



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 2 1978

OFFICE OF WATER AND
HAZARDOUS MATERIALS

FROM: THOMAS C. JORLING, ASSISTANT ADMINISTRATOR

PUBLIC PARTICIPATION IN PROGRAMS UNDER THE RESOURCE CONSERVATION AND RECOVERY ACT, THE SAFE DRINKING WATER ACT, AND THE CLEAN WATER ACT

Attached are public participation regulations which were recently proposed by the Environmental Protection Agency. The proposed regulations cover two areas: (1) overall regulations for programs under the Resource Conservation and Recovery Act, the Safe Drinking Water Act, and the Clean Water Act (40 CFR Part 25). (2) amendments to construction grants program regulations (40 CFR Part 35) which would implement the new overall public participation requirements of 40 CFR Part 25 with respect to the wastewater treatment facility planning program and other aspects of the construction grants program.

The Environmental Protection Agency values the views and suggestions of members of the public regarding these important regulations. I urge you to read the attached document carefully and provide us with your reactions, comments, and recommendations for changes. Comments on the proposed regulations may be submitted to the Agency through October 6, 1978. As indicated in the introduction (page 2) to the proposed regulations, written comments should be addressed to Lee Daneker, Environmental Protection Agency, WH-556, 401 M Street, S.W., Washington, D.C. 20460. The introduction (pages 2 and 3) also provides details regarding other opportunities for public involvement in the regulation development process. These consist of a toll-free telephone number to make comments or ask questions regarding the proposed public participation regulations, and a public hearing on the regulations to be held in Washington, D.C. on September 26, 1978.

Environmental Protection Agency
Rm. 556, WH-556
401 M Street, S.W.
Washington, D.C. 20460

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Parts 25 and 35]

(FRL 915-1)

PUBLIC PARTICIPATION IN PROGRAMS UNDER THE RESOURCE CONSERVATION AND
RECOVERY ACT, THE SAFE DRINKING WATER ACT, AND THE CLEAN WATER ACT
Proposed Rule and Notice of Public Hearing

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule and notice of public hearing.

SUMMARY: The provisions which follow include proposed regulations which would establish overall public participation requirements for programs under the Safe Drinking Water Act, the Resource Conservation and Recovery Act, and the Clean Water Act. These would replace existing regulations for public participation in water programs and interim final regulations for public participation in solid waste management programs. The proposed regulations also include provisions implementing the new overall public participation requirements with respect to the municipal wastewater treatment facility construction grant program. Where appropriate, regulations applicable to other Clean Water Act, Safe Drinking Water Act, and Resource Conservation and Recovery Act programs will be supplemented or revised at a later date to specify where the new overall public participation procedural requirements will be applicable. The proposed regulations would apply to covered activities which occur after the date of promulgation and to grants and significant grant amendments made after that date. Existing public participation regulations would remain applicable, in uncodified form, to all other ongoing activities.

DATES: Public Hearing: September 26, 1978 from 1:30 p.m. to 5:30 p.m. and
7:30 p.m. to 10:30 p.m.

Comments must be received on or before October 6, 1978.

ADDRESSES: Public Hearing: Department of Commerce Auditorium
14th and E Streets, N.W.
Washington, D.C.

Send requests to speak to: Ned Sullivan, Environmental Protection
Agency, WH-556, 401 M Street, S.W.,
Washington, D.C. 20460 (For additional
information regarding requests to speak
and the agenda for the hearing see
Public Hearing below)

Send written comments to: Lee Daneker, Environmental Protection
Agency, WH-556, 401 M Street, S.W.,
Washington, D.C. 20460

Telephone Service: EPA will provide, during the hours and on the
days specified below, a toll-free telephone number to assist
the public in making comments or requesting clarifications
regarding the proposed public participation regulations (CFR 40
parts 25 and 35). The toll-free number is 800-424-9390. The
toll-free line will be open only from 1 p.m. to 5 p.m., Eastern
Daylight Time from September 5 through 8, September 25 through
29, and October 2 through 6, 1978. This line will be open for
the sole purpose of hearing comments and providing information
on the proposed public participation regulations.

Comments submitted may be inspected at the Public Information
Reference Unit, EPA Headquarters, Room 2922, Waterside Mall,
401 M Street, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Ned Sullivan, Environmental Protection
Agency, WH-556, 401 M Street, S.W.,
Washington, D.C. 20460, (202)755-0511.

Public Hearing

A hearing to receive comments on the proposed public participation regulations will be held at the Department of Commerce Auditorium, 14th and E Streets, N.W., Washington, D.C., from 1:30 p.m. to 5:30 p.m. and 7:30 p.m. to 10:30 p.m., on September 26, 1978.

Individuals wishing to comment are requested to submit their names, addresses, and telephone numbers to Ned Sullivan, Environmental Protection Agency, WH-556, 401 M Street, S.W., Washington, D.C. 20460. Requests should indicate the length of time each individual wishes to comment and any preference to time. Statements will be limited to a maximum of 10 minutes. Individuals who request to comment will be notified in advance of the time scheduled for their statement. Time will be reserved for unscheduled comments. Each individual who plans to comment is requested to submit one typewritten copy of his or her statement at the hearing. The hearing record will be closed at the end of the hearing; however, as indicated above, written and telephone comments on the proposed regulations will be accepted by EPA if they are received no later than October 6, 1978. The agenda for the hearing is as follows: Afternoon Session: Introductory Presentation -- 1:30 - 1:50; Question and Answer Session -- 1:50 - 2:10; Scheduled Presentations -- 2:10 - 4:45; Unscheduled Testimony -- 4:45 - 5:30; Recess -- 5:30. Evening Session: Introductory Presentation -- 7:30 - 7:50; Question and Answer Session -- 7:50 - 8:10; Scheduled Presentations -- 8:10 - 9:45; Unscheduled Testimony -- 9:45 - 10:30; Adjourn -- 10:30.

BACKGROUND

It is EPA policy that EPA, State and substate agencies implementing the Clean Water Act, the Resource Conservation and Recovery Act, and the Safe Drinking Water Act shall provide for, encourage, and assist public participation.

All Federal programs are intended to serve the public interest, and all government agencies are, by definition, public servants. EPA's programs directly and indirectly affect the lives of all citizens. These citizens have the right to share in program decisions, and public servants who implement Federal environmental statutes have the responsibility to seek out and be responsive to the concerns of the public in their decisions. The term, "the public" in the broadest sense means the people as a whole, the general populace which all Federal programs are intended to serve.

For any given program decision, however, there are a number of identifiable "segments of the public" which have an interest in the outcome. These comprise individuals and organizations, governmental and nongovernmental. Interested and affected segments of the public may be directly impacted by a decision, either beneficially or adversely, or they may be indirectly affected or otherwise have some concern about the decision. The segments of the public relevant to any given decision tend to change over time, as do their interests in given issues.

EPA wishes to ensure that all interested and affected member of the public have an opportunity to participate in decisionmaking processes

under agency programs. In addition to private citizens, parties affected by agency action may include but are not limited to representatives of consumer, environmental, and minority associations; trade, industrial, and labor organizations; agricultural organizations; public health, scientific, and professional societies; civic associations; public officials; and governmental and educational associations. Special effort should be made to ensure that public interest groups and citizens representing themselves, whose resources and access to decisionmaking may be limited, have every opportunity to participate.

