
**Clean Water State Revolving Fund Program
Treatment Works Definition
August 23, 2023**

Purpose

The purpose of this document is to provide guidance for consistently determining whether a project meets the definition of “treatment works”. Based on this definition, the North Dakota Department of Environmental Quality (NDDEQ) Clean Water State Revolving Fund (CWSRF) Program will determine what federal requirements will apply to a project.

Background

Section 212 of the 1972 Federal Clean Water Act defines “treatment works” as:

(2)(A) The term “treatment works” means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 201 of this act, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including acquisition of the land that will be an integral part of the treatment process (including land use for the storage of treated wastewater in land treatment systems prior to land application) or will be used for ultimate disposal of residues resulting from such treatment and acquisition of other land, and interests in land, that are necessary for construction.

(B) In addition to the definition contained in subparagraph (A) of this paragraph, “treatment works” means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems.

33 U.S.C.A. § 1292(2)(A). With the passage of the Water Resources Reform and Development Act (WRRDA) in June 2014, Congress expanded the eligibility of projects that can be financed using the CWSRF funds and applied the following requirements to treatment works projects:

1. National Environmental Policy Act (NEPA) - requires an environmental review to ensure the constructed project will not have a detrimental environmental impact.

2. Davis-Bacon Act – requires the use of prevailing wages consistent with wages defined by the US Department of Labor and Industry.
3. American Iron and Steel Act (Section 608 of the Federal Water Pollution Control Act) – requires iron and steel products used in the construction of the project to be produced in the United States of America.
4. Section 5003 of WRRDA – requires a recipient of a loan for a project that involves the repairing, replacement, or expansion of a publicly owned treatment works to develop and implement a fiscal sustainability plan or certify that it has developed and implemented such a plan. Some states, including North Dakota, do not give direct loans to communities but instead buy the municipal bonds issued by the communities. Therefore, this requirement does not apply to North Dakota’s CWSRF program.

Treatment Works Definition

The section 212 “treatment works” definition will be limited to domestic and industrial wastewater projects. Projects to address stormwater will NOT be considered treatment works except if the project also involves the treatment of municipal sewage, such as in projects at treatment plants with combined sewage and storm systems. The rationale for limiting this to domestic and industrial wastewater projects is as follows:

1. The CWA section 212 “treatment works” definition must be read with the goal of understanding the intent of Congress at the time it was written in 1972. At that time there was no intent to fund non-point source projects. That did not arise until 1987, with the introduction of sections 319/320. In 1972 Congress was concerned with the upgrade of POTWs using the Federal Construction Grant program. With that in mind, they realized that wastewater includes varying amounts of stormwater that wastewater systems receive into sanitary sewers (inflow) and combined sewers (storm inlets). They included “stormwater” in the definition so that the eligibility of wastewater system repairs would not exclude the volume of wastewater that included stormwater.
2. Expanding the definition to include projects that treat stormwater runoff separately is a grammatical read of the Clean Water Act that could be interpreted in several ways. It could just as easily be read to mean that the phrase “including stormwater runoff” applies only to the practice of “disposing” and therefore its inclusion as part of “municipal waste” pertains only to that practice. The most common method for “disposing” of stormwater runoff associated with municipal waste is to pipe it to the treatment plant as part of the collection system. Such interpretation assumes that “disposing” of stormwater necessarily includes combining the runoff with “municipal waste,” On the contrary, most current strategies for managing stormwater include separating combined sewer systems and using best management practices, exclusive of a treatment facility, to lessen pollution.
3. CWA section 216 describes the “needs categories” for treatment works. Those categories are secondary treatment, more stringent treatment, infiltration/inflow correction, sewer system rehabilitation, new collector sewers, new interceptors, and combined sewers. All

of those are relevant to wastewater treatment systems and are unrelated to stormwater treatment or non-point source projects.

4. Although there was some national discussion among EPA and States during the development of the final WRRDA guidance regarding expanding the definition of treatment works to include all stormwater projects, no such expansion was included in the final WRRDA guidance.
5. The drafters of WRRDA listed treatment works, storm water, decentralized wastewater treatment systems, etc., as different types of projects that are now eligible for assistance under section 603(c). If the drafters of the WRRDA had intended to include these other eligibilities under "treatment works", then they would not have listed them as separate items.
6. The pollution reduction methodologies associated with stormwater, agriculture, and other sectors are purposely referred to as "best management practices" and not "treatment works" to distinguish the difference.

Clarification

If a project has any treatment work components, then the entire project will be considered treatment works. For example, projects that include sanitary sewer and storm sewer would need to meet treatment works requirements due to the sanitary sewer. If a project does not include a treatment work component, then the project will be considered non-treatment works.

Please note that this definition does not replace any state regulatory definition of treatment works. For example, North Dakota Century Code 61-28-02.13 and 14: "Treatment works" means any plant or other works used for the purpose of treating, stabilizing, or holding wastes. "Wastes" means all substances which cause or tend to cause pollution of any waters of the state, including dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radiological materials, heat, wrecked or discarded equipment, rock, sand, and cellar dirt and industrial, municipal, and agricultural pollution discharged into any waters of the state.