Concept Paper
for Implementation of

TITLES II and VI
of the
WATER QUALITY ACT OF 1987

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U.S. Environmental Protection Agency
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CONCEPT PAPER
FOR IMPLEMENTATION OF TITLES II AND VI
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INTRODUCTION

A. Purpose of Concept Paper

This paper describes the Environmental Protection Agency's (EPA) interpretation of the Water Quality Act of 1987 (1987 Amendments), which amends the Federal Water Pollution Control Act. This interpretation is intended to provide the basis for the implementation of these amendments.

The purpose of this Concept Paper is to provide interested parties with the opportunity to review and respond to EPA's interpretation of the amended construction grants program and the newly created capitalization grant program, whereby funds may be obligated to State Water Pollution Control Revolving Funds.

After the review period for this Concept Paper ends, EPA will decide whether any provisions in the Act will be developed as regulations, or whether guidance alone will provide a suitable operational framework.

Comments should be addressed to Geoffrey Cooper, U.S. Environmental Protection Agency, Office of Municipal Pollution Control (WH-546), 401 M Street, SW, Washington, D.C. 20460. In order to use these comments in guidance or rulemaking, EPA must receive them by May 20, 1987.

B. Contents of the Paper

Part I of this paper briefly reviews the history of the construction grants program and highlights changing trends.

Part II describes the approach EPA is proposing to use in developing the guidance, and rules if necessary, to implement the 1987 Amendments and sets forth a tentative schedule.

Part III describes the amendments to the construction grants program.

Part IV describes the new capitalization grants program.

Part V includes appendices cited in the text.

I. LEGISLATIVE HISTORY OF THE CONSTRUCTION GRANTS PROGRAM

In 1972, Congress enacted amendments to the Federal Water Pollution Control Act of 1956 that provided for a strong Federal role in the construction of publicly owned wastewater treatment works. The 1972 Amendments, commonly referred to as the Clean Water Act, increased the level of Federal aid and expanded the Federal grant share to 75 percent in an effort to quicken the pace of wastewater treatment facility construction and eliminate a backlog of needed facilities. However, Congress has long expected that States and municipalities would eventually assume full responsibility for financing, building, operating, maintaining, and replacing their treatment facilities.

This shift in responsibility to State and local governments began in 1977. The 1977 Amendments to the Clean Water Act authorized the Environmental Protection Agency (EPA) to delegate most of its construction grants management functions to the States. The Federal role was further reduced by the 1981 Amendments, which cut the annual Federal authorization in half, reduced the Federal grant share, narrowed the eligible funding categories, and reduced the eligible treatment capacity to that required to meet existing needs.

The Water Quality Act of 1987 (the 1987 Amendments), sets forth a schedule and mechanism for completing the transition to full State and local responsibility. EPA's authorization to award new project grants to municipalities to construct wastewater treatment facilities ends in fiscal year 1990. New authority is given to EPA to make grants to capitalize State Water Pollution Control Revolving Funds (SRFs), the primary purpose of which will be to provide loans and other financial assistance to municipalities for the construction of wastewater treatment facilities.

Beginning in fiscal year 1987, States will have the option to use a portion of their annual construction grants allotments for the capitalization of SRFs. Separate appropriations for SRF capitalization grants are authorized from fiscal year 1989 through fiscal year 1994. After the management of fiscal year 1994 funds is completed, the Federal role will no longer include financial assistance to States or municipalities for wastewater treatment facility construction. The States and municipalities will thereafter have the sole responsibility for providing financing to meet the enforceable requirements of the Act.

II. APPROACH TO IMPLEMENTATION (GUIDANCE AND/OR RULES)

A decision has not yet been made whether, in addition to guidance, regulations will be necessary to implement the amended construction grant program and the newly created capitalization grant program of Title VI. The amendments to Title II and the legislative language of Title VI are clear, detailed, and straight-forward. The areas which may call for regulatory interpretation appear to be limited in number and scope.

Title VI in particular contains areas of considerable complexity and terms which are inadequately defined. Regulations may be necessary to clarify these matters and to assure consistent, binding EPA interpretations. Regulations may also be necessary to assure that the flexibility of the Act is not inadvertently restricted by other programs or Agency regulations. Whichever option is eventually selected, EPA intends to implement the program in a manner which adheres as nearly as possible to the language and the intent of the Water Quality Act, while providing States with sufficient latitude to operate their SRF programs.

In order to assist the Agency in determining whether, and to what extent, regulations are necessary, this Concept Paper is being distributed widely to solicit comments on the Agency's interpretations of the 1987

amendments. The Agency's decision on the approach to program implementation will be made soon after the comment period ends on May 15, 1987.

Regardless of whether that decision is to implement the program by means of guidance, regulation, or both, this Concept Paper will serve as the basis for preparing interim guidance to allow States and the Regions to negotiate capitalization grant agreement for SRF programs as soon as possible.

Should the Agency decide that some regulations will be promulgated to facilitate the long term management of the program, the Concept Paper and responses to the Concept Paper will also serve as the basis for developing rules. These rules could be published in interim final form in early 1988. An interim final rule would provide an additional opportunity for public comment before a final rule would be published in 1989 to reflect experience under interim provisions. The interim final rule would also provide a basis for States and municipalities to make the necessary changes to their construction grants programs, establish SRF programs, or alter existing SRF programs, where necessary.

States receiving capitalization grants negotiated under guidance must recognize that subsequent regulations or changes to guidance may affect the terms under which subsequent grants are negotiated.

Construction grants may continue to be awarded under existing regulations.

DESCRIPTION OF TOPICS IN TITLES II AND VI

III. TITLE II - AMENDMENTS TO THE CONSTRUCTION GRANTS PROGRAM

A. National Reserves and State Set-asides

The 1987 Amendments continue the authority for State set-asides and establish two national reserves. Funding for the national reserves, the new set-asides for non-point source and estuary purposes, and the optional transfer of Title II funds for Title VI purposes, shall apply to any appropriations bill passed after enactment of the Water Quality Act of 1987.

1. National Reserves

The national reserves provide funding for projects to abate combined sewer overflows (CSO) into marine bays and estuaries and for awarding construction grants to Indian Tribes. Unlike State set-asides and the Governor's discretionary authority, which are percentage amounts set aside by the State or the Regional Administrator from each State's allotment, or from each State's share of the authorization in the case of State management assistance grants, national reserves are amounts deducted by the EPA Administrator from the entire appropriation, before allotment

a. Marine CSO and Estuaries Reserve

The marine CSO and estuaries reserve is 1 percent of the appropriation for fiscal years 1987 and 1988, and 1.5 percent of the entire appropriation in fiscal years 1989 and 1990. Two-thirds of the amount of the reserve shall be available to address water quality problems resulting from marine CSO discharges into marine bays and estuaries. The Agency intends to use existing regulations (40 CFR Part 35.2024(b)) and guidance to award funds for marine CSO projects from this set-aside.

Applications for marine CSO grants from fiscal year 1987 funds must be submitted to the Regional Administrator by September 1, 1987.

The remaining one-third of the marine CSO and estuaries reserve is to be used to supplement the funds available to the National Estuary Program under Section 320 of the Act. These funds will be administered under guidance or regulations to be developed by the Office of Marine and Estuarine Protection and will not be discussed in further detail in this Concept Paper.

b. Grants to Indian Tribes

Under the 1987 Amendments, one-half of one percent of the sums appropriated under section 207 will be reserved for grants for the development of waste treatment management plans and for the construction of sewage treatment works to serve Indian tribes.

In cooperation with the Indian Health Service (IHS), EPA will conduct a 12-month survey/study to assess the sewage treatment needs of Indian Tribes. The survey will also study how allotments to States under section 205 can best meet Indian needs. The 1987 Amendments also require the Administrator to specify how tribes are to be assisted in meeting their wastewater management planning and construction needs, and how the Agency will maximize Indian participation in the administration of these programs.