It is useful to reflect on the specific meanings of some of the terms used above. The term "participate" means to take part; to have a role in program deliberations prior to a decision being made. The term "encourage" means to stimulate. The term "assist" means to help, aid, give support. The term "responsive" means providing a timely answer or reply; reacting in a receptive manner; demonstrating that serious consideration has been given to public comment.

Public participation is that part of the decision-making process that seeks to determine the "public interest" in any given decision. "Public interest" may be defined as the composite of continuously shifting individual and group values, viewpoints, concerns and interests. It is inevitable in many decisions that

the "public interest" will be partially determined by controversy. These controversies must be aired early so that issues can be resolved and timely decisions made.

DEVELOPMENT OF PROPOSED REGULATIONS FOR PUBLIC PARTICIPATION

Since November 1977, a working group in the Office of Water and Waste Management (OWWM) has been reviewing public participation requirements for its areas of responsibility. The working group developed a set of concept papers addressing revisions to overall public participation requirements for all programs under OWWM and new requirements for public participation in the municipal wastewater treatment construction grants program. These concept papers were finalized in early March and circulated to approximately 7,000 interested parties including more than 3,000 who were mailed draft construction grant regulations dated March 3, 1978. The working group has held two public meetings to receive comment on the concept papers, met with EPA staff in all ten EPA regions, received numerous verbal comments telephoned to the Agency, and met with several outside interest groups including representatives of several States and municipalities and of the Association of State and Interstate Water Pollution Control Agencies.

As a result of these outreach activities, the Agency has received more than 300 written comments on the concept papers. After considering all comments, the working group has revised the concept papers. The revisions include: (1) Proposed 40 CFR Part 25 which would establish overall public participation requirements in programs under the Resource Conservation and Recovery Act, Safe Drinking Water Act, and Clean Water Act programs. (When the

proposed 40 CFR Part 25 is promulgated as a final regulation, the existing 40 CFR Part 105 (Public Participation in Water Pollution Control) and interim-final 40 CFR Part 249 (Public Participation in Solid Waste Management) will be deleted.) (2) Proposed revisions to 40 CFR Part 35 which would implement the new Part 25 with respect to the wastewater treatment facility construction grants program.

Major issues raised in comments are summarized below. Each issue is followed by an explanation of changes which are reflected in the proposed regulations or other ways in which the Agency has responded to comments received on the concept papers.

DISCUSSION OF COMMENTS RECEIVED ON THE CONCEPT PAPER FOR
PUBLIC PARTICIPATION IN CLEAN WATER ACT, SAFE DRINKING WATER
ACT, AND RESOURCE CONSERVATION AND RECOVERY ACT PROGRAMS:

1. Consistency. One of the issues highlighted for public comment in the concept papers was whether the new Part 25 would apply only to water programs or to other OWM programs under the Safe Drinking Water Act and the Resource Conservation and Recovery Act as well. Comment has been virtually unanimous in favor of a single overall set of public participation requirements for all OWM programs. Accordingly the proposed regulations have been drafted to cover activities under the Resource Conservation and Recovery Act and the Safe Drinking Water Act, as well as under the Clean Water Act.

Several commenters indicated that the concept papers should not be limited to OWWM programs, but should apply to all EPA activities. The Agency hereby requests public comment on whether such an expansion in scope would be desirable.

2. Discretion. The concept papers solicited comment on the degree of discretion which should be allowed in establishing public participation requirements. A closely related issue was the extent to which elements of a public participation program should be specified in regulation or in guidance. Many, although not all, governmental agencies commenting upon the regulations favored wide discretion and extensive use of guidance. A large volume of citizen comment called for significantly limiting discretion; these comments indicated that permitting broad discretion often frustrates active participation by leaving potential citizen participants unaware of their rights and opportunities to become involved. Some individuals provided examples of instances in which discretion had been exercised in a manner which did not foster participation in agency programs. While EPA recognizes such problems, we also recognize that flexibility is needed for effective environmental management. We have responded to several comments identifying areas where discretion should be expanded or where the use of guidance would be more appropriate than regulation. As a result, the current proposals provide considerable added flexibility,

especially in the area of advisory group responsibilities, organization, membership, and relation to grantee agencies.

3. Role of elected and appointed decisionmaking officials.

Many commenters pointed out that the concept papers did not devote sufficient attention to the role of State and municipal officials. We concur. Accordingly, the current proposals place strong emphasis on the legal authority of official decisionmakers and encourage their inclusion on advisory groups.

4. Advisory Groups. Several Agency programs are already utilizing advisory groups as a public participation mechanism where careful scrutiny of a plan or project by an informed group of citizenry is needed. The advisory group requirements included in the concept papers were intended to foster the formation of an informed core group of citizens which would assist elected and appointed decision-making officials by becoming familiar with plans and programs funded by Federal grants, making recommendations to decisionmaking officials, and encouraging interchange and mutual education among interests represented on the group.

Many commenters suggested that the advisory group requirements were too stringent and would be difficult to apply in some planning areas. Others indicated that the requirements represent a vital initiative to ensure formation of truly balanced advisory groups.

Strong support was expressed for the requirement that a majority of advisory group members be private citizens and members of public interest groups and for the provision that would bar any person with a financial conflict of interest from the advisory group. These two requirements were also the subject of significant critical comment. A number of comments cited instances in which individuals with a financial stake in various grant-supported activities have made constructive contributions to advisory group deliberations. The lack of encouragement for placing elected officials on advisory groups was also criticized by a number of commenters.

The Agency concurs with much of the comment calling for changes in advisory group requirements. The proposed regulations provide considerably more flexibility in the form of encouragement for membership by State and local public officials, and permitting advisory group membership by individuals with an economic stake in the project activities. However, the Agency cannot ignore the large volume of comment indicating that private citizens and public interest representatives should make up at least half of the advisory group. Accordingly, this requirement has been retained with the qualification that this portion of advisory group membership should reflect a balance of community interests.

The proposed regulations establish two categories of advisory group membership for purposes of addressing potential conflicts of interest (See §25.4(d)(4)(iii)). The proposed regulations do not

prohibit membership by economically interested persons as the concept paper would have. However, such a prohibition does apply to the private citizen, public interest group membership category. All advisory group members would be required to disclose any financial interest which they have in the plan or project.

Some comments stated that the portions of the requirements addressing advisory group duties and organization, and the responsibilities of the grantee to the advisory group were too detailed. Other comments pointed out that these features are critical in determining the effectiveness of an advisory group and should be of major concern to EPA in its role of providing grants for State and local assistance. The Agency concurs with both perspectives reflected above. The concept papers have been revised to include considerably less detail in these areas; however, the Agency will provide guidance addressing advisory group structure, duties, and staff support.

Strong support was expressed for the concept of training advisory groups to fulfill their role. Accordingly, the training provision of the concept papers has been retained. However, the Agency has determined that it is appropriate to address the content of the training in guidance. Therefore, the portions of the concept paper which discussed training content are not included in the proposed regulations.

