

Kentucky State Environmental Review Process for State Revolving Fund Projects

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**Energy and Environment Cabinet
Department for Environmental Protection
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INTRODUCTION

40 CFR 35.3580(a) requires states to conduct environmental reviews of the potential environmental impacts of all construction projects receiving assistance from the State Revolving Fund (SRF) programs. As per the requirements, Kentucky has elected to develop a State Environmental Review Process (SERP) that is functionally equivalent to the National Environmental Policy Act (NEPA). The Kentucky Division of Water (DOW), representing the Energy and Environment Cabinet (Cabinet), will be the responsible agency for environmental review oversight.

Environmental reviews will be conducted for all projects receiving SRF assistance where the potential for impact exists. Activities may be excluded from the environmental review if it is determined that, due to their nature, they do not individually, cumulatively over time, or in conjunction with other actions have a significant effect on the quality of the human environment (refer to 40 CFR 35.3575).

Kentucky's SERP is demonstrated through three routes:

1. Categorical Exclusions (CE),
2. Environmental Assessments (EA), or
3. Environmental Impact Statements (EIS).

Upon the receipt of all federal and state cross-cutters comments, required project documentation, and maps, the DOW issues the findings of the review. For Categorical Exclusions, a Categorical Exclusion Determination is issued; for Environmental Assessments, a Finding of No Significant Impact is issued; and for an Environmental Impact Statement a Record of Decision is issued. All official findings contain the scope of work to be constructed, project costs, any required mitigation, and public notice requirements if applicable.

APPLICABILITY

This document shall govern the environmental review of construction projects receiving financial assistance from the Clean Water or Drinking Water SRF.

DEFINITIONS

"Applicant" means any governmental agency, except a federal agency, that has submitted an application for financial assistance from the SRF.

"Kentucky eClearinghouse" means the automated Kentucky State Clearinghouse coordinating the federal executive review process and the Kentucky intergovernmental review process, for which the Department for Local Development has been designated as the single point of contact for federal or state financial assistance as required by KRS 147A.021(3)(k).

"Categorical Exclusions (CEs)" are identified categories of actions which do not individually, cumulatively over time, or in conjunction with other federal, state, local or private actions have a significant effect on the quality of the human environment.

"Categorical Exclusion Determination (CED)" refers to the official determination document issued by the Cabinet, stating that a categorical exclusion applies.

"Environmental Assessment (EA)" means a concise public document that serves to provide sufficient evidence and analysis for the final document determination. EAs include brief discussions of the need for the proposed project, alternatives considered, potential environmental impacts, and a listing of agencies and persons consulted.

"Environmental Impact Statement (EIS)" means a document required for major projects or legislative proposals expected to significantly affect the environment and describing the positive and negative effects of the undertaking.

"Environmental Information Document (EID)" means a written analysis prepared by an applicant that provides sufficient information for the Cabinet to undertake an environmental review and prepare a final decision document.

"Finding of No Significant Impact (FONSI)" means a document that briefly states the reasons an action that doesn't qualify for a CED will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it. If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

"Prohibitive Circumstances" means those circumstances listed in Table 2 of this document that may cause a significant environmental effect such that a proposed action that otherwise meets the requirements of a CE may not be categorically excluded.

"Record of Decision (ROD)" records the Cabinet's decision on an action pertaining to an EIS.

CATEGORICAL EXCLUSION

Loan recipients must present project and environmental documents, in writing, to the Cabinet for review.

(A) Upon submission, the Cabinet will review the information to determine whether it qualifies for a categorical exclusion. In order to make a determination, the request must include:

1. A description of the proposed action,
2. A statement of how the action meets the criteria for a Categorical Exclusion (CE) without violating the criteria in subsection (C) of this section, and
3. A map of the project area with existing and proposed facilities.

(B) A proposed action may be categorically excluded if the action fits within a category of action that is eligible for exclusion and the proposed action does not involve any prohibitive circumstances. Unless the provisions of subsection (C) apply, the Cabinet will issue CEs for projects that include the types of construction as presented in Table 1.

