

Environmental Facilities Corporation

Oversight of the Clean Water State Revolving Fund

Report 2020-S-64 | December 2021

OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability



Audit Highlights

Objective

To determine if the Environmental Facilities Corporation (Corporation) is adequately overseeing the Clean Water State Revolving Fund (CWSRF) to ensure funds are being awarded, used, and collected in accordance with requirements and in support of CWSRF goals, including ensuring projects meet their intended purposes. The audit period covers projects that were active between October 2017 and September 2021.

About the Program

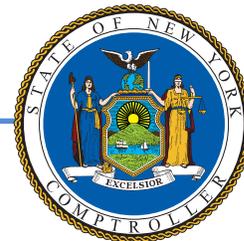
The Corporation is a public benefit corporation that provides financial and technical assistance primarily to municipalities for their water quality infrastructure projects. Its mission is to assist communities throughout the State to undertake critical water quality infrastructure projects by providing access to low-cost capital, grants, and expert technical assistance. Established in 1990, the CWSRF provides communities low-cost financing for a wide range of water quality infrastructure projects. The Corporation provides interest-free or low-interest rate financing to municipalities to support a variety of eligible water quality improvement projects. Since the inception of the CWSRF, the Corporation, in conjunction with the Department of Environmental Conservation (DEC), has provided more than \$30 billion in low-cost financing to communities. Under a memorandum of understanding (MOU) with DEC, the Corporation, along with DEC, is responsible for administering the CWSRF. The MOU states that the Corporation and DEC shall work cooperatively to develop terms and conditions governing the design, construction, operation, and maintenance of CWSRF projects. The Corporation enters into a project financing agreement (PFA) with each loan recipient and has responsibility for the overall administration of CWSRF projects, including monitoring compliance with the provisions of the PFA. The provisions require recipients to comply with approved project plans and applicable rules and regulations and maintain the project to ensure it continues to meet its intended goal throughout the term of the PFA.

Key Findings

- The Corporation generally has adequate controls to ensure projects are awarded according to established scoring criteria, meet the requirements of the CWSRF, and are repaid timely. Also, the Corporation adequately monitors projects during construction to project completion through a combination of on-site inspections, communication with recipients, and receipt of fiscal and project progress documentation such as photographs and on-site inspection reports.
- The Corporation could improve post-construction performance and maintenance monitoring to determine whether projects continue to operate as intended and whether the maintenance terms of the PFA are being met.

Key Recommendation

- Develop a structured process between DEC and the Corporation for communicating post-construction project maintenance and operating status, including information that would enable the Corporation to determine whether recipients are complying with the PFA.



**Office of the New York State Comptroller
Division of State Government Accountability**

December 30, 2021

Basil B. Seggos
Chairman
Environmental Facilities Corporation
625 Broadway, Suite 7
Albany, NY 12207

Dear Chairman Seggos:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for the tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Oversight of the Clean Water State Revolving Fund*. This audit was performed pursuant to the State Comptroller's authority under Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Division of State Government Accountability

Contents

- Glossary of Terms**..... **4**
- Background**..... **5**
- Audit Findings and Recommendation**..... **7**
 - Project Oversight..... **7**
 - Project Awarding and Loan Repayment..... **8**
 - Recommendation..... **9**
- Audit Scope, Objective, and Methodology**..... **10**
- Statutory Requirements**..... **12**
 - Authority..... **12**
 - Reporting Requirements..... **12**
- Agency Comments**..... **13**
- Contributors to Report**..... **15**

Glossary of Terms

Term	Description	Identifier
Corporation	Environmental Facilities Corporation	<i>Auditee</i>
CWSRF	Clean Water State Revolving Fund	<i>Fund</i>
DEC	Department of Environmental Conservation	<i>Agency</i>
EPA	Federal Environmental Protection Agency	<i>Agency</i>
GIGP	Green Innovation Grant Program	<i>Program</i>
ISCG	Integrated Solutions Construction Grant	<i>Grant</i>
MOU	Memorandum of understanding	<i>Key Term</i>
PFA	Project Financing Agreement	<i>Key Term</i>

Background

The Environmental Facilities Corporation (Corporation) is a public benefit corporation that provides financial and technical assistance primarily to municipalities for their water quality infrastructure projects. Its mission is to assist communities throughout the State to undertake critical water quality infrastructure projects by providing access to low-cost capital, grants, and expert technical assistance. A primary goal of the Corporation is to ensure that critical water quality infrastructure projects remain affordable while safeguarding essential water resources.