5. Paperwork. Comments have indicated that the public participation work plan, the responsiveness summary, and the summary of public participation which were defined in the concept papers might frustrate the EPA (and Federal government) policy of reducing unnecessary paperwork. Some comments indicated that the summary of agency response and the summary of public participation appeared to be duplicative. Many other comments indicated that the work plan, responsiveness summary, and public participation summary would be important mechanisms to assure adequate public participation. Comments indicated that these documents would assist citizens to participate by enabling them to know what participation opportunities existed and to learn how agencies have taken their participation into account in decision-making. Many citizen comments indicated that, under the present system, feedback on participation is frequently inadequate. We concur with these comments. In addition, the Agency's experience suggests that the responsiveness summary, the public participation work plan, and the public participation summary are needed if the Agency is to fulfill its management responsibility to monitor public participation performance.

We are very concerned, however, with avoiding unnecessary paperwork and have revised the requirements of the public participation summary to indicate that it will require no work which duplicates responsiveness summaries. In addition, EPA is indicating

here, and will reiterate in program guidance, that the work plan and, where appropriate, other required material are intended to be brief documents which merely outline agency plans and action. They will not be lengthy materials which are a burden to prepare.

6. Advance notice of public hearings and meetings. The concept papers included a public hearing notice requirement of 45 days. The present requirement is 30 days. Many commenters with experience in hearing participation have strongly supported this change. They indicated that under current requirements they often do not receive notices or hearing materials in time to thoroughly prepare hearing testimony. This is of particular concern because the complex issues discussed in hearings in many Agency programs require more than just a few days for thoughtful preparation. Government agencies have, for the most part, indicated that they see no need to change the current notice requirement and would oppose extending the notice period to 45 days.

The proposed regulations specify a 45-day notice for hearings; however, the Agency wishes to hear additional public comment on this issue. We especially invite comment on whether or not 30 days has generally provided adequate time for notices to be mailed and received, hearing documents to be obtained and reviewed, and testimony prepared.

The proposed regulations permit reduction of advance notice of public meetings from the normally required 45 days to a lesser period. No limitation on the reduction is specified. The Agency solicits comment on whether an absolute minimum of advance notice for public meetings should be set and, if so, what the minimum time should be.

7. Reimbursement of participation expenses. The Agency has received considerable comment, both pro and con, regarding reimbursement of advisory group out-of-pocket expenses such as transportation, parking, or child care. This is currently a grant eligible expense, but many agencies have exercised their discretion not to apply for grant funding to pay such costs. Some agencies opposed reimbursement on the basis of their opinion that costs do not inhibit participation in any way. Many citizen commenters indicated their belief that covering advisory group expenses will encourage more active participation, especially by low income individuals. Given the general balance of comment between the two points-of-view described above, the proposed regulations neither require nor prohibit reimbursement of advisory group member expenses. Before departing from the current practice, the Agency wishes to hear further comment on the issue. Comment on whether the administration of reimbursement systems need be an excessive burden (assuming proper guidance) would be particularly helpful.

Some comment has addressed the issue, raised in the concept paper, of whether reimbursement or some other form of government assistance for costs of participation (other than out-of-pocket costs of advisory group members) would be appropriate. Much of this comment, especially interest expressed at public meetings, strongly supports at least a pilot program to provide technical assistance or expert advice to assist participation.

The Agency is currently conducting an experimental program to reimburse selected participants in a rulemaking conducted under the Toxic Substances Control Act (TSCA). However, rulemaking activities differ significantly from many of the environmental control programs administered by the Agency. Considering these differences, the additional time that would be required for a thorough evaluation of the TSCA experience, and the EPA's strong commitment to assist public participation, the Agency does not believe it to be appropriate to defer action on assistance in non-rulemaking activities until the TSCA results are evaluated. The Agency will begin development of a pilot program to explore means to provide technical or expert assistance to participants in programs (other than rulemaking activities) under the Clean Water Act, Resource Conservation and Recovery Act and the Safe Drinking Water Act.

DISCUSSION OF COMMENTS RECEIVED ON THE CONCEPT PAPER FOR
PUBLIC PARTICIPATION IN THE MUNICIPAL WASTEWATER TREATMENT
FACILITY CONSTRUCTION GRANT PROGRAM:

Recognizing that wastewater treatment projects vary in complexity and community impact, the proposed public participation requirements institute a two-tiered program: an Abbreviated Public Participation Program, suitable to less complex projects with only moderate or minimal community impact, and a Full-Scale Program, for projects of greater complexity and community impact.

It is currently estimated that a maximum of 30 percent of the Step 1 (facility planning) projects would require a Full-Scale Public Participation Program in FY 79. Exemptions from the Abbreviated Public Participation Program would be available for certain minor projects upon approval of the Regional Administrator.

Significant issues raised in comments submitted on the construction grant public participation concept paper are as follows:

1. Discretion. Many commenters supported the public participation requirements outlined in the March concept papers and suggested additional requirements which should be applied to assure an adequate level of public participation. Many other commenters indicated that the concept papers were already too detailed and suggested that they be revised to provide more discretion to States, localities, and EPA Regions.

The proposed regulations provide more flexibility and discretion than did the concept papers. Specific areas where flexibility or discretion have been provided are as follows:

- o The criteria that trigger the Full-Scale Program were modified to permit the Regional Administrators increased discretion in making these determinations.
- o The criteria for exempting projects were modified to permit grantees with minor projects to petition the Regional Administrator for an exemption from the Abbreviated Program requirements.
- o Advisory groups are required for the Full-Scale Program to assist the grantee by providing a mechanism for consultation by an informed core group of citizens. This is considered an essential element for adequate public involvement in projects with potentially significant social, economic or environmental consequences. However, considerable flexibility has been provided in advisory group requirements (see the discussion of Advisory Groups above).

2. Resources. Implementation of a Full-Scale Program for a maximum of 30 percent of new Step 1 projects and an Abbreviated Program for the remaining projects (minus exemptions) would, as many commenters pointed out, increase the resource demands on EPA, States, and grantees. The Agency recognizes the resource requirements

of an adequate public participation effort and is taking action to meet its own staff requirements, particularly in the Regional offices. State resources may be augmented by funds available for State Management Assistance under section 205(g) of the Clean Water Act of 1977. At the local level, the required public participation activities will be eligible for 75 percent Federal funding. The additional local costs for public participation should be small in comparison to the total project costs, particularly construction and operating costs. Currently, the facilities planning process (Step 1) where the proposed public participation requirements are concentrated accounts for only 2 to 5 percent of the total cost of a municipal wastewater treatment project. Small additional expenditures in the facility planning stage ultimately can assist a community to achieve significant savings through development of projects which are less costly to build or operate.

3. Early Public Involvement. Numerous comments from many interests stressed the importance of informing and involving the public in the early, formative stages of the facilities planning process. The Agency agrees that public input should be focused in the early stages of facilities planning. However, since activities prior to Step 1 grant award are not grant eligible, the Agency is reluctant to impose public participation requirements at that stage. Consequently, the proposed regulations include no pre-Step 1 grant award public participation requirements except public notification and consultation in development of the plan of study and a

brief outline of the public participation program in the plan of study. The Agency encourages, but does not require, grantees to undertake other early involvement activities, especially during plan of study development.