(C) Prohibitive circumstances preventing a CE include those listed in Table 2.

| Table 1 Actions That May Be Categorical Excluded | |
|---|---|
| Wastewater (CWSRF) | Drinking Water (DWSRF) |
| Minor rehabilitation of existing facilities or treatment works | Minor upgrade or expansion of existing infrastructure systems or treatment works in previously disturbed areas, to primarily serve existing development |
| Actual or functional replacement of equipment or structures | Minor rehabilitation of existing infrastructure systems or treatment systems to primarily serve existing development |
| Construction of ancillary facilities adjacent or appurtenant to existing facilities | Construction of new minor ancillary facilities adjacent to or on the same property as existing facilities, which have been previously disturbed |
| Corrections of infiltration and inflow problems | |
| Construction of small structures on existing sites | |
| Construction of new wastewater collection systems for existing populations | |
| Sewer line extensions in areas previously disturbed by construction, including extensions in highway right-of-ways primarily to serve existing population | |
| Sewer line extensions less than one mile in length that connect to existing collection systems | |
| WWTP expansions that will result in less than twenty (20) percent increases in the volume of discharge or the loading of pollutants from an existing source | |

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| Actions in unsewered communities of less than 10,000 people where on-site technologies are proposed | | |
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Table 2
Actions That May Prevent a Categorical Exclusion

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| The action is known or expected to have a significant effect on the quality of the human environment, either individually, cumulatively over time, or in conjunction with other federal, state, local, tribal or private actions |
| The action is known or expected to have disproportionately high and adverse human health or environmental effects on any community, including minority communities, or low-income communities |
| The action is known or expected to significantly affect federally listed threatened or endangered species or their critical habitat |
| The action is known or expected to significantly affect environmentally important natural resource areas such as wetlands, floodplains, significant agricultural lands, aquifer recharge zones, wild and scenic rivers, and significant fish or wildlife habitat |
| The action is known or expected to significantly affect national natural landmarks or any property with nationally significant historic, architectural, prehistoric, archeological, or cultural value, including but not limited to, property listed on or eligible for listing in the National Register of Historic Place |
| The action is known or expected to cause significant adverse air quality effects |
| The action is known or expected to cause significant adverse impact to groundwater supplies, including sole source aquifers |
| The action is known or expected to cause significant adverse impact to important farmlands as set forth in the Farmland Protection Policy Act (7 USC §§ 4201 to 4209) |
| The action is known or expected to have a significant effect on the pattern and type of land use or growth and distribution of population including altering the character of existing residential area, or be inconsistent with state or local government approved land use plans or federal land management plans |
| The proposed action is known or expected to cause significant public controversy about a potential environmental impact of the proposed action |
| The proposed action is known or expected to be associated with providing financial assistance through an interagency agreement for a project that is known or expected to have potentially significant environmental impacts |
| The proposed action is known or expected to conflict with federal, state, or local government environmental resource-protection, or land-use laws or regulations |
| The action is known or expected not to be cost-effective |
| The wastewater facilities proposed will create a new discharge |
| The wastewater facilities will relocate an existing discharge to surface or groundwater to a different waterbody |

The Cabinet shall prepare an Environmental Assessment (EA) or require the applicant to prepare an Environmental Impact Statement (EIS) when a proposed action involves extraordinary circumstances.

(D) If the Cabinet determines that a project qualifies for a CE, the Cabinet will issue a Categorical Exclusion Determination (CED) to include:

- A brief description of the proposed action
- A statement identifying the categorical exclusion that applies to the action
- A statement explaining why no prohibitive circumstances apply to the proposed action
- A copy of the determination document will be available from the Cabinet to the public upon request. Applicants must also make the determination document available for review to the public upon request.

The Cabinet may revise a CED at any time provided the revision is supported by the appropriate documentation as determined by the Cabinet. A revised CED is subject to all provisions of this section.