Established in 1990, the Clean Water State Revolving Fund (CWSRF) provides communities low-cost financing for a wide range of water quality infrastructure projects. The federal Environmental Protection Agency (EPA) annually provides a grant to the State to fund the CWSRF program, which allows the Corporation to provide interest-free or low-interest rate financing (i.e., loans) and grants to municipalities throughout the State to support a variety of eligible water quality improvement projects. Since the inception of the CWSRF, the Corporation, in conjunction with the Department of Environmental Conservation (DEC), has provided more than \$30 billion in low-cost financing to communities.

Under a memorandum of understanding (MOU) with DEC, the Corporation, along with DEC, is responsible for administering the CWSRF. The Corporation also administers the Green Innovation Grant Program (GIGP) and the Integrated Solutions Construction Grant (ISCG) under the CWSRF. The MOU states that the Corporation and DEC shall work cooperatively to develop terms and conditions governing the design, construction, operation, and maintenance of CWSRF projects. The Corporation enters into a project financing agreement (PFA) with each loan recipient and has responsibility for the overall administration of CWSRF projects, including monitoring compliance with the provisions of the PFA. The provisions require recipients to comply with approved project plans and applicable rules and regulations and maintain the project to ensure it continues to meet its intended goal throughout the term of the PFA. Under the PFA, the Corporation also retains the right to inspect projects and ensure recipients meet all terms of the PFA, including fulfilling maintenance requirements.

During project construction, Corporation staff should review and maintain support that certain State and federal requirements have been met. The Corporation should also receive photographs documenting project progress, disbursement requests for reimbursing funds as the project progresses, and site visit checklists. Site visit checklists are completed by one of the Corporation's engineers or by a third-party engineer (contractor). The checklist documents the engineer's inspection, conducted typically around the 75-80% project completion mark (larger projects may have multiple visits), verifying that the project meets CWSRF standards.

Since October 1, 2017, the EPA has allotted \$858.2 million to New York to support the CWSRF; the State is required to provide at least an additional 20% in matching funding. The CWSRF program supports a variety of eligible water quality improvement projects for the purpose of preserving, protecting, or improving water quality. For example, projects that protect publicly owned treatment works and conveyance systems from flooding are eligible for CWSRF program assistance,

including point source (e.g., wastewater treatment plants) projects, non-point source (e.g., stormwater management) projects, and projects that protect national estuaries.

The Corporation scores each project based on a number of factors, including project location, water pollution source, extent of anticipated water quality improvement, governmental requirements, fiscal need, and whether the applicant is located in an area of economic hardship. Depending on the project score and/or eligibility for hardship financing, as well as the length of the financing term, recipients may be eligible for either an interest-free loan, a reduced interest rate loan (i.e., market interest rate reduced by 50%), or a loan split between 50% interest free and 50% market interest rate (e.g., \$100,000 loan = \$50,000 at zero interest and the remaining \$50,000 at market rate). Projects that have scores outside the subsidy requirements receive market interest rate financing. Hardship financing is generally for municipalities that are smaller (less than 300,000 people served) and lower-income (e.g., less than 80% of regionally adjusted median household income) communities. Projects may receive short- or long-term financing. The Corporation may finance the full project cost, including planning, design, and construction, with short-term financing. The Corporation may also offer affordable long-term financing to the borrower when the project's final costs have been determined. Short-term financing is generally repaid over a term of between 3 and 5 years, while long-term financing is repaid over a period of up to 30 years.

In addition to the federal EPA allotment and the repayments the Corporation receives when borrowers repay their loans, the Corporation issues program bonds, which provide an additional source of funding to finance new projects under the CWSRF.

