

“Progress on Implementing the American Recovery and Reinvestment Act of 2009”

Testimony

of

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Introduction and Background

Chairman Oberstar, Ranking Member Mica, honorable members of the Transportation and Infrastructure Committee, on behalf of Governor David A. Paterson and the Environmental Facilities Corporation’s Chairman, Commissioner Alexander “Pete” Grannis, thank you for inviting New York to participate in today’s hearing on the implementation of the American Recovery and Reinvestment Act (ARRA).

The Environmental Facilities Corporation (EFC) administers the Clean Water State Revolving Fund (CWSRF) on behalf of the New York State Department of Environmental Conservation (DEC) and administers the Drinking Water State Revolving Fund (DWSRF) jointly with the New York State Department of Health. EFC is a public benefit corporation with a seven-member board of directors and a staff of one hundred and thirty dedicated public employees. Today, I will focus my comments on the Clean Water State Revolving Fund.

EFC has administered the CWSRF in New York State since its launch in 1990. Since then, we have received roughly \$3 billion in federal capitalization grants. Using those funds and the required state match proceeds, we have provided almost \$10 billion dollars in subsidized financial assistance to more than 1,300 clean water projects throughout New York State. We provide a 50% interest subsidy to our traditional CWSRF clients and additional interest subsidy for qualified hardship communities, most of which qualify for zero percent loans. We estimate that the total avoided interest for the projects financed to date will total more than \$3 billion at maturity.

As is true in every state, New York faces a seemingly insurmountable challenge to restore and construct the infrastructure needed to achieve compliance with state and federal water quality standards. Prior to the enactment of ARRA, EFC and DEC collaborated on a needs report which found that New York will need more than \$36 billion in capital investment for clean water infrastructure over the next two decades. New York's 2009 CWSRF Intended Use Plan (IUP) includes more than \$4.5 billion in requests for financial assistance. Following the enactment of ARRA, Governor Paterson, via his economic recovery website, received an additional \$6.5 billion in requests for ready-to-go sewer and wastewater treatment projects in New York, bringing our immediate demand for financing well in excess of \$11 billion for close to 2,000 projects.

ARRA Implementation

The American Recovery and Reinvestment Act, in our view, is representative of this Committee's recognition and commitment to provide desperately-needed funding for clean water projects throughout the country and moreover, representative of a shift in the federal government's approach to funding these important environmental improvements.

There is no question that the \$4 billion included within ARRA for clean water funding was desperately needed and is greatly appreciated.

As directed by Congress and President Obama, New York State is moving quickly to obligate these funds to qualified, ready-to-go projects. Immediately following this Committee's economic stimulus hearing in October at which Governor Paterson's Deputy Secretary for the Environment, Judith Enck, testified, EFC began to prepare for an increase in CWSRF funding. We worked to streamline our loan application and loan review processes, conducted meetings and conference calls with our colleagues in state government and US EPA, and initiated outreach efforts to inform potential clients of the need to be prepared to move quickly when a stimulus package became law.

In addition, prior to the enactment of ARRA, Governor Paterson convened an Infrastructure Cabinet to coordinate the State's efforts to implement the pending stimulus legislation. As a result, we have been working very closely with our colleagues in State government to ensure that we provide these monies quickly to eligible projects, that we remain in full compliance with all reporting and tracking requirements, and that we are administering these monies in a transparent and equitable manner.

With regard to ARRA implementation, I would like to take this opportunity to express my thanks to EPA Administrator Lisa Jackson and her staff, who have worked tirelessly over the past two months to help the states succeed in the implementation of ARRA. Only days after ARRA's

enactment, EPA issued draft guidance on implementation, giving the states their first glimpse at what steps would be required to apply for, receive approvals on and begin to distribute these monies. EPA has hosted numerous nationwide webcasts, providing the states with expert advice and guidance on how to properly amend our Intended Use Plans, identify eligible “green innovation” projects and submit formal grant applications. I cannot stress enough the deep appreciation we feel for the leadership shown by Administrator Jackson throughout this effort, and for the ongoing assistance offered by Jim Hanlon and his staff in EPA’s Office of Wastewater Management, Cynthia Dougherty and her staff in EPA’s Office of Ground Water and Drinking Water, and our partners at EPA Region 2. They have all worked very hard to help the states move forward quickly on this important mission.

