

State of Alabama

Alabama Department of Environmental Management
Clean Water State Revolving Fund Program



SRF Section

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**CWSRF Bipartisan Infrastructure Legislation (BIL) Emerging
Contaminants (EC)
Intended Use Plan**



Fiscal Year 2023

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I. Introduction:

As required by Title VI of the Clean Water Act (CWA), each year the Department must prepare an Intended Use Plan (IUP) identifying the projected uses of funds available in its Clean Water State Revolving Fund (CWSRF) Bipartisan Infrastructure Legislation (BIL) Emerging Contaminants (EC). The U.S. Environmental Protection Agency (EPA) is authorized to award capitalization grants to the States, which in turn administer the CWSRF program. The Bipartisan Infrastructure Law (BIL) was implemented on November 15, 2021. The BIL provides an additional supplemental appropriation to address exposure to perfluoroalkyl and polyfluoroalkyl substances (PFAS) and other emerging contaminants through their wastewater. Given the clear Congressional intent that these funds focus on projects addressing perfluoroalkyl and polyfluoroalkyl substances (hereinafter PFAS), EPA expects states to actively solicit and prioritize PFAS focused projects. States, however, have the flexibility to fund projects for any contaminant in any of EPA Contaminant Candidate Lists.

This Intended Use Plan (IUP) describes how the State intends to use available CWSRF-BIL-EC funds for the year to meet the objectives of the CWA and BIL and further the goal of protecting public health.

The State of Alabama will receive an EPA Capitalization Grant of \$2,378,000 from EPA for fiscal year 2023 that will be used to provide financial assistance for the CWSRF program. These funds will be used exclusively for assistance to communities for projects addressing emerging contaminants. No state match is required for the projected grant. The capitalization grant funds for the CWSRF-BIL-EC funds will be distributed as outlined by this plan. At least 25% (\$594,500) of the CWSRF-BIL-EC Capitalization Grant will be subsidization to the state-defined disadvantaged communities OR communities serving a population of 25,000 or less. Alabama intends to allocate all funding from this Capitalization grant exclusively to disadvantaged communities.

In accordance with the Clean Water Act (CWA) Amendments of 1987, the Department proposes the following plan for the intended use of the CWSRF funds for FY 2023 as required by Section 606(c) of the CWA.

ADEM has set its short and long term goals of this IUP to align with EPA's strategic goals and objectives [FY 2022-2026 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 of the specific commitments made by the State are properly correlated to the strategic goals and objectives of the Agency.

II. Program Goals:

A. Short Term Goals (Outputs)

1. To provide CWSRF assistance to the extent there are sufficient eligible project applications of the CWSRF Capitalization Grant for projects to address emerging contaminants. Projects which are eligible for traditional CWSRF funding and are addressing emerging contaminants will be eligible for the BIL emerging contaminant funding.
2. To support American workers, renew the water workforce, and cultivate domestic manufacturing by ensuring compliance with the Davis-Bacon Act and American Iron and Steel (AIS) and Build America Buy America (BABA) requirements. (Deliverable)
3. To achieve statewide compliance with Federal and State water quality standards, particularly with the NMP as rapidly as possible.
4. To protect the public health and the environment and promote the completion of cost-effective wastewater treatment facilities.

B. Long Term Goals (Outcomes)

1. To maintain the CWSRF program and the fiscal integrity of the fund.
2. To provide a self-perpetuating source of financial assistance for the construction of public wastewater treatment and transport facilities needed to meet water quality standards and provide capacity for future growth.
3. To assure that all Municipal NMP facilities achieve compliance as soon as possible.
4. To assure that all municipal facilities achieve compliance with final effluent limits as soon as possible.
5. To assist in the maintenance of water quality standards wherever such standards are adversely affected by municipal wastewater point sources.
6. To meet public health and environmental needs of those communities with malfunctioning on-site treatment systems that are either identified as a health hazard by the State Health Department or that adversely affect water quality.

C. Program Changes

No major changes to the program are proposed for this fiscal year.

III. Sources and Use of the Funds:

The estimated sources and uses of funds in the FY 2023 CWSRF-BIL-EC program are as follows:

Projected Sources:

2023 EPA CWSRF BIL Emerging Contaminants Cap Grant:	\$2,378,000
State Match	\$0
Total:	\$2,378,000

Projected Uses:

Project Assistance:	\$2,378,000
Administrative Costs:	\$0
Total:	\$2,378,000

A. Leveraging

The Department does not intend to issue CWSRF revenue bonds for new projects during FY2023.

B. Transfer of Funds

In accordance with 40 CFR 35.3530, the Alabama Department of Environmental Management (ADEM) reserves the right to transfer funds from the CWSRF-BIL-EC to the DWSRF-BIL-EC. Funds transferred from the CWSRF-BIL-EC to the DWSRF-BIL-EC are to be used to fulfill DWSRF EC infrastructure financing demand as needed. Any proposed future transfers will be included on future IUP(s).

Projects on the CWSRF Project List are ranked by their respective priority point rating and may be funded according to availability of funds. Projects that are not funded from the Project List may be funded in subsequent years.

C. Eligible Projects to be Funded

For a project or activity to be eligible for funding under this appropriation, it must otherwise be CWSRF eligible and the primary purpose must be to address emerging contaminants found on the EPA Contaminant Candidate Lists (CCL) to meet the congressional intention of the BIL EC Capitalization Grant, in wastewater. These projects include, but are not limited to, the planning, design, and construction of improvements to eliminate emerging contaminants such as:

- Installation of technology to treat for PFAS and other emerging contaminants at POTWs;
- Potable and non-potable water reuse/reclamation projects that may be applying advanced treatment (e.g., reverse osmosis, granulated activated carbon, or ion exchange) to remove PFAS or other emerging contaminants;
- Projects that can trap and/or treat the contaminants in runoff prior to reaching waterbodies or instream treatment or removal may be eligible;
- Other non-source projects that support the implementation of a current EPA approved state nonpoint source management program plan or nine-element watershed-based plan established under Section 319 of the Clean Water Act and may be publicly or privately owned.
- Other projects meeting the priority objectives of the program.

D. Financial terms of loans

The Fund will offer loans for up to 100 percent of allowable project costs for projects addressing emerging contaminants in wastewater. Such loans must be made such that the total amount of funding is provided with 100 percent principal forgiveness.

Project fund disbursements to recipients at intervals as work progresses and expenses are incurred and approved.

The specific terms and conditions of the funds shall be incorporated in the financial agreement to be executed by the recipient and the Department.

IV. Water Resources Reform and Development Act

The Water Resources Reform and Development Act (WRRDA) was enacted on June 10, 2014 and brought several changes to the CWSRF program.

A. Fiscal Sustainability Plans

The Federal Water Pollution Control Act (FWPCA) Section 603(d)(1)(E) requires a recipient of a loan for a project that involves the repair, replacement, or expansion of a publicly owned treatment works to develop and implement a Fiscal Sustainability Plan (FSP) or certify that it has developed and implemented an FSP. This provision applies to all loans for which the loan recipient submitted an application on or after October 1, 2014.

The Alabama CWSRF program provides all assistance by purchasing outstanding debt obligations (bonds) from the borrower, thus this requirement does not apply. The Alabama CWSRF program commonly refers to these bond purchase agreements as “loans”, though they are not loans as defined by EPA.

