Q Can the funding be used for land acquisition and/or land easements?
- a No. As outlined in the EPA ARRA Guidance, funding cannot be used for the purchase of land or land easements.
- Q Are there any matching requirements for the ARRA funding?
- a No.
- Q Will the funding available under 604B be used for the development of green infrastructure plans?
- a No. The Department's position regarding planning monies dedicated for this purpose was that the funding should come out of the SRF, from which the 604(b) allocation is derived. The final EPA 604(b) guidance acknowledged this position by suggesting, but not requiring, this use of 604(b) money for green infrastructure plan. In response to the urgent need to obligate the base grant and pass-through monies, during the first week of March DEP distributed an RFP to county/regional planning commissions, county conservation districts and river basin commissions suggesting a continuation of work that has been traditionally associated with 604(b) - surface water assessment and planning for the purposes of listing, de-listing waters based on use attainment and support of TMDL development. Work Plans for both the base grant and pass-through portion of the grant are currently under review at EPA Region 3 with the target of mid-May for a grant award to PA.
- Q Funding may need to be revoked from some projects because they failed to start by October 1. If that happens, what projects will replace them?
- a They will be replaced with projects next-in-line from the April 6th – May 18th solicitation period.
- Q Without knowing if an H2O grant submission will be awarded, can another application be submitted?
- a It is recommended that applicants not wait on the H2O decision but that applications be submitted for consideration under both opportunities. PENNVEST will coordinate on all funding efforts.
- Q Can I begin construction now with other funds and repay that source with my GPR financial assistance?
- a Yes. In order to maintain eligibility you are required to request and receive a Letter of No Prejudice from PENNVEST before you start work.

IV. Eligible Work

- Q How do I know if the work I want to do is eligible?
- a The *Pennsylvania Bulletin* notice published on April 4, 2009 provided detailed guidance on specific types of projects which can be funded. That guidance will be supplemented with additional detail as the information becomes available. You will

also be able to discuss your project with DEP and PENNVEST staff before submitting your funding request.

- Q Is a state agency an eligible applicant?
- a No.
- Q Can non-public entities apply for funding under the CWSRF GPR?
- a Yes. Preliminary guidance offered by DEP and PENNVEST did not list private entities as an eligible recipient. That was an oversight. It is therefore possible, for example, for the owner of a private hotel complex to propose a project to better manage their stormwater.
- Q Would community colleges be eligible to apply for CWSRF GPR funding?
- a Yes. A community college would fall under the "other authorized organization" category of eligible applicants.
- Q Do you have to be a PA based entity to receive PENNVEST Funds? For example could an out of state party apply for PENNVEST funds to perform work in PA?
- a Yes. An applicant must be a Pennsylvania-based entity, the work must be performed in Pennsylvania and it must benefit the Commonwealth.
- Q What is meant in the guidance by "eligibility will require documentation of exceptional technology and practices to qualify"?
- a That statement is included in the drinking water guidance in the Water Efficiency section for work on drinking water lines, and in the Energy Efficiency section for work on energy-efficient retrofits and upgrades, and drinking water lines. The reason is that EPA requires what they call a "business case" argument for the work to qualify under Green Project Reserve." That argument must show that the purpose of the specific project is more than the traditional one of replacing worn-out equipment and pipe. It must have benefits that are extraordinary or that improve the state-of-the-art. Further guidance is expected.
- Q Are projects submitted for GPR funding limited to those that support the needs of traditional DW and CW infrastructure?
- a For DWSRF, yes. For CWSRF, no. Any projects that support water quality benefits are eligible in CWSRF as long as they also satisfy GPR criteria.
- Q Can a farmer receive funding for irrigation equipment?
- a Probably not because it is unlikely that GPR criteria will be met.
- Q Can funding be provided for the installation of riparian buffers and/or in-stream/natural stream channel design projects?
- a Yes. ARRA funding can be used for these types of activities however hard armoring (i.e. rip rap) of streams is not an eligible activity.
- Q Is brownfield remediation an eligible activity?
- a Potentially yes, if GPR criteria can be met.
- Q Are Dirt and Gravel Road stormwater projects eligible?
- a Potentially yes, if GPR criteria can be met.

- Q Would a municipality be able to apply for GPR funding to complete a street light replacement project?
- a No. However, if lighting were replaced at a DW/WW facility, it may be eligible.
- Q Is the decommissioning of small dams eligible for funding?
- a No.
- Q Would costs of a complete green roof be eligible, or would only the “green” increment be eligible?
- a Case-by-case determinations will need to be made because projects may be so different.
- Q Can PENNVEST and/or ARRA funding pay a \$1,000/acre incentive for NPS projects?
- a No. PENNVEST can only provide funding for the costs (i.e. construction, labor etc) associated with completing a specified activity.
- Q Would a sewer line replacement project be considered a water efficiency activity under GPR?
- a No.
- Q Is GPR the same as what is commonly called “green infrastructure”?
- a No. GPR is defined by EPA to be specific activities related to water efficiency, energy efficiency, green infrastructure and environmentally innovative.