ENVIRONMENTAL INFORMATION DOCUMENTS

An Environmental Information Document (EID) is required when a project does not qualify for a Categorical Exclusion (CE). The EID must be of sufficient scope and content to enable the Cabinet to prepare an Environmental Assessment (EA). The EID must be submitted to the Division of Water (DOW) for review and include the information as presented in Table 3.

| Table 3 | |
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| Components of an Environmental Information Document | |
| Proposed Project | Project description including major components |
| | Owner |
| | Location and area description |
| | Affected utilities |
| | Population/customers |
| | Map (topographic) illustrating location and affected utilities |
| Costs | Project cost |
| | Funding source(s) and amounts |
| | User rates based on 4,000 gal/month |
| Need for Proposed Project | <p>The need for the project and its importance to social and economic development in the area should be presented; emphasizing existing public health or water quality problems (problems typically include water quality violations or problems, documented public health hazards, existing facility overload, insufficient capacity for projected demand, failing groundwater wells, and insufficient pressure). Other special situations may justify proposed facilities and should be included.</p> <p>Include the planning period for the project. The planning period should justify the capacity of the system with its projected population. Population projections should be based on U.S. Census projections or some recognized source of demographic data.</p> |

**Table 3
Components of an Environmental Information Document (cont.)**

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| Existing Environment | <p>Description of surface waters and their quality is needed in every case with specific reference to any wild and scenic rivers and any impaired surface waters in the project area, watershed name and hydrologic unit code. Identify any public health problems related to poor water quality</p> <hr/> <p>Existing and potential groundwater quality problems</p> <hr/> <p>Special or sensitive environmental areas such as wetlands, floodplains, or drinking water sources</p> <hr/> <p>Threatened or endangered species as set forth in Endangered Species Act, Pub. L 93-205, as amended</p> <hr/> <p>Suitability of soils and topography for on-site sewage disposal systems that might be affected by the introduction of potable water service</p> <hr/> <p>Local ambient air quality</p> <hr/> <p>Important farmlands, as set forth in the Farmland Protection Policy Act (7 U.S.C. §§ 4201 to 4209)</p> <hr/> <p>Cultural resource areas, as set forth in the National Historic Preservation Act (16 U.S.C. §§ 470 to 470x-6) and the Archeological and Historic Preservation Act (16 U.S.C. §§ 469)</p> <hr/> <p>Environmental justice concerns, as set forth in Executive Order 12898. Briefly describe any minority and/or low-income populations which exist within the overall planning area or which may otherwise be impacted by the projects. If these areas would be affected by an alternative under consideration, more detail should be provided</p> <hr/> <p>Special or sensitive environmental areas such as wetlands; areas of recognized scenic or recreational value; floodplains; and parkland or other public lands</p> |
| Existing Water System | <p>This section should include a description of the existing treatment and distribution system, water demand (average and peak), surface water sources including intake locations and permitted and actual withdrawal, groundwater sources, location of wells and well fields, water storage, raw water characteristics, residual and backwash disposal and the service area. This section should also include a general description of the wastewater collection and treatment system for the planning area. Describe existing collection, transport, treatment and sludge facilities. The service area(s) of these facilities should be described briefly and shown on an attached figure. Include the condition of the facilities, especially as it affects alternative selection.</p> |
| Alternative Analysis | <p>All alternatives analyzed should be described. The development of alternatives should include the no-action alternative, optimum utilization of existing facilities including flow reduction and water conservation, and new construction alternatives. An explanation should be given for rejecting or selecting alternatives. The explanation should include cost comparisons, including present worth or equivalent annual cost comparisons; reliability of the alternatives; complexity of the alternatives; significant environmental effects; and legal or institutional constraints. Identify which reasonable alternative was selected and state the reasons why this alternative was chosen.</p> |

Table 3
Components of an Environmental Information Document (cont.)