B. Architectural and Engineering (A/E) Services Procurement

For any capitalization grant awarded after October 1, 2014, the State must ensure that all A/E contracts for projects identified as using funds directly from each year's capitalization grant (i.e. equivalency projects) comply with the elements of the procurement processes for A/E services as identified in 40 U.S.C. 1101 et seq., or an equivalent State requirement. The Alabama CWSRF requires its recipients to comply with the *September 30, 2014 Alabama CWSRF A/E Procurement Requirements* (See Attachment 3).

C. Cost and Effectiveness Certification

Section 602(b)(13) requires that CWSRF recipients certify that the recipient has studied the cost and effectiveness of the project and selected the project that maximizes the potential for efficient water use, reuse, recapture and conservation, and energy conservation. The Alabama CWSRF program is requiring each recipient of CWSRF funding to provide a certification in compliance with 602(b)(13). This certification can be found on page 14 of the CWSRF Loan Application (Form 339 M-2).

D. Additional Subsidy and Affordability

Additional subsidy in the form of principal forgiveness shall be made available in total of the required amount for the States 2023 Capitalization Grant Appropriation (\$2,738,000) or the cap set at 603(i)(3) of the Federal Water Pollution Control Act, whichever is less. Additional subsidy will be provided in rank order to projects as determined by the Affordability Measure for Alabama. Each project may receive principal forgiveness until the maximum amount has been allocated. The Affordability Measure Guidelines for Alabama can be found on Attachment 4.

E. Extended Term Financing

Section 603(d)(1)(A) authorizes CWSRF loans to be made for a term not exceeding the lesser of 30 years or the useful life of the project. The total term financing shall not exceed 20 years, or under special circumstances, 30 years may be considered.

V. Project Selection and Methods of Distribution of Funds

A. Priority List

In order to be considered for CWSRF-BIL-EC assistance, the project must be addressing emerging contaminants found on EPA's Contaminant Candidate List (CCL) in wastewater, must be on or added to the Priority List, and have a proposed project schedule that coincides with the availability of CWSRF-BIL-EC funds. The CWSRF-BIL-EC priority list was developed by identifying the priority point rating for each proposed project. By prioritizing ECs on the EPA CCL to meet the congressional intention of the BIL EC Capitalization Grant, any regulated contaminant will be ineligible for this funding. Additionally, ranking of potential projects was based on the detected concentration of an EC listed on EPA CCL. The funding of such projects is also subject to availability of funds.

The State reserves the right to fund projects not on the priority list, on an emergency basis, if funds are available. Emergency projects would include those where some type of failure was unanticipated and requires immediate attention to protect public health. Additionally, supplemental loans may be issued to previous recipients as needed to complete segmented projects or to cover cost overruns. See Attachment 1.

All projects funded from the CWSRF BIL EC allocation are considered equivalency projects and will meet all applicable requirements for equivalency.

B. Additional Subsidization:

The 2023 BIL-CWSRF-EC Capitalization Grant includes a requirement for a minimum of \$2,378,000 be provided as assistance with additional subsidy. The Department will meet these requirements by offering selected borrowers additional subsidization in the form of principal forgiveness. The Department expects to allocate principal forgiveness to projects in communities determined to be disadvantaged and/or for those communities implementing projects that have the largest reduction in emerging contaminants. Communities are assessed as disadvantaged based on the Affordability Measure Guidelines for Alabama (see Attachment 4).

C. Prevailing Wages

Davis-Bacon wage requirements apply for fiscal year 2023 and each fiscal year thereafter and the requirements of section 513 of the Federal Water Pollution Control Act (33 U.S.C. 1372) shall apply to the construction of treatment works carried out in whole or in part with assistance made available by the CWSRF as authorized by title VI of that Act (33 U.S.C. 1381 et seq.). The Department will include in all loan agreements and procurement contracts terms and conditions requiring compliance with this requirement.

D. Build America, Buy America (BABA)

The Department will implement the Build America Buy America Act (BABA) as stated in 41 USC 8301 for projects funded through CWSRF BIL Emerging Contaminants.

BABA will be implemented for this fiscal year and be required for certain projects funded through the Clean Water State Revolving Fund (CWSRF). BABA is considered a federal cross-cutting requirement that applies to SRF assistance equivalent to the federal capitalization grant (i.e., "equivalency" projects). EPA's SRF regulations at 40 CFR 35.3145 and 35.3575 require states and recipients of SRF funds equivalent to the amount of the federal capitalization grant to comply with federal cross-cutting requirements. Section 70914 of the IIJA, which states when a Buy America preference applies, explains that "none of the funds made available for a Federal financial assistance program for infrastructure...may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States." Therefore, BABA only applies to projects funded in an amount equivalent to the federal capitalization grant.

E. Inadequate Allocations:

If the actual federal CWSRF allocations are less than anticipated by the Department in the development of the CWSRF priority list, the Department may find it necessary to reduce their commitments to projects on the priority list. The Department may take formal action to reduce the number of commitments in accordance with subparagraph 3) of this paragraph.

- 1). The Department may redistribute the CWSRF funds allocated to each project.
- 2). The Department may redistribute funds from lower priority projects to higher priority projects.
- 3). The Department may bypass projects on the priority list in accordance with Section H, below.

F. Unanticipated and Uncommitted Funds:

If unanticipated or uncommitted funds become available, the Department may take action to distribute them in accordance with subparagraphs 1-2 of this paragraph:

- 1). The Department may use the unanticipated or uncommitted funds to fund the highest priority project(s) from the priority list.

2). The Department may use the unanticipated or uncommitted funds to increase the amount of funds allocated to CWSRF fundable projects or to provide increased assistance to projects which have already received CWSRF assistance.

Additionally, supplemental loans may be made to previous recipients as needed to complete segmented projects or to cover unanticipated cost overruns.

G. Distribution of Funds to Set-Aside Accounts

EPA provisions allow funds to be set aside from the State Revolving Fund Capitalization Grant for activities such as administration of the SRF program, operator training, technical assistance, special drinking water projects, and source water assessment. These activities are discussed in “Set-Aside Activities” below.

H. Selection of Systems to Receive Assistance

Both federal and state law require that a project priority ranking system be developed to determine the priority order of projects to be funded through the CWSRF program. To the maximum extent possible, the CWSRF gives priority for the use of funds to projects that address the most serious risk to human health and are necessary to ensure compliance with the Clean Water Act. The priority ranking system is designed so that the greatest priority is given to projects that:

1. Address the detection of an EC listed on EPA CCLs.
2. Address the most serious risks to human health and provide the highest nature of benefit
3. Benefit the most people per dollar expended
4. Assist systems most in need on a per household affordability basis
5. Use consolidation with other systems to correct existing deficiencies and improve management

These considerations are addressed by the Priority Ranking Criteria found in ADEM Administrative Code R. 335-11-2-.04 and in the CWSRF Pre-Application provided in Attachment 3.

When two or more projects score equally under the Project Priority System a tie breaking procedure will be utilized. The project with the smallest number of existing customers served will receive the higher ranking.

A project on the fundable portion of the list may be bypassed and the next eligible project funded if it is determined that the project will not be ready to proceed during the funding year. The Department will give the applicant whose project is to be bypassed written notice. Projects that have been bypassed may be funded at a later date when the project is ready to proceed. Should a system on the funded list decline the loan, the next ranked project shall be offered access to all or a portion of these funds.