According to the Corporation's annual report, which outlines program and financing activities for the period from October 1, 2019 through September 30, 2020, the Corporation provided \$1.17 billion in financing for 102 projects as follows:

- \$795 million for 59 short-term financed projects
- \$74.9 million long-term direct financing and \$288.1 million long-term leveraged (bonded) financing for 36 projects
- \$8.6 million for seven grant-funded projects (GIGP or ISCG)

For the period of October 2017 through December 2020, the Corporation made over 3,500 disbursements totaling nearly \$5 billion.

Audit Findings and Recommendation

The Corporation is adequately overseeing the CWSRF to ensure funds are being awarded, used, and collected in accordance with requirements. The Corporation has implemented processes to ensure projects are awarded according to established scoring criteria, meet the requirements of the CWSRF, and are repaid timely. Also, the Corporation adequately monitors projects from construction to project completion through a combination of on-site inspections, communication with recipients, and receipt of fiscal and project progress documentation such as photographs and on-site inspection reports. However, the Corporation could improve post-construction performance and maintenance monitoring to determine whether projects continue to operate as intended and whether the maintenance terms of the PFA are being met.

Project Oversight

Project Construction

We found the Corporation has adequate controls to ensure funds are being used in accordance with CWSRF requirements and that projects are constructed and completed in support of CWSRF goals and meet their intended purposes. We reviewed files for 20 projects and found sufficient documentation, including site visit checklists, disbursement requests, and photographs documenting construction progress, in support of the Corporation's monitoring efforts during project construction. Due to the length of projects, some of the records we reviewed were from as early as January 2004.

For six of the 20 projects in our sample, we also reviewed documentation to ensure payments made for the projects met CWSRF requirements. Between December 2010 and July 2020, the Corporation made 75 disbursements for five of the six projects, totaling more than \$48 million (one project did not have any disbursements made at the time of our review); of this, we reviewed support for approximately \$13.4 million. We found the Corporation had sufficient documentation (e.g., payment requests, supporting invoices) to support its payment of the entire \$13.4 million in disbursements and that the funds were used appropriately in support of CWSRF goals.

Post-Construction Monitoring

While, under the PFA, the Corporation retains the right to inspect projects throughout the term of the PFA, it does not generally inspect projects after they are completed. The maintenance clause of the PFA generally requires the recipient to ensure proper and efficient operation and maintenance of the project and retainment of a sufficient number of qualified staff to perform required testing and compliance with any other State requirements. After completion of the project, the recipient shall at all times operate the project in a sound economical manner and maintain, preserve, and keep the project in good repair and working order. Should the recipient not comply with this section of the PFA, the Corporation may take action against the recipient.

Corporation officials stated they rely on DEC to monitor projects after they are completed, since the projects funded by the CWSRF typically require DEC-regulated permits (e.g., State pollutant discharge elimination systems and publicly owned sewer systems). Because it is DEC's responsibility to monitor these types of systems, Corporation officials feel it would be duplicative and a poor use of their resources.

While DEC is generally responsible for monitoring permit requirements (and, therefore, aspects of project maintenance), the Corporation may take action against the recipient if a violation of the PFA is egregious enough to warrant it. However, there is no structured communication between the Corporation and DEC that would alert the Corporation if such a violation may have occurred. According to officials, the Corporation only receives notification from DEC of issues if they require additional funding from the Corporation to remedy. Establishing a more structured process between DEC and the Corporation would enhance the Corporation's ability to ensure violations of the PFA are acted on if warranted.

While the communication between DEC and the Corporation could be improved, we found that, generally, recipients were adhering to the post-construction requirements of the PFA. We conducted site visits for 15 projects and found that, at all the facilities we visited, recipients had some system in place for oversight and maintenance to ensure the project continued to operate as intended. Although some recipients' approach to maintenance was more reactive than proactive (i.e., repairing defects after they occur rather than implementing preventive maintenance practices), each facility had operation and maintenance manuals available to staff, and all were outfitted with a system capable of generating alarms in the event of a system error that could affect the proper operation of the project.

Although we were able to determine that the CWSRF projects we visited were being maintained and monitored to ensure they were meeting applicable requirements, the Corporation does not have the same assurance for these projects as it does not conduct any post-construction monitoring and generally does not receive regular performance and operating information from DEC or the recipient.