V. Application

- Q What is the award criterion, specifically the ranking criteria, for the GPR?
- a Projects will be ranked based on information included in the technical component of the application as well as readiness to proceed, job creation, local level of unemployment, and financial resources of the applicant.
- Q As it relates to the project ranking, who has defined the criteria?
- a The criteria have been defined through a joint effort of PENNVEST and DEP.
- Q In ranking DW/WW projects will points be added if part of the project falls under GPR project? How will the funding of total traditional projects be conducted if it contains a “green” component? Is a separate application needed for “green” component of a traditional project?
- a Green components will enhance the ranking of traditional DW/WW projects. While green components will need to be clearly delineated, no separate funding requests, or applications are required for green components to be considered.
- Q Will the project review criteria consider water quality improvements to be achieved by the project and its impacts in a defined TMDL or impaired watershed?
- a Yes.
- Q Can parts of a project be submitted for funding consideration?
- a PENNVEST does not have to fund 100% of a project, but must fund projects that will result in a complete solution to the identified problem.
- Q If a water authority has multiple projects that are not related or dependent on another, should the projects be submitted separately or together in one application?

- a Separate applications should be submitted for each project even if it is for the same applicant.
- Q How will projects fostering regionalism be viewed (i.e. consolidation of plants etc)?
 - a The application needs to show how the project fits within the four categories.
- Q Can the same agricultural project be bundled together under one application or does each landowner need to apply?
 - a The same project can be bundled together however the landowners need to be identified in the application and an agreement will need to be executed to comply with the “own or operate” requirement.
- Q Can administrative costs be included in the application for funding consideration? Can it be shown that by funding a project it would save a current position?
 - a Associated administrative costs are eligible for consideration as long as the recipient does not receive funding for the work from other sources, costs do not exceed 4% of construction costs, and payments are made on a reimbursable basis.
- Q Will consistency with Act 67 and Act 68 be required of applications?
 - a Yes.
- Q What does it mean by applicant financial resources?
 - a Financial resources of the applicant means the information that PENNVEST needs under its enabling legislation to make judgments on the amount of subsidy to provide.
- Q What kind of financial information is needed from a private entity that seeks to submit an application?
 - a Requested information could include Audited Financial Statements, Financial Statements, CPA Reports, Tax Returns, Treasurers Reports, or other information that would allow staff to ascertain the financial condition of the applicant.
- Q Is the application for a GPR project different than the ordinary PENNVEST application?
 - a Yes. An entity will complete the existing application as well as the GPR application.
- Q Will assistance be available if an applicant is unfamiliar with the PENNVEST application process?
 - a Yes. PENNVEST will be available to help applicants. A webinar is planned for April 20th which will provide a walk through example of how to complete an application. A contact for application questions is also provided at the end of this document.
- Q Can a paper application be submitted?
 - a No, all applications must be submitted via the Online Funding Request web application found on the PENNVEST webpage.

VI. PENNVEST Process Related

- Q What are the steps that have to be completed in order to be under contract?
 - a The sequence includes the application being submitted and if approved by the Board a funding offer is made. The recipient will then need to complete (if it hasn't been

done yet) all necessary environmental reviews, obtain all permits and receive bids for the work. Once completed, the recipient will sign paperwork that serves as the closing, or "Settlement." All projects must be "under contract or construction" by October 1, 2009.

- Q Will GPR funding will be awarded at the April 20th PENNVEST Board meeting? How much will be remaining to award in July?
- a It is anticipated that the majority of the funding will be available for the awards to be made in July. PENNVEST is targeting up to \$70 Million to be available in GPR funding at the July meeting.
- Q What does "principal forgiveness" mean?
- a Principle forgiveness is a term used by EPA to describe loan money that does not have to be repaid. It is essentially the same as a grant.
- Q Will PENNVEST hold pre-planning meetings/consultations?
- a GPR projects will not require planning consultations.
- Q What happens if permits are not in place by the contract deadline of October 1, 2009? Will the award be lost even if it is by no fault of the recipient?
- a Projects should expect that any project funding not under contract by October 1, 2009 will be moved to other projects that are ready to proceed.
- Q Post ARRA, is it possible that SRF funding may be available for NPS type projects?
- a Yes, PENNVEST expects to be able fund similar projects on an on-going basis.
- Q Once a project is under contract, how will reimbursements be handled?
- a Disbursements are made monthly based upon costs incurred, and invoices submitted to PENNVEST for reimbursement of eligible costs.
- Q Once a project is approved by the Board, how soon can it be started?
- a As soon as you can obtain bids, meet the requirements and settle on the funding offer you can begin. If you need to begin construction prior settlement you must have authorization from PENNVEST.
- Q How can projects get started if the entity doesn't have the means to provide upfront funding?
- a Engineering and other technical costs associated with design necessary to be considered for funding are reimbursable once you complete settlement, should you receive funding approval. The funding offer may be used by the approved project sponsor to obtain local interim financing for the project if necessary.
- Q What kind of state oversight will be expected once projects are awarded and under contract?
- a Day to day project implementation and oversight is the responsibility of the recipient. PENNVEST will review invoices, and will likely field audit projects as some point during the construction phase. DEP will conduct field inspections. A final inspection by DEP is necessary prior to receipt of final disbursement. Information on project progress may be requested more frequently than normal to fulfill any requests made by EPA.
- Q What oversight will EPA provide and what will happen if EPA disagrees with funding decision that has already begun construction? Who will be held liable?

- a EPA will review the projects before they are approved by the PENNVEST Board.

Contact Persons:

Name	Email	Phone	Help Topics
Lee Murphy	c-lemurphy@state.pa.us	717-772-4055	General information
Ann Smith	annsmith@state.pa.us	717-787-4726	General information
Russell Wagner	ruwagner@state.pa.us	717-772-5807	Non-point source projects
Bev Reinhold	breinhold@state.pa.us	717-783-6589	PENNVEST application