I. Project Bypass/Reallotment:

The Department may bypass any project on the CWSRF priority list that is not, in the Department's opinion, making satisfactory progress in satisfying requirements for CWSRF assistance. Bypassed projects will be removed from the priority list. In determining whether or not a project is making satisfactory progress in satisfying the requirements for CWSRF assistance, the Department shall use the criteria contained in subparagraphs 1-6 of this paragraph. Funds released through project bypass will be considered as uncommitted and available for redistribution in accordance with this section.

1. Any project on the CWSRF Priority List may be bypassed if the applicant fails to submit a complete CWSRF application.
2. The Department may use individual project schedules developed by the Department to determine whether or not the project is making satisfactory progress during the fiscal year.

3. In order to comply with EPA certification restrictions related to equivalency requirements, it may be necessary to bypass projects which have not complied with Title II requirements and other federal authorities.
4. Any project on the CWSRF Priority List may be bypassed if the applicant fails to demonstrate the ability to repay the loan.
5. To maintain the fiscal integrity of a leveraged loan program or provide funds for new construction, the Department may choose to bypass projects which involve refinancing of existing debt.
6. Projects may be removed from the priority list at the request of the applicant or if the Department finds that the project is ineligible for CWSRF assistance.
7. Any changes to projects or allocations within the IUP will be provided for public comment and review at that time. No major changes in projects, scope, or allocations will be made without first soliciting the IUP for public comment for a period of at least 30 days.

VI. Set-Aside Activities

A. Administrative Set-Aside

BIL and SRF guidelines allow states to set aside up to a maximum of 4% of the grant for the SRF administrative costs. The Department is reserving the authority to take the 4% administrative set-aside for future capitalization grants.

VI. Certifications:

1. The Department certifies that this IUP will be subject to public review and comment with a public notice period of 30 days.
2. The Department certifies that all wastewater facility projects in this IUP are on the CWSRF Priority List. (Deliverable)
3. The Department certifies that projects funded through the CWSRF-BIL-EC Capitalization Grant will be to address Polyfluoroalkyl Substances (PFAS) and other emerging contaminants in wastewater through the CWSRF-BIL-EC funding as defined by the definitions and terms within the Bipartisan Infrastructure Legislation (BIL). (Deliverable)
4. The Department certifies that it will enter into binding commitments for 100% of each payment under the CWSRF capitalization grant within one (1) year after receipt of each payment. (Deliverable)
5. The Department certifies that it will expend all funds in the CWSRF in an expeditious and timely manner. (Deliverable)
6. The Department certifies that funding provided through the CWSRF-BIL-EC program will include additional subsidization in the form of principal forgiveness for 100% (\$2,378,000) of the CWSRF-BIL-EC Capitalization Grant. At least 25% of the CWSRF BIL EC Capitalization Grant will be subsidization to the state-defined disadvantaged communities OR communities serving a population of 25,000 or less. (Deliverable)
7. The Department certifies that the inspection team will perform timely onsite inspections and monitoring to assure compliance with BIL, BABA, Davis-Bacon wage rates, and American Iron and Steel requirements, and provide deliverables such as notes, checklists, and photos, outlining items in the inspection, staff in attendance, and any deviations from the requirements that require addressing. (Deliverable)

8. The Department certifies that the CWSRF-BIL-EC program will be implemented in compliance with Title VI of the Clean Water Act and to ensure conformance with Federal crosscutting issues as required by the 1987 Clean Water Act amendments. (Deliverable)
9. The Department certifies compliance with all Title VI requirements of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Equal Employment Opportunity requirements (Executive Order 11246 as amended) which prohibit activities that are intentionally discriminatory and/or have a discriminatory effect based on race, color, national origin (including limited English proficiency), age, disability, or sex.
10. The Department certifies that all wastewater facilities in the state are in compliance with enforceable requirements or are making progress toward meeting those requirements except as specifically noted in the IUP.
11. The Department certifies that the CWSRF-BIL-EC program will be implemented in compliance with the "first use" requirements, which require that CWSRF assistance be available to projects which are members of the National Municipal Policy (NMP) universe; projects which have legally enforceable compliance schedules. (Deliverable)
12. The Department certifies that all facilities funded by the CWSRF shall complete a NEPA-like environmental review process. (Deliverable)
13. The Department certifies that it will comply with all requirements of the 1997 Operating Agreement with EPA.
14. The Department certifies that it will complete a Benefits Assessment worksheet for each loan agreement executed in order to comply with EPA environmental results reporting requirements. (Deliverable)

VII. Program Income:

The Alabama Water Pollution Control Authority, with ADEM as its agent, assesses an annual fee based on outstanding loan principal. These fees vary based on the fiscal year to which the loan agreement was secured and are collected twice a year when the recipient initiates repayment of the loan. In accordance with *Guidance on Fees Charged by States to Recipients of Clean Water State Revolving Fund Program Assistance*, published October 20, 2005, fees collected from loans sourced from outstanding grants will be used for administration of the SRF fund only. All other fees will be used to provide fee income for the Department's CWSRF Direct Loan Fund and assist in the implementation of the Department's Water and Field Operations Divisions.

Since the CWSRF-BIL-EC funds are required to be distributed with 100% additional subsidization, no fees are expected to be collected from these funds.

VIII. Estimated CWSRF Capitalization Grant Payment Schedule

A. Estimated Grant Draw Schedule

Fiscal Year	Month	Draw
2024	Apr	\$198,167
2024	May	\$198,167
2024	Jun	\$198,167
2024	Jul	\$198,167
2024	Aug	\$198,167
2024	Sep	\$198,167
2024	Oct	\$198,167
2024	Nov	\$198,167
2024	Dec	\$198,167
2024	Jan	\$198,167
2024	Feb	\$198,167
2024	Mar	\$198,163
Total		\$2,378,000

B. Estimated Grant Disbursal Schedule

Payment Quarter	Payment Date	Payment Amount
FY2024/Quarter 3	05/01/24	\$2,378,000

Payments are defined as increases to the amount of funds available from the federal SRF capitalization grant. This draft payment schedule is based on the State's projection of binding commitments and disbursements from the SRF to the members of the SRF project list. The disbursement schedule will essentially coincide with the grant payment schedule as ACH draw requests will be processed only upon submittal of payment requests from loan recipients for actual costs incurred. Funds from the ACH will be disbursed to the recipient immediately. The disbursement of funds will be in proportion to the amount of state and federal funds provided by the grant and state match. This will be ensured by disbursing all state match funds prior to drawing capitalization grant funds for project disbursements.

C. Capitalization Grant Budget Periods:

2023 EPA CWSRF BIL Emerging Contaminants Capitalization Grant

October 1, 2023 through September 30, 2029

IX. Public Participation

The IUP was provided for public notice and comment on June 21, 2024. Comments were received and the responses are attached. No significant changes were made to the IUP as a result of the comments; however, small changes were made to the formatting and location of items throughout the IUP. These changes were made for clarity and did not modify any information originally proposed in the draft.

