



# Department of Environmental Protection Fiscal Year 2021 Revised Budget Proposal Response to Office of Legislative Services

September 22, 2020

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1. The revised FY 2021 budget proposes a \$60 million appropriation for Clean Water and Drinking Water programs. How does the department intend to allocate this funding? Will it become a part of the I-Bank process, or will a separate process for project prioritization be used? Is there a homeowner assistance component under consideration replace their lead service lines?

**RESPONSE:**

Consistent with prior years, this \$60 million is appropriated to DEP and made available to prospective borrowers through the Water Bank financing program, which is a partnership between DEP and the I-Bank. DEP's partnership with the I-Bank, which has access to the private market, allows the Water Bank to package DEP's low-interest loans and principal forgiveness offerings with market-rate loans to achieve a blended rate unavailable from the private market alone.

Each federal fiscal year, DEP issues an [Intended Use Plan \(IUP\)](#) for the Drinking Water State Revolving Fund outlining the funding and policy priorities, as well as ranking criteria to be applied to applications. There is a singular Water Bank application process through the online portal system H2OLOans—the State's sole entry point for application submissions and tracking, and an evaluation tool for the financing of drinking water and clean water infrastructure. The Water Bank offers funding for lead service line replacements only if the entire lead service line is replaced, regardless of ownership. Consistent with prior issued IUPs, principal forgiveness may be utilized by eligible water systems to offset their costs for the replacement of the homeowner-owned portion of the lead service lines.

2. Last year, the department included in its Drinking Water State Revolving Fund (DWSRF) Intended Use Plan \$30 million to provide up to 90 percent principal forgiveness for lead service line replacements for eligible water systems through the IBank. How much of this total has the department allocated? Please provide a list of projects and the amount that the department has allocated for each loan.

**RESPONSE:**

For clarification, the \$30 million referenced here is the allocated annual capitalization grant that DEP receives from USEPA for the state's DWSRF. DEP provides this financing through the Water Bank financing program, which includes principal forgiveness to eligible borrowers as explained above. DEP has allocated \$27 million in principal forgiveness to date to eligible water systems through the New Jersey Water Bank. This includes \$18 million in principal forgiveness to Newark for their \$12.3 million phase 1 lead service line replacement program and \$13.5 million for their phase 2 project, as well as \$9 million in principal forgiveness to Trenton for their \$15 million phase 1 project.

3. Please evaluate the progress made on the plan to replace all lead service lines within 10 years. What are the department’s current estimates of the cost to complete the plan for is government-owned and privately-owned public water systems, respectively?

**RESPONSE:**

In October 2019, Governor Murphy presented a comprehensive statewide plan to address lead exposure in New Jersey. Governor Murphy’s plan recognizes that while modernizing our aging water infrastructure is a critical piece in ensuring access to clean, safe drinking water, we must also work creatively and collaboratively to prevent lead exposure from lead-based paint in homes and contaminated soil in our communities. One component of the seven-point plan is the goal of replacing all lead service lines in New Jersey within ten (10) years. Achieving this important goal requires statutory and regulatory change, as well as financing. DEP is already at work in developing a new statewide lead rule for drinking water systems to help further this goal, which it seeks to propose in FY21. DEP is also affirmatively using its existing legal authority and available financing (described in Q1-2, above) to direct and support water systems in replacing lead service lines as quickly as possible.

By way of background, there is currently no legal requirement to replace all lead service lines within 10 years. The Department uses its legal authority under the Safe Drinking Water Act and the federal Lead and Copper Rule to require water systems to replace lead service lines after they have a lead action level exceedance following the installation of corrosion control treatment. The existing federal regulatory requirement, however, is based on a 15-year replacement schedule and allows a water system to cease replacements once it has two (6-month) monitoring periods below the lead action level.

