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

17 FEB 1978

OFFICE OF WATER AND HAZARDOUS MATERIALS
Construction Grants
Program Requirement Memorandum
PRM No. 78-3

SUBJECT: Buy American

FROM: John T. Rhett, Deputy Assistant Administrator for Water Program Operations (WH-546)

TO: Regional Administrators

Section 215 of the Federal Water Pollution Control Act, as amended by section 39 of the Clean Water Act of 1977 (Public Law 95-217) provides that no grant (Step 3 grant), for which application is received by the Regional Administrator after February 1, 1978, shall be made unless preference is given to the use of domestic construction materials in the construction of sewage treatment works (Buy American).

Municipalities applying for Step 3 grants after February 1, 1978, must be notified that the Buy-American provision will apply to procurements under those Step 3 grants. Grant awarding officials must insure that grants awarded prior to amendment of the Construction Grant Regulations include a special condition requiring the grantee to give preference to domestic construction materials pursuant to section 215 of the Federal Water Pollution Control Act, as amended, and EPA implementing regulations and guidelines.

The following guidance is provided to aid in implementation of the Buy American provision. The definitions have been adapted from the current Federal Procurement Regulations which EPA has been directed to follow, where applicable.

"Construction material" means any article, material or supply brought to the construction site for incorporation in the building or work. An unmanufactured construction material is a "domestic construction material" if it has been mined or produced in the United States. A manufactured construction material is a "domestic construction material" if it has been manufactured in the United States substantially all from articles, materials, or supplies mined, produced or manufactured (as the case may be) in the United States. Generally, a construction material is considered a domestic construction material if the cost of its components

which have been mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all of its components. "Component" means any article, material, or supply directly incorporated in a construction material.

A component shall be considered to have been "mined, produced, or manufactured in the United States" (regardless of its source in fact), if the article, material, or supply in which it is incorporated was manufactured in the United States and the component is of a class or kind determined by the Regional Administrator to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

Bidding documents for construction work which is funded by a Step 3 grant for which application is made after February 1, 1978, must include the following statement:

INFORMATION REGARDING BUY AMERICAN PROVISION

(a) The Buy American Provision of Public Law 95-217 (section 215 of Public Law 92-500 as amended) as implemented by EPA regulations and guidance, generally requires that preference be given to the use of domestic construction material in the performance of this contract.

(b) Bids or proposals offering use of nondomestic construction material may be acceptable for award if the Regional Administrator waives the Buy American provision based upon those factors that are deemed relevant, including: (i) such use is not in the public interest; (ii) the cost is unreasonable; (iii) the available resources of the Agency are not sufficient to implement the provision; or (iv) the articles, materials, or supplies of the class or kind to be used or the articles, materials, or supplies from which they are manