

**BASE IUP FY 2023
Attachment II
CAPACITY DEVELOPMENT PROGRAM**

CAPACITY DEVELOPMENT

The Safe Drinking Water Act (SDWA) Amendments of 1996 (Pub. L. 104-182) authorize a Drinking Water State Revolving Fund (DWSRF). The DWSRF is designed to assist publicly owned and privately owned community water systems and nonprofit non-community water systems in financing the costs of infrastructure needed to achieve or maintain compliance with SDWA requirements, and to meet the public health objectives of the SDWA. Section 1452 (a)(3) of the SDWA prohibits a state from providing DWSRF assistance to a system that lacks technical, managerial and financial capacity or is in Significant Non-Compliance "SNC" with any requirements of a national primary drinking water regulation or variance, unless: 1) the use of the financial assistance will ensure SDWA compliance, or (2) the owner or operator of the system agrees to undertake feasible and appropriate changes to assure that adequate capabilities will be put in place, and agrees to implement such changes.

The following is a screening process used to assess the technical, managerial, and financial capacity of any DWSRF project sponsor.

I. Technical Capacity

Technical Capacity refers to the adequacy, operation and maintenance of a water system's infrastructure. To assure adequate technical capacity, a project sponsor must demonstrate that its water system has adequate source water and adequate infrastructure and must demonstrate that its water system is operated by personnel with technical knowledge about applicable standards. In assessing the technical capacity of the water system, the Department of Health will review, in addition to other information, the following items regarding the project sponsor:

1. SDWA Compliance data including recent sampling results. Inspections reports and/or Sanitary Surveys to identify actual and potential problems that might lead to non-compliance or degradation of drinking water quality.
2. Operator Certification to evaluate if the water system is operating under an operator certified by the Commonwealth, with the appropriate certification classifications and in accordance with operator certification program, as stated In the SDWA.
3. Susceptibility assessments as established by DOH on the Source Water Assessment Program (SWAP) to determine potential source water contamination.
4. Enforcement actions: administrative consent orders, or directives issued to the water system, requiring corrective actions to ensure compliance with the SDWA.
5. Comprehensive Performance Evaluations (CPEs) to analyze a surface water treatment plant's performance.
6. Consumer Complaint Records to identify technical problems with the water system (e. g., odor; taste, or low-pressure source capacity to supply actual demand).
7. Engineering reports, project, and long-term planning documents, for Improvements to ensure compliance with Federal and Commonwealth SDWA regulations, rules, and statutes.

Note: Significant Non-Compliance refers to long term repeated violations that

constitute a threat to public health. A summary of significant non-compliance is attached to this document.

8. Design is in compliance DOH regulation.

The project sponsor's must demonstrate adequate technical capacity as follows:

1. The project sponsor and its water system are not in significant non-compliance as defined by EPA.
2. The project sponsor and its water system have no continuing violations under the Commonwealth laws and regulations.
3. The project sponsor is operating its water system under a certified operator, or the appropriate certification pursuant to Commonwealth Operator Certification Process,)/DWSRF Operator Certification Program (Act. No. 53 of July 13, 1978, as amended by Act 29 of January 16, 2002, and Act No. 59 of May 8¹, 2002, and by the Regulation for the Certification of Operators of Systems and/or Treatment Plants for Drinking Water and Wastewater, which derogated Regulation No: 5440 of June 27, 1996.

II. Managerial Capacity

Managerial Capacity refers to the personnel expertise required to administer the overall water system operations. To assure adequate managerial capacity, the project sponsor must demonstrate that relative to its water system it has clear ownership, proper and organized staffing, and effective interaction with regulators and

customers. In assessing the managerial capacity of the water system, the DOH, in consultation with the Puerto Rico Department of State Drinking Water Treatment Plant Operator Certification Board and in accordance with the DOH/Department of State Drinking Water Treatment Plant Operator Certification Program and other Commonwealth Agencies, as appropriate, shall review, in addition to other information, the followings items regarding the project sponsor:

1. A summary of Biographies, Resumes and other related material from the previous 5 years, to determine the training expertise and education of personnel.
2. Business or Water System Plan to evaluate management's overall practices and ownership accountability to assist in evaluating the owner's understanding of current DOH regulations and professional practice.
3. A summary of billing and collection procedures used for the water system from the previous 5 years.
4. Consumer Complaint Records within the previous 5 years to identify the water system's responses to customer complaints.
5. Documents that demonstrate ownership accountability and evidence of the community Incorporation.
6. Evidence of the compliance and/or the corresponding endorsement of other Commonwealth Agencies concerned with the construction process of water systems.

7. Administrative Structure Flow Chart and Membership selection or establishment procedure
8. Legal document specifying and assuring the compliance of the System with the SDWA Regulation including mechanisms for user charge fee or process.

The project sponsors must demonstrate adequate managerial capacity as follows:

1. The project sponsor or its water system shall not be In receivership;
2. The project sponsor demonstrates to the Department's satisfaction that it has clear ownership of the water system or that other arrangements are in place to satisfy the managerial capacity requirements; and
3. The project sponsor and its water system do not have any continuing violations of requirements, rules or statutes of the DOH's and other Commonwealth Agencies as applicable.

III. Financial Capacity

Financial capacity refers to the ability to acquire, generate and manage enough monetary resources to a project sponsor for its water system to support the cost of operating, maintaining, and improving the water system and achieve and maintain compliance with SDWA requirements. To assure adequate financial capacity, the project sponsor must demonstrate that relative to its water system it has sufficient revenues, fiscal controls, and credit worthiness. In assessing the financial capacity of

the water system PRIFA/PRFAFAA¹ will conduct and evaluate in coordination with DOH as appropriate (in accordance with their standard operation procedures) the financial capability analysis to determine revenue generating and pay back capabilities of the borrower project sponsor through information require and to be provided on the Business Plan.

1. Business Plan and financial information, including, where available but not limited to the following, shall be evaluated:

- a. Financial statements or annual audit reports for the previous three years.
- b. Current and proposed rate schedules. as applicable; or if rate schedules are unavailable, then documents indicating the project sponsor's access to credit for operations and contingencies to demonstrate the project sponsors capability to repay debt.
- c. A summary of any pending litigation regarding current or proposed rates.
- d. Federal and state income tax returns of the projects sponsor

¹ GDB, the Government Development Bank of Puerto Rico filed bankruptcy in 2016 as a result of the operational changes undertaken by the institution. The EPA decreed a federal cut-off of the electronic fund transfer mechanism between the federal government treasury and said institution and, thus, the government of Puerto Rico. The operation of the DWSRF was paralyzed until certain conditions were met by the government of Puerto Rico which was also under severe financial distress. One of the conditions was the exclusion/elimination and or replacement from the DWSRF of the GDB. The PR Fiscal Agency and Financial Advisory Authority (PRFAFAA) was created as a result of the Moratorium Act enacted in 2016 when the government of Puerto Rico was unable to comply with its fiscal responsibilities through the GDB. The PRFAFAA substituted the GDB with limited banking capabilities in the operation of the DWSRF.

for the previous 3 years.

e. Current operating budget and projected budget for a five year or as available period including debt service on the loan and any rate schedule adjustments.

(i) Revenue projections including any assumptions on which the projections are based. Total annual percentage of budgetary Increases, annual percentage increases to meet loan repayments and other non-loan project costs, and time when same shall take effect should be identified and included.

(ii) Expenses projections including a copy of the Capital Budget and assumptions on which the projections are based.

(iii) Plans for rate Increases.

f. Composition of customer base

1.The project sponsor's water systems meet the standards for adequate financial capacity if the following is met:

2.1. Business Plan has been reviewed and approved by DOH and PRFAFAA/PRIFA were applicable.

The referenced Capacity Development Checklist summarizes and outlines the above-mentioned activities.