Under current rules, only five (5) water systems in New Jersey are *required to replace a portion* of their lead service lines: Newark Water Dept., Belleville Water Dept., Bloomfield Water Dept., Trenton Water Works (TWW), and Suez Lambertville. With the exception of Trenton, these water systems are required to replace 7% of their LSLs annually until they have two consecutive 6 months monitoring periods below the action level. TWW is no longer required to replace pursuant to an annual percentage as they have not had a recent exceedance. However, Trenton is still required to replace 14% of its lead service lines based on previous exceedances of the federal lead action level. The progress is as follows:

At this time, only water systems that have voluntarily committed to proactively replacing all lead

	Initial LSL Inventory	% Requirement	# LSLR Required	# Replaced to Date
Newark	23,548	21%	4,953	14,629
Bloomfield	9,812	7%	687	88
Belleville	5,505	7%	385	0
Trenton Water Works	57,222	14%	8,011	1515
SUEZ Lambertville	~ 154	7%	11	0

service lines within a 10-year timeframe, *e.g.* Newark Water, are doing so. The EPA has proposed some amendments to strengthen the federal Lead and Copper Rule, but it does not appear at this time that these changes will accelerate the requirement for replacement of lead service lines. DEP is evaluating regulatory options for issuing more affirmative lead service line replacement requirements in a state-specific New Jersey Lead and Copper Rule.

To replace all lead service lines, DEP currently estimates that \$1.2B is needed for publicly owned water systems and \$4 million for privately owned public water systems, based on the numbers of known lead service lines. It is important to note, however, that public water systems continue to identify previously unknown lead service lines in their water systems, which will increase these estimates. DEP estimates the complete replacement plan would cost between \$2.1B and \$3.2B once all unknown lead service lines are identified.

**4. The Legislature recently revised the formula for allocating constitutionally dedicated tax revenues from the Preserve New Jersey fund. Does the department believe that the revisions better meet the needs of the State for recreation and conservation, farmland preservation and historic preservation? Are there specific changes to the new funding allocations the Legislature consider?**

**RESPONSE:**

Yes, the recent revisions balancing acquisition, development, and stewardship afford the DEP opportunity to better address capital backlog, address safety issues, and increase visitor experience while furthering the ability to meet the needs for recreation, conservation, and preservation.

**5. The entire FY 2020 appropriation of \$4 million for Grants for Urban parks was de-appropriated to close the budget deficit. The FY 2021 revised budget provides \$2.5 million for this purpose. Please describe what public and/or private entities will be eligible for funding, how they will be selected and the terms and conditions of receiving funds. Why is the Green Acres Program an inappropriate source of funds for any grants this appropriation would fund, and why should the Preserve New Jersey Green Acres Fund be supplemented when there are unappropriated balances in that fund?**

**RESPONSE:**

DEP has not yet developed criteria for the FY21 Grants for Urban Parks appropriation. Administration of previous grants, however, appears to be different than what Green Acres' rules allow. For example, Green Acres distributes funding after a statewide application round, whereas, previously, \$1 million of the *Grants for Urban Parks* fund was specifically allocated to Paterson's Hinchliffe Stadium by legislation (P.L. 2019, c. 441). Additionally, the allocation to Paterson was in the form of a 100% grant, whereas Green Acres provides a maximum of 75% matching grants.

Regarding the unappropriated balances in the Preserve New Jersey fund, DEP will hold its next Green Acres local application funding round in early 2021. DEP expects to approve and request appropriation of all available balances because demand for Green Acres funding always far exceeds available funding.

**5. In a November 2019 press release, the department announced the availability of \$13.5 million in funding for local communities and other initiatives to prevent future harmful algal blooms (HABs). The press release indicated that there were three components to this funding: \$10 million dollars in principle loan forgiveness from the Clean Water State Revolving Fund for sewer and storm water upgrades, \$1 million in grants for projects that reduce nonpoint source pollution, and \$2.5 million in matching grants for lake and HAB prevention and management projects. Regarding the \$2.5 million in matching grants, the department has issued a request for proposals for the implementation of projects to manage HABs through prevention and mitigation. The department has also issued a request for proposals for the \$1 million in grants for projects that reduce nonpoint source pollution. \$2 million for**

**a grant program to assist with HAB screening equipment and remedies, proposed in the original FY 2021 budget, is not present in the revised budget. Absent this funding, how will the department assist with HAB screening equipment and remedies?**