X. Reporting

1. Annual reports are required for the BIL CWSRF EC Capitalization Grant. Each annual report is due on December 30th following each fiscal year period. The annual report for the 2023 BIL CWSRF EC funding will include the results from the period of October 1, 2023 through September 30, 2024 and will be submitted on or before December 30, 2024.
2. The Department will submit information on projects into the CWSRF National Information Management System (NIMS) as binding commitments are entered into with borrowers as proposed in this IUP. The projects will be updated in NIMS at a maximum of one quarter after the binding commitment close date.

Attachment 1: Project Priority List

Project #	Applicant Name	Project Description	City/Town	County	Justice 40 Map Coverage	Poverty Rate	Unemployment Rate	Population	Total Census Rank	Financial Rank	Disadvantaged Rank	Priority Ranking Points	CW BIL-EC Amount Granted	CW BIL-EC % of PF (min 100%)	Applied for Project Amount
CS010815-02	West Morgan- East Lawrence Water and Sewer Authority**	Reverse Osmosis System Effluent EC Removal	Decatur	Lawrence,Morgan	Yes	0	1	57,303	1	0	2.000	100	\$2,378,000	100%	\$2,378,000
	1												\$2,378,000		\$2,378,000

**Note: Denotes equivalency project.

Attachment 2: Project Descriptions

West Morgan / East Lawrence-Waste Stream and Sludge Treatment Improvements

The proposed project is a continuation of the fiscal year 2022 project (see FY2022 CWSRF BIL EC IUP). The proposed facility improvements will improve handling of the waste streams from the UF and RO systems by installation of new pumps with VFD controls. The existing clarifier is undersized and its capacity will be increased with the addition of plate settlers. The clarification improvements will help stabilize organic matter and bind more of the PFAS particles together. Once the coagulated PFAS particles settle, the solids will be transferred to a sludge thickening tank and then will be sent to a screw press for drying. Once the sludge has been discharged from the screw press it will be sent to an approved disposal site. The supernatant will flow to a disk filter and then will be pumped to the GAC chambers for reduction of PFAS before discharge.

WM/EL has also implemented actual scale pilot testing for treatment and destruction methods for the waste stream from the RO system. These treatment options may be implemented pending the results of the pilot test. This would result in elimination of the concentrated waste stream containing emerging contaminants.

Attachment 3: A/E Procurement Requirements

Alabama CWSRF A/E Procurement Requirements

Effective September 30, 2014 for all assistance agreements directly made available from the FY 15 (and later) capitalization grant.

It is the intent of the Alabama Clean Water SRF program that all assistance recipients select architectural & engineering services based on qualifications of the selected firm, not price. This reinforces Canon IV of the Board of Engineers and Land Surveyors' Code of Ethics, contained in the Board's regulations at 330-X-14-.05 (f):

The engineer or land surveyor shall not participate in or implement procurement practices (bid submittals) which do not first determine the qualifications of the engineer or land surveyor prior to entering into fee negotiations for services being sought. An engineer or land surveyor having submitted a statement of qualification and performance data, and having first been judged as the qualified individual or firm to provide the services required for the proposed project, may proceed to negotiate a contract with a client and establish compensation or fees for the required services.

Should the engineer or land surveyor be unable to negotiate a satisfactory contract with the client for any reason, the engineer or land surveyor shall withdraw from further consideration for the engineering or land surveying services. Another engineer or land surveyor may then be selected for negotiations of a contract for the services on the stated project.

Examples include but are not limited to, simultaneous negotiations or solicitation of fee proposals by the client from two or more engineers or land surveyors constitutes "bidding" and participation by a licensee is prohibited.

Use of a qualifications-based selection is also required by the Alabama Board for Registration of Architects, at 100-X-5-.10:

Architects are encouraged to seek professional employment on the basis of qualifications and competence for proper accomplishment of the work. This procedure restricts the architect from submitting a price for services until the prospective client has selected, on the basis of qualifications and competence, one architect or firm for negotiations.

CWSRF assistance applicants are required to certify the following:

1. That the applicant sought the most-qualified firm for professional services, by issuing a Request for Proposals (RFP) or a Request for Qualifications (RFQ).
2. That the applicant made a good faith effort to seek proposals or qualifications from at least 3 firms, as evidenced by a public notice, advertisement, or other appropriate means.
3. That the applicant evaluated the proposals or qualifications and selected a firm based on professional competency, past performance, specialized experience, and other factors deemed critical for success of the project.

4. That only upon making a selection based on qualifications did the applicant negotiate a contract and determine compensation. (If the applicant was unable to negotiate a contract with the most qualified firm, the applicant may then negotiate with the next-most-qualified firm)

Attachment 4: Additional Subsidization and Affordability Criteria

Alabama Clean Water State Revolving Fund Additional Subsidization and Affordability Criteria Effective September 30, 2015

Purpose:

This document establishes the additional subsidization and affordability criteria for the Alabama Clean Water State Revolving Fund. The criteria are effective September 30, 2015, and may be modified from time-to-time upon notice.

Background:

Section 603(i) of the Federal Water Pollution Control Act states the following:

Additional Subsidization-

(1) IN GENERAL- In any case in which a State provides assistance to a municipality or intermunicipal, interstate, or State agency under subsection (d), the State may provide additional subsidization, including forgiveness of principal and negative interest loans--

(A) to benefit a municipality that--

(i) meets the affordability criteria of the State established under paragraph (2);
or

(ii) does not meet the affordability criteria of the State if the recipient--

(I) seeks additional subsidization to benefit individual ratepayers in the residential user rate class;

(II) demonstrates to the State that such ratepayers will experience a significant hardship from the increase in rates necessary to finance the project or activity for which assistance is sought; and

(III) ensures, as part of an assistance agreement between the State and the recipient, that the additional subsidization provided under this paragraph is directed through a user charge rate system (or other appropriate method) to such ratepayers; or

(B) to implement a process, material, technique, or technology--

(i) to address water-efficiency goals;

(ii) to address energy-efficiency goals;

(iii) to mitigate stormwater runoff; or

(iv) to encourage sustainable project planning, design, and construction.

(2) AFFORDABILITY CRITERIA-

(A) ESTABLISHMENT-

(i) IN GENERAL- Not later than September 30, 2015, and after providing notice and an opportunity for public comment, a State shall establish affordability criteria to assist in identifying municipalities that would experience a significant hardship raising the revenue necessary to finance a project or activity eligible for assistance under subsection (c)(1) if additional subsidization is not provided.

(ii) CONTENTS- The criteria under clause (i) shall be based on income and unemployment data, population trends, and other data determined relevant by the State, including whether the project or activity is to be carried out in an economically distressed area, as described in section 301 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3161).

(B) EXISTING CRITERIA- If a State has previously established, after providing notice and an opportunity for public comment, affordability criteria that meet the requirements of subparagraph (A)--

(i) the State may use the criteria for the purposes of this subsection; and

(ii) those criteria shall be treated as affordability criteria established under this paragraph.

(C) INFORMATION TO ASSIST STATES- The Administrator may publish information to assist States in establishing affordability criteria under subparagraph (A).

(3) LIMITATIONS-

(A) IN GENERAL- A State may provide additional subsidization in a fiscal year under this subsection only if the total amount appropriated for making capitalization grants to all States under this title for the fiscal year exceeds \$1,000,000,000.

(B) ADDITIONAL LIMITATION-

(i) GENERAL RULE- Subject to clause (ii), a State may use not more than 30 percent of the total amount received by the State in capitalization grants under this title for a fiscal year for providing additional subsidization under this subsection.

(ii) EXCEPTION- If, in a fiscal year, the amount appropriated for making capitalization grants to all States under this title exceeds \$1,000,000,000 by a percentage that is less than 30 percent, clause (i) shall be applied by substituting that percentage for 30 percent.

(C) APPLICABILITY- The authority of a State to provide additional subsidization under this subsection shall apply to amounts received by the State in capitalization grants under this title for fiscal years beginning after September 30, 2014.

(D) CONSIDERATION- If the State provides additional subsidization to a municipality or intermunicipal, interstate, or State agency under this subsection that meets the criteria under paragraph (1)(A), the State shall take the criteria set forth in section 602(b)(5) into consideration.

Discussion:

On June 10, 2014, the Water Resources Reform and Development Act of 2014 was signed into law. Among the provisions of the Act is the new Section 603(i), which details how a state Clean Water State Revolving Fund (CWSRF) program may provide additional subsidization. It also requires that each program establish an affordability requirement that can be a consideration in granting additional subsidization.

The American Recovery and Reinvestment Act of 2009 was the first time that Congress applied the principle of principal forgiveness to the CWSRF. In response, the Alabama CWSRF program utilized additional subsidization in the form of principal forgiveness to construct green infrastructure. In Alabama, green infrastructure (stormwater) projects are constructed very infrequently, even though stormwater runoff is a major source of pollutants. Many local communities lack a dedicated revenue stream to pay for stormwater projects; thus, the CWSRF program has applied principal forgiveness to these projects in order for them to be economically viable. It is hoped that in time, the success of these projects will encourage the construction of more improvements without the need for additional subsidy. The Alabama CWSRF intends to continue this practice to ensure nonpoint source projects are constructed along with the traditional point source projects.

In previous years, the amount of additional subsidization was set by Congress through the annual appropriations process. The amount available varied from year to year and may have been subject to a minimum or maximum. Under the new 603(i)(3), a state may provide up to a maximum of 30% of its capitalization grant if the total appropriations equal or exceed \$1.3 billion. The project priority list will be used to determine which projects are provided principal forgiveness. The highest ranking green infrastructure project will receive principal forgiveness in order to continue to incentivize green projects. Additionally, principal forgiveness will be allocated based on the projects which have the highest priority rankings until all additional subsidization has been allocated.

The amount of principal forgiveness allocated to each project will be determined by a number of factors. These include affordability, need (priority ranking), and type of project (resolving compliance, etc.). 603(i)(2) also requires state CWSRF programs to establish affordability criteria. The criteria *“shall be based on income and unemployment data, population trends, and other data determined relevant by the State”*. Traditionally, affordability has been determined by the CWSRF through a comparison of median household income and annual sewer use charges. The new requirements take a broader approach, focusing more on income and employment of the affected population. In response, the Alabama CWSRF program will utilize the county poverty rate (a measure that compares household income to the number of persons in the household), county unemployment rate, and statewide population trend to determine if a project is affordable. In addition to these measures, the Department also performs a financial analysis to determine a community’s coverage ratio (the ratio of revenue to debt), a financial sustainability to determine how much of a typical SRF loan a community can afford and utilization of the Justice40 Mapping Tool to verify disadvantaged communities within large service areas.

Final Criteria for Additional Subsidy and Affordability:

Additional subsidy in the form of principal forgiveness shall be made available in a total amount per year not to exceed the cap set at 603(i)(3). Funding will be provided in rank order on the project priority list, until the maximum amount has been allocated.

The Affordability Measure for Alabama will be calculated as the sum of the following:

1. The poverty rate of the county served by the project minus the statewide poverty rate;
2. Unemployment Rate Value: The unemployment rate of the county minus the statewide unemployment rate;
3. If the statewide population trend has increased over the two most recent 10-year census estimates, the population trend value shall be 1; if it has decreased the population value shall be 2.
4. Utilization of the Justice40 Mapping Tool – if the Justice40 Mapping Tool indicates that the project area or immediate surrounding area is disadvantaged based on the criteria set within the mapping tool the value shall be 1.



Form 340: Clean Water State Revolving Fund Preapplication

Project Name	
Assistance Amount Requested	\$
Date Submitted	



Submit Complete Preapplication to:	
Preferred method By email:	srf@adem.alabama.gov
By overnight mail:	1400 Coliseum Boulevard Montgomery, Alabama 36110-2400 (334) 271-7714
By mail:	SRF Section Alabama Department of Environmental Management Post Office Box 301463 Montgomery, Alabama 36130-1463

Section 1: Contact Information**Loan Applicant**

Applicant Name			
Authorized Representative (Signatory of Loan Agreement)		Title of Authorized Representative	
Email Address		Telephone Number	
Contact Person (Daily SRF Communications)		Title of Contact Person	
Email Address		Telephone Number	
Mailing Address		City, Zip Code	
County		UEI Number	
Fax Number		PWSID Number	
AL House District(s)		AL Senate District(s)	
NPDES Permit Number of Facility (if applicable)		Population of System	
Names and 12-digit HUC Codes of Watersheds Impacted			

Project Engineer:

Firm Name	
Address	
City, State, Zip code	
Engineer Name	
Telephone Number	
Email Address	
Fax Number	

Section 2: Project Information

For the following questions, please attach additional pages if adequate space is not provided on this form:

1. List all other funding sources to be utilized to complete this project.

Other Funding Source(s)	Amount(s)	Commitment Date

2. Provide demographic information about the affected community

Community is defined as the township or county that best represents the system. Please identify what community is being used.

Median Household Income		Source/Date:	
Unemployment Rate		Source/Date:	
Population Trend Over 10 Years (+%)		Source/Date:	
Community			

Priority Ranking System

The following factors are used to rank the proposed project, and will ultimately determine if it falls in the fundable portion of the priority list. The applicant must provide documentation where required in order to receive credit.

*Any ranking criteria that cannot be verified through supporting documentation by the Department will be awarded zero points.

A. Enforcement and Compliance Rating Criteria (Maximum: 50 points) *

Ranking Criteria		Point Value
1	Facility is under formal enforcement action by ADEM and is currently in significant non-compliance. The project will bring the facility into compliance. (A copy of the enforcement order must be attached)	50
2	Project is a voluntary effort to resolve violations and will mitigate the issuance of a formal enforcement action.	40
3	The facility is currently in compliance with permit limits, but will fall out of compliance without the proposed project.	25

B. Water Quality Improvement Criteria (Maximum: 135 points) *

Ranking Criteria		Point Value
1	Project will significantly address water quality standards in a water body that:	
	a) Has an approved TMDL	25
	b) Is subject to a draft TMDL, dated 0-2 years from present	15
	c) Is subject to a draft TMDL, dated 3-5 years from present	10
	d) Is subject to a draft TMDL, dated 6-10 years from present	5
2	Project will implement TMDL(s) for:	5
	a) Pathogens (i.e., fecal coliform/E. coli)	15
	b) Mercury	10
	c) Nutrients (i.e., phosphorous, nitrogen)	5
	d) Organic Enrichment/Dissolved Oxygen	5
	e) Ammonia (toxicity)	15
	f) Siltation (sediment)	
3	a) Project will benefit a Category 5 or Category 4 listed water body.	5
	a) Project takes place in an EPA-identified priority watershed and reduces/eliminates one or more sources of impairments (point and nonpoint source).	5
	b) Project will improve water quality in an Outstanding Alabama Water (OAW).	5
	c) Project will improve water quality in an Outstanding National Resource Water (ONRW).	5
4	Project will upgrade or replace existing failing or inadequate decentralized wastewater treatment systems, or construct septage treatment facilities that are crucial to the proper operation of decentralized wastewater treatment systems.	10
5	Project will protect a public drinking water source from contamination that will negatively impact public health.	15
6	Project will implement a National Estuary Program Comprehensive Conservation Management Plan	10

C. Water/Energy Efficiency Rating (Maximum: 65 points) *

Ranking Criteria		Point Value
1	Project incorporates energy efficient design considerations with established objectives and targets for energy reduction opportunities, performed energy audits or developed energy conservation plans.	5
2	Project uses renewable energy to provide power to a POTW.	10
3	Project implements upgrades to pumps and treatment processes which result in:	
	a) 20 percent or greater reduction in energy consumption at a POTW.	10
	b) Less than a 20 percent reduction in energy consumption at a POTW.	5
4	Infiltration/Inflow correction projects that save energy from pumping and result in reduced treatment costs, and I/I projects in cases where excessive groundwater infiltration is contaminating the influent.	10
5	Projects that incorporate recycling and/or reuse of gray water or wastewater.	20
6	Production of treated effluent for groundwater recharge, industrial operations, or agricultural purposes.	5

D. Stormwater Management Criteria (Maximum: 50 points)

Ranking Criteria		Point Value
1	Project will implement stormwater harvesting and reuse.	10
2	Project incorporates wet weather management systems including: permeable pavement, bioretention, tree plantings, green roofs, rain gardens and other practices that can be designed to mimic natural hydrology and reduce effective imperviousness.	10
3	Project will create riparian buffers, floodplains, vegetated buffers and additional streambank restoration methods.	10
4	Project supports wetland protection or restoration, including constructed wetlands.	10
5	Downspout disconnection to remove stormwater from sanitary sewers and manage runoff onsite.	5
6	Project incorporates green streets for new development, redevelopment or retrofits.	5

E. Agricultural and Nonpoint Source Pollution Criteria (Maximum: 35 points)

Ranking Criteria		Point Value
1	Project addresses water quality impacts associated with farming operations by: a) Implementing water-saving irrigation systems in farms currently using inefficient watering systems. b) Implementing methods to reduce soil and stream bank erosion. c) Utilizing BMPs including no-till farming practices, rotational grazing, cropland conversion and winter cover crops. d) Utilizing alternative watering sources including effluent or grey water reuse.	5 10 10 10
2	Project addresses water quality impacts associated with animal feeding operations by: a) Developing a Nutrient Management Plan. b) Establishing heavy –use protection areas. c) Implementing onsite waste management systems for manure and poultry litter; including recycling, spreading, and storage systems, and digester gas technologies. d) Utilizing dead bird composters and/or incinerators. e) Implementing BMPs (including exclusion fencing and stream crossings).	10 5 10 5 5

F. Sustainability Criteria (90 possible bonus points) *

Ranking Criteria		Point Value
1	Project incorporates one or more of the following planning methodologies: a) Comprehensive Land Use Plan (must designate areas where public infrastructure will and will not be supported) b) Asset Management Plan c) Watershed Management Plan d) Nutrient Management Plan e) Nutrient Trading f) Open Space Preservation g) Integrated Water Resource Plan that stresses water efficiency, reuse and conservation	5 10 5 5 5 5 5
2	Project includes one or several of the following design considerations: a) Site fingerprinting for minimized landscape disturbance and sustainable landscape design. b) LEED certified or other ADEM-approved green building techniques for POTWs. c) Minimizes the environmental and water quality impact of construction through the use of clean fuel construction vehicles, construction waste reduction and other innovative methodologies. d) Project envelope is located in a previously developed area. e) Use of environmentally friendly post-consumer recycled or reclaimed materials.	5 5 5 5 5
3	Project implements at least one of the following construction methods: • Innovative erosion control practices; • Protection of onsite trees, vegetation, native habitats and urban forests; or • Replanting of disturbed areas with native plant species.	5
4	Project will utilize one or more of the following water conservation strategies: a) Development of a water conservation program. b) Incorporates sustainable water pricing practices and rate structures. c) Completion of EPA's Water Quality Scorecard (see http://www.epa.gov/smartgrowth/water_scorecard.htm).	5 10 5

G. Growth Criteria (50 possible bonus points)

Ranking Criteria		Point Value
1	Project includes a significant growth component. (See PER instructions)	0
2	Project does not include a significant growth component. (See PER instructions)	50

Sum the points from each category below.

Part A: Enforcement and Compliance (50 points maximum)	
Part B: Water Quality (135 points maximum)	
Part C: Water/Energy Efficiency (65 points maximum)	
Part D: Stormwater Management (50 points maximum)	
Part E: Agricultural/Non-Point Source (35 points maximum)	
Part F: Sustainability (90 bonus points maximum)	
Part G: Growth (50 bonus points maximum)	
TOTAL POINTS CLAIMED:	

This form should be signed by the official who is authorized to execute contracts on behalf of the applicant jurisdiction.

ONE SIGNED COPY (including attachments) should be emailed to the address shown on Page 1 of this form.

Attachments to be included with this form:

- 1. Preliminary Engineering Report (PER Outline PER Format Below (Preferred))**
- 2. Copies of last three (3) years of audited financial statements (if available)**

Preliminary Engineering Report Outline:

- 1. Description of Project**
 - a. Brief description and background of project
 - b. Purpose of project
 - c. Location of project
 - d. Project Scope
 - e. Average annual household water bill
 - f. Population and median household income
- 2. Proposed Improvements**
 - a. System connections and connections that benefit from construction
 - b. System plan for water conservation
 - c. Proposed operation and management
 - d. Improvements to system
- 3. Project Maps**
 - a. Include all affected water bodies
- 4. Projected Outlay Schedule**
- 5. Cost Breakdown**
 - a. Estimated cost outline for entire project
- 6. Supporting Documentation*** for priority points claimed, as required above. Any points claimed that cannot be readily substantiated from the information submitted will not be counted. The Department reserves the right to make the final determination of all points awarded.
- 7. Growth Criteria:** If the project includes any of the following components, enter a point value of 0:
 - a. New (not a replacement) wastewater treatment plant (excluding decentralized systems).
 - b. Upgraded/expanded/replacement wastewater treatment plant where the purpose of the project is to increase the design flow or projects where the design flow of the facility incidentally increases by more than 20%.
 - c. Collection system improvements that increase design flow (excluding rehabilitation projects where the original design flow is restored).
 - d. New or expanded collection systems.
 - e. Any POTW project that serves future growth.

If none of the criteria above apply, the project will be awarded points as shown.

The undersigned representative of the applicant certifies that the information in the application and in the attached statements and exhibits is true, correct and complete to the best of the applicant's knowledge, information and belief.