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| Existing Wastewater System | <p>A general description of the existing wastewater collection and treatment system. The service areas of these systems should be described briefly and shown on attached maps. The description shall include the existing facilities' physical condition, hydraulic and organic design capacities, characteristics of wastewater, ability to meet permit limits, method of sludge handling and disposal, existing flows including average and peak flows, operation and maintenance problems, current compliance status and applicable permit limits, and permit number. A discussion of inflow and infiltration problems and their impact on water quality and public health. A description of any type of state or federal enforcement actions that may exist against any WWTP owned or operated by the applicant within the project area.</p> <p>Where septic tanks are prevalent in all or part of the service planning area, their performance should be described. Explain any problems and provide details about the location and severity of the problems in relation to the proposed project. Also include existing system performance for all facilities.</p> |
| Environmental Consequences and Mitigation | <p>This section should describe and document the environmental effects of the selected alternative. Address the direct, indirect, and cumulative impacts for each aspect. This section should also describe anticipated impacts on the environment and measures proposed to mitigate those adverse impacts. Discuss any recommendations from the crosscutting agencies that implement environmental laws and include agency approval letters in an appendix to the EID. The applicant must resolve all comments from the Kentucky State eClearinghouse, or the clearinghouse's successor, the U.S. Fish and Wildlife Service, the U.S. Corps of Engineers, and the Natural Resources Conservation Service. All correspondence, including attachments submitted to and from the crosscutting agencies concerning the proposed project, must be submitted as part of the EID. The documentation must include evidence that the agencies generating the comments are satisfied with the applicant's responses and/or commitment to mitigation measures.</p> |
| Public Participation | <p>Documents submitted in preparation for an EA or EIS must be presented to the public for comment.</p> <p>Public Notice: For all projects that have not been categorically excluded, the applicant shall provide the public with notice of the project by publishing one or more notices in the local newspaper. The notice shall be published between seven (7) days to twenty-one (21) days before the public meeting (KRS 424.130).</p> <p>All public notices shall contain the following information:</p> <ul style="list-style-type: none"> • The name and address of the applicant and the entity that drafted the EID • A brief description of the proposed project and the area the project will serve • The name, address, and telephone number of persons from whom interested parties may obtain information • A brief description of how the public may comment • The date, time, and place of the meeting |

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- A brief description of the nature and purpose of the meeting
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Table 3
Components of an Environmental Information Document (cont.)

Public Comment: The public shall be given an opportunity to comment on the EID and the period for comment shall remain open for thirty (30) days from the date of the first publication of the notice of the public meeting or until the termination of the meeting, whichever is later.

- The public may request longer comment periods, which may be granted by the applicant at its discretion.
- Any person may submit comments or oral statements and data to the applicant, who may set reasonable limits upon the time allotted for oral statements and may require that statements be submitted in writing.
- All persons who believe that any condition of the EID is inappropriate, inaccurate, incomplete, or otherwise not in the best interest of the public and the environment, shall raise all reasonably ascertainable issues and submit all reasonably available arguments and factual background supporting their position, including all supporting materials to the applicant by the close of the public comment period.

Public Meeting: The public meeting shall include the following discussions:

- Scope of the project
- Project cost
- Alternatives that were considered during planning
- Estimated user charges
- Estimated hook-up fees
- Any required mitigation

The applicant shall submit as part of the EID a copy of the advertisement for the public meeting, a copy of the minutes of the meeting, and any written comments and responses. In addition, the EID shall include a list of all sources consulted for information and/or concurrence. The Kentucky State eClearinghouse shall be one of the entities consulted.

ENVIRONMENTAL ASSESSMENT

The Cabinet will prepare an Environmental Assessment (EA) if the proposed action is not categorically excluded, or if the Cabinet has decided to prepare an Environmental Impact Statement (EIS). The Cabinet shall conduct an environmental review of the Environmental Information Document (EID) as submitted by the applicant to determine whether any significant impacts are anticipated. The EA will focus on resources that might be impacted and any environmental issues that are of public concern. An EA includes:

- A summary of the proposed action, including funding sources
- The need for the proposed action
- The alternatives, including the no action alternative
- The affected environment including baseline conditions that may be impacted by the proposed action and alternatives
- The environmental impacts of the proposed action and alternatives, including any unresolved conflicts concerning alternative uses of available resources
- Other applicable environmental laws and executive orders
- Identification and description of any mitigation measures considered, including any mitigation measures that shall be adopted to ensure the action will not have significant impacts
- Incorporation of documents by reference, if appropriate
- A listing of sources consulted

If after preparing an EA, the Cabinet determines that the project has the potential to significantly affect the quality of the human environment, an EIS will be required and the Cabinet will prepare and issue a Record of Decision.