Project Awarding and Loan Repayment

All projects that meet the requirements of the CWSRF are ultimately financed by the Corporation at some level (i.e., they receive market rate, reduced interest rates, no-interest financing, or a combination). For six projects, we reviewed available documents related to the awarding of funds, such as project applications, environmental reviews, engineering reports, scoring documentation, and financing agreements. Due to the length of the agreements, some of the records we reviewed were from as early as May 2001. We verified the validity of project scores by comparing the assigned score with the Corporation's scoring criteria. The Corporation consistently and correctly applied its established scoring methodology for determining which projects received the most favorable financing.

Also, the Corporation generally receives loan repayments on time and in full. As borrowers repay their loans, the principal and interest payments are used by the Corporation to finance new projects under the CWSRF program. As such, it is important that the Corporation receives loan repayments in full and on time to keep the fund “revolving.” During the period of October 1, 2017 through April 5, 2021, the Corporation collected nearly \$1.8 billion in repayments for 1,007 loans (4,892 transactions). We reviewed repayments for four loans with a combined loan value of about \$17.5 million. For these four loans, there were 58 repayments, totaling approximately \$3.2 million, made from April 30, 2002 through February 1, 2021. All repayments were received in full and generally on time.

Recommendation

1. Develop a structured process between DEC and the Corporation for communicating post-construction project maintenance and operating status, including information that would enable the Corporation to determine whether recipients are complying with the PFA.

Audit Scope, Objective, and Methodology

The objective of the audit was to determine if the Corporation is adequately overseeing the CWSRF to ensure funds are being awarded, used, and collected in accordance with requirements and in support of CWSRF goals, including ensuring projects meet their intended purposes. The audit period covers projects that were active between October 2017 and September 2021.

To accomplish our objective, we became familiar with and assessed the adequacy of the Corporation's internal controls as they related to our audit objective. We reviewed relevant laws, regulations, and the Corporation's internal risk assessments. We also interviewed officials from the Corporation regarding its processes for overseeing the CWSRF. To obtain information about projects, we reviewed project-related documents as well as met with CWSRF recipients and visited their project sites. While the projects selected for our samples were active during our scope period, since CWSRF projects typically have a life span of up to 30 years, significant supporting documentation such as score sheets and other project-related documents date back to at least May 2001. Although the GIGP and ISCG are offered under the CWSRF, our review excluded the GIGP because we had previously audited it and the ISCG because it is not a substantial portion of the CWSRF. We also assessed the reliability and accuracy of CWSRF-related data sets. Overall, we determined the data to be reliable for the purposes of our audit objective. The results of our sample selections and audit tests cannot be projected to the population as a whole.

To assess whether the Corporation was awarding CWSRF funds appropriately, we judgmentally selected six of 357 CWSRF projects for review based on information contained in the Corporation's 2018-20 multi-year lists and the Corporation's 2018-20 federal annual reports (Dutchess County Water and Wastewater Authority, NYC Municipal Water Finance Authority, Oneida County, Onondaga County, Rensselaer County, and Village of Hammondsport). We considered factors such as geographic location, project category, age of project, length of project financing, loan type, and loan amount when making our selections.

To assess the appropriateness of the use of CWSRF funds, we also reviewed two disbursement records for each of five of the six projects selected above (Dutchess County Water and Wastewater Authority, NYC Municipal Water Finance Authority, Oneida County, Onondaga County, and Rensselaer County). At the time of our review, the Corporation had not disbursed any funds for the sixth project (Village of Hammondsport); therefore, there were no records available to review. We compared disbursed amounts with payment requests and supporting documentation (i.e., contractor and sub-contractor invoices) to validate the appropriateness of the payments that the Corporation made.

We judgmentally selected and visited facilities for 15 of 2,191 CWSRF projects (that had loans close between May 24, 1990 and March 18, 2021) to assess post-construction performance. We considered factors such as the year of financing activity, financing amount, loan type, and municipality category (based on municipality size and whether the municipality was receiving a hardship loan) when making our selections. During those visits, we interviewed key personnel to determine their monitoring processes for project operations, and we toured the

facilities to determine whether projects were operational and to obtain assurance that the projects were being maintained as required.