4. Paperwork. See discussion of Paperwork above.

5. Coordination with Water Quality Management Planning.

The water quality management planning program (authorized by §208 of the Clean Water Act) and the municipal wastewater treatment construction grants program (authorized by §201 of the Act) are closely related. Many commenters urged that 208 advisory groups be used for 201 planning.

EPA agrees that there must be formal liaison between 201 and 208 planning and public participation activities. It is Agency policy to encourage such coordination whenever possible; however, the mechanism for coordination will be left to local discretion. The Agency believes that the different geographic scope of 208 advisory groups and the already heavy demands upon their time militate against mandating that 208 advisory groups also provide detailed advice to 201 planners. This would, however, be acceptable to the Agency if grantees determine that it is the most effective approach.

6. Public Participation in Steps 2 and 3. The concept papers raised the issue of requiring that a public participation program continue in Step 2 (design) and Step 3 (construction) of the construction grant process. Comment was mixed on this matter. The current proposal provides that the grantee, after consultation with the public and the advisory group where appropriate, can plan and conduct public participation activities in Step 2 and Step 3. The grantee must prepare and have approved a brief work plan for public participation to make such activities grant eligible. The proposed regulations also require public notice, information, and consultation in the adoption of the user charge system and the industrial cost recovery system which are not usually finalized until sometime in Step 2 or Step 3.

7. Public participation staffing in Full-Scale Program. Many commenters indicated that the term "public participation specialist" which was used in the March concept papers, would require a community to recruit and hire highly trained professionals at considerable expense. These individuals might not be familiar with the community and its interests and problems. Other commenters suggested that EPA require the public participation staff to be very familiar with the community. It was suggested that public participation functions should be carried out by a community organization or local public interest group under contract to the grantee.

Academic training will not be a requirement for the public participation staff. To indicate the type of staffing which will satisfy the requirement, the term in the proposed regulations has been changed from "public participation specialist" to "public participation coordinator." The Agency is sympathetic with the concept of meeting public participation staff requirements through a contract to a community group, but it questions whether this should be a requirement. Additional public comment on this issue is invited.

Many commenters indicated that an advisory group must have its own staff to be effective. The Agency does not have enough information at this time to require that advisory groups to facility planning processes be provided with their own staff. However, the intent of the general advisory group requirements in Part 25 is that the grantee provide staff support to the advisory group.

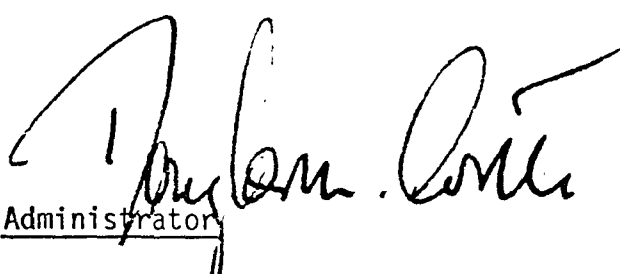
8. Delay. Some commenters indicated that the public participation requirements would substantially increase the time required to construct facilities for municipal wastewater treatment. These contentions were not supported by data demonstrating that public participation necessarily results in delay. Some projects begun after promulgation of the new regulations may take

more time in facility planning due to public participation activities; however, public participation can also shorten project time by permitting faster progress through environmental reviews, avoiding time-consuming controversy, promoting public acceptability of the approved plan, and thus helping to obtain passage of bond issues to pay the local share.

NOTE -- The Environmental Protection Agency has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Analysis Statement under Executive Orders 11821 and 11949 and OMB Circular A-107.

DATED:

July 31, 1978


Administrator

1. 40 CFR is amended by deleting Parts 105 and 249.
2. 40 CFR is amended by adding a new Part 25 reading as follows:

PUBLIC PARTICIPATION IN PROGRAMS UNDER THE RESOURCE CONSERVATION
AND RECOVERY ACT, THE SAFE DRINKING WATER ACT, AND THE CLEAN WATER
ACT

Sec.

- 25.1 Purpose and scope.
- 25.2 Policy and objectives.

- 25.3 Information and consultation responsibilities.
- 25.5 Enforcement.
- 25.7 Legal proceedings.
- 25.9 Rulemaking.
- 25.11 Grant work elements.
- 25.13 Responsiveness summaries.
- 25.15 Summary of public participation.
- 25.17 Assuring compliance with requirements.
- 25.19 Coordination and non-duplication.

AUTHORITY: Section 101(e) of the Clean Water Act, as amended, 33 U.S.C. 1251(e); section 7004(b) of the Resource Conservation and Recovery Act, 42 U.S.C. 6974(b); section 1450(a)(1) of the Safe Drinking Water Act, as amended, 42 U.S.C. 300j-9.

§25.1 Purpose and scope.

(a) This part sets forth requirements for public participation in activities described in paragraph (b) under the Clean Water Act, the Resource Conservation and Recovery Act, and the Safe Drinking Water Act.

(b) The activities covered by this part are:

- (1) EPA rulemaking;
- (2) EPA administration of permit programs;

- (3) Development by EPA of major informational materials intended for wide distribution to the public;
 - (4) When a Deputy Assistant Administrator determines it to be appropriate, development by EPA of strategy and policy guidance memoranda;
 - (5) Development and implementation of plans, programs, construction, and other activities supported with EPA grants to State, interstate, regional, and local agencies (hereinafter referred to as "State and substate agencies");
 - (6) Delegation of programs to States and substate agencies, and administration of such delegated programs;
 - (7) Such other activities as the Assistant Administrator for Water and Waste Management, the Assistant Administrator for Enforcement, or any EPA Regional Administrator deems appropriate in view of the Agency's responsibility to involve the public in significant decisions.
- (c) Activities which are not covered by this part, except as otherwise provided under (b)(7) or (d) of this section, are activities under Parts 33, 39, 40, 45 and 46 of this chapter.

- (d) Some programs covered by regulations in this chapter contain further provisions concerning public participation. Therefore, the reader should review both the provisions in this part and the provisions elsewhere in this chapter which are applicable to the program of interest. Regulations governing public information use and release are set forth in Part 2 of the chapter.
- (e) These regulations are applicable to the activities of all grantees whose grants are awarded after (the effective date of final regulations), and to all other covered activities of EPA, State and substate agencies which occur after that date. These regulations will be applicable to ongoing grants or other activities upon any significant change in the activity (for example, upon a significant proposed increase in project scope of a construction grant). Parts 105 and 249 will no longer appear in the Code of Federal Regulations; however, they will remain applicable, in uncodified form, to grants awarded prior to the effective date of this part and to all other ongoing activities.

§25.2 Policy and objectives.

- (a) It is EPA policy that EPA and all State and substate agencies participating in activities described in §25.1 will provide for, encourage, and assist the participation of the public

to the fullest extent practicable. Those responsible for covered activities must continuously strive to make public participation happen. Particular emphasis must be directed toward encouragement and assistance, including determining why the public does not participate in an action and overcoming the identified obstacles. Merely conferring with the public after a final agency decision does not meet this policy requirement.