**RESPONSE:**

With respect to DEP's ability to assist with HAB screening equipment and remedies, DEP has worked with the United States Environmental Protection Agency (EPA) equipment loan program to acquire nine fluorescence meters, which will be distributed to partners. The DEP has also developed HAB monitoring training for health departments, partner agencies, and community monitoring groups. The fluorescence meters are to be used to screen for HABs and phycocyanin reading can be correlated to estimated cell counts. This important screening tool allows DEP to understand relative change in a HAB (*i.e.*, whether it is trending better or worse). DEP will also use FY21 funding not required for annual staff and operating expenses to procure additional fluorescence meters for distribution to partners, 10 additional real-time continuous monitoring buoys for lake deployment, as well as a hyperspectral sensor to be mounted on a drone for HAB lake surveillance.

DEP has also entered a contract with the New Jersey Sea Grant Consortium to recruit and coordinate a team of lakes management and cyanobacterial HAB experts. The expert team's primary objective is to provide guidance to DEP on HAB prevention, mitigation and management for New Jersey lakes and other waterbodies. One deliverable intended to assist our local partners will be a toolkit that will include best management practices for the prevention and management of HABs to be used by New Jersey lake managers. The team will also provide technical advice, review the progress of DEP funded HAB mitigation grant projects, and develop a HAB lake management training program, including conducting a minimum of three (3) one-day training workshops at various locations in the state.

DEP will also look to utilize federal pass-through grants to fund additional HAB-related projects in FY21 where possible.

**6. New Jersey resumed participating in the Regional Greenhouse Gas Initiative (RGGI) again this year. How much revenue has been received from the RGGI auction this year, and how will that revenue used?**

New Jersey anticipates receiving \$67M in RGGI funds in 2020 and has plans to fund projects that, in dual fashion, support economic development and environmental improvements—particularly in and around our most vulnerable communities). These projects can be readily implemented from an existing applications process for over \$200M in new investment in green and innovative technologies that improve air quality, hasten the transition to a clean energy economy, and drive job growth. In addition, EDA anticipates an announcement in November of a pilot program to stimulate the medium and heavy duty electric vehicle industry in New Jersey. This will be followed by a several other programs to be launched early in Q1 2021.

By way of background, the RGGI auction process corresponds to the calendar year. New Jersey's Q1-3 auction proceeds were approximately \$67M and the Q4 auction will be held in December. New Jersey anticipated receiving a total of \$85+ million. New Jersey has set forth its investment intentions in the RGGI Strategic Funding Plan (see <https://www.nj.gov/rggi/docs/rggi-strategic-funding-plan.pdf>). Projects that accelerate the electrification of transportation assets will receive the most significant

share of the proceeds, followed by those that drive improved energy efficiency and renewable energy uses in the industrial, commercial, and institutional sectors. The final focus will be on projects to enhance the State's natural resources (e.g., forests, marshes), to ensure their continued role in sequestering carbon. These initiatives represent a roadmap for uniting economic growth and environmental improvement by reducing greenhouse gas emissions, improving health outcomes, creating jobs, and accelerating New Jersey's economic recovery from the impacts of COVID-19. While improving air quality and reducing the public health and economic risks from climate change, these investments in the State's clean energy economy will strengthen businesses and spark high-quality job growth.

**7. Last year the Department of Environmental Protection announced that it would establish a new Office of Climate Resilience. What amount of funding was allocated to and expended by the office in FY 2020, ending June 30? What amount is provided for the July 2020-June 2021 operating year as a result of the FY 2021 revised budget proposal? What is the office's staffing level?**

On October 29, 2019, Governor Murphy signed Executive Order No. 89 establishing the Climate and Flood Resilience Program within DEP and appointing Dave Rosenblatt as the State's Chief Resilience Officer and DEP Assistant Commissioner of Climate and Flood Resilience (CFR). CFR is committed to promoting the resilience of New Jersey's communities from the current and anticipated future impacts of climate change. CFR consists of the following organizational areas: the Division of Coastal Engineering, the Division of Dam Safety and Flood Engineering, and the Division of Program Operations, which includes the Bureau of Climate Resilience Design Engineering and the Bureau of Climate Resilience Planning.

CFR was funded through multiple sources in FY20 including general state fund appropriations, capital funds, federal funds, and bond funds. The FY21 revised budget proposal has CFR's estimated funded levels flat to FY20 for all Divisions.

The Bureau of Climate Resilience Planning (BCRP) represents the newest unit within CFR and constitutes the Office of Climate Resilience that was announced last year, and was assembled by means of reorganization of then-existing DEP resources and personnel, and not through any new appropriation or increase in funded FTEs. BCRP provides planning and technical support to New Jersey's communities to help them make informed decisions about climate resilience and is responsible for coordinating DEP policies, programs, and activities to plan for the impacts and associated hazards of climate change and promote awareness of climate change science. BCRP has an approved FTE level of 12 in FY20 and FY21.

In FY20 and FY21, BCRP staffing and operations is funded through a general state fund appropriation, Corporate Business Tax allocation, federal Coastal Zone Management grant funding, and other sources of federal funding. The amount allocated, in FY20 and FY21, to cover BCRP's 12 FTE and operating needs is \$1.2M. This allocated funding was fully committed in FY20 and the full amount is expected to be committed in FY21. Additional federal grant funding will be committed as awarded and available to achieve BCRP's goals.

8. The FY 2021 revised budget proposes to offset State parks management and operations with a transfer of \$12 million from the State Recycling Trust Fund and \$10 million from the Clean Communities Trust Fund. These transfers are considered non-recurring spending offsets. How will the transfer of these funds affect local recycling and clean-up programs? Why is this proposal considered non-recurring?

To reduce demand on the general fund and maintain an existing level of state parks operations that benefit communities throughout New Jersey, it is necessary to temporarily reduce recycling grants and clean communities litter cleanup grants to local governments by fifty percent. DEP appreciates that this may pose a challenge to our partners in local government who utilize these funds to (1) subsidize recycling collection; (2) pay local recycling coordinator and solid waste planning salaries; (3) pay overtime for DPW employees to run recycling/waste disposal days on weekends; (4) fund litter collection and anti-litter campaigns; and (5) purchase equipment. During this interim time of reduced grants, DEP advises and expects that our local partners will defer capital expenditures or reduce the number of community-wide paper shredding days or hazardous waste collection days, rather than eliminate programs or reduce staff numbers or salaries. This is proposed as a non-recurring offset due to the urgent immediate needs for parks resulting from the COVID-19 pandemic, and the continuing long-term need to support community recycling.

9. Both the original and the revised FY 2021 budgets recommend \$6 million, a first-time appropriation, for an Economic Development and Infrastructure Improvement Revolving Fund. There is no language setting terms or conditions on the appropriation, and no explanation of the goals or details of the funding. Please explain the purpose of this appropriation. What processes will govern allocation of resources from this revolving fund? Are any non-state funds to be added to the revolving fund?

The \$6M Economic Development Program appropriation is intended to fund an infrastructure investment program through the Infrastructure Bank (I-Bank), not DEP. The appropriation appears in the DEP budget given the historical relationship between DEP and I-Bank, which has since been organizationally separated from DEP, becoming an entity in, but not of, the Department of the Treasury.

10. Voters approved a constitutional amendment in November 2017 dedicating all State revenue annually derived from what are commonly referred to as natural resource damage settlements. Please list the specific natural resource damage (NRD) and natural resource recovery costs (NRR) settlements or actions that resulted in revenue received in FY 2019 and FY 2020 as of September 1, 2020, and that are expected to result in revenue by the close of FY 2021, including the location of the environmental or natural resource damage that led to the action. Please also list other pending proceedings that could result in receipt of this type of revenue.

Natural resource damage settlements or actions that resulted in revenue received in FY19 and FY20 as of September 1, 2020 include:

Case	County and Municipality	Defendants	FY	Recovery
MTBE, BP	Statewide groundwater contamination	BP	FY19	\$22,729,306



MTBE - Lyondell	Statewide groundwater contamination	Lyondell	FY19	\$24,548
MTBE, Lukoil	Statewide groundwater contamination	Lukoil	FY20	\$17,600,000

Natural resource damage settlements or actions that that are expected to result in revenue by the close of FY21 include:

Case	County and Municipality	Defendants	Status	Anticipated FY21 Recovery
Total Petrochemicals USE	Statewide groundwater contamination	Atlantic Richfield Co. (MTBE)	Public comment period closed - awaiting execution	\$1,500,000
Sayreville Landfill/Carbide Graphite	Middlesex County, Sayreville	Carbide Graphite Group/Linde LLC	Public Comment period closed - Awaiting execution	\$32,989
Wyeth/American Cyanamid	Somerset County, Bridgewater Township	Wyeth Holding, LLC	Settled - Awaiting payment and land purchase	\$1,455,608
Getty Properties	Statewide groundwater contamination	Atlantic Richfield Co. (MTBE)	Posted for public comment	\$13,500,000
HP Delta Site No.08-CIV-00312	Middlesex County, Woodbridge Township	Atlantic Richfield Co. (MTBE)	Posted for public comment	\$1,350,000

11. Please identify any program, service or activity suspended or discontinued upon the issuance of Executive Order 103 declaration of the public health emergency declaration, the current status of the program, service or activity, and status for FY 21. What number of persons, households, business entities or government entities were, are or will be affected? Please identify any specific permitting or licensing activities for which backlog of pending items developed or worsened since the emergency declaration, and the department's plans to resolve such backlogs.

At the outset of the pandemic, DEP temporarily suspended some non-essential functions pursuant to the Department's Continuity of Operations/Continuity of Government (COOP/COG) plan, while the majority of Departmental operations were transitioned to a virtual (work-from-home) format. Departmental functions necessary for the immediate protection of public health were not suspended, and the Department has since resumed most field work with plans for full resumption of field work now being implemented. Additional details specific to certain program areas are below:

## Office of Records Access

As the DEP workforce transitioned to a remote work environment, the processing of requests submitted under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq (OPRA) was severely impacted. While DEP was able to maintain a minimal level of service through the production of electronic-only records, staff was unable to access onsite and archived government records, review records for responsiveness and privilege/confidentiality concerns, host onsite record inspections, and copy responsive records. This led to approximately 1,700 partial responses and unfulfilled requests. At present, with the return of some staff onsite and the designation of this service as essential, DEP has significantly reduced this backlog to approximately 150 requests and continues to prioritize responses to requests that are critical to public health and economic recovery. As access to DEP's records is often required to complete real estate transactions, redevelopment, remediation, disruption in this area affects numerous business and individuals. On average DEP receives over 1500 OPRA requests per month and more than all other agencies combined on a yearly basis.

## Site Remediation & Waste Management

Generally, Site Remediation and Waste Management Program activities that could not be conducted remotely were temporarily suspended or delayed until safety plans or other protocols were developed, such as: inspections of permitted facilities, field sampling and investigations, court proceedings associated with enforcement, examinations and continuing education requirements for Licensed Site Remediation Professionals. As deadlines were extended for several activities and deadlines (e.g., submissions of remedial reports), a review backlog for reports and documents is expected to occur, but the magnitude of the backlog is unclear at this time.

## Compliance & Enforcement

### **Licensing and Registrations**

- 800 scheduled pesticide applicator exams needed were cancelled and an additional 350 exams could not be scheduled. Exams are expected to resume in Sept-Oct 2020 through a new arrangement with Rutgers University to proctor exams including online proctoring (at no new costs to the state).
- 400 Water Licensed Operator exams were cancelled, and an additional 800 exams could not be scheduled. Exams are expected to resume through a third-party contractor in October 2020 (at no new costs to the state). Ongoing demand for licensure faces several months delay in application approval and review of denial appeals through the independent Board of Examiners whose collective review of paper submissions is not as efficient remotely. Alternative paths to licensure are under review, such as approving third party certifications using national standards.
- *Delayed Billing for Registration Fees.* A diverse set of billing (hazardous and medical waste related), totaling \$5 million across 40,000 customers (generators, transporters and facilities) was already delayed up to 12 months for differing technical reasons, (mostly major changes in data ownership and architecture) and is further delayed (up to 6 months more) since and



due to the emergency. \$2M has been billed from June-August 2020 and the remaining \$3M is expected to be billed from September through about December 2020.

**Water and Land Use Enforcement.** Most field operations were suspended in the earlier months of the pandemic, as resources were focused on emergent field operations. As a result, the division was unable to perform approximately 700 Water Quality inspections, 325 Water Supply inspections and over 200 Incident investigations. Non-critical Water Quality compliance sampling was suspended for the last three months of the fiscal year. In response to the backlog that was created, the Division has performed over 300 Virtual Inspections utilizing technology and remote video. The backlogged inspections and investigations are being prioritized based upon environmental impacts and potential impacts to public health. Additionally, the bulk of the inspections that EPA was scheduled to perform on behalf of NJDEP this past fiscal year were not performed. DEP and EPA are re-visiting the priority for these inspections for the coming fiscal year.

#### Water Resources Management

**Water Bank (financing program).** Field verification activities for 268 active construction projects were temporarily suspended following issuance of EO 103. During this period, DEP staff have been monitoring progress and compliance through remote attendance at monthly progress meetings, review of status reports, project documentation, and progress photos provided via email by the project sponsors and consulting engineers. DEP is also relying on certifications provided by the vendors, project sponsors, and consulting engineers that billed construction costs are proper and allowable. DEP expects to resume inspection activities on all work completed since the last on-site inspection before the end of September to ensure compliance with program requirements and approved payment requisitions. These activities will be incorporated into DEP's regular quarterly inspections and, as such, we expect to work through the on-site inspection backlog within 3 months.

**Well Driller, Pump Installer, and Water System Operator Licensing.** Testing processes under contract to an independent nationwide testing center organization were disrupted due to the closure of all centers in New Jersey. One center in Jersey City was able to open in early summer in accordance with operational conditions required by the State of New Jersey. As of September 8, 2020, all testing centers are currently operating with limited capacity dependent on each center's ability to comply with State requirements. DEP does not itself resolve backlogs, as this would be up to individual test-takers.

**Marine Water Monitoring Programs.** With the exception of summer beach monitoring, all non-critical sample collection and laboratory analysis for the National Shellfish Sanitation Program, Ambient Nutrient Monitoring Program, Coastal Lakes Network, Barnegat Bay Long term Monitoring Program, the vibrio monitoring program, the National Coastal Condition Assessment, and the deployment of the continuous water quality monitoring buoys were suspended through the early summer, but all programs were restored and are currently active, with some being limited due to time constraints. The Interstate Shellfish Sanitation Commission worked with the Food & Drug Administration to adapt protocols that relate to commercial shellfish harvest, including aquaculture, and interstate sale of shellfish. This program protects public health by assuring shellfish are harvested from clean waters and supports the \$1.2 billion commercial shellfish industry.

**Water Quality Monitoring in Freshwaters.** All routine monitoring networks were suspended between March and August 2020. This resulted in a 75% decrease in samples collected for routine monitoring as compared to the same period in 2019. Most routine networks will experience a gap or delay in data due to this suspension in FY20. Networks which can be monitored using individual sample collectors will resume as normal in FY21. The Ambient Macroinvertebrate Network will resume but with delays as this is usually sampled in a two-person team. The Fish Index of Biotic Integrity Network (FIBI) requires teams of 2-7 staff. This network will be significantly delayed or suspended until social distancing guidelines are relaxed. Data collection from these networks serves to meet federal Clean Water Act state monitoring and water quality information requirements, grant commitments, and support the Integrated Water Monitoring and Assessment Report.

#### Natural & Historic Resources

**Green Acres.** Field inspections of Green Acres encumbered land were temporarily suspended during the beginning of the emergency declaration, delaying efforts to resolve an existing inspections backlog.

**Historic Preservation.** Consultants from private consulting companies have not been able to access our cultural resource reference library to do background research responsive to federal and state permitting requirements. The Historic Preservation Office is considering options for making some of this collection available to consultants digitally, but no timeline is yet available.