Signature of Authorized Representative	Print or Type Name
Title	Date



Alabama Rivers Alliance

Victoria Miller
Alabama Rivers Alliance
2014 6th Ave. S.
Birmingham, AL 35203

July 23, 2024

Brian Espy
SRF Section
Permits and Services Division
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, AL 36130

via electronic mail only: bespy@adem.alabama.gov; srf@adem.alabama.gov

RE: FY 2023 Draft CWSRF and DWSRF Emerging Contaminants IUPs

Mr. Espy,

On behalf of the eight undersigned organizations and individuals, Alabama Rivers Alliance (“ARA”) submits the following comments concerning the FY 2023 draft Intended Use Plans (“IUPs”) released by the Alabama Department of Environmental Management (“ADEM” or “the Department”) for the Clean Water State Revolving Fund (“CWSRF”) and the Drinking Water State Revolving Fund (“DWSRF”) Bipartisan Infrastructure Law (“BIL”) Emerging Contaminants (“EC”) programs.

Alabama Rivers Alliance is a state-wide network of groups working to protect and restore all of Alabama’s water resources through building partnerships, empowering citizens, and advocating for sound water policy. ARA has a long history of working with communities and in partnership with ADEM on drinking and wastewater infrastructure issues in Alabama. We have also worked on issues related to emerging contaminants throughout the state.

PFAS Contamination Requires a Systematic, State-wide Approach

The BIL included the first-ever federal investments into mitigating emerging contaminants like PFAS (per- and poly-fluorinated alkyl substances) from drinking

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www.AlabamaRivers.org www.SouthernExposureFilms.org

water and wastewater treatment.¹ We are glad to see ADEM make use of these funds to fund projects to remove PFAS in drinking water. We also understand the urgency of spending this time-constrained funding before it expires in 2026.

ARA appreciates all efforts to ensure Alabamians have clean, safe drinking water, free from PFAS and other contaminants. We also recognize that the \$15,868,000 available in the EC IUP during fiscal year 2023 is not enough to bring all public drinking water systems into compliance prior to the 2029 deadline established by EPA's PFAS National Primary Drinking Water Regulation.² While we assume further EC IUP funds will be released in FY 2024, 2025 and 2026, we do not anticipate that those funds will be enough to fully address Alabama's PFAS contamination issues.³

As it stands, dozens of drinking water utilities in Alabama are failing to meet the National Primary Drinking Water Regulations ("NPDWR") that will come into force in 2029.⁴ These systems are very diverse. These systems are not confined to any specific geographic area of the state, they are of varying sizes, and they serve communities with differing socio-economic characteristics. PFAS is a problem throughout the state of Alabama. Unfortunately, for the second consecutive year, the EC IUP only addresses concerns in two communities in North Alabama. Addressing PFAS contamination in Alabama requires a systematic approach.

Opportunities to Organize a Systematic State-wide response to PFAS

Fortunately, BIL EC funds contain the ability to set-aside funding for activities that can inform a more systematic approach to mitigating PFAS in

¹ P.L. 117-58; 135 Stat. 1401

² 40 CFR § 141.900 *et seq.*

³ E.g., Alex Brown, *States need to keep PFAS 'forever chemicals' out of the water. It won't be cheap.* Stateline, May 21 2024. Available at:

<https://stateline.org/2024/05/21/states-need-to-keep-pfas-forever-chemicals-out-of-the-water-it-wont-be-cheap>

(EPA Office of Water policy staff estimates the need at \$1.5 billion dollars annually for the next 80 years. Simply dividing this need by 50 states yields a conservative estimate of \$30 million per year to fully remediate PFAS in Alabamians' drinking water. ARA views this estimate as conservative because Alabama has higher levels of PFAS contamination in the environment than other states, See NB Khanal, L Elbakidze, *Peril in the Pipeline: Unraveling the threads of PFAS contamination in U.S. drinking water systems.* PLoS ONE (2024) available at:

<https://doi.org/10.1371/journal.pone.0299789>)

⁴ Environmental Protection Agency, UCMR 5 Occurrence Data (2024), available at:

<https://www.epa.gov/dwucmr/occurrence-data-unregulated-contaminant-monitoring-rule> (Asbury Water System, Belforest Water System, Beulah Utilities District, Colbert County Rural Water System, Holtville Water System, Huntsville Utilities, Marbury Water System, South Marengo County Water & Fire Protection Authority, and the Thomasville Waterworks & Sewer Board all had positive test results for PFOA and PFOS, two of the PFAS regulated by 40 CFR § 141.900 *et seq.*; Belforest Water System, Bridgeport Utilities Board, East Alabama Water & Fire Protection District, Eclectic Water & Sewer Board, Wastewater & Sewer Board of the City of Hanceville, Jackson County Water Authority, LaFayette Water Works, Lanett Water Works, Scottsboro Water Works, and South Alabama Utilities Water System all had positive test results for other PFAS. This only includes UCMR-5 data and does not reflect other testing for PFAS throughout the state.)

drinking water. Set-aside funding may be used in order to develop statewide plans and prepare for forthcoming compliance issues that will arise once PFAS NPDWR takes full effect. This would also be an opportunity to leverage EC-specific funding beyond the deadline in the BIL. By establishing a framework to prioritize funding for utilities struggling to meet the NPDWR requirements, the time-constrained BIL funding can have an impact long past its expiration date in FY 2026.

A first step to achieve a comprehensive state-wide plan for addressing PFAS in Alabamians' drinking water would be outreach to communities and utilities impacted by PFAS contamination as indicated by UCMR-5 monitoring. Based on conversations ARA and our member groups have had with community members and leaders, communities with PFAS are not always aware of their eligibility for SRF funding. Likewise, they are often unaware of the availability of PFAS-specific funding through these EC IUPs. The rapidly shifting policy landscape around PFAS and emerging contaminants, as well as the rapid increase in federal funding is no doubt responsible for much of this confusion. ADEM has the opportunity to use set-asides to increase outreach and alleviate this lack of awareness among some Alabama utilities and communities.

Another step that would help systematize ADEM's approach to addressing PFAS and other emerging contaminants through IUPs would be adding points to SRF ranking criteria for utilities that show sampling results for regulated PFAS at or near regulated levels.

We also ask whether ADEM plans to use any of its CWSRF EC funding to support POTWs, specifically those with industrial indirect dischargers whose effluent contains PFAS. As with many other water quality issues, solutions to PFAS contamination in drinking water can often be found upstream. In the case of PFAS, CWSRF EC funds could be targeted to utilities with industrial indirect dischargers.

Conclusion

The time-constrained supplemental federal funds provided by the BIL will not be enough to provide all Alabamians with safe, clean, drinking water free from emerging contaminants like PFAS. Increased funding at the state and federal level is necessary. We commend ADEM's membership in the "Save the SRFs" Coalition at the federal level, and encourage ADEM to continue to pursue increased funding to provide clean water for Alabamians from Congress and the Alabama Legislature.

Alabama Rivers Alliance and the other signatories to this comment appreciate ADEM's past responses to PFAS, which have better positioned us to deal with these issues than many of our neighboring states, and look forward to working with the Department to address the monumental challenge of compliance with the PFAS NPDWR.

If you would like to discuss these comments further, please reach out to the Alabama Rivers Alliance at any time.

Sincerely,

A handwritten signature in black ink that reads "V. Miller". The signature is fluid and cursive, with the first name "V." and the last name "Miller" clearly distinguishable.