The Act authorizes EPA to treat Indian tribes as States for purposes of Title II and other sections of the Act, but only where the tribe has the necessary capability and authority to carry out the functions of the Act and applicable regulations. The 1987 Amendments require the Agency to promulgate regulations before August 5, 1987 on how Indian tribes will be treated as States. For the purposes of the construction grants program,

EPA's initial thinking is to apply the existing regulations at 40 CFR, Part 35, Subpart J that govern State delegation agreements.

In view of the phase-out of the construction grants program in 1990, and the limited time in which to fully develop the technical and managerial capabilities to manage the program, it's very possible that Indian tribes may elect to forego delegated authority to manage the construction grants program.

To assure that there are alternative administrative arrangements, EPA is exploring the feasibility of an administrative arrangement based on the existing relationship between the Indian Health Service and the tribes. Under this approach the IHS could administer the Title II funds through its existing sanitation facilities program. IHS guidance would apply in the interest of IHS program consistency and administrative efficiency, however, EPA may include additional requirements, such as a requirement that projects with CWA eligible needs receive first priority for funding. Alternatively, EPA could enter into an agreement whereby the IHS would act as a "delegated State" and administer the set aside under the construction grants regulations and an EPA national priority list.

EPA will establish a workgroup to evaluate these alternative approaches on Title II implementation for Indian Tribes. The workgroup, which will include representatives of the tribes, IHS, Regions, and States, will study proposed implementation approaches, impacts, and regulatory barriers to implementation, and other major activities as they relate to applying Title II provisions to Indian tribes.

The actual allocation of the set-aside funds will be based on some form of priority ranking system that includes criteria for determining eligibility and priority. For example, at least the following approaches will be considered:

-- An Indian Project Priority List developed by an Indian tribe, if the Indian tribe receives program delegation.

-- A National Priority List developed by EPA in cooperation with IHS if IHS assumes responsibility as a "delegated State."

-- A Project Funding List developed by IHS if IHS administers program.

The Act does not authorize the Agency to treat Indian Tribes as States for purposes of awarding capitalization grants under Title VI, but they may be eligible for SRF assistance in the same manner as municipalities.

2. State Set-asides

a. Section 205(g) Management Assistance Grants

The authority for the set-asides for State management assistance grants, which are deducted from each State's share of the Title II authorization, is extended through fiscal year 1994. However, authorization of funds for Title II construction grants ends in fiscal year 1990, so the source of funds for State management assistance grants after 1990 is unclear.

By extending section 205(g) authority and not some other set-asides to 1994, Congress appears to recognize that construction grant management activities will continue for several years after fiscal year 1990 and to intend for funds to be available for delegated States to phase out the program.

Most States will seek to coordinate operations of the construction grant and the capitalization grant programs, and EPA expects to facilitate such coordination by allowing States to use up to 4 percent of their annual authorizations in a combined fashion for both purposes. However, States may not use more than 4 percent of the amount of its yearly capitalization grant award for administration of the SRF.

b. Section 205(h) Rural Set-Aside

The rural set-aside is extended through fiscal year 1990. This section requires rural States to set aside at least 4 percent of its allotment and is amended to allow any State to reserve up to 7.5 percent of its allotment to assist small communities in constructing alternative treatment facilities

c. Section 205(i) Innovative and Alternative Technology

The authority for the innovative and alternative technologies set-aside is extended through fiscal year 1990. Each State must set-aside 4 percent, and may set-aside up to 7.5 percent of its allotment for increasing the Federal grant to projects using innovative/alternative technologies. The 1987 Amendments revise the reallotment formula for funds remaining for the innovative and alternative technologies set-aside after the two year period of availability has expired. Up to $1 million of funds set-aside for innovative and alternative technologies, but unobligated within the deadline shall be awarded to the Small Flows Clearinghouse, which was established in the 1977 Amendments. Any funds in excess of the $1 million shall be realloted to the States in the customary manner.

Subsection e. of this Section describes how the amounts set aside under the rural and the innovative/alternative technology provisions may be effected in any year in which funds are transferred to an SRF under section 205(m).

4. Section 205(j) Water Quality Management Planning Non-Point Source and Estuary Programs

The set-aside for water quality management planning of section 205(j)(1) is continued under Title II and a similar set-aside for planning under sections 205(j) and 303 is included in the new Title VI.

Section 316(d) of the 1987 Amendments (new section 205(j)(5) of the Act) creates a set-aside for the Nonpoint Source Pollution Management Programs developed under the new section 319. Each State must reserve the greater of $100,000 or one percent of its annual allotment. The State is required to obligate the first $100,000 of this reserve annually for development and implementation of nonpoint source pollution management programs or forfeit the unobligated balance of that first $100,000 to reallotment. These 205(j) funds shall be reallotted to States that are able to obligate such funds for the purposes of section 319. Where the reserve for any State exceeds $100,000, funds in excess of the mandatory $100,000 may be used by the State for any purposes defined under Title II of the Act.

The nonpoint source management set-aside can be used for the same purposes as funds authorized to be appropriated under new section 319(j) of the Act for developing and implementing approved nonpoint source management programs. In addition, section 316(c) amends 201(g)(1) to make eligible, under the Governor's 20 percent discretionary provision, grants for the development and implementation of non-point source management programs and demonstration projects (319(h)), and grants for protecting

groundwater (319(i)). The Conference Report states that sections 201(g)(1) and 205(j)(5) funds can be used for "financial assistance to individuals only insofar as the assistance is related to costs of implementing demonstration projects."

The new sections 601(a) and 603(c) provide that SRF funds may be used for implementing a management program under section 319 and for developing and implementing a conservation and management program under section 320.

Guidance or regulations to implement these programs will be developed by the Office of Water Regulations and Standards and will not be discussed in further detail in this Concept Paper.

e. Section 205(m) Optional Transfer of Title II Funds to Title VI

Section 205(m) of the 1987 Amendments allows the State to transfer funds from the State's Title II allotment for deposit into the SRF to use as a Title VI capitalization grant. The amount of the Title II allotment that can be transferred is limited to 50 percent of the State's fiscal year 1987 allotment and 75 percent of the State's fiscal year 1988 allotment. There is no limit on the amount of the deposit for fiscal years 1989 and 1990. Section 205(m) specifically exempts only sums reserved under section 205(j), including subsections (1) and (5), from deposit into an SRF under this provision.

The Title II set-aside calculations may be affected in any year in which Title II funds are transferred into an SRF. Because Title VI exempts only section 205(j) from deposit into the SRF, it appears that Congress intended for the other statutory set-asides to be calculated against the balance of each allotment remaining available for Title II purposes. EPA recognizes that under this preferred interpretation,

mandatory set-asides other than section 205(j) could be effectively eliminated by a State that deposits its entire allotment into an SRF in fiscal years 1989 and 1990. However, this appears to be consistent with the increased flexibility Congress has given to the States's to determine the use of allotted funds. If, instead, a State were required to calculate these set-asides against its entire allotment, the amounts would be disproportionate in relation to the amount the State retains for construction grants.

B. Design/Build Projects

Design/build agreements permit a grantee planning to build a small treatment system to advertise one contract for both design and construction of a treatment works, thereby avoiding several review and bidding requirements. The use of design/build contracts are intended to reduce both the amount of time to complete the project and the cost of the project.

EPA will soon publish a class deviation to current regulations which will authorize the use of alternative "design/build" grant management procedures by communities planning to build aerated lagoons, trickling filters, stabilization ponds, land application systems, sand filters, or subsurface disposal systems. To be considered for these alternative agreements, a project must have an approved facility plan and a total estimated cost of $8 million or less. A grantee may receive only one grant for a design/build project. No more than 20 percent of a State's annual allotment can be obligated for these projects.