(b) The following shall be the objectives of all actions of EPA and State and substate agencies under this part:

(1) to assure that the public understands official programs and proposed actions, and that government understands public concerns;

(2) to assure that no significant government decision on any activity covered under this part is made without consultation with interested and affected segments of the public;

(3) to assure that government action is responsive to the maximum extent feasible to public concerns, and to demonstrate that public concerns are evaluated and considered;

(4) to promote public support of environmental laws;

(5) to keep the public informed of significant issues and proposed project or program changes as they arise;

(6) to foster a spirit of openness and mutual trust among EPA, States, substate agencies and the public; and

(7) to continuously strive to make public participation happen, by using all feasible means to furnish opportunities for participation and by stimulating and supporting participation.

§25.3 Information and consultation responsibilities.

(a) General. EPA, State, and substate agencies shall conduct a continuing program for public information and participation in the development and implementation of activities covered by this part. Where functions are delegated to a State by EPA, the State shall be responsible for meeting the requirements for public participation which EPA otherwise would be required to meet.

(b) Information and assistance requirements. Public information is a necessary prerequisite for meaningful, active public involvement. Informational activities must be designed to encourage and facilitate the public's participation in all significant decisions, particularly where alternative courses of action are proposed. Each agency shall provide continuing policy, program, and technical information and assistance at the earliest practicable times and at places easily accessible to interested or affected persons and organizations. Fact sheets, news releases, newsletters and other publications may be used for this purpose. Informational materials must be comprehensive and easily understood. Special efforts shall be made to clearly and concisely summarize complex technical materials for public and media uses. Lengthy documents should be summarized (noting where the full document can be obtained). Information must be timely. It is essential that informational materials highlight significant issues that will be the subject of decision-making. Whenever possible, the social, economic, and environmental consequences of proposed decisions

should be clearly stated. Agencies should identify segments of the public likely to be affected by agency decisions and target specific informational materials toward them (in addition to the materials directed toward the general public). Each agency shall provide in a convenient location or locations, one or more central public collections or depositories of relevant documents. Examples of such documents are grant and permit applications, permits, effluent discharge information, compliance schedule reports, and materials specified in section 208(b) of the Clean Water Act. Copying facilities at reasonable cost should be available. Requests for information directed to the agency shall be promptly handled.

(c) Public notification. Each agency shall develop and maintain a list of persons and organizations who have expressed an interest in or may by the nature of their purposes, activities or members be affected by or have an interest in any covered activities. Those on the list shall receive timely and periodic distribution of materials under paragraph (b) of this section. In addition, the Agency shall provide written notification to those on its mailing list and media at times when major decisions are being made and in conjunction with consultation activities under paragraphs (d)(2), (3) and (4) of this section. Where specific hearing or other notice requirements exist in law or other regulations in this chapter, such actions shall be supplemented, to the extent not duplicative, with informal notice to all interested persons or

organizations having requested in advance such notice. All advance notifications under this part must be provided sufficiently in advance of Agency action to permit time for public response; generally, this should not be less than 30 days. Media publication which is obscure (e.g., legal notification pages) shall not be acceptable as the sole means of public notification.

(d) Public consultation. (1) General. "Public consultation" means an exchange of views between governmental agencies and interested or affected persons and organizations in order to meet the objectives set forth in §25.2. Three common forms of public consultation, discussed further below, are public hearings, public meetings, and advisory groups; other less formal consultation mechanisms include review groups, ad hoc committees, task forces, workshops, seminars and informal personal communications with individuals and groups. Public consultation must be preceded by timely information activities under paragraphs (b) and (c) of this section, and must occur sufficiently in advance of decision-making to permit response to public views prior to agency action. EPA, State and substate agencies shall provide for early and continuing public consultation in any significant action covered by this part. In addition to holding hearings and meetings as specifically required in this chapter, a hearing or meeting shall be held if there is significant public interest or if EPA, the State or substate agency determines that a hearing or meeting would be useful.

(2) Public Hearings. (i) Applicability. Where non-adjudicatory public hearings are required in this chapter, the following minimum requirements apply. These requirements are subordinate to any more stringent requirements found elsewhere in this chapter or otherwise imposed by EPA, State or substate agencies. Procedures developed for adjudicatory hearings required by this chapter shall be consistent with the public participation objectives of this part, to the extent practicable.

(ii) Notice. A notice of each hearing shall be well publicized, and shall also be mailed to the list of interested and affected persons and organizations under §25.3(c). Except as otherwise specifically provided elsewhere in this chapter, these actions must occur at least 45 days prior to the date of the hearing. The notice shall identify the matters to be discussed at the hearing and shall be accompanied by a fact sheet supplementing the contents of the notice with a discussion of the agency's tentative determination on major issues (if any), a bibliography of relevant materials, and procedures for obtaining further information. Reports, documents and data relevant to the discussion at the public hearing shall be available to the public for a reasonable time prior to the hearing, generally not less than 30 days.

(iii) Locations and time. Hearings must be held at times and places which, to the maximum extent feasible, avoid travel hardships and facilitate attendance by the public. Accessibility of public transportation, and use of evening and weekend hearings, should be considered. In the case of Statewide programs, holding more than one hearing should be considered.

(iv) Scheduling presentations. Witnesses at public hearings shall be scheduled in advance when necessary to ensure maximum participation and allotment of adequate time for all speakers. However, some time must be reserved for unscheduled testimony. Blocks of time may be considered for major categories of witnesses.

(v) Conduct of hearing. The agency conducting the hearing shall inform the audience of the issues involved in the decision to be made, the considerations the agency will take into account under law and regulations, the agency's tentative determinations (if any), and the information which is particularly solicited from the public. The agency should hold a question and answer period before presentations begin. Procedures shall not unduly inhibit free expression of views (for example, by onerous written statement requirements or qualification of witnesses beyond minimum identification).

(vi) Record. A transcript or other record of public hearing proceedings shall be developed and made promptly available at no more than cost to anyone who requests it.

(3) Public meetings. Public meetings differ from public hearings only in that they are less formal, formal presentation scheduling is not required, and a record of proceedings need not

be maintained. The requirements of §25.3(d)(2)(ii) and (iii) are applicable to public meetings, except that the notice requirement of 45 days may be reduced, if the notice specifies a reason.

(4) Advisory groups. (i) Applicability. The requirements of this section on advisory groups shall be met whenever provisions in Parts 30 or 35 of this chapter require use of an advisory group by State or substate agencies involved in activities supported by an EPA grant.

(ii) Role. Primary responsibility for decision-making in environmental programs is vested by law in the elected and appointed officials who serve on public bodies and agencies at various levels of government. Public participation in environmental quality planning must, however, extend to all segments of the public. Accordingly, where EPA finds that there is a need for continued attention of an informed core group of citizens, advisory groups are required in program regulations. Such advisory groups will not be the sole mechanism for public participation, but will complement other mechanisms. They are intended to assist the decision-making officials by making recommendations on important issues. In addition, advisory groups can encourage a constructive interchange among the various interests present on the group and enhance the prospect of community acceptance of agency action.