And moving quickly we are. I am very pleased to report to you today that New York State has already applied for and received conditional grant approval from EPA for its CWSRF ARRA funding. We were thrilled to have Administrator Jackson travel to Albany on April 3rd to present Governor Paterson with our formal grant approval for \$432 million. This is the largest CWSRF grant in the history of the program and I understand the single largest grant in the history of EPA.

An important question I intend to answer for the Committee today is how we intend to use these monies. As stated previously, New York does not lack demand for these resources. As required by ARRA, we have developed what we believe is an efficient and effective plan to fund ready-to-go, job-creating projects, while also promoting the Act’s focus on building energy efficient, water efficient, and environmentally innovative projects. We believe that it is both possible and necessary to build fast, but also to build better.

ARRA requires states to reserve 20% of their capitalization grant for green innovations projects, which for New York is approximately \$86.5 million. We intend to distribute all of these monies as grants or principal forgiveness.

We are extremely excited by the opportunity provided by ARRA’s Green Reserve requirement and have developed a two-pronged approach to administer these monies. As stated earlier, first we want to ensure that we build facilities financed with ARRA monies using the most up-to-date, energy and water efficient technologies. Providing Green Reserve monies for these improvements will allow EFC to work with its clients and improve project plans to include items that otherwise may have been viewed as “experimental” or simply too costly to consider under a 100% loan scenario. We will use \$51.5 million of our Green Reserve as additional principal forgiveness in an effort to update and improve treatment and collection facilities receiving ARRA monies via our traditional funding categories.

EFC has opted to obligate the remaining \$35 million in Green Reserve monies to a new, Green Innovations Grant Program (GIGP). On April 13th, Governor Paterson announced a call for projects for this new program and we expect tremendous demand for these resources from communities, not-for-profits, school districts and potentially private businesses. The GIGP will provide 90% grant funding to non-traditional SRF projects that accomplish the objectives of the Clean Water Act. Eligible projects may include the deployment of low-impact development strategies including the use of “green infrastructure,” green roofs, urban forestry, energy efficiency measures at wastewater treatment facilities and water conservation strategies.

We believe that this combined effort will ensure that our clients build or upgrade their wastewater treatment facilities using state-of-the-art technologies while also deploying non-traditional stormwater control and water conservation measures. I would like to note that although there is a waiver provision for the use of Green Reserve funds in ARRA, New York is confident that we will use the full 20% for qualified green innovations projects and we do not intend to seek a waiver from EPA for an alternative use of these monies.

Of the remaining ARRA monies, EFC has opted to use only 2.75% of the capitalization grant for administrative purposes rather than the statutorily permissible 4%, leaving \$385 million in funding for conventional wastewater treatment and collection projects.

Due to the significant demand for CWSRF funding prior to the enactment of ARRA, EFC opted not to open the 2009 Intended Use Plan to unlisted projects. While this was a difficult decision to make, and not one that was taken lightly by staff, or our Board of Directors, we felt it was important to dedicate our efforts to identifying and working with previously listed, ready-to-go projects. I would like to assure the members of this committee, however, that we will work with every community seeking financial assistance to determine their projects eligibility for SRF funding and we will list those projects on the 2010 IUP for future funding opportunities.

With regard to the additional subsidization authorized in ARRA, EFC opted to provide eligible projects with 50% principal forgiveness and 50% loan financing. We wholeheartedly welcome the return of federal grant funding for clean water projects and encourage Congress to continue some level of grant funding for the CWSRF beyond ARRA, as you have done in the recently passed House Reauthorization bill.