Victoria Miller, Director of Advocacy Research
Alabama Rivers Alliance

Black Warrior Riverkeeper

Blackbelt Women Rising

Cahaba River Society

Cahaba Riverkeeper

Kathleen Kirkpatrick, Environmental Engineer

Lynn Phillips, Environmental Engineer

Southern Environmental Law Center

Voters Legal Justice Watch Group

CC: Johnnie Purify

EPA Region 4

Purify.Johnnie@epa.gov



Alabama Department of Environmental Management
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Montgomery, Alabama 36130-1463
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September 12, 2024

Ms. Victoria Miller
Director of Advocacy Research
Alabama Rivers Alliance
2014 6th Ave S
Birmingham, AL 35203

Re: FY 2023 Draft CWSRF and DWSRF Emerging Contaminants IUPs Comments

Comment: The BIL included the first-ever federal investments into mitigating emerging contaminants like PFAS (per- and poly-fluorinated alkyl substances) from drinking water and wastewater treatment.¹ We are glad to see ADEM make use of these funds to fund projects to remove PFAS in drinking water. We also understand the urgency of spending this time-constrained funding before it expires in 2026. ARA appreciates all efforts to ensure Alabamians have clean, safe drinking water, free from PFAS and other contaminants. We also recognize that the \$15,868,000 available in the EC IUP during fiscal year 2023 is not enough to bring all public drinking water systems into compliance prior to the 2029 deadline established by EPA's PFAS National Primary Drinking Water Regulation.² While we assume further EC IUP funds will be released in FY 2024, 2025 and 2026, we do not anticipate that those funds will be enough to fully address Alabama's PFAS contamination issues.³

As it stands, dozens of drinking water utilities in Alabama are failing to meet the National Primary Drinking Water Regulations ("NPDWR") that will come into force in 2029.⁴ These systems are very diverse. These systems are not confined to any specific geographic area of the state, they are of varying sizes, and they serve communities with differing socio-economic characteristics. PFAS is a problem throughout the state of Alabama. Unfortunately, for the second consecutive year, the EC IUP only addresses concerns in two communities in North Alabama. Addressing PFAS contamination in Alabama requires a systematic approach.

The SRF works closely with the Drinking Water and Municipal compliance and permitting branches to ensure the funds are targeted to communities with the greatest need. The State of Alabama has completed multiple rounds of testing for per-and polyfluoroalkyl substances (PFAS) compounds in finished water¹. Additionally, the SRF staff have met with multiple communities in an effort to form a "regional" approach to discuss possible solutions. A viable solution is to promote the consolidation and/or purchase of water from communities who have previously remediated emerging contaminants from their drinking water or do not have emerging contaminants present in their drinking water.



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Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1603 (FAX)

Decatur Office
2715 Sandlin Road, S.W.
Decatur, AL 35603-1333
(256) 353-1713
(256) 340-9359 (FAX)

Coastal Office
1615 South Broad Street
Mobile, AL 36605
(251) 450-3400
(251) 479-2593 (FAX)

The projects which were funded in previous years took this regional approach and ensured that smaller communities benefited from a large community's remediation efforts. This also ensures the funds are maximized - multiple remedial systems are not constructed in the same area; therefore, this approach increases the benefit and reduces the cost of treating for emerging contaminants. This approach results in projects that will have a positive impact for multiple small communities throughout the area in the future.

The Emerging Contaminant funds from the Bipartisan Infrastructure Legislation (BIL-EC) are only allocated through fiscal year 2026; however, since PFAS² have been regulated through the National Primary Drinking Water Regulations, projects addressing those regulated contaminants would be eligible through traditional SRF funding going forward. Funding is also available to communities through other methods such as legal action and the SRF is determined to use our resources where funding is not available through other means.

Comment: Fortunately, BIL EC funds contain the ability to set-aside funding for activities that can inform a more systematic approach to mitigating PFAS in drinking water. Set-aside funding may be used in order to develop statewide plans and prepare for forthcoming compliance issues that will arise once PFAS NPDWR takes full effect. This would also be an opportunity to leverage EC-specific funding beyond the deadline in the BIL. By establishing a framework to prioritize funding for utilities struggling to meet the NPDWR requirements, the time-constrained BIL funding can have an impact long past its expiration date in FY 2026. A first step to achieve a comprehensive state-wide plan for addressing PFAS in Alabamians' drinking water would be outreach to communities and utilities impacted by PFAS contamination as indicated by UCMR-5 monitoring.

Based on conversations ARA and our member groups have had with community members and leaders, communities with PFAS are not always aware of their eligibility for SRF funding. Likewise, they are often unaware of the availability of PFAS-specific funding through these EC IUPs. The rapidly shifting policy landscape around PFAS and emerging contaminants, as well as the rapid increase in federal funding is no doubt responsible for much of this confusion. ADEM has the opportunity to use set-asides to increase outreach and alleviate this lack of awareness among some Alabama utilities and communities. Another step that would help systematize ADEM's approach to addressing PFAS and other emerging contaminants through IUPs would be adding points to SRF ranking criteria for utilities that show sampling results for regulated PFAS at or near regulated levels. We also ask whether ADEM plans to use any of its CWSRF EC funding to support POTWs, specifically those with industrial indirect dischargers whose effluent contains PFAS. As with many other water quality issues, solutions to PFAS contamination in drinking water can often be found upstream. In the case of PFAS, CWSRF EC funds could be targeted to utilities with industrial indirect dischargers.

As noted in a previous comment, the funds available for emerging contaminants are limited. Since sampling was previously required, the Department has a comprehensive list of systems which are impacted by emerging contaminants. The SRF has attempted to and/or communicated with all 587 water systems throughout the state. This effort will continue as long as funding is available. The SRF does plan to utilize set-aside funding in future fiscal years for technical assistance and guidance for

smaller communities. The request for proposal should be out within the first quarter of 2025 for the small systems technical assistance set-aside. In addition, the Alabama Rivers Alliance (ARA)_ is welcome to assist with this technical assistance. ARA's support will save the SRF funds and will allow additional funds to be placed into projects. Please contact the Department if ARA wishes to support these efforts with your expertise.

The SRF and enforcement branches (Drinking Water and Municipal) have solicited each permitted entity and each entity which has shown to have emerging contaminants in their drinking water through sampling. Furthermore, the SRF solicits to each city, municipality, county, and water system annually to ensure that communities are aware of SRF funding. As mentioned above, in addition to conference attendance, the SRF has also been meeting with regional representatives from drinking water/wastewater systems to discuss possible solutions using the funds available through the program.

The SRF is open to all funding options for the clean water emerging contaminant funding (CWBIL-EC). The program has been marketed to traditional SRF eligible borrowers as well as entities such as landfills and disposal entities for destruction purposes. No applications for such a project have been submitted to date.

Sincerely,

A handwritten signature in dark ink, appearing to read "Russell Kelly", with a stylized flourish at the end.

Russell Kelly, Chief
Permits and Services Division
ADEM

Cc via email: Chris Thomas, USEPA Region 4
Johnnie Purify, Jr., USEPA Region 4
Chris Bruegge, USEPA Region 4

- 1: ADEM required all sources of finished water to sample in 2020 and/or 2022. The results are published on the ADEM website.
- 2: EPA established National Primary Drinking Water Regulation for six PFAS – PFOA, PFOS, PFHxS, PFNA, “GenX”, and mixtures containing two or more of PFHxS, PFNA, HFPO-DA, and PFBS. 40 CFR Parts 141 and 142