(iii) Membership. (A) Generally, where the activity has a particular geographic focus, the advisory group shall be made up of persons who are residents of that geographic area.

(B) A majority of advisory group members shall be private citizens and representatives of public interest groups reflecting a balance of interests in the project area. For purposes of this requirement, a "public interest group" is an organization which represents a general civic, social, environmental or public health perspective in the community and which does not directly reflect the economic interests of its membership or general economic interests otherwise appropriately represented under paragraph (d)(4)(iii)(C) of this section. While the private citizens and representatives of public interest groups must include interested and affected persons, no person may be included on the portion of the advisory group addressed by this paragraph who is likely to incur a substantial financial gain or loss as a result of any action likely to be taken by the grantee.

(C) The grantee should also provide an opportunity for representation on the advisory group of public elected and appointed officials and of organizations representing substantial economic interests of the community (for example, farmers' organizations in areas which are agricultural). Advisory group members appointed under this paragraph are not subject to the conflict-of-interest provision set forth in paragraph (d)(4)(iii)(B) of this section.

(D) The grantee shall require all prospective advisory group members to make written disclosure of personal and organizational economic interests in the activity as a condition of membership on the advisory group, in accordance with supplementary EPA guidance.

(iv) Grantee support and responsibilities. The grantee shall designate a staff contact who will be responsible for day-to-day coordination between the advisory group, the grantee, and the grantee's consultant. The grant agreement shall include a budget item for this staff contact. Where substantial portions of the grantee's responsibilities will be met under contract, the grantee shall require a similar designation, and budget specification, of its contractor. In the latter event, the grantee need not designate a separate staff contact on its own staff, if the Regional Administrator determines that the contractor's designation will result in an adequate level of coordination. In all cases, the staff contact shall be located in the project area. The grantee shall provide the advisory group with information and other appropriate support in accordance with EPA guidance.

(v) Advisory group authority and duties. The advisory group shall be appointed by the grantee in accordance with the requirements of this section. The advisory group shall undertake its responsibilities fully and promptly in accordance with the policies and requirements of this part. Nothing shall

preclude the right of the advisory group to request EPA to perform an evaluation of the grantee's compliance with the requirements of this part. EPA will provide supplementary guidance on advisory group coordination responsibilities, organization, and procedures.

(vi) Training and assistance. EPA will promptly provide appropriate written guidance and project information to the newly formed advisory group and may provide advice and assistance to the group throughout the life of the project. EPA will develop and carry out a program to provide a training session for the advisory committee and appropriate grantee representatives promptly after its formation. The grantee will provide that any additional needed training or information is provided to advisory group members as the need arises.

(vii) Grantee record keeping requirements. The grantee shall prepare a written statement of its responses to any formal recommendation of the advisory group, which shall be available to the public. The grantee shall record the names and addresses of each member of the advisory group, with the attributes of each in relation to the requirements of §25.3(d)(4)(iii) and shall provide a copy to EPA and make the list available to the public.

§25.5 Enforcement.

Each State and substate agency shall develop internal procedures for receiving and ensuring proper consideration of information and evidence submitted by citizens about violations of pollution control requirements. Public effort in reporting violations shall be encouraged, and the agency shall make available information on reporting procedures. Alleged violations shall be promptly investigated by the Agency.

§25.7 Legal proceedings.

EPA and each State and substate agency shall provide full and open information on legal proceedings to the extent not inconsistent with court requirements, and where such disclosure would not prejudice the conduct of the litigation. EPA actions shall be consistent with the Statement of Policy issued by the Department of Justice with regard to affording opportunities for public comment before the Department of Justice consents to a proposed judgement in an action to enjoin discharges of pollutants into the environment. (see Title 28, Code of Federal Regulations, Chapter 1, §50.7)

§25.9 Rulemaking.

In addition to providing an opportunity for public hearings on proposed and interim regulations, EPA shall invite and consider comments in writing from any interested or affected persons and organizations. All such comments shall be part of the public record and a copy of each comment shall be available for public inspection. EPA will maintain a docket of comments received and Agency responses, if any. Notices of proposed and interim rulemaking, as well as final

rules and regulations, shall be distributed in accordance with §25.3(c) to interested or affected persons promptly after publication. Each notice shall include information as to the availability of the full texts of rules and regulations (where these are not set forth in the notice itself) and places where copying facilities shall be available at reasonable cost to the public. Under Executive Order 12044 (March 23, 1978), further EPA guidance will be issued concerning public participation in EPA rulemaking. A summary of public participation will be published as part of the preamble to interim and final regulations.

§25.11 Grant work elements.

(a) This section is applicable to activities under §25.1(b)(4) except as otherwise provided in Parts 30 or 35.

(b) Each grant applicant shall set forth in the application a public participation work plan or work element which reflects how public participation will be provided for, encouraged, and assisted in accordance with this part. This work plan or element shall cover the project period. At a minimum, the work plan or element shall state:

(1) staff and budget resources to be devoted to public participation by category;

(2) a proposed schedule of public participation activities according to major points in the program;

- (3) the types of consultation to be used;
- (4) informational mechanisms to be used; and
- (5) the segments of the public targeted for involvement.

(c) All reasonable costs of public participation incurred by grantees which are identified in an approved public participation work plan or element, or which are otherwise approved by EPA, shall be allowable.

§25.13 Responsiveness Summaries.

At specific decision points specified in program regulations, agencies are required to prepare a responsiveness summary. This document is an identification of the public participation activity conducted; a summary of the public's views, comments, criticisms and suggestions; and the Agency's specific responses in terms of modifications to the proposed action or an explanation for rejection of proposals made by the public. The responsiveness summary shall accompany the record of the decision. Responsiveness summaries shall be made available to the public. Responsiveness summaries shall be used as part of evaluations required under this part or elsewhere in this chapter.

§25.15 Summary of public participation.

Each agency which conducts any activities required under this part shall prepare a Summary of Public Participation where specified in program regulations. The summary shall describe the matters brought before the public, the measures taken by the agency to meet its responsibilities under this part and related provisions elsewhere in this chapter, the public response, and the agency's response to significant comments. Responsiveness summaries may be used to meet appropriate portions of these requirements to avoid duplication. The summary of public participation shall be forwarded to the appropriate EPA Assistant Administrator or Regional Administrator as required in program regulations and shall be made available to the public.

§25.17 Assuring compliance with requirements.

(a) Grant programs. (1) Grant applications. EPA shall review the public participation work plan (or, if no work plan is required for the particular grant by this chapter, the public participation element) included in the grant application to determine consistency with all policies and requirements of this part. No grant shall be awarded unless EPA is satisfied that the public participation policies and requirements of this part and Part 35 will be met.

(2) Compliance. (i) Evaluation. EPA shall evaluate grantee compliance with public participation requirements using

the work plan, responsiveness summary, summary of public participation, and other available information. The adequacy of public participation effort shall be judged in relation to the requirements of §25.2 and §25.3. In conducting such evaluation, EPA may request additional information from the grantee, including records of hearings and meetings, and may invite public comment on the performance of the grantee. The evaluation will be undertaken as part of any mid-project review required in various programs under this chapter; where no such review is required the review shall be conducted at an approximate mid-point in continuing EPA oversight activity. EPA may, however, undertake such evaluation at any point in the project period, and will do so whenever it believes there may be a failure to meet public participation requirements.

(ii) Remedial actions. Whenever EPA determines that public participation requirements are not fully met, EPA shall take actions which it deems appropriate to assure that the adverse effects of the failure are mitigated and the failure is not repeated. For ongoing projects, such action shall include, at a minimum, imposing more stringent requirements on the grantee for the next budget or other period of the project (including such actions as more specific output requirements and milestone schedules for output achievement; interim EPA review of public participation activities and materials prepared by the grantee; and phased release of grant funds based on compliance with milestone schedules.) EPA may terminate or suspend part or all of a grant for non-compliance with public participation requirements,

and may take such other further actions it deems appropriate in accordance with the provisions of Parts 30 and 35 of this chapter (see, in particular, §§30.340 and 30.615-3, and Subpart H of Part 30).

(b) Water permit programs. Compliance with public participation requirements in the permit programs (see Part 124) administered by approved States shall be monitored by EPA during the annual review of the State's water program (see §35.570) and during the review of State permit programs. Failure to comply with public participation requirements may constitute grounds for withdrawing the program from a State.

(c) Other covered programs. (reserved)

§25.19 Coordination and non-duplication.

Public participation activities and materials required under this part may be combined with closely related programs or activities wherever such combination will enhance the economy, the effectiveness, or the timeliness of the effort, enhance the clarity of the issue, and not be detrimental to participation by the widest possible public. Hearings and meetings may be held jointly by more than one agency on the same matter, where such procedure does not conflict with the policy above. Special efforts shall be made to coordinate public

participation procedures under this part and applicable regulations elsewhere in this chapter with environmental assessment and analysis procedures under 40 CFR Part 6. Interstate agencies particularly are encouraged to develop combined proceedings on behalf of the States concerned.

3. 40 CFR Part 35 Subpart E is amended by revising S35.903(o) to read as follows:

S35.903 Summary of construction grant program.

* * * * *

(o) It is the policy of the Environmental Protection Agency to provide for, encourage, and assist public participation in the construction grant program. Public participation is required:

(1) in the development of the state project priority system and list under S35.915;

(2) in the development of facilities plans, in accordance with S35.917-5;

(3) in the development of user charge systems, in accordance with S35.925-11, and industrial cost recovery systems, in accordance with S35.925-12; and

(4) in the delegation of administrative responsibilities for the construction grant program under S35.1000 et seq.

4. 40 CFR Part 35 Subpart E is amended by revising S35.917-1(g) to read as follows:

S35.917-1 Content of Facilities Plans.

* * * * *

(g) A summary of public participation, consistent with S25.15 of this chapter and S35.917-5(g).

5. 40 CFR Part 35 Subpart E is amended by revising S35.917-5 to read as follows:

S35.917-5 Public Participation.

(a) General. Public participation in the facilities planning process shall be provided for, encouraged, and assisted consistent with §101(e) of the Act and with Part 25 of this chapter. Citizens shall be provided with information about and shall be given the opportunity to become involved in:

- (1) the assessment of local water quality problems and needs;
- (2) the identification and evaluation of appropriate waste treatment technologies and locations for treatment works;
- (3) the evaluation of social, economic, fiscal, and environmental impacts; and
- (4) the resolution of other significant facilities planning decisions.

(b) Abbreviated Public Participation Program. Public participation in the facilities planning process (except for those projects exempt under paragraph (c) of this section and those qualifying for the Full-Scale Program under paragraph (d) of this section) shall include, but not be limited to, the following:

(1) Public notification and consultation in development of the plan of study.

(2) An outline in the plan of study of the types of consultation and information mechanisms to be used, the segments of the public targeted for involvement, the mechanisms for coordination with any pertinent 208 public participation programs, projected budget and staff commitments, and the schedule for public participation as part of the schedule for completion of specific tasks (see S35.920-3(a)(1)).

(3) Submission to EPA of a brief public participation work plan (see S25.11 of this chapter) within 45 days after the date of acceptance of a Step 1 grant award. The work plan shall be widely distributed to groups and individuals who may be interested in or affected by the project. A project fact sheet shall accompany the work plan and shall identify the professional consulting engineer responsible for preparation of the facilities plan. The work plan shall set forth:

(i) Staff and budget resources committed to public participation;

(ii) A schedule of public participation activities according to major points in the program;

(iii) Types of public consultation mechanisms to be used (see S25.3(d)) of this chapter);

(iv) Types of informational materials and mechanisms to be used and methods for distribution;

(v) Segments of the public targeted for involvement; and

(vi) Coordination mechanisms with any pertinent 208 public participation programs.

(4) Consultation with the public (see S25.3(d) of this chapter) early in the facilities planning process when the assessment of the existing and future situations is being made and before the selection of alternatives for evaluation according to the cost-effectiveness analysis procedures.

(5) A public meeting when alternatives are largely developed but before an alternative or plan has been selected.

(6) A public hearing in accordance with S25.3(d)(2) of this chapter prior to the adoption of the facilities plan. This public hearing may be held in conjunction with the public hearing on the draft Environmental Impact Statement under S6.914 of this chapter.

(7) Efforts to keep the public continuously informed of the progress of the facilities planning process, especially treatment alternatives, costs, and environmental impacts.

(8) A summary of public participation (in accordance with SS25.15 and 35.917-5(g) of this chapter).

(c) Exemption from public participation program requirements.

(1) Upon petition by the grant applicant, the Regional Administrator may exempt from the requirements of paragraphs (b) and (d) of this section, except for the public hearing required by S35.917-5(b) and public disclosure of costs, projects in which only minor plant upgrading or minor sewer rehabilitation is anticipated by the State Project Priority List. Before granting any exemption, the Regional Administrator shall issue a public notice of intent to waive the above requirements and shall allow 30 days for response. If responses indicate that serious local issues exist, then the Regional Administrator shall deny the exemption.

(2) During the facilities planning process, if the Regional Administrator determines that the project no longer meets the exemption criteria stated above, then the exemption to public participation program requirements lapses. The grantee, in consultation with the Regional Administrator, shall then undertake

public participation activities commensurate with the Abbreviated Public Participation Program but adjusted for constraints imposed by facilities planning activities already completed.

(3) If a project is segmented, the Regional Administrator shall look at the project as a whole when considering any petition for exemption.

(d) Full-Scale Public Participation Program Criteria. (1) A Full-Scale Public Participation Program under paragraph (e) of this section is required for all projects for which EPA prepares an Environmental Impact Statement under Part 6 of this chapter during facilities planning. In addition, a Full-Scale program under paragraph (e) is required during facilities planning for any other project for which the Regional Administrator determines that enhanced public access to decisionmaking is needed because of the possibility of particularly acute effects on matters of citizen concern, as indicated by one or more of the following:

(i) Significant change in land use or impact on environmentally sensitive areas;

(ii) Significant increase in treatment plant, interceptor capacity or sewerage area;

(iii) Substantial total cost to the community or substantial cost to users, (i.e. costs not reimbursed under grant);

(iv) Significant general public controversy;

(v) Significant impact on local population or economic growth;

(vi) Substantial opportunity for use of innovative or alternative technology.

(2) A Full-Scale Public Participation Program shall be initiated as soon as the determination in subparagraph (1) of this paragraph is made. Generally, the determination should be made prior to or with the award of the Step 1 grant. However, if the Regional Administrator's determination under subparagraph (1) of this paragraph to require a full-scale program occurs after initiation of facility planning because of newly discovered circumstances, the grantee shall initiate an expanded public participation program at that point. The Regional Administrator shall determine that the expanded program is at least as inclusive as a normal Full-Scale Public Participation Program, except for constraints imposed by facilities planning activities already completed.

(e) Full-Scale Public Participation Program. The Full-Scale Public Participation Program shall include the following:

(1) All of the requirements for an Abbreviated Public Participation Program contained in paragraph (b) of this section, except that a public

meeting, rather than other public consultation mechanisms, is required when the assessment of the existing and future situations is being made and before the alternatives to be studied are selected.

(2) A public participation coordinator designated or hired by the grantee immediately after the Step 1 grant award.

(3) A public advisory group established by the grantee immediately after the Step 1 award, in compliance with the advisory group requirements of S25.3(d)(4) of this chapter.

(4) Consultation with the advisory group and the public:

(i) In the development of the work plan;

(ii) Early in the facilities planning process when the assessment of the existing and future situations is being made and before the selection of alternatives for evaluation according to the cost-effectiveness analysis procedures;

(iii) When alternatives are largely developed but before an alternative or plan has been selected;

(iv) Otherwise as appropriate.

(f) Public notification. Adequate advance notice of public meetings and public hearings shall be provided the public, consistent with S25.3(d)(2) of this chapter. Generally, 45 days (but not less than 30 days) notice shall be provided. Appropriate local and State agencies, State and

regional clearinghouses, interested environmental groups and appropriate local public officials should receive written notice of public meetings and hearings.

(g) Reporting. The grantee shall prepare responsiveness summaries in accordance with S25.13 of this chapter and this section. For projects conducted under the Abbreviated Public Participation Program the grantee shall prepare responsiveness summaries following the public consultation and the public meetings required by paragraph (b) of this section, and also as a part of the summary of public participation (see S25.15 of this chapter) in the completed facilities plan. For projects conducted under the Full-Scale Public Participation Program the grantee shall prepare responsiveness summaries following the required public meetings and as a part of the summary of public participation in the completed facilities plan. The grantee shall promptly and widely distribute copies of the responsiveness summaries to interested or affected members of the public and will submit a copy to EPA separately or in conjunction with progress reports (see 40 CFR Part 35 §917-3(d)).

(h) Relationship between facility planning (201) and water quality management planning (208). The grantee must provide for a formal liaison between the facilities planning advisory group (or the grantee, where there is no advisory group) and any areawide advisory committee established under §208 of the Act.

6. 40 CFR Part 35 Subpart E is amended by revising 35.920-3(a)(1) and by adding a new subparagraph (10) to S35.920-3(b) to read as follows:

§35.920-3 Contents of application.

(a) * * *

(1) A plan of study presenting (i) the proposed planning area; (ii) an identification of the entity or entities that will be conducting the planning; (iii) the nature and scope of the proposed Step 1 project and public participation program, including a schedule for the completion of specific tasks; and (iv) an itemized description of the estimated costs for the project;

* * * * *

(b) * * *

(10) A work plan for public participation for Steps 2 and 3 if the grant applicant, after consultation with the public and its advisory group (if one exists), determines it to be necessary;

7. 40 CFR Part 35 Subpart E is amended by revising S35.925-11 to read as follows:

S35.925-11 User charges.

That, in the case of grant assistance awarded after March 1, 1973, for a project involving Step 2 or Step 3, an approvable plan and schedule of implementation have been developed, with adequate public information and consultation, for a system of user charges to assure that each recipient of

waste treatment services within the applicant's service area will pay its proportionate share of the costs of operation and maintenance (including replacement as defined in S35.905-17 of this chapter) of all waste treatment service provided by the applicant and the applicant must agree that such system(s) will be maintained. See Appendix B to this subpart.

8. 40 CFR Part 35 Subpart E is amended by revising paragraph (a) of S35.925-12 to read as follows:

S35.925-12 Industrial cost recovery.

(a) That, in the case of any grant awarded after March 1, 1973, for a project involving Step 2 or Step 3, signed letters of intent have been received by the applicant from each significant industrial user to pay that portion of the grant amount allocable to the treatment of its wastes. Each such letter shall also include a statement of the industrial user's intended period of use of the treatment works. A significant industrial user is one that will contribute greater than 10 percent of the design flow or design pollutant loading of the treatment works. In addition, the applicant shall inform and consult with the public about the industrial cost recovery system and must agree to require all industrial users to pay that portion of the grant amount allocable to the treatment of wastes from such users.

9. 40 CFR Part 35 Subpart E is amended by revising paragraph (h) of S35.928-1 of the interim final regulations published in the FEDERAL REGISTER on April 25, 1978, to read as follows:

S35-928-1 Approval of the industrial cost recovery system.

* * * * *

(h) Adoption of system. The industrial cost recovery system must be incorporated in one or more municipal legislative enactments or other appropriate authority. If the project is a regional treatment works accepting wastewaters from other municipalities, the subscribers receiving waste treatment service from the grantee shall have adopted industrial cost recovery systems in accordance with section 204(b)(1)(b) of the Act and these regulations. Such industrial cost recovery systems shall also be incorporated in the appropriate municipal legislative enactments or other appropriate authority of all municipalities contributing waste to the system. Affected segments of the public shall be consulted prior to adoption of the industrial cost recovery system.

10. 40 CFR Part 35 Subpart E is amended by revising paragraph (e) of §35.929-2 of the interim final regulations published in the FEDERAL REGISTER on April 25, 1978, to read as follows:

§35.929-2 General requirements for all user charge systems.

* * * *

(e) Adoption of system. The user charge system must be incorporated in one or more municipal legislative enactments or other appropriate authority. If the project is a regional treatment works or part of a regional system accepting wastewaters from other municipalities, the subscribers receiving waste treatment services from the grantee shall have adopted user charge systems in accordance with section 204 (b)(1)(A) of the Clean Water Act and SS35.929 through 35.929-3. Such user charge systems shall also be incorporated in the appropriate municipal legislative enactments or other appropriate authority of all municipalities contributing waste to the system. Affected segments of the public shall be informed of the financial impact of the user charge system on them and shall be consulted prior to adoption of the system.

11. 40 CFR Part 35 Subpart E is amended by adding a new paragraph (r) to S35.940-1 to read as follows:

S35.940-1 Allowable project costs.

* * * * *

(r) Reasonable costs of public participation incurred by grantees which are identified in a public participation work plan, or which are otherwise approved by EPA, shall be allowable.

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