In an effort to stretch our ARRA grant as far as possible, we intend to combine ARRA monies with conventional SRF monies in order to provide this benefit to as many eligible projects as possible, while maintaining our 50% grant/50% loan policy. For example, a community that qualifies for ARRA funding and has a \$10 million project will receive \$5 million in principal forgiveness and \$5 million in low-cost, SRF financing. As discussed earlier in my testimony, communities may increase their grant funding by including energy efficiency measures and other

green innovations. For instance, our \$10 million project may now include an additional \$750,000 in energy efficiency improvements and \$250,000 for the construction of a green roof. This \$1 million increase in project costs will be fully funded using our Green Reserve allocation thus providing our client with \$6 million in total principal forgiveness and \$5 million in low-cost financing.

As directed by the Committee report on ARRA, EFC has increased benefits for communities deemed to fall into our hardship category. EFC has a long-standing approach to determining hardship status using a combination of median-household income, project costs as well as operation and maintenance costs, and a per household target service charge. Communities deemed to meet our objective hardship criteria qualify for enhanced programmatic benefits through our traditional program and for ARRA funding.

Qualified hardship communities currently receive increased interest subsidy as low as zero percent in order to help make projects more affordable for the end user. We intend to provide our hardship clients with increased loan subsidization up to 80% principal forgiveness. In the event that a project achieves affordability using zero percent financing, we will still provide the community with no less than 50% principal forgiveness.

I would like to provide the Committee with one example of how the additional financial assistance provided by ARRA is certain to help rural communities throughout the country. In upstate New York, EFC has been working for several years with a municipal client that is under a consent order with our environmental regulators to upgrade their wastewater treatment facility, which will cost the community \$7 million. The community is also under order from the Department of Health to build a new water treatment and delivery system at a cost of an additional \$3 million. This is not atypical, but shockingly this \$10 million price tag is for two systems that serve only 100 households. Absent the grant funding now authorized by ARRA, the sewer rate alone would be \$1,453 per household annually. In providing ARRA funded principal forgiveness, we are able to reduce this cost by 43% to \$827 per year.

As stated earlier, we are moving quickly to create and retain the jobs necessary to make these important environmental projects a reality. On April 14th, EFC's Board of Directors approved ten ARRA-eligible projects requiring \$170 million in financial assistance. These projects represent our first phase of project funding. When complete, these projects will help to remove nitrogen from Long Island Sound, protect the Ramapo River watershed in New York and New Jersey, improve the social and economic viability of two rural communities in upstate New York and promote the use of green infrastructure to mitigate storm water runoff in the City of Syracuse.

Our Board of Directors will meet again on May 14th and June 30th to approve additional ARRA-eligible projects. We expect to obligate our entire ARRA grant no later than July and we are asking that all ARRA funded clients award all of their construction contracts no later than January 1, 2010, rather than February 16, 2010, as authorized by ARRA. This requirement will help us to ensure that approved projects receive the technical assistance and staff support they need to comply with the various requirements of the traditional CWSRF program and ARRA.

In an effort to aide our clients with ARRA reporting requirements we are exploring the option of procuring consulting services to ensure that our clients are reporting appropriate and necessary information in a timely manner and complying with the Act's Disadvantaged Business Enterprise (DBE), wage and Buy American provisions. We feel that this is a very worthwhile investment on our part to ensure compliance and continued transparency of how SRF clients utilize ARRA monies.

While there are many challenges to implementing ARRA, our greatest challenge to date is without a doubt the Act's Buy American provision. We fully support Congress' effort to ensure that ARRA monies benefit American manufacturers and companies, but we remain gravely concerned about potential project cost increases, unavailability of materials, and the inability to use innovative technologies not produced in the United States.

In the water and wastewater world in particular, many technological improvements that we are encouraging through ARRA's Green Reserve have been tested and are produced in foreign nations. In working to implement ARRA, it has become apparent to SRF administrators throughout the nation that there is an inherent conflict in the Act's Buy American provision and the Green Reserve incentive. While we would prefer to have these monies invested domestically, the reality is that many technological innovations require foreign made systems and materials.