FINDING OF NO SIGNIFICANT IMPACT

If after preparing an Environmental Assessment (EA), the Cabinet determines that the project will not significantly affect the quality of the human environment, a Finding of No Significant Impact (FONSI) will be issued to include:

- The EA
- A brief description of the reasons why there are no significant impacts
- Any commitments to mitigation that is essential to render the impacts of the proposed action not significant
- The date of issuance

The preliminary FONSI will be made available to the public in accordance with this document before taking final action. The Cabinet may proceed with final environmental clearance after responding to any substantive comments received on the preliminary FONSI during the 30-day comment period, or 30 days after issuance of the FONSI if no substantive comments are received. The Cabinet will ensure that the mitigation measures necessary to the FONSI determination, at a minimum, are enforceable, and conduct appropriate monitoring of the mitigation measures.

The Cabinet may revise a FONSI at any time provided the revision is supported by the appropriate documentation as determined by the Cabinet. A revised FONSI is subject to all provisions of this section.

ENVIRONMENTAL IMPACT STATEMENT AND RECORD OF DECISION

If after preparing an Environmental Assessment (EA), the Cabinet determines that the project has the potential to significantly affect the quality of the human environment, the Cabinet will require the applicant to prepare an Environmental Impact Statement (EIS) and the Cabinet will issue a Record of Decision (ROD).

If the Cabinet determines before it has drafted an EA that the project has the potential to significantly affect the quality of the human environment, the Cabinet may dispense with the preparation of an EA and request the applicant to prepare an EIS according to procedures set forth in 40 CFR Part 6.

The Cabinet will evaluate the EIS in conjunction with public comments and issue a ROD that includes mitigation measures that make the project environmentally acceptable.

FIVE YEAR REVIEW OF PROJECTS

For all environmental review determinations (CE/CEDs, EA/FONSI, or EIS/RODs) that are five years old or older and for which construction of the project has not begun, the Cabinet may re-evaluate the project, environmental conditions and public views and:

- (1) *Reaffirm*: Issue a public notice reaffirming the Cabinet's decision to proceed with the project without revising the environmental review determination;
- (2) *Supplement*: Update information and prepare, issue and distribute a revised environmental review determination of the same category originally issued; or,
- (3) *Reassess*: Withdraw the environmental review determination and prepare a new environmental review determination. The Cabinet shall reassess if there has been substantial change to the project's anticipated impact on the environment or if there has been substantial change to the affected environment itself.

Construction shall not begin on the project until the Cabinet's re-evaluation is complete and all public notice, public comment, and public meeting requirements applicable for that category of environmental review determination have been met.

PUBLIC PARTICIPATION

The Cabinet must notify the Kentucky State Clearinghouse and provide public notice of its environmental review when:

- A Finding of No Significant Impact (FONSI) is issued but before it becomes effective
- A decision issued five (5) years earlier is reaffirmed or modified; or,
- A draft Environmental Impact Statement (EIS) is initiated.

Public notice of environmental review decisions described in this section must be given by the following methods:

- The Cabinet shall mail or, with the permission described below, e-mail a notice to the following persons. Any person otherwise entitled to receive notice under this subparagraph may waive his rights to receive notice for any classes and categories of environmental reviews.
 - a. The applicant
 - b. Persons on a mailing list that is developed by including those who request in writing to be on the list and by notifying the public via periodic announcements on the DOW official website of the opportunity to be put on the mailing list. The Cabinet may substitute e-mail notification for mail notification with the permission of the person being notified.
- The Cabinet will post notice on the DOW's official website.

Except with respect to the issuance of a categorical exclusion or the reaffirmation of a previous decision, the Cabinet will provide for a formal public comment period during which no action on a project will be allowed.

The public comment period will remain open for thirty (30) days from the date the Cabinet first provided notice of its decision. The Cabinet will only consider requests that are received by the Cabinet before the close of the public comment period.

The public may request that the Cabinet extend the public comment period fifteen (15) days. Such requests shall be submitted in writing. The Cabinet will consider the request but is not obligated to extend the public comment period.

If the Cabinet receives comments that are adverse to its decision, the comments will be considered and a response returned in writing or by e-mail. Its response(s) will also be posted on the DOW's official website.