IV. Long-term Capacity

DOH, where appropriate, will assess whether a project sponsor and its water

system have a long-term plan to undertake feasible and appropriate changes in operations necessary to develop adequate capacity. Information such as engineering reports and other available information will be used in making these assessments. Plan review procedures for these systems are being developed and may be established and discussed in the Standard Operating Procedures of DOH. DOH has initiated and will continue to encourage consolidation of water systems in an effort to improve capacity.

V. Systems with inadequate capacity

A water system that requires Improvement to obtain adequate capacity can apply to the DWSRF provided that the improvements will ensure SDWA compliance. DOH in consultation with the corresponding agencies, as applicable, will make these assessments on a case-by-case basis, with emphasis on compliance with all applicable requirements rules or statutes of the concerned agencies. The project sponsor must agree and demonstrate to the concerned agencies satisfaction the Implementation of any required technical managerial or financial change necessary to obtain approval by DOH.

VI. Systems in Significant Non-Compliance "SNC"

The SDWA prohibit a state from providing DWSRF assistance to a system in significant noncompliance (SNC) with any requirements of a national primary drinking water regulation or variance, unless 1) The use of the financial assistance will ensure SDWA compliance, or 2) the owner or operator of the system agrees to undertake feasible and appropriate changes to assure that

adequate capabilities will be put in place and agrees to Implement such changes.

As of January 2010, the Department of Health implemented in the Public Water Supply Supervision Program (PWSS) actions to reflect the new Enforcement Response Policy (ERP) and the Enforcement Targeting Tool (ETT). DOH completed the transition from the evaluation of systems through the traditional Historical Systems in Non-Compliance (HSNC) to the new EPA enforcement approach, the ETT and thus has been working since its effectiveness in fiscal year 2010. Regarding the Capacity Development and the DWSRF programs the term “historical significant noncompliance (HSNC)” and “significant noncompliance” (SNC) are to be interpreted as systems with ETT scores of eleven (11) or greater.

Currently systems are being evaluated using the *Enforcement Targeting Tool (ETT)*. The ETT approach replaces the existing contaminant by contaminant compliance Strategy with one that focuses on the drinking water systems with the most serious or repeated violations. Under this new approach, the states will not be required to submit a list of HSNCs every three years. It uses a targeting tool/formula as a model for escalating responses to violations in a timely and appropriate response. This new strategy brings the systems with the most significant violations to the top of the list for enforcement actions in states. The ETT enables the prioritization of PWS by assigning each violation a “weight” or number of points based on the assigned threat to public health. Points for each violation of a water system are summed to provide a total score for that public water system (PWS). A PWS that incurs in a system score of 11 points or greater is considered as in significant Noncompliance

with the National Primary Drinking Water Regulations (NPDWR) and is subject to the required enforcement actions.

It is the intention that the list generated as part of the ETT can be used as one of the ways to identify systems that may lack technical, managerial and financial capacity (TMF) and prioritizes the assistance that can be provided. This Department, instead of reporting SNCs, will be indicating which of those new community and non-transient non-community water systems has had, at any point during the first three years of operation, unaddressed violations that incurred an ETT score greater than or equal to 11. Under the Enforcement Response Policy (ERP), these systems are considered a priority system by EPA. This is a tool to determine steps to help the systems return to compliance. Priority is awarded to systems with higher population. As stated before, DOH completed the revision of the Non-PRASA Strategy, which is included in the Capacity Development Strategy with the purpose of using or applying the ETT concept where now all systems included are ranked based on the ETT, notwithstanding if these are SNC or not, changes the total of systems PRASA or Non-PRASA less than 10,000, that will be included.

The *Check List Capacity Development Program New Drinking Water Capacity Assurance Plan (Attachment III)* provides the procedures that could be used to evaluate systems in SNC while review procedures for systems that are not in compliance are fully developed, established and discussed in the Standard Operating Procedures of DOH.