To assess whether the Corporation was adequately receiving loan repayments, we randomly selected five (but reviewed repayment for only four as one did not have any repayments due at the time of our review) of 1,250 loans that the Corporation provided since 1990 and that had a maturity date occurring on or after October 1, 2017. We compared the loan payment schedules with the Corporation's database of receipts and/or with banking statements to verify payments were being received in full and on time.

Statutory Requirements

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State, including some duties on behalf of public authorities. For the Corporation, these include operating the State's accounting system, reporting the Corporation as a discrete component unit in the State's financial statements, and approving selected contracts. These duties could be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our professional judgment, these duties do not affect our ability to conduct this independent audit of the Corporation's oversight and administration of the CWSRF program.

Reporting Requirements

A draft copy of the report was provided to Corporation officials for their review and comment. Their comments were considered in preparing this final report and are attached in their entirety at the end. In general, officials agreed with our recommendation.

Within 180 days after final release of this report, as required by Section 170 of the Executive Law, the Chairman of the Environmental Facilities Corporation shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendation contained herein, and if the recommendation was not implemented, the reasons why.

Agency Comments



**Environmental
Facilities Corporation**

KATHY HOCHUL
Governor

MAUREEN A. COLEMAN
President and CEO

December 10, 2021

Christopher Herald
Audit Supervisor
Office of the State Comptroller
110 State Street
Albany, New York 12236

RE: *Oversight of the Clean Water State Revolving Fund (Report 2020-S-64)*
Response to Draft Report Findings and Recommendation

Dear Christopher Herald:

Thank you for the opportunity to provide a written response to the draft report entitled *Oversight of the Clean Water State Revolving Fund (Report 2020-S-64)*.

The Environmental Facilities Corporation (EFC) is encouraged by the results of the audit of the Clean Water State Revolving Fund (CWSRF). The audit establishes that EFC is adequately overseeing the CWSRF to ensure funds are being properly awarded, used, and collected. The audit also confirms EFC has implemented sufficient processes to ensure projects are awarded according to the required scoring criteria, projects meet CWSRF programmatic requirements, and recipients of CWSRF funds are timely repaying their financings.

EFC was also pleased that the audit found EFC adequately monitors CWSRF financed projects during their construction. EFC is reviewing actions available to address the draft report's sole recommendation.

Draft Report Recommendation – Develop a structured process between the Department of Environmental Conservation (DEC) and EFC for communicating post-construction project maintenance and operating status.

EFC believes CWSRF financed projects are being appropriately and adequately monitored after construction completion. Indeed, the audit found no instances of maintenance issues at any of the 15 sampled project sites. This demonstrates that current monitoring practices are effective. Moreover, EFC collaborates with DEC on a host of issues, including post-construction operation and maintenance of CWSRF projects.

EFC believes, however, that there is always room for improvement. To that end EFC is reviewing its engagement level with DEC with the goal of creating a more robust process to discuss post-construction maintenance and other issues that may arise over the course of EFCs' administration of the CWSRF.

EFC appreciates the professionalism and diligence of the audit team throughout this audit, especially given the difficulties associated with working during the COVID-19 pandemic.

Sincerely,



Albert Schnide, CPA
Controller

cc: Basil Seggos
Maureen A. Coleman

Contributors to Report

Executive Team

Andrea C. Miller - *Executive Deputy Comptroller*

Tina Kim - *Deputy Comptroller*

Ken Shulman - *Assistant Comptroller*

Audit Team

Nadine Morrell, CIA, CISM - *Audit Director*

Heather Pratt, CFE - *Audit Manager*

Chris Herald, CIA, CGAP - *Audit Supervisor*

Matthew Conway - *Examiner-in-Charge*

Kathy Gleason - *Senior Examiner*

Brian Supple - *Senior Examiner*

Loriann Johnson - *Staff Examiner*

Kelly Traynor - *Senior Editor*

Contact Information

(518) 474-3271

StateGovernmentAccountability@osc.ny.gov

Office of the New York State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236



Like us on Facebook at facebook.com/nyscomptroller

Follow us on Twitter @nyscomptroller

For more audits or information, please visit: www.osc.state.ny.us/audits/index.htm