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Infrastructure Act Provides Funding for PFAS Remediation

Signed into law on November 15, 2021, the landmark Infrastructure Investment and Jobs Act, also called the bipartisan infrastructure bill, ("infrastructure bill") allocates \$10 billion for the remediation of per- and polyfluoroalkyl substances ("PFAS") in drinking water.¹ In turn, the bill divides the \$10 billion into three categories: (1) \$1 billion for the PFAS Clean Water State Revolving Fund ("CWSRF"); (2) \$5 billion for the PFAS Small & Disadvantaged Fund; and (3) \$4 billion to the Drinking Water State Revolving Fund ("DWSRF").² These provisions are discussed in detail further below.

In addition to the infrastructure bill, the Biden administration and Congress have both signaled an increased interest in addressing PFAS—in drinking water and other media—through the introduction of various bills, provisions, and other funding sources.

I. Funding for PFAS Remediation in the Infrastructure Bill

The infrastructure bill's three funding categories are available to states and tribes, who may then distribute funds according to specific guidelines set forth in the new law. Under the infrastructure bill, funds may be allocated to privately-owned community water systems, publicly-owned community water systems, non-profit non-community water systems, municipal, intermunicipal, interstate, or State agencies ("Recipients").

A. The Clean Water State Revolving Fund ("CWSRF")

The CWSRF functions like an environmental infrastructure bank by providing low-interest loans to eligible borrowers for water infrastructure projects. First, money is distributed into each Recipient's CWSRF, and the Recipient in turn will make new loans to borrowers for high-priority water-quality activities. Eligible borrowers include any municipality, intermunicipal, interstate, or state agency that will use the funds for the construction of publicly owned treatment works in that state or tribe's geographic area.



B. PFAS Small & Disadvantaged Fund

The PFAS Small & Disadvantaged Fund authorizes the Environmental Protection Agency (“EPA”) to award grants to states to assist underserved, small, and disadvantaged communities that are unable to finance activities needed to comply with the Safe Drinking Water Act (“SDWA”). Grants are awarded to states and tribes to support underserved communities that meet the small or disadvantaged statutory definition. Specifically, a small or disadvantaged community is one that: (1) the state determines to be a disadvantaged community under SDWA § 1452(d)(3); (2) may become a disadvantaged community as a result of carrying out a project or activity; or (3) has a population of less than 10,000 individuals that does not have the capacity to incur debt sufficient to finance a project to comply with the SDWA.

Projects eligible for assistance include:

- projects that return a public water system to compliance;
- efforts that benefit disadvantaged communities on a per household basis;
- programs to provide household water quality testing, including testing for unregulated contaminants; and
- activities necessary for a state to respond to a contaminant.

C. Drinking Water State Revolving Fund (“DWSRF”)

The DWSRF is a financial assistance program to help states to achieve the health protection objectives set out in the SDWA. Congress appropriates funding for the DWSRF, and the EPA then awards capitalization grants to each state based upon the results of the most recent Drinking Water Infrastructure Needs Survey and Assessment. In turn, the state provides a twenty percent match. States will place the balance of their capitalization grant, together with the state match, into a dedicated revolving loan fund.

This revolving fund provides loans and other authorized assistance to water systems for eligible infrastructure projects. Eligible borrowers from each DWSRF include:

- “Existing privately-owned and publicly-owned community water systems and non-profit non-community water systems, including systems utilizing point of entry or residential central treatment.”³
- “New community water systems that represent cost-effective solutions to existing public health problems with [certain] serious risks”⁴

II. Other Federal Legislative Efforts to Remediate PFAS Contamination

Along with the Infrastructure Bill, a number of enacted and pending federal legislative efforts further indicate that PFAS remediation is a priority for the Biden administration and Congress. The National Defense Authorization Act for Fiscal Year 2022, which passed in December, included a Subtitle D that was exclusively focused on the treatment of PFAS. And, if passed, the Build Back Better Act proposes to include a provision that would provide grants to Firefighters to receive “PFAS-free personal protective equipment and PFAS-free firefighting foam, and for related administrative expenses.”⁵

In addition, at least thirty bills were introduced in the House and Senate last year dealing with the remediation of PFAS, ranging from the “No PFAS in Cosmetics Act”⁶ to the “Protecting Firefighters from Adverse Substances Act.”⁷ Many of the proposals are specific to PFAS assessments and studies, such as the “PFAS Exposure Assessment and Documentation Act.”⁸ King & Spalding has a team of lawyers tracking and advising clients on these emerging changes. More information is available [here](#).



III. Conclusion

Entities who seek to receive funding can take the following steps if they wish to be involved in PFAS drinking water remediation projects:

- track the funding as it is distributed and submit proposals to funding recipients directly for project involvement;
- meet with state and EPA officials for direction regarding PFAS remediation; and
- work with members of Congress for new funding designations for remediation.

King & Spalding can assist you with all of the above. In particular, Marcella Burke and J.C. Boggs have expertise assisting clients as they navigate funding opportunities for government funding, including PFAS remediation. Marcella also has expertise in chemical remediation from her time served at the EPA as Deputy General Counsel, at the Department of Interior (“DOI”) as Deputy Solicitor for Energy and Natural Resources, and as Senior Counselor to the Assistant Secretary for Land and Minerals Management. Further, King & Spalding has previously addressed the energy investments provided for in the infrastructure bill. See Nikesh Jindal, Marcella Burke, Laura Bushnell, Cason Hewgley, & Elizabeth Holden, *Infrastructure Bill Paves the Way for New Energy Investments and Technology* (Jan. 25, 2022), <https://www.kslaw.com/news-and-insights/infrastructure-bill-paves-the-way-for-new-energy-investments-and-technology>.

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¹ Pub. L. No. 117-58 (2021).
² *Id.* at 135.
³ EPA, Drinking Water State Revolving Fund Eligibility Handbook (2017), at 8.
⁴ *Id.*
⁵ H.R. 5376, 117th Cong. § 90004 (2021).
⁶ (H.R. 3990).
⁷ (S. 231).
⁸ (S. 2555/H.R. 4340).