The grant agreement must specify a maximum Federal contribution, based upon a competitively bid document consistent with applicable Federal procurement requirements and any limitations imposed on design/build contracting by State and local laws, regulations of basic design data and standard construction specifications, and a determination of eligible

costs at the applicable Federal share. An allowance will be provided for facility planning work if a Step 1 grant has not been awarded for the project.

The grant agreement must also provide:

- Dates for the start and completion of construction;

- A schedule of payments for the Federal share;

- Assurance that:

  -- the grantee has adequate engineering and management assistance,
  -- the treatment works will be operable and will meet all program requirements,
  -- the treatment works will meet project performance standards or applicable permit requirements within one year following the agreed date of completion;

- A requirement for a contractor's bond in an amount to protect the Federal interest; and,

- Other terms and conditions to assure compliance with program requirements, (excluding the submission of plans/specifications and payment provisions as Stated in section 203(a), (b), and (c), which do not apply).

To assure compliance, EPA will retain 10 percent of each grant payment awarded for design/build projects. In the case of non-compliance the Federal contribution will be recovered. Excess Federal funds remaining in a design/build grant will be deobligated and returned to the State's allotment.

C. Termination of Higher Federal Share for Phased or Segmented Projects

Phases or segments of projects which previously received a Federal grant share of 75 percent, or 85 percent for innovative and alternative technologies, will no longer be eligible for that level of funding after October 1, 1990. On that date, the Federal share for all projects will be no more than 55 percent, and no more than 75 percent for innovative and alternative technologies. The reserve capacity eligibility for grandfathered phase/segmented projects continues to be 20 years for grants or grant amendments for these projects funded from any remaining funds appropriated under Title II.

D. Agreements On Eligible Costs

Under section 203(a) of the 1987 Amendments all construction grant agreements or amendments must now include a written statement specifying the items of the proposed project which are eligible for Federal payments. The Agency may not later modify such eligibility determinations unless they are found to have been made in violation of applicable Federal statutes and regulations. However, this provision does not prohibit grant amendments. Eligibility determinations do not preclude the Agency from auditing a project or from withholding or recovering Federal funds for costs which are found to be unreasonable, unsupported by adequate documentation, or otherwise unallowable under applicable Federal cost principles, or are incurred on a project which fails to meet the design specifications or effluent limitations contained in the grant agreement and permit. Guidance on this provision was issued by Memorandum, dated March 31, 1987, to the EPA Regional Offices.

IV. TITLE VI - THE STATE REVOLVING FUND CAPITALIZATION GRANT PROGRAM

A. Purpose

This section describes the Federal requirements associated with the State revolving fund capitalization grant program, which is authorized by Title VI of the Clean Water Act, as amended. Capitalization grants are to be awarded to States for deposit in State Water Pollution Control Revolving Funds (SRFs). From these funds the States shall provide loans and other types of financial assistance, but not grants, to local communities, intermunicipal, and interstate agencies, for the construction of publicly-owned wastewater treatment facilities, and for implementation of the new nonpoint source pollution control and estuary protection programs. Congress anticipated that most of the financial assistance provided by the SRFs would be in the form of loans. Loan repayment would then provide a continuing source of capital for States to make available to localities for water pollution control facilities and programs (See Appendix A "Annual Operations").

The new SRF capitalization grants program is fundamentally different from the established construction grants program. Whereas the construction grants program is Federally designed, and is operated by States only after delegation of specific activities and responsibilities, the Federal role in the capitalization grants program is limited to program-level grants-making and review. (EPA does not envision a direct Federal project management role except at the request of the State or as a function of the Agency's oversight responsibility, which is discussed in Section F of this Paper). Each SRF is to be primarily State-designed and operated, with minimal Federal requirements imposed on its structure.

Congress devised the SRF Capitalization Grant program with two overriding objectives in mind: to enable States to quicken the pace of wastewater treatment facility construction in order to meet the enforceable requirements of the Clean Water Act, and to facilitate the establishment of permanent institutions in each State that would provide continuing sources of financing needed to maintain water quality. EPA will assure that these two objectives are achieved through the Agency's implementation of the program.

B. Types of Assistance

1. The SRF may not award grants

2. Loans

The primary type of financial assistance an SRF is expected to provide is loans. Properly conditioned loans, as compared with the other types of financial assistance available from SRFs, establish repayment streams to the SRF to assist communities in attaining and maintaining compliance with the CWA. The conditions placed on loans made by an SRF are intended to maintain the Fund's financial integrity without hampering the State's flexibility to use the Fund to address the diverse needs of its communities. As part of its fund management strategy, a State should strive to ensure that money will be continually available to meet future wastewater treatment needs. Note, however, that loans may not be made to support the non-Federal share of a project receiving grant assistance under the construction grants program. However, loans can be made for phases, segments or stages of treatment works that previously received grant assistance for other phases, segments or stages.

a. Interest Rate

Loans must be made at or below market interest rates, and may include zero interest loans. A State may exercise flexibility in setting interest rates in order to accommodate the fiscal circumstances of individual communities. (The market interest rate is the rate the State ascertains to be prevailing in the State for similar public works projects, and may be applied for a period of time or may be set as each loan is made.)

b. Repayment

Principal and interest payments must be made at least annually beginning not later than one year after the date of completion of construction. The loan must be fully amortized within twenty years of completion of construction. EPA intends to define completion of construction as the date operations are initiated. Each State has complete flexibility in setting the yearly amount of the principal repayment and the interest payment. States may set standard State-wide amortization schedules or address each loan on a case-by-case basis.

c. Dedicated Repayment Source

Each loan recipient must establish one or more dedicated sources of revenue for repayment of the loan. Dedicated sources of revenue could be special assessments, general tax pledges (full faith and credit of the municipality), revenue bonds, user charges or other sources. Recipients constructing treatment works with loan funds "directly made available by capitalization grants under Title VI and section 205(m)" of the Act must also establish user charge systems as required under sections 602(b)(6) and 204(b)(1) of the Act which must satisfy the requirements of 40 CFR Part 35 Subpart I. However, user charge systems meeting EPA requirements do not necessarily assure or require that the user charge system provide

for the collection of debt service and, therefore, may not meet the dedicated source of revenue requirement established by section 603(d).

d. Payment to the SRF

All payments of principal and interest must be credited to the SRF.

e. Prevention of Double Benefit

If a State makes a loan from its SRF in part to finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of treatment works and subsequently awards the recipient a grant under section 201(g) for construction of the treatment works and an allowance under section 201(g)(2), the State must ensure that the recipient will promptly repay the loan to the extent of the allowance. For this reason, the State should generally not make these expenses eligible for loans when the State plans to award a subsequent grant for construction.

3. Uses Other Than as Loans

In addition to loans, State Revolving Funds may provide any of the following types of financial assistance:

a. Refinancing

An SRF may buy or refinance a local debt obligation at or below market rate where such debt was incurred after March 7, 1985. For example, a municipality that, for NPDES compliance reasons, cannot wait for SRF funding to become available before commencing construction of its wastewater treatment facility may obtain interim financing from another source and seek refinancing through the SRF at a later date when SRF funds are available. Projects receiving SRF refinancing must comply with the

requirements applicable to projects funded by SRF loans (see Section E and Appendix B). Further, where the original debt was in the form of a multi-purpose bond incurred for purposes in addition to wastewater treatment facility construction, an SRF may provide refinancing only for eligible purposes, and not for the entire debt.

b. Guarantees and Insurance

An SRF may guarantee or buy insurance for local debt obligations where such action would improve credit market access or reduce interest rates. Because guarantees and insurance may involve the expenditure of funds without a return stream, their use will reduce the future purchasing power of the SRF.

c. Leveraging

Resources in the SRF may also be "leveraged," i.e., used as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State if the proceeds of the sale of such bonds are deposited in the SRF. Resources include all assets of an SRF, including the existing balance in the SRF at any point in time, and future revenues from loan repayments. The State may choose to borrow against the repayment stream from outstanding loans made from an initial set of capitalization grants or part of the capitalization grant or State match, thus making available significant amounts of money much sooner than would otherwise be possible. Each State must comply with all of its securities laws and regulations, as well as with those of the Federal government. The bonds may be issued by an instrumentality of the State, the State agency responsible for administering the SRF, or an interState agency to which two or more States have delegated such responsibility.

The State match cannot come from future proceeds of a leveraging action that is dependant on a reserve account funded from the capitalization grant. The intent of the State match requirement is to show the State's willingness to invest in the SRF and to provide an absolute increase in the resources available to the SRF. Further, a capitalization grant payment is not available for use by a State until the State has shown that each match payment will be made and has made at least the first quarter's payment into the SRF.

d. Sub-State Revolving Funds

An SRF can provide loan guarantees for similar revolving funds established by municipal or intermunicipal agencies. EPA intends to delay implementing this provision until there exists sufficient experience with State-level revolving funds to provide a basis for considering sub-State revolving funds.

e. Administrative Expenses

As previously noted, EPA intends to allow States to use section 205(g) funds and SRF administrative funds for coordinated administration of the Fund and the construction grants program. These expenses may not exceed four percent of the State's combined share of the authorizations under Titles II and VI.

The eligible administrative costs for SRF administration include all costs similarly eligible under section 205(g) for management of the construction grants program: and under the SRF program costs of servicing loans and issuing debt, SRF program start-up costs, financial, management, and legal consulting fees, and reimbursement costs for support services from other State agencies. However, the SRF administrative allowance cannot be charged with the costs of administering permit programs under

sections 402 and 404 and Statewide waste treatment management planning programs under section 208(b)(4), or any other section 106 activities.

f. Earn Interest

An SRF may earn interest on fund accounts, subject to the requirements for expeditious expenditure of Federal grant funds and Federal and State arbitrage limits.

g. Assistance for the Non-Federal Share

If a project is receiving a Federal construction grant it may not receive a loan for the non-Federal share of the project's cost. However, other forms of financial assistance, such as loan guarantees, may be provided to that project only if the Governor determines that the municipality faces severe financial constraints and the assistance is necessary to allow the project to proceed.

C. Notice of Intent to Use Title II Allotments for SRF Programs

If a State wishes to use a portion of its construction grant allotment under section 205 of the Act as a capitalization grant, the Governor must file a notice of the State's intent with the Regional Administrator. In order to use fiscal year 1987 construction grant allotments for this purpose, the Notice of Intent must be received no later than May 5, 1987. In order to use available allotments in subsequent fiscal years, the notice must be filed no later than 90 days before the first day of those fiscal years. In fiscal year 1987, up to 50 percent of the State's allotment may be deposited in its SRF, and up to 75 percent may be deposited for fiscal year 1988. Funds set-aside under section 205(j) cannot be deposited into the SRF.

The notice of intent requirement is not intended to bind the State to a declared course of action. Instead, it will enable EPA to administer the SRF program more efficiently, particularly in its early years. Because the deadline for filing a notice of intent for any fiscal year could pass before EPA issues interim final rules, and because a State's legal and budget circumstances may remain unclear until after the 90 day deadline, the Agency is advising States to submit the notice as specified above with the assurance that the notice may be amended or withdrawn. In determining the portion of the allotment the State wishes to transfer for deposit in its SRF, it should consider the effect of set-asides.

D. Capitalization Grant Application and Agreement

Prior to receiving capitalization grant funds, the Regional Administrator and the State should reach an understanding on how the State will administer SRF activities and the role of EPA in the program.

EPA is considering an umbrella concept whereby these understandings and activities would be incorporated in a State-EPA Water Pollution Control Revolving Fund Operating Agreement (OA) which could be in effect for multiple years, and which would be similar to other State-EPA agreements. Since activities on construction grant projects will continue for the next few years, the OA may incorporate or cite by reference applicable portions of the existing State delegation agreement. Once the terms of the OA are agreed upon, the State's subsequent applications for capitalization grants may contain only the information needed to support the annual application--for example the intended use plan, a negotiated payment schedule and annual State certifications.

Among the topics that could be addressed in the OA are: the goals and objectives of the SRF; the responsibilities and the relationships of the State organizations involved in the total wastewater treatment facility construction program; the manner in which projects will be

selected for funding (using priority lists and intended use plans) and administered through construction, completion and full repayment; the content and frequency of intended use plans; the State's method for accounting for obligations and disbursements, the application of State and Federal regulations and procedures; (e.g., progress toward meeting enforceable requirements, etc.); reporting; EPA capitalization grant and payment procedures; the nature and scope of technical assistance, information agreements, auditing and oversight activities, annual report requirements, and other topics.

Although an Operating Agreement may contain many of the items in a Capitalization Agreement, for each fiscal year, a Capitalization Grant Agreement must be entered into between the Administrator and the State before funds can be awarded from Title VI appropriations and from Title II under the section 205(m) option. A State may apply for a capitalization grant by submitting to the Regional Administrator the standard application form SF 5700-31 and a draft agreement and intended use plan (the intended use plan is described in detail in Section E). Beginning with fiscal year 1989, EPA must receive the application no later than 90 days prior to the end of the second fiscal year after appropriation. The Regional Administrator should take action on the application within 45 days of receipt.

Section 602 and 603 of the Act clearly set forth specific conditions that must be included in this agreement:

1. SRF - An Instrumentality of the State

Each State must establish that it has created an SRF as an instrumentality of the State which complies with the requirements and objectives of the Act.

2. Payment Schedule

A payment schedule, established jointly between the Regional Administrator and the State in accordance with the State's intended use plan, must be included with the capitalization grant agreement. For each grant, the law requires that Federal payments must be made in quarterly installments and completed no later than eight quarters after the date the State first obligated such funds or twelve quarters after the funds were allotted to the State, whichever is earlier. The payment schedule negotiation should also take into account the loan commitments that an SRF has made or is expected to make, the factors effecting the pace of construction within the State, the amount of funds already available but not expended by the SRF, and the timing and amount of various borrowing needs of municipalities, States and the Federal government.

3. State Match

The State must agree to satisfy the 20 percent match requirement on or before the date the State receives the grant payment according to the negotiated schedule. The report to the Senate bill provides that the match requirements can be satisfied by deposits into a dedicated State revolving fund in fiscal years prior to the fiscal year that Federal capitalization grant funds are received. State funds that were deposited into a dedicated State Revolving Fund after March 7, 1985, which is the date this legislation began Congressional consideration, can be used to satisfy match requirements. EPA is examining the Act to determine whether the match requirement can be satisfied from loan repayments or interest, particularly those from loans made from State deposits into the SRF in excess of the match.

4. Commitments for 120 Percent In One Year

The State must agree to enter into binding commitments to provide financial assistance from the SRF in an amount equal to 120 percent of each quarterly grant payment (the Federal grant and the State's match) not later than one year after receipt of each payment. If a State enters into binding commitments greater than the 120 percent requirement, the excess balance may be credited towards a subsequent quarter's requirement. Any SRF funds committed for use, including funds placed in a reserve account for guarantees for local projects funds used to purchase insurance and funds used for administration, can be cited as meeting the 120 percent binding commitment requirement. Binding commitments are legal obligations, recognized by State law, that define terms and timing for transferring SRF assets to a recipient of financial assistance.

The intended use plan (described in Section E) must identify sufficient potential recipients of financial assistance to satisfy this requirement. The actual commitment made must be documented in the Annual Report. In addition, any negotiated interim reporting may be met by updating the intended use plan. The intended use plan does not bind the State. Substitutes and modifications to provisions in the original plan must, however, be explained in the Annual Report, and total commitments on the amount, timing and type of assistance must be met. Only changes that are so significant as to constitute a change to the program for which the grant was awarded will require review and approval by EPA.

5. Conditions Applying to All Funds

Generally, the funds in an SRF may be used to provide financial assistance for (1) the construction of publicly owned treatment works as defined in section 212 of the Act; (2) the implementation of nonpoint source management programs established under section 319 of the Act; and,

(3) the development and implementation of estuary conservation and management plans under section 320 of the Act, subject to certain conditions in the 1987 Amendments which are explained in the following sections. Projects to receive financial assistance from the SRF must appear on the State's priority list developed under section 216 and discussed further in the next section.

The State must agree to expend all of the funds in its SRF in a timely and expeditious manner as defined in the intended use plan and capitalization grant agreement and as constrained by the applicable Tax Acts. In order to effectuate the Congressional intent to speed needed construction, EPA is also considering requiring States to agree to expend funds within one year of the date a binding commitment was made. This requirement applies to the capitalization grant payments, deposits made under section 205(m), the State match and any other State contributions, including the proceeds of leveraging or other use of the monies and, ultimately, loan repayments. Deposits into reserve accounts for guaranteeing a local issue and the purchase of insurance are considered expenditures, as are loan awards. However, securing a State bond issue with Federal grant money is not considered an expenditure. The intended use plan must include assurances and specific proposals for meeting this requirement.

Projects and programs to receive financial assistance must be consistent with plans, if any, developed under sections 205(j), 208, 303(e), 319 and 320.

6. Funds as a Result of Capitalization Grants -- First Use for Enforceable Requirements

All funds in the SRF "as a result of" Federal capitalization grants (e.g., capitalization grants, the State match, interest and repayments from loans made from those grants, and leveraging proceeds, but not proceeds from State monies in excess of the match) must first be used to assure maintenance of progress toward compliance with the enforceable deadlines, goals, and requirements of the Clean Water Act. The enforceable requirements of the Act include the municipal compliance deadline of July 1, 1988. The Conference Report accompanying the 1987 Amendments explains that this first use requirement is met if the treatment works in a State are on enforceable schedules to achieve compliance with effluent limitations, whether or not there is a commitment to fund such treatment works from a State revolving loan fund or with a Title II grant. Thus, if all treatment works (as defined in section 212 of the Act) in a State are on enforceable schedules and thereby maintaining progress toward compliance with, for example, the 1988 municipal deadline, the State may use its SRF funds resulting from capitalization grants for any treatment works project on the State's priority list, or for eligible programs or projects other than treatment works (i.e., programs or projects identified under the Nonpoint Source Pollution Control Program (section 319) or the National Estuaries Program (section 320)).

A project is maintaining progress toward compliance if during the term of the Intended Use Plan it is not in significant non-compliance or is on an enforceable schedule. An enforceable schedule is an NPDES permit, a judicial order, an administrative order, or a State order that has been recognized by EPA as having the equivalent enforceability of an order issued under section 309.

At any given time there could be facilities in a State not maintaining compliance. In order to avoid impeding the SRF's ability to expend available funds in a timely manner, EPA is considering a provision whereby the Regional Administrator may be permitted to accept a State's

assurance that a facility not maintaining progress toward compliance and unable to proceed regardless of funding commitments will be brought onto an enforceable schedule by a specified date. If such an assurance could be made, that facility could possibly be considered as maintaining progress toward compliance.

Funds in the SRF not as a result of capitalization grants are not subject to this requirement. These monies may be used at any time for the construction of any treatment works on the State's priority list, for the implementation of management programs established under section 319, or for development and implementation of conservation and management plans under section 320. The use of the funds for section 319 and 320 programs need not be on the priority list but must be described in the intended use plan. The Governor retains the discretion to use up to 20 percent of the State's allotment to fund previously eligible projects as provided in 40 CFR Subpart I 35.2015.

7. Funds Directly Made Available from Capitalization Grants -- Title II Requirements

The State must certify to the Regional Administrator that all projects financed, in whole or in part, from funds authorized before fiscal year 1995 which are "directly made available" by capitalization grants under Title VI and section 205(m) of the Act, will meet the requirements listed below in the same manner as projects receiving grants under Title II. These requirements are not imposed on projects funded wholly from the State match nor to monies repaid to the fund, but do apply to projects funded by the portion of the proceeds of leveraging which is equivalent to the capitalization grant when that grant is used for leveraging purposes. This is referred to as the "equivalency requirement." Those Title II requirements can be shown to be met by identifying in the Intended Use Plan projects whose total eligible costs equal or exceed the grant amount. Eligible costs are defined in section

201(g)(1), which permits funding otherwise ineligible categories (sections 201(g)(1) and 211) from the 20 percent Governor's discretionary account. Any projects cited as having eligible costs that help to meet the equivalency requirement must also satisfy the other requirements listed below.

If a project receives a loan of at least 50% of its total eligible costs, the total eligible costs of the project can be credited toward satisfying the equivalency requirement of that grant and any excess eligible costs can be offset against subsequent grants. The content of the Intended Use Plan is described in more detail in the following Section.

The applicable Title II requirements are:

Section 201(b), which requires that projects apply best practicable waste treatment technology (see 40 CFR, 35.2005(b)(7);

Section 201(g)(1), which limits assistance to projects for secondary treatment, advanced treatment, or any cost-effective alternative, new interceptors and appurtenances, and infiltration-inflow correction (this section retains the Governor's discretionary set-aside by which a State can use up to 20 percent of its allotment for other projects within the definition of treatment works in section 212(2), and for certain non-point source control and groundwater protection purposes, as defined in sections 319 and 320 of the Act and subsequent Agency regulations (see 40 CFR, 35.2015(b)(2)(ii-iv));

Section 201(g)(2), which requires that alternative technologies be considered in project design (see 40 CFR 35.2030);

Section 201(g)(3), which requires the applicant to show that the related sewer collection system is not subject to excessive infiltration (see 40 CFR, 35.2030(b)(4) and 35.2120);

Section 201(g)(5), which requires that applicants study innovative and alternative treatment technologies and take into account opportunities to make more efficient uses of energy and resources (see 40 CFR, 35.2030);

Section 201(g)(6), which requires that the applicant analyze the potential recreation and open space opportunities in the planning of the proposed facility (see 40 CFR 35.2030(b)(5);

Section 201(n)(1), which provides that funds under section 205 may be used for water quality problems due to discharges of combined sewer overflows, which are not otherwise eligible, if such discharges are a major priority in a State (see 40 CFR 35.2015(B)(2)(iv) and 35.2024(a);

Section 201(o), which calls on the Administrator to encourage and assist communities in the development of capital financing plans;

Section 204(a)(1) and (2), which require that treatment works projects be included in plans developed under sections 208 and 303(e) (see 40 CFR 35.2023);

Section 204(b)(1), which requires communities to develop user charge systems and to have the legal, institutional, managerial, and financial capability to construct, operate, and maintain the treatment works (see 40 CFR 35.2208, 35.2130, 35.2140, and 35.2214);

Section 204(d)(2), which requires that, one year after the date of construction, the owner/operator of the treatment works must certify that the facility meets design specifications and effluent limitations included in its permit (see 40 CFR 35.2218);

Section 211, which provides that collectors are not eligible, under the Governor's 20 percent discretionary authority of 201(g)(1), unless the collector is needed to assure the total integrity of the treatment works or that adequate capacity exists at the facility (see 40 CFR 35.2015(b)(2)); (Note that the 1987 Amendments extend the prohibition for funding separate storm sewers through fiscal year 1990).

Section 218, which assures that treatment systems are cost-effective and requires that projects of over $10 million include a value-engineering review (see 40 CFR 35.2030(b)(3) and 35.2114);

Section 511(c)(1), which applies the National Environmental Policy Act to treatment works projects (see 40 CFR 35.2113); and,

Section 513, which applies Davis-Bacon labor wage provisions to treatment works construction (see 40 CFR 30.603(a).

Appendix B -- illustrates the eligibility concepts of Title VI and section 205(m).

The Act places the responsibility for demonstrating compliance with these requirements on the State, which must establish "to the satisfaction of the Administrator that" (section 602(b)) the eligible treatment works have met the requirements "in the same manner as treatment works

constructed with assistance under Title II" of the Act (section 602(b)(6)). This language, along with language in the Conference Report to the effect that States need only "demonstrate" compliance with the enumerated requirements, suggests three possible approaches to assuring compliance:

- the State would adopt and apply the applicable construction grant regulations and procedures that implement these statutory requirements;

- the State would apply the construction grant regulations, but would be permitted to adopt its own streamlined procedures which are more appropriate to projects financed by loans; or,

- the State would develop its own regulations and procedures to implement the statutory language.

Presently, EPA favors the second approach which is a more reasonable interpretation of the language of the Act and of Congressional intent and is the approach that would allow the earliest award of capitalization grants under guidance. This option would also most effectively accomplish the two goals of achieving compliance with the Act's requirements and providing States with the flexibility needed to operate the program.

There are a number of laws and directives from other executive agencies, in addition to those contained in Subpart C of EPA's regulations implementing the National Environmental Policy Act (40 CFR Part 6), that have traditionally applied to projects that receive Federal funds. EPA does not intend to apply, for example, the Federal procurement policy and similar authorities attaching to Federally funded projects. However, there are a number of "cross-cutting" statutes which apply by their own terms, whether or not a project receives direct Federal financial assistance. Notable among these laws is Title VI of the Civil Rights Act

of 1964. It is clear from the legislative history of the Civil Rights Act that Congress intended for its non-discrimination provisions to apply broadly to any Federally assisted construction project, and this interpretation of its application has been upheld by the court. Several other laws pertaining to discrimination and patterned after Title VI of the Civil Rights Act may also apply.

Appendix C lists most of the laws and other requirements which the Agency is evaluating to determine whether, and to what extent they apply to projects funded by an SRF. The Agency will provide guidance to States and recipients of SRF assistance explaining their responsibilities with regard to these authorities and others which may need to be evaluated.

8. Set-Aside from Title VI Allotments

Title VI provides for only one set-aside. Each year, a State must reserve one percent of its allotment or $100,000, whichever is greater, to carry out planning under sections 205(j) and 303(e).

9. State Laws and Procedures

The State must agree to assure that it will follow its own laws and procedures applicable to revenue commitment or expenditure. This requirement may be satisfied by certification by an auditing body of the State that the SRF's procedures are established so as to comply with the State's laws and procedures and generally accepted accounting principles.

10. State Accounting and Auditing Procedures

As a Federal grant recipient the State must follow the accounting and auditing provisions in EPA's General Grant Regulations (40 CFR Part 30). The Agency expects that these regulations will satisfy the requirements of Title VI. The State must agree to establish appropriate

fiscal and reporting procedures for the SRF. The State is required to maintain accounts for payments received by the fund, disbursements made by the fund, and fund balances at the beginning and end of the accounting period. The accounting period will be the Federal fiscal year (October 1 to September 30) unless other annual reporting periods are established in the Capitalization Grant Agreement.

At least once a year, the Administrator will conduct, or will require the State to have independently conducted, an audit of the fiscal operation of the SRF. The State may designate an independent auditor of the State to carry out the audit or may contractually procure the service. An "independent auditor" is a State or local government auditor who meets the independence standards specified in generally accepted government auditing standards. The Regional Administrator may arrange for an EPA audit if the State fails to conduct the audit or if the State's review is otherwise unsatisfactory. The audit must be submitted to the Regional Administrator within 180 days of the end of the fiscal year for which it was conducted. State conducted audits may be done in conjunction with the single Audit Act (see Office of Management and Budget Circular A-128). EPA will develop a compliance supplement which will detail requirements of an SRF audit for use by State auditors. A State audit does not preclude a subsequent audit by the EPA's Office of the Inspector General (IG). Any IG audit will build upon the State's audit to the maximum extent practicable.

The State will use accounting, audit, and fiscal procedures that conform to the generally accepted accounting principles (e.g., Standards for Audit of Governmental Organizations, Programs, Activities and Functions, 1981, also known as the "Yellow Book" and "Governmental Accounting and Financial Reporting Principles", National Council on Government Accountings Statement 1, March 1979). EPA intends to develop an example report format as guidance.

11. Recipient Accounting and Auditing Procedures

As a condition of making a loan or other forms of assistance described in section 603(d), the State must require recipients to maintain project accounts in accordance with generally accepted government accounting standards (e.g., Standards for Audit of Governmental Organizations, Programs, Activities and Functions. 1981, also known as the "Yellow Book" and "Governmental Accounting and Financial Reporting Principles", National Council on Government Accountings Statement 1, March 1979).

12. Environmental Review Requirements

As noted in Section 7, section 511(c)(1) requires the Governor to apply a NEPA-like review to projects constructed with funds directly made available by capitalization grants. However, section 602(a) of the Act gives the Administrator the authority to include conditions in capitalization grant agreements in addition to those specified in section 602(b). Based on this authority, EPA plans to require each State to assure, prior to receiving capitalization grant funds, that all treatment works to be constructed in whole or in part with funds provided from the State's revolving fund will be subject to a NEPA-type review and to systematic, interdisciplinary environmental review procedures to evaluate the possible environmental impacts (including secondary impacts) associated with such construction. Although the primary purpose of the SRF program in providing funding for the construction of treatment works is to improve the quality of the environment, this environmental review requirement is included because the potential exists for undesirable environmental side-effects resulting from inappropriate design or siting of funded treatment facilities, or from the promotion of uncontrolled residential, commercial, or industrial development. In order to ensure that the environmental improvement objectives of the SRF program are most effectively carried out in perpetuity and are not jeopardized by

inadequate consideration of the associated environmental costs, EPA believes it is essential for States to develop and conduct ecologically sound environmental reviews. Like the Federal NEPA process, these reviews should provide for adequate public involvement.

States' comprehensive environmental review programs will be able to fulfill the above requirement simply by complying with their own program requirements. States have the option to use the NEPA process (as developed under the construction grants program) until such time as the State's own procedures have been developed and approved by the Administrator. These EPA approved NEPA process review procedures must be in place by fiscal year 1994 in order to be considered eligible for a capitalization grant in that fiscal year. Once the State's procedures are a matter of record, the Administrator's only concern will be to ensure that the State consistently follows its procedures.

E. Intended Use Plan, Annual Report

1. Intended Use Plan

A State must submit an intended use plan as part of its application for a capitalization grant. The plan may be amended upon an agreement between the State and the Regional Administrator. The following information must be included in each intended use plan:

a. List of Projects

A list of the publicly owned wastewater treatment construction projects on the State's priority list and non-point source and estuary protection projects eligible for SRF assistance;

b. Long and Short Term Goals

A description of the long and short term goals of the State's SRF;

c. Information on the Activities to be Supported

Information on the activities to be supported by the SRF program, including a description of project categories, applicable discharge or other enforceable requirements, terms of financial assistance, and communities served;

d. Timing and Use of Funds

Assurances and proposals for meeting the binding commitments, expeditious and timely expenditure of funds, maintenance of progress, and specified Title II requirements of Section 602(b) of the Act;

e. Criteria and Method for Distribution of Funds -- Including Public Comment

Information on the criteria for distribution of funds. The State must provide opportunity for public comment and review of the proposed intended use plan before submitting it, in final form, to EPA. Hearings for priority system and priority list purposes may concurrently satisfy this requirement; and,

f. Interim Reporting Requirements

The intended use plan can be updated with actual dates to facilitate any interim reporting negotiated by the Regional Administrator and the State at the time of capitalization grant award.

2. Annual Report

A State must submit an annual report, no later than 90 days after the end of the fiscal year, which shall reflect the actual use of capitalization grant funds. The report shall update the intended use plan, identify recipients of financial assistance and include dates of loans, loan amounts, loan terms, and similar information regarding forms of financial assistance other than loans. The annual report, the intended use plan, and other records the Regional Administrator may reasonably require, form the basis of the annual review of each SRF program. EPA intends to develop an example report format as guidance. Appendix D includes a sample listing of contents. EPA anticipates that this reporting requirement will end with the closeout of the last project funded with funds "resulting from the capitalization grant" or the closeout of the last capitalization grant, whichever is earlier. However, limited information may be required as part of a general State report to EPA as long as the SRF operates, such as deposits of all repayments into the SRF, use only for purpose under 212, 319 and 320, and public review and comment on the operation of the fund.

F. EPA's Role - Oversight of Capitalization Grant Conditions

1. Program Level Review

The Regional Administrator is responsible for reviewing each State's compliance with its capitalization grant agreement and the overall requirements of Title VI. This review is conducted at the program level. EPA will conduct reviews of selected projects at the time of review of the annual report to assure program compliance. Projects may be reviewed at any time as part of an investigation into allegations of waste, fraud, or abuse of a program grant.

2. Information Management

In order to facilitate effective and efficient EPA oversight of the SRF program, States will be required to report a limited set of project level data. Selected information will be updated on a quarterly basis and will be used by EPA to assess the progress of the State in providing financial assistance to municipalities that result in treatment works construction. The focus of EPA will be on the progress, or results being achieved, by the SRF.

This information will also be used to facilitate management of the cash flow, or outlays under capitalization grants in accordance with the payment schedules negotiated between EPA and the State.

3. Annual Review and Compliance Assurance

The Regional Administrator will complete an annual review of the intended use plan and the annual report covering the same fiscal year within 60 days of receipt of the annual report. The scope of the Regional Administrator's review will be specified in the capitalization grant agreement. The Regional Administrator may request from a State or loan recipient materials that may be needed to conduct an adequate programmatic review. If additional information is required to complete the review and determine compliance, and the Regional Administrator provides reasonable notice, the State or loan recipient must make the requested records available to the Regional Administrator for the annual review.

If the Regional Administrator finds, as a result of the annual review, that the State has not complied with its capitalization grant agreement or other requirements under Title VI, the Regional Administrator shall notify the State of such non-compliance and prescribe the necessary corrective action. Failure to satisfy the terms of the capitalization grant agreement, including unmet assurances or invalid certifications, is grounds for a finding of non-compliance.

In making a determination of non-compliance with the capitalization grant agreement and devising the corrective action, the Regional Administrator will identify the nature and cause of the State's failure. The State's corrective action must remedy the specific instance of non-compliance and adjust program management to avoid non-compliance in the future. Upon request, the Regional Administrator will provide technical assistance to the State in correcting the non-compliance problem.

If a State fails to take the necessary corrective action as directed by the Regional Administrator within sixty days of receipt of the non-compliance notice, the Regional Administrator shall withhold payment to the SRF until the State has taken the required corrective action. Once the State takes the corrective action deemed necessary and adequate by the Regional Administrator, the withheld payments shall be released and scheduled payments shall recommence.

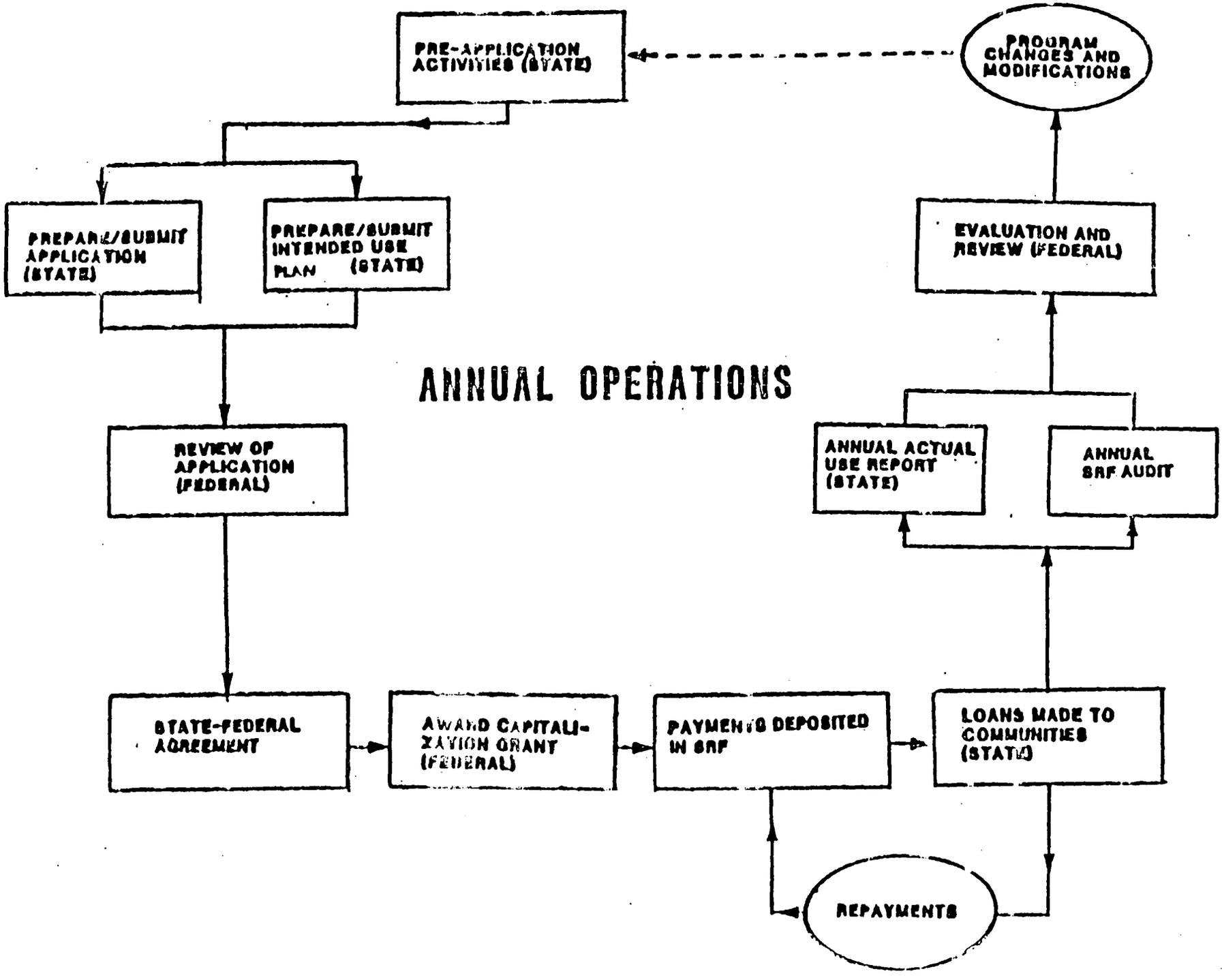
If a State fails to take the necessary corrective action deemed adequate by the Regional Administrator within twelve months of receipt of the original notice, any withheld payments shall be deobligated and realloted to other States.

4. Recovery of Funds

As a recipient of a Federal grant, the State is required to safeguard the capitalization grant or section 205(m) funds from waste, fraud, and abuse. If the Regional Administrator determines that capitalization grant funds or funds resulting from the capitalization grant were subjected to waste, fraud, or abuse, the capitalization grant or section 205(m) funds may be recovered in accordance with procedures outlined in 40 CFR Part 30.

5. Audit Review

The findings of the audit may be independent grounds for a determination of non-compliance. The audit should support the line items and the conclusions of the annual report. If the audit proves the annual report incorrect, the report should be reviewed again in terms of the audit findings. If this second review finds the State in non-compliance, the procedure outlined above will be implemented.


PRE-APPLICATION ACTIVITIES (STATE)
PROGRAM CHANGES AND MODIFICATIONS
PREPARE/SUBMIT APPLICATION (STATE)
PREPARE/SUBMIT INTENDED USE PLAN (STATE)
EVALUATION AND REVIEW (FEDERAL)
ANNUAL OPERATIONS
REVIEW OF APPLICATION (FEDERAL)
ANNUAL ACTUAL USE REPORT (STATE)
ANNUAL SRF AUDIT
STATE-FEDERAL AGREEMENT
AWARD CAPITALIZATION GRANT (FEDERAL)
PAYMENTS DEPOSITED IN SRF
LOANS MADE TO COMMUNITIES (STATE)
REPAYMENTS

3/27/87

CONDITIONS ON THE USE OF FUNDS IN A FEDERALLY CAPITALIZED STATE REVOLVING FUND

ALL FUNDS – EXPEND IN TIMELY MANNER – GENERAL USES: 212, 319, 320			
			POTWs NPS-GW Estuaries
FUNDS AS A RESULT OF – 1ST USE – ENFORCEABLE REQUIREMENTS			
		Municipal Compliance Deadline	
120% OF GRANT – COMMITTED IN 1 YEAR		+	
FUNDS DIRECTLY MADE AVAILABLE (EQUIVALENCY) – TITLE II REQ. I Secondary II More Stringent IIIA Interceptors IVB Infiltration/Inflow Governor's 20% Discretionary	To Financial Assistance		
GRANT	MATCH	– REPAYMENTS – INTEREST – PROCEEDS OF LEVERAGING WITH GRANT	– STATE MONEY IN EXCESS OF MATCH eg. proceeds of leveraging with state funds – REPAYMENTS – INTEREST

APPENDIX C

CATALOGUE OF AUTHORITIES EFFECTING THE EPA CONSTRUCTION GRANTS PROGRAM

(Authorities in existence as of February, 1981)

ENVIRONMENTAL:

Archeological and Historic Preservation Act of 1974, PL 93-291

Clean Air Act, PL 95-95

Clean Water Act, PL 92-500, as amended

Coastal Zone Management Act of 1972, PL 92-583, as amended

Executive Order 11593, Protection and Enhancement of the Cultural Environment

Executive Order 11988, Floodplain Management

Executive Order 11990, Protection of Wetlands

Executive Order 12114, Environmental Effects Abroad of Major Federal Actions

Fish and Wildlife Coordination Act, PL 85-624, as amended

Marine Protection, Research, and Sanctuaries Act of 1972 PL 92-532, as amended

National Environmental Policy Act of 1969, PL 90-190, as amended

National Historic Preservation Act of 1966, PL 89-665, as amended

Noise Control Act of 1972, PL 92-574, as amended

Resource Conservation and Recovery Act, PL 94-580

Rivers and Harbors Act of 1899

Safe Drinking Water Act, PL 92-523, as amended

Toxic Substances Control Act, PL 94-469

Water Resources Planning Act, PL89-80, as amended

Wild and Scenic Rivers Act, PL 90-542, as amended

ECONOMIC:

Appalachian Regional Development Act, PL 90-103

Contract Work Hours and Safety Standards Act, PL 87-581

Davis-Bacon Act, 46 Stat. 14994, as amended

Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended

Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans

Local Public Works Capital Developmenst and Investment Act of 1976, PL 94-369, as amended

National Community Development Program, PL 93-383, PL 95-557

National Flood Insurance Program, PL 90-448, PL 93-234

Public Works and Economic Development Act of 1965, PL 89-136

SOCIAL LEGISLATION:

Age Discrimination Act, PL 94-135

Civil Rights Act of 1964, PL 88-352

Executive Order 11246, Equal Employment Opportunity

Executive Orders 11625 and 12138, Women's and Minority Business Enterprise

Rehabilitation Act of 1973, PL 93-112 (including Executive Orders 11914 and 11250)

MISCELLANEOUS AUTHORITY:

Copeland (Anti-Kickback) Act

Intergovernmental Cooperation Act of 1968, PL 90-557

Regulatory Flexibility Act, PL 96-354

Uniform Relocation and Real Property Acquisition Policies Act of 1970, PL 91-646

APPENDIX D: EXAMPLE OF CONTENTS FOR THE ANNUAL REPORT

The Annual Report shall describe how the State has met the goals and objectives for the previous fiscal year as identified in the Intended Use Plan. The Annual Report shall include the same information in the Intended Use Plan, updated to reflect actual loan activities, dates, and a statement of accounts. In addition, the Annual Report must answer the following questions:

a. Has the SRF been established in accordance with Section 603 of the CWA?

b. Have all grant payments been deposited directly into the dedicated SRF?

c. Has the State satisfied its match requirement on or before the date of deposit of the Federal payment?

d. Has the State made binding loan commitments equal to 120% of the grant payment amount within one year of receipt of each quarterly payment?

e. Have all funds in the SRF been committed in an expeditious and timely manner?

f. Have all the projects funded (in whole or in part by funds made directly available by the capitalization grants) met the specified requirements that apply to a project that received a grant under Title II?

g. Has the first priority for use of funds made available as a result of the capitalization grant gone to projects to assure maintenance of progress toward compliance with the enforceable requirements of the Clean Water Act (including the municipal compliance deadline)?

h. Has the SRF committed or expended the grant payments received in accordance with the applicable State laws and procedures?

i. Are accounting, auditing, and fiscal procedures in accordance with generally accepted government auditing standards (GAGAS) and generally accepted accounting principles (GAAP)?

j. Has the SRF required loan recipients to maintain project accounts in accordance with generally accepted accounting principles?

k. Has the State made annual reports to the Regional Administrator on the actual use of the SRF?

APPENDIX E: TIMING OF KEY ACTIVITIES FOR FY87-90: Funding From 205(m)

Activity	Timing
1) Notice of Intent to Regional Administrator (RA)	May 5, 1987, then 90 days prior to each succeeding fiscal year.
2) Appropriation available for grant awards to States	During the fiscal year appropriated and the following fiscal year.
3) Application to RA (includes Intended Use Plan)	As soon as possible, but no later than (NLT) 90 days prior to the end of the second fiscal year of an appropriation.
4) Complete Capitalization Grant Agreement (including negotiated payment schedule)	NLT 45 days after receipt of complete application
5) Payments to State	No more frequently than quarterly, for the earliest of 12 quarters from allotment, or 8 quarters from the first obligation by the State.
6) Deposit 20% State Match into SRF	No later than date of receipt of each payment.
7) Binding commitments for an amount equal to each quarterly payment plus State match	Within one year of receipt for each quarterly payment.
8) Interest payments from loans to SRF	At discretion of State, but all within 20 years after project completion of construction.
9) Principal repayments to the Fund	At least annually, commencing one year after completion of construction, fully amortized not later than 20 years after completion of construction.
10) Submit Annual Report to EPA	NLT 90 days after the end of the fiscal year.
11) RA completes annual review; compliance letter (if any) to State	NLT 45 days after receipt of Annual Report.
12) Submit annual audit to RA	NLT 180 days after the end of the fiscal year.

(3) Final review of annual audit; compliance letter (if any) to State	NLT 90 days after receipt of annual audit.