We await further guidance from the Commerce Department and EPA on the details of this provision, but we ask that the Committee and our partners in the Obama Administration work to provide as-soon-as possible, a clear and uniform administrative approach to implementation of Buy American. We also ask that Congress grant the EPA Administrator broad discretion to waive Buy American when implementing the Act's Green Reserve requirement and doing so is in the best interest of achieving ARRA's overarching goal of creating immediate jobs.

CWSRF Reauthorization

ARRA represents the single largest investment in the history of the Clean Water SRF program. In our view, we believe ARRA also represents the beginning of a new generation of water finance in our nation. The Construction Grants Program of the 1970s was tremendously

successful in restoring the natural health of our nation's waterways but many would argue inefficient. The SRF programs have proven to be extremely efficient in utilizing state and federal resources in a cost effective manner free from the waste, fraud and the sometimes abuses of large grant programs, but many communities simply cannot afford 100% project financing, even at a subsidized interest rate. ARRA is truly a hybrid approach, taking the best of both programs and expanding the purview of the SRFs to provide some grant funding while also promoting the use of energy efficient, water efficient and other green innovations at our nation's wastewater treatment facilities.

On behalf of Governor Paterson, I would like to again express our gratitude for the leadership shown by Chairman Oberstar and this committee in recently advancing the Water Quality Investment Act of 2009 (HR 1262) in the House. We look forward to continuing to work with you and your colleagues in the Senate to ensure enactment of this important legislation.

Clearly, the members of this Committee, and many of your colleagues in Congress recognize the need to continue the state/federal partnership that supports the construction and maintenance of our nation's aging water infrastructure. Simply put, many communities cannot afford to go it alone and simply transfer the full cost of these costly projects to ratepayers. We do believe that communities should charge appropriate, affordable rates in order to sustain their water infrastructure. Charging appropriate rates, however, does not imply that every community must charge the full cost of its capital projects to its ratepayers. Instead, we support an approach similar to our ARRA hardship program, where communities borrow what they can afford, using objective, predetermined criteria and receive principal forgiveness, or other enhanced subsidization for the balance of project costs. We believe that this approach will ensure that communities are treated equitably and that grant funds will be used sparingly and in the most needed and efficient circumstances.

Governor Paterson is also committed to and embraces the philosophy that communities seeking financial assistance to construct water infrastructure should develop and implement asset management plans that guide the maintenance and operations of these facilities. At the Governor's direction, we are exploring the option of asking municipalities to adopt and implement comprehensive asset management plans for their publicly owned treatment works. Properly designed management plans help to reduce operations and maintenance costs and will help to ensure the longevity of the capital infrastructure we help to finance well beyond its useful life.

We agree with the sentiment that we should not, nor as a nation can we afford to, face a water infrastructure funding crises every thirty years as our first, and now second, generation of treatment facilities begin to age out. We have come too far since the 1972 amendments to the

Clean Water Act and we simply cannot afford to lose the ground we have gained by under investing in our nation's water infrastructure.

Conclusion

This is truly an historic time in the world of water finance and I would like to once again thank you Mr. Chairman, and the Committee for your long-standing and continued support of the SRF programs. SRF administrators throughout the nation have worked tirelessly to earn the respect and trust of Congress and I am confident that we will maintain that trust and respect throughout the administration of the ARRA program and beyond.

I would also like to express our gratitude to our partners at the Council of Infrastructure Financing Authorities (CIFA) and the Association of State and Interstate Water Pollution Control Administrators (ASWIPCA) for their tremendous efforts in coordinating and organizing state responses to Committee requests for information. Throughout the stimulus debate, both organizations played a significant role in ensuring that we provided you and your staff with timely and accurate information from the states and that the states were aware of how we could assist in your efforts to include this vital program in the final ARRA legislation.

While we still have much work to do, I believe that most, if not all states, are off to a great start and I look forward to submitting further reports to the Committee on our continued success as we make further progress on implementing the ARRA program.