

# **Policy on Administration of the Equitable Access to Drinking Water Fund**

## **I. Authority**

The Commonwealth of Virginia’s 2022-2024 Biennial Budget that became effective on July 1, 2022 (Chapter 2 of the 2022 Special Session I Acts of Assembly), included an appropriation of \$1 million each in fiscal years 2023 and 2024 for the Virginia Department of Health to establish a fund to provide support for small community waterworks. This fund will help the Virginia Department of Health Office of Drinking Water consolidate small waterworks to reduce health violations, improve economies of scale, and address resilience and reliability at small and disadvantaged systems.

## **II. Definitions**

“Consolidating waterworks” means a small and/or disadvantaged waterworks, the owner of which is either voluntarily or involuntarily having its waterworks operation permit invalidated and consolidating its waterworks, or proposing to consolidate its waterworks, with the receiving waterworks.

“Fund” means the Equitable Access to Drinking Water Fund, which was established in the Commonwealth of Virginia’s 2022-2024 Biennial Budget.

“ODW” means the Virginia Department of Health Office of Drinking Water.

“Policy” means this Policy on Administration of the Equitable Access to Drinking Water Fund.

“Receiving waterworks” means the waterworks that is receiving, or proposes to receive, the assets and customer base of the poorly performing waterworks that will serve as the consolidating waterworks.

“Regulations” means the Waterworks Regulations (12 VAC 5-590).

“TMF capacity” is the technical, managerial, and financial capabilities to operate and maintain a waterworks so that the waterworks complies with all legal requirements.

“Federal Crosscutters” are the requirements of federal laws and Executive Orders that apply in the case of federally funded projects.

### **III. Application**

This Policy applies to any and all uses of the Fund. This Policy does not supersede federal, state, or local law, and does not supersede any other Virginia Department of Health financial policy.

### **IV. Purpose**

The purpose of the Fund is to provide support for small community waterworks. The Fund is to help ODW consolidate small waterworks to reduce health violations, improve economies of scale, and address resilience and reliability at small and disadvantaged systems.

ODW will manage and utilize the Fund for the sole purpose of benefitting waterworks that are consolidating with or receiving small community waterworks that are recalcitrant, poorly performing, or whose customers would otherwise benefit from consolidation of the small community waterworks that serves them.

This Policy shall apply to all requests to access the Fund, and ODW permits no other uses of the Fund.

### **V. Procedures**

ODW will approve an application for access to the Fund for waterworks owners actively engaged with ODW on a consolidation project as long as the applicant is eligible to receive funding and funding is available.

The owner of a receiving waterworks may receive funds when it is willing to take over the consolidating waterworks. In order to qualify as a “consolidating waterworks,” the waterworks must be recalcitrant or not have sufficient TMF capacity. A receiving waterworks owner that receives proceeds from the Fund must use such Fund proceeds for operation and maintenance needs of the consolidating waterworks. The Fund is not for capital improvements nor for equipment replacement.

#### **1. The Fund**

Expenditures have to be for the sole purpose for which the Fund was established and must be approved by ODW.

Requirements to use the Fund do not include Federal Crosscutters, such as American Iron and Steel (AIS), Build America Buy America (BABA), Davis-Bacon, and National Environmental Policy Act (NEPA).

#### **2. Uses**

The Fund shall be used only to cover operation and maintenance costs incurred by the receiving waterworks’ owner due to consolidation of the consolidating waterworks, and for

ODW's administration of the Fund. An ODW review panel (Review Panel) will determine the eligibility of the general project scope submitted in the application.

In general, the following operation and maintenance costs incurred by the receiving waterworks' owner due to consolidation of the consolidating waterworks are eligible for reimbursement from the Fund:

- Salary of designated waterworks operator who holds a license at the appropriate level for the receiving waterworks, related to the consolidation;
- Required compliance sampling;
- Typical cleaning or replacement of materials such as filter media;
- Replacement of non-mechanical assets under \$1,000 (e.g., chemicals, supplies, gauges, meters, small parts);
- Repair of waterline by clamping or similar method;
- Replacement of sections of waterline not more than 25 linear feet in length;
- Repairs of equipment such as motor re-windings, pump gasket replacements, or similar;
- Replacement of water meters (installation costs only); and
- Painting that is not associated with rehabilitated or new equipment.

By contrast, ineligible costs include, but are not limited to, equipment purchases, waterline replacements greater than 25 linear feet, and work effort requiring large construction equipment (e.g., pulling large pumps, excavation in excess of 25 linear feet, electrical or wiring work requiring boom trucks or similar). Receiving waterworks owners can request funding of these costs through a construction loan or grant award, and may refer to the requirements for a Drinking Water State Revolving Fund loan or other construction fund programs for more information.

### 3. Eligibility

Any owner of a waterworks located in Virginia can apply to access the Fund pursuant to this Policy. Owners of waterworks located outside of Virginia can apply to access the Fund pursuant to this Policy if the waterworks owner seeks to consolidate with a waterworks that serves Virginia residents. Waterworks owners in active participation with ODW on a consolidation initiative can submit an application to the Fund for consideration. The appropriate ODW Field Office will provide the Review Panel with a recommendation on the waterworks owner's, and their agents', ability to operate the additional waterworks. The Fund shall be limited in eligibility to these entities acting as the owner of the receiving waterworks. Any person or entity can own or operate the consolidating waterworks as codified in the Regulations.

### 4. Application

The receiving waterworks owner must complete the online application and attach all the required documentation to allow ODW to consider the receiving waterworks' project for reimbursement from the Fund. Waterworks can find guidance and applications on the ODW website: <https://www.vdh.virginia.gov/drinking-water/fcap/drinking-water-funding-program/>.

Prior to application, notwithstanding any other funding, which must comply with any other utilized funding agency's requirements, all applicants to the Fund shall comply with the following:

a. Commitments to Consolidate

A commitment to consolidate must be in writing, whether it is a resolution by a board that oversees the receiving waterworks, or another mechanism authorized by the owner of the receiving waterworks. It is not necessary for the owner of the receiving waterworks to provide a single document with the consolidating waterworks owner's signature. The receiving waterworks owner must agree to serve the consolidated waterworks' customers for a period of no less than five (5) years following completion of the consolidation.

Documentation provided must include the commitment of each consolidating waterworks to the project and authorizes the receiving waterworks owner to act on behalf of the consolidating waterworks with respect to the Fund application. The consolidating waterworks owner must agree to surrender its operation permit upon completion of consolidation.

Additionally, the receiving waterworks owner shall submit a Service Agreement with the Fund application. The submitted Service Agreement shall clearly identify the obligations of the consolidating waterwork(s) and the receiving waterworks, including at least the following items:

- i) Any construction-related requirements including, but not limited to, a clear description of the project components and an estimated project work plan.
- ii) Terms of transfer of the consolidating waterworks' customers and assets, including:
  - Procedures and timing for the consolidating waterworks' surrender of the operation permit;
  - Process and timeline for the receiving waterworks' distribution of water to each customer of the consolidating waterworks;
  - Terms and timeline for transfer of facilities from the consolidating waterworks to the receiving waterworks;
  - Terms and timeline for disconnecting any non-essential appurtenances of the consolidating waterworks' facilities, and installation of any required cross-connection or backflow protection devices due to the consolidation;
  - Terms and timeline for destruction of disconnected water supply facilities (e.g., destruction of wells);
  - Establishment of the length of service to the consolidating waterworks' customers (not less than five (5) years); and
  - Clear delineation of areas of operations and maintenance responsibility and facility ownership for the receiving and consolidating waterworks.

b. TMF Capacity

ODW will complete a TMF capacity assessment for the receiving waterworks. ODW's TMF capacity assessment will become part of the receiving waterworks owner's application for access to the Fund. The application must include ownership and water rights documentation for the consolidating waterworks.

c. Financial Information

A receiving waterworks owner involved in the consolidation project(s) must submit the most recent three years of audited financial statements and relevant system debt documents.

d. Ownership

The application shall include documentation for the receiving waterworks and for the consolidating waterworks to establish the legal ownership of the waterworks, including water rights documentation, at the time of application.

e. Documentation of Problem

The application shall include for each waterworks involved in the consolidation documentation of the issues needed to be addressed through the consolidation effort.

5. Review Panel

The Review Panel will evaluate all applications. The Review Panel will be designated by the ODW Director and will include at a minimum: staff from the Drinking Water State Revolving Fund Construction Program, staff from the ODW Field Office that is responsible for the area where the receiving waterworks and the consolidating waterworks are located, staff from the ODW Division of Technical Services, and a member of the ODW Capacity Development staff. Additional optional Review Panel members can include the Deputy Commissioner of Public Health and Preparedness, the ODW Director, ODW Compliance & Enforcement staff, and other ODW staff or members of the Waterworks Advisory Committee as deemed necessary by the ODW Director.

The Review Panel will consider the application for eligibility, appropriateness of uses and costs, completeness of the application, commitment from all parties to the consolidation project, and benefit to the health of the communities. For the reimbursement request, Office of Drinking Water Project Officers will review the appropriateness of the costs and request confirmation of costs as need from the Field Office staff. Activities in the reimbursement request will be identified as eligible and acceptable but will not be evaluated as to the amounts charged.

Criteria for project selection will be based on severity/history of non-compliance by the consolidating waterworks, public health concerns, feasibility of consolidation, and the extent/type of work needed.

## 6. Scoring

ODW will not score applications as a competitive grant, but will evaluate the applications for eligibility and project scope appropriateness.

## 7. Award

The maximum award for any single application is \$200,000.00, regardless of the number of consolidating waterworks under the application, unless the receiving waterworks can provide a sound business justification for additional funding. No costs incurred prior to July 1, 2022 are eligible for reimbursement. ODW will issue a funding agreement that an authorized representative of the receiving waterworks must sign and the VDH representative will sign. VDH will reimburse costs once submitted to ODW with all required documentation and verification of eligibility, and in accordance with the terms of the funding agreement.

Due to the limited size of the Fund, a maximum of six months of operator costs incurred due to the consolidation shall be eligible for reimbursement as an initial matter. After the receiving waterworks owner has incurred four months of operator costs due to the consolidation, the receiving waterworks owner may request that ODW evaluate for approval a second six-month period of eligible operator costs. In no case will ODW provide proceeds from the Fund to the receiving waterworks owner for reimbursement of operator costs due to the consolidation incurred for a period longer than one year.

Any funds paid to a receiving waterworks owner from the Fund are subject to clawback by ODW if it is discovered that the funds were improperly paid, including but not limited to improper payment due to a failure of the receiving waterworks owner or agents to abide by any requirements as set forth in this Policy or any agreement entered into in relation to this Policy or the Fund.

## **VI. Related Authorities**

Code of Virginia § 32.1-170 Regulations

Code of Virginia § 32.1-171.1. Waterworks Operation Fee Required

12 VAC 5-590 Waterworks Regulations

12 VAC 5-600 Waterworks Operation Fee regulations

# Equitable Access to Drinking Water Fund Application

VIRGINIA DEPARTMENT OF HEALTH (VDH)  
OFFICE OF DRINKING WATER (ODW)

<p><b>RETURN APPLICATION TO:</b> Virginia Department of Health Office of Drinking Water 109 Governor Street, 6th Floor Richmond, VA 23219</p> <p style="text-align: center;"><b>or email to</b> <b>barry.matthews@vdh.virginia.gov</b></p>	<p><b>Additional Information is online at</b> <a href="https://www.vdh.virginia.gov/drinking-water/fcap/drinking-water-funding-program/">https://www.vdh.virginia.gov/drinking-water/fcap/drinking-water-funding-program/</a></p>
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*Applicants must schedule a Preliminary Project Conference with the Division of Training, Capacity Development, and Outreach.*

**PRE-REQUIREMENTS FOR FUNDING**

If you answer **YES** to any of these questions, **STOP**, as you are not eligible to apply for funds.

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|---|---------------------------|--------------------------|
| 1. Has the Commonwealth debarred or suspended your organization from applying for state or federal funds? | <input type="radio"/> Yes | <input type="radio"/> No |
| 2. Is the applicant waterworks state, federally, or tribally owned?                                       | <input type="radio"/> Yes | <input type="radio"/> No |
| 3. Is the waterworks applying for funds a noncommunity waterworks?  | <input type="radio"/> Yes | <input type="radio"/> No |
| 4. Will the consolidation require a drinking water source or source agreement contract?                   | <input type="radio"/> Yes | <input type="radio"/> No |
| 5. Does the waterworks need to develop user agreements for new service area customers?                    | <input type="radio"/> Yes | <input type="radio"/> No |

**PROJECT, ORGANIZATIONAL, AND CONTACT INFORMATION**

1. Project Name: \_\_\_\_\_ Location (City/County) \_\_\_\_\_

2. Waterworks info:     New                       Existing  
 PWSID Number: \_\_\_\_\_ System Name: \_\_\_\_\_  
 Ownership Type:     Publicly owned     Investor/privately owned     Other: Explanation: \_\_\_\_\_

3. Legal Owner of Waterworks or Authorized Agent:

a. Name: \_\_\_\_\_

b. Address: \_\_\_\_\_  
Street Address/P.O. Box                      Town/City                      State                      ZIP

c. Contact Person: \_\_\_\_\_

d. Telephone Number: \_\_\_\_\_ Alternate Number: \_\_\_\_\_

e. FAX Number: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

f. Federal ID #: \_\_\_\_\_

4. Engineering Consultant (If applicable):

a. Firm Name: \_\_\_\_\_

b. Address: \_\_\_\_\_  
Street Address/P.O. Box                      Town/City                      State                      ZIP

c. Preferred Contact Info:

Contact Person: \_\_\_\_\_  
Name                      Title

Telephone Number: \_\_\_\_\_ Alternate Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_ Alternate E-mail Address: \_\_\_\_\_

FAX Number: \_\_\_\_\_

# Equitable Access to Drinking Water Fund Application

## APPLICATION CERTIFICATION

Submittal of this application is only a starting point for discussion and is not a binding agreement on either party.

Incomplete information may result in the delay or rejection of the application request.

The undersigned representative of the applicant certifies that the information contained herein and the attached statements and exhibits are true, correct, and complete to the best of their knowledge and belief. The undersigned agrees to clarify or supplement information pertaining to this application upon request. The undersigned recognizes that the information contained herein may be subject to state Freedom of Information Act requirements.

### Owner or Chief Administrative Officer of Waterworks:

NAME and TITLE: \_\_\_\_\_

ORGANIZATION: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_



# Equitable Access to Drinking Water Fund Application

## **SECTION C – REQUIRED ATTACHMENTS**

- Attachment A – Project completion schedule
- Attachment B – Ownership Documentation for all waterworks involved in consolidation
- Attachment C – Receiving waterworks TMF Assessment, including three years of audited financial statements
- Attachment D – Resolution to apply for funds adopted by all waterworks involved in consolidation
- Attachment E – Consolidation Commitment Documentation from all waterworks involved in consolidation

## **SECTION D – PROPOSED PROJECT DESCRIPTION – Provide Documentation**

Please provide a summary and a detailed project description (see list of eligible and ineligible costs below) including a map/sketch depicting the project area and proposed facilities including length of waterlines, storage tank(s) sizes, etc. (Sketches on 8 ½ by 11 portions of topo sheets are adequate.)

### **I. Summary**

**A. Describe the problems of all waterworks that this project intends to correct or address.**

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**B. Describe the proposed scope of maintenance work including already incurred and anticipated costs.**

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**C. Briefly quantify the expected benefits or problems corrected with the successful completion of the project.**

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# Equitable Access to Drinking Water Fund Application

## II. Demographics

### A. Describe income levels in the proposed project areas.

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### B. Describe the community that benefits from the proposed project.

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### Eligible versus ineligible costs

The following operation and maintenance costs incurred by the receiving waterworks' owner due to consolidation of the consolidating waterworks are eligible for reimbursement from the Fund (this list is not comprehensive):

- Salary of designated waterworks operator who holds a license at the appropriate level
- Required compliance sampling;
- Typical cleaning or replacement of materials such as filter media;
- Replacement of non-mechanical assets under \$1,000 (e.g., chemicals, supplies, gauges, meters, small parts);
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- Replacement of water meters (installation costs only); and
- Painting that is not associated with rehabilitated or new equipment.

Ineligible costs include, but are not limited to:

- equipment purchases
- waterline replacements greater than 25 linear feet,
- and work effort requiring large construction equipment.