

**Hearing Report  
April 21, 2009**

**Clean Water Fund Financial  
Assistance Programs Municipal Water Pollution Control  
State Fiscal Year 2009**

**Hearing Officer:**

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Water Planning and Standards Division  
Municipal Facilities Section**

**Hearing Date:**

**March 25, 2009**

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## **I. Introduction**

The award of financial assistance from the Clean Water Fund (CWF) to municipalities and state agencies for wastewater infrastructure is governed by sections 22a-475 through 22a-483, 22a-439 and 22a-439a of the Connecticut General Statutes and the Clean Water Fund regulations, sections 22a-482-1 through 4 of the Regulations of Connecticut State Agencies (“CWF regulations”). In accordance with the CWF regulations, the Department of Environmental Protection shall prepare an ordered priority listing of projects for which funding assistance is available for the fiscal year.

With the passage of the American Recovery and Reinvestment Act of 2009, the State of Connecticut will receive approximately \$48.5 million in additional funding for the State’s Clean Water Fund program. As stipulated by the federal law, these funds will be deposited into the Clean Water Fund accounts and will be utilized for grants and loans to municipalities for additional wastewater infrastructure projects. Consistent with the Clean Water Fund Regulations and the program requirements of EPA for receiving the additional funding, the DEP is required to revise its FY 09 Priority List to reflect the additional funding. In addition, we have taken the opportunity to update projects including costs and schedules, and to add potential new projects to the list.

## **II. Administrative Requirements**

In conformance with federal regulations governing the capitalization grant that the Department receives from the federal Environmental Protection Agency and the CWF Regulations, the Department issued a notice of public hearing dated March 9, 2009. (Exhibit 2). Such notice appeared in the following Connecticut regional newspapers (Exhibits 3, 4 and 5):

- Connecticut Post (publication date 3/13/09)
- Hartford Courant (publication date 3/11/09)
- New Haven Register (publication date 3/11/09)
- Waterbury Republican American (publication date 3/11/09)
- Norwich Bulletin (publication date 3/12/09)

The Department mailed copies of the public notice (Exhibit 2) and a memorandum (Exhibit 6) which contained a link to the DEP’s website where the draft Amended FY09 Priority List could be found. This mailing was sent to the chief elected officials of all 169 municipalities, the water pollution control authority of every municipality in which a WPCA exists and to their wastewater superintendent, consultants that commonly work in the municipal wastewater field and the thirteen regional planning organizations. DEP listed the Priority List public hearing in DEP’s Calendar of Events. A memorandum (Exhibit 7) was mailed to officials in South Windsor, New Milford, West Haven, Norwalk and their respective consulting engineers requesting detailed information on their projects relative to energy efficiency and green infrastructure components of their projects.

Commissioner Gina McCarthy appointed George V. Hicks as the hearing examiner (Exhibit 1).

A public hearing was held on March 25, 2009 in the Phoenix Auditorium of the Department's offices at 79 Elm Street, Hartford, CT. The hearing was convened at 9:30 am and was concluded at 9:48 am. Approximately 40 people attended the hearing. Two letters were received prior to the hearing and were entered into the record as Exhibits 8 and 9. Governor Rell's press release (Exhibit 10) and the draft Amended FY 2009 Priority List (Exhibit 11) were entered into the record at the hearing. Three individuals from the City of Ansonia testified at the hearing. The public comment period closed on April 13, 2009. After the close of the hearing, nine letters listed as Exhibits 12 – 20 were delivered to DEP prior to the close of the comment period.

Following the public hearing and the comment period, the hearing examiner considered all written comments received in response to the notice of public hearing as well as written and verbal comments during the hearing and has prepared this hearing report.

### **III. Specific Project Comments and Responses**

#### **Norwich Public Utilities**

Comment: Norwich Public Utilities (NPU) provided comments (Exhibit 8) relative to costs on past and current studies, and the need for funding of their digester upgrade. NPU indicated that there is \$223,000 owed to them for their wastewater management plan; \$2.2 million needed to fund their combined sewer overflow long term control plan (CSO LTCP); and requested \$8.5 million to fund the digester upgrade.

Response: The \$223,000 is already being processed by DEP for payment to NPU. The draft FY09 Priority List has identified sufficient funding in the planning grant reserve to fund the \$2.2 million CSO LTCP with a grant of 55% of the study cost, with the remaining costs to be paid by NPU. In addition, Norwich was specifically listed as a planning project to be funded under this reserve. This reserve will be distributed on a first come, first served basis.

The digester upgrade incorporates the installation of a micro-turbine fueled by methane gas generated by the digester. The benefits of the micro-turbine will be power generation and the use of excess heat for the digester process. Initially, the digester upgrade was not considered for funding. As a standalone project, it did not have a sufficient number of priority points to make the fundable list. With the addition of the reserve for green infrastructure projects, the digester upgrade qualifies for funding under this reserve.

Recommendation: Show the digester upgrade project for funding under the reserve for green infrastructure projects.

#### **New Milford**

Comment: The City of New Milford requested (Exhibit 9) to remain on the final Priority List for a treatment plant upgrade to remove nitrogen.

Response: In the draft FY09 Priority List, New Milford is shown as fundable for a construction project for a denitrification upgrade.

Recommendation: Based upon the schedule submitted by New Milford, continue to show this project on the Fundable List.

### **Ansonia**

Comment: Senator Crisco (Exhibit 12) and State Representatives Linda Gentile and Theresa Conroy (Exhibit 13) requested additional grant funding for Ansonia's treatment plant upgrade from the federal economic stimulus program. Town Attorney John Androski, WPCA member Maureen Bennett and WPCA Chairman Howard Madigosky testified as to the need for additional grant funding of the treatment plant upgrade and for funding of several collection system improvement projects (2 siphons and 11 pump station upgrades).

Response: This treatment plant upgrade construction project has already been funded through the Clean Water Fund program from FY08 funds. Under the Clean Water Fund statutes, additional grant funding is not allowed. There is no funding identified for collection system improvement projects in the proposed FY09 Priority List.

Recommendation: There is no need to add the treatment plant upgrade project to the fundable list since it is already funded. In addition, there is no advantage to classifying this as an economic stimulus project since the grant and loan percentages follow the current Clean Water Fund program. Regarding the collection system improvement projects, the Department proposed not to fund the collection system loan only program for FY09. The Department continues to recommend no funding for the collection system loan only program as sufficient revenue bonds are not authorized to fund this program.

### **Stafford**

Comment: The Water Pollution Control Authority will seek funding from United States Department of Agriculture – Rural Development Program (RD) to fund the treatment plant upgrade (Exhibit 14). The town requests that this project still be listed as a Fundable FY09 project until the town receives final approval from RD.

Response: Stafford filed the application with RD on April 9, 2009 and expects to receive final approval from RD by the end of April. RD has indicated that there is 99% certainty that this project will be approved for funding.

Recommendation: Delete Stafford from the Fundable FY09 project list with the caveat that if the RD funding falls through, DEP will strive to fund Stafford's project by either partially funding all four green infrastructure projects with the available funds or by funding fewer green infrastructure projects while still meeting ARRA requirements.

### **Metropolitan District Commission**

Comment: The MDC requested to add a proposed heat recovery and electric generation project for \$11 million to the FY09 priority list (Exhibit 15).

Response: A reserve for green infrastructure has been added to the priority list. This project would qualify for funding under the reserve and has been identified in the reserve.

Recommendation: Include this MDC project in the green infrastructure reserve to the priority list.

### **Norwalk**

Comment: A memorandum from DEP (Exhibit 7) was sent to Norwalk requesting detailed information on their project relative to green infrastructure. Norwalk's engineering consultant responded with the requested information (Exhibit 16).

### **Meriden**

Comment: A memorandum from DEP (Exhibit 7) was sent to Meriden requesting detailed information on their project relative to green infrastructure. Meriden's engineering consultant responded with the requested information (Exhibit 17).

### **South Windsor**

Comment: A memorandum from DEP (Exhibit 7) was sent to South Windsor requesting detailed information on their project relative to green infrastructure. South Windsor's engineering consultant responded with the requested information (Exhibit 18).

### **New Milford**

Comment: A memorandum from DEP (Exhibit 7) was sent to New Milford requesting detailed information on their project relative to green infrastructure. New Milford's engineering consultant responded with the requested information (Exhibit 19).

### **West Haven**

Comment: A memorandum from DEP (Exhibit 7) was sent to West Haven requesting detailed information on their project relative to green infrastructure. West Haven's engineering consultant responded with the requested information (Exhibit 20).

## **IV. Technical Corrections**

A number of technical corrections are made to the draft priority list to ensure that the final list fairly and accurately reflects all of the funding requests from municipalities. These technical corrections have been initiated by DEP staff and are itemized in Appendix C. It is important to recognize that none of the technical corrections have affected the fundable projects list for FY09.

## **V. Summary of Major Recommendations**

The Department identified in the draft amended FY09 Priority List (FY09 PL) contracts within the MDC project that were deemed to qualify for the green infrastructure criteria of the ARRA funds. Subsequent to the public notice of the hearing on the amended FY09 PL, DEP was verbally informed by EPA that not all components of the MDC project qualified for the green infrastructure criteria. As a result of the verbal notification, DEP embarked on identifying other components of previously submitted projects that might qualify for the green infrastructure criteria. These efforts included:

- Reviewing the complete list of potential projects developed from DEP's solicitation effort of December 8, 2008 for projects that meet the green infrastructure criteria.

- Sending a letter to the five wastewater treatment plants identified as fundable FY09 construction projects and requesting a breakout of equipment that meets the green infrastructure criteria and the associated costs (purchase and installation) (Exhibit 7).
- Attending a meeting on April 3, 2009, to become informed on the Green Capitols initiative by EPA to demonstrate wet weather green infrastructure around state capitols.

As a result of these efforts, the Department has identified a number of projects that have potential to be considered as ARRA green infrastructure projects. A discussion on each project follows:

- Green Capitols Project – A potential demonstration project that could be constructed around the state capitol grounds, other nearby state buildings and/or Bushnell Park that would infiltrate wet weather runoff into the ground rather than into the combined sewers may be developed as a part of the MDC Clean Water Project (the reduction of combined sewer overflows). Through a collaborative effort of multiple interested parties, such a wet weather project can be developed such that a construction contract can be awarded prior to February 16, 2010. Estimates of costs range from \$250,000 to \$500,000.
- Enfield Digester Gas Utilization with Electrical Generation through Fuel Cells – The Town of Enfield has been pursuing this project for implementation at the Enfield wastewater treatment plant that would generate a sizeable portion of the plant’s existing electrical demand through the utilization of digester gas. If funding becomes available, Enfield would enter into a design-build contract for the construction of the facilities within six months of notice of available funding. To augment the potential of anaerobic digester gas, the town would look for other high strength waste to add to their sludge and reduce the payback time of the investment. Other sources include other municipal wastewater sludges, area farm manure products, or a high strength industrial waste discharger.

The estimated design and construction costs sought from the Clean Water Fund are \$8,600,000. This cost may be lowered if Enfield also pursues Connecticut Clean Energy Fund financing, a contract with an energy service company (ESCO), or renewable energy credits.

- MDC Sewage Sludge Incinerator Heat Recovery and Electrical Generation Project – The MDC currently operates two sewage sludge incinerators for sludge produced at the four MDC owned wastewater treatment plants. A third sewage sludge incinerator will be upgraded in 2009 to serve as a backup to the two operating incinerators. Waste heat from the exhaust flue gases will be recovered and utilized to produce electrical energy that will replace up to one third of the current plant electrical demand.

Estimated costs for design and construction are \$11 million. Design will be initiated by May of 2009 and a construction contract awarded no later than February 16, 2010.

- Norwich Digester Gas Utilization with Electrical Generation through Microturbines- Norwich Public Utilities has been pursuing this energy recovery project for several years. With the refurbishing of the Norwich wastewater treatment plant digesters, the option of collecting the methane gas to run micro-turbines for electricity generation became a potential. The digester rehabilitation contract is nearing design completion and can be awarded for construction by the fall of 2009. The add-on micro-turbine design will be initiated as soon as funding is identified and can be completed such that a construction contract can be awarded prior to February 16, 2010. The estimated design and construction costs are \$8 million for the digester and \$1 million for the micro-turbine system.
- Based upon replies from the four wastewater treatment plant projects fundable under the amended FY09 Priority List, the energy efficiency component of each project has been estimated at the following:

•	New Milford	\$ 112,000
•	South Windsor	\$ 7,100,000
•	West Haven	\$ 6,610,000
•	Norwalk	\$10,100,000

**Recommendation:**

The Department is seeking to balance several requirements of the ARRA funding with each project identified. These requirements include the American iron, steel and manufactured goods, the 20% green infrastructure requirement equal to \$9.7 worth of projects and reporting requirements.

The Department has elected not to designate any portion of the four wastewater treatment plant projects as ARRA green infrastructure projects at this time due to both the reporting requirements to be imposed on both the municipalities and the Department along with the difficulty of meeting the American iron, steel and manufactured good requirement on numerous pieces of equipment. Each of these treatment plants will be funded whether or not they are designated as ARRA projects. However, because green infrastructure eligibility requirements are still being crafted, these projects may be revisited if necessary to meet the ARRA green infrastructure 20% goal.

The Department has elected to designate one or more of the four other options for green infrastructure projects as ARRA projects to satisfy the 20% green infrastructure requirement. The final determination of which project or projects is so designated will be made at a later date when the Department has received additional guidance from EPA and a determination is made as to how these projects can meet the American iron, steel and manufactured goods requirements. The Department will notify each municipality so designated when the determination is made.

The financing necessary for all four projects is as follows:

•	Green Capitols Project	\$500,000
•	Enfield Electrical Generation	\$8,600,000
•	MDC Electrical Generation	\$11,000,000
•	Norwich Electrical Generation	\$9,000,000
	Total	\$29,100,000

The Green Capitols project qualifies for a 50% grant and a 50% loan as a combined sewer overflow reduction project while the three energy recovery projects qualify as wastewater treatment plant projects with a 20% grant and an 80% loan. Therefore, in order to fully fund all four projects, \$5.97 million in grants and \$23.13 million in loans is needed.

In order to fund the green infrastructure projects listed above, the Department is establishing a Green Infrastructure reserve in the Priority List. Such reserve will allow the State of Connecticut to comply with the requirement that 20% of the ARRA funds or \$9.7 million shall be used for green infrastructure. In addition, this reserve is consistent with the Governor’s and EPA’s initiatives to promote green infrastructure. Given that the value of the identified projects greatly exceeds the ARRA requirement of \$9.7 million for green infrastructure, we are confident that we can meet the requirement.

The Green Infrastructure Reserve will be funded without impacting funding of other projects on the proposed list because one previously identified project will be funded directly by a federal agency, one project that was recently bid received a price lower than that shown in the draft priority list; and another project will likely receive a bid price lower than the engineer’s estimate based upon the current bidding climate. The projects and the reduction in associated costs are as follows:

	<u>Grant</u>	<u>Loan</u>	<u>Total</u>
Stafford <sup>1</sup>	\$2.875 M	\$ 9.625 M	\$12.5 M
South Windsor <sup>2</sup>	\$1.725 M	\$ 5.775 M	\$ 7.5 M
New Milford <sup>3</sup>	<u>\$1.334 M</u>	<u>\$ 4.466 M</u>	<u>\$ 5.8 M</u>
	\$5.934 M	\$19.866 M	\$25.8 M

1. Stafford electing USDA Rural Development funding rather than CWF funding of the construction cost for the entire treatment plant upgrade.
2. Lower bids received for the South Windsor treatment plant upgrade reflecting a \$7.5 million savings.
3. Lower bids anticipated on the New Milford treatment plant upgrade from the design engineer’s cost estimate based upon lower bids received in both South Windsor and Stafford. The anticipated reduction in cost is expected to be approximately \$5.8 million.

The Department is recommending that all four green infrastructure projects be funded with the following conditions:

- The commitment of funding for each is for the amended FY09 Priority List **only** at this time. Therefore, a construction contract must be entered into by either the date of the adoption of the FY10 and 11 Priority List or by February 16, 2010, whichever comes earlier. If the FY10 and 11 Priority List adoption comes earlier, it is the Department’s sole discretion to consider retention of some or all of these projects on the FY10 and 11 Priority List. The Department shall consider, including but not limited to, revised projects costs as well as the readiness to proceed and demand upon the available FY10 and 11 funds from other projects.
- The Green Capitols project set aside of \$500,000 shall be considered as a “not to exceed” number. A project of a lesser value may be developed.

- Each of the three energy recovery projects shall pursue simultaneously with CWF financing all other reasonable funding options including the Connecticut Clean Energy Fund, renewable energy credits, and energy service company contracts. Where any other funding source is available which can reduce the grant or loan required from the CWF and such funding is cost-effective for CWF and the municipality, the municipality shall secure such other funding.

The ability to fund all four green infrastructure projects is based upon the following assumptions:

- Stafford enters into a funding agreement with the United States Department of Agriculture, Rural Development program for their treatment plant upgrade project.
- The New Milford treatment plant upgrade project cost is \$5.8 million below the engineer's cost estimate.

The Department reserves the right to either partially fund all four green infrastructure projects with the available funds or to delete a project if either the projected savings from the New Milford project are not realized or if Stafford does not secure Rural Development funding and instead claims Clean Water Fund financing.

## **VI. Final Recommendation**

I recommend that the Commissioner adopt the "Amended FY2009 Priority List Based Upon Passage of the American Recovery & Reinvestment Act of 2009" as presented in Appendix D.

April 21, 2009  
Date

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George V. Hicks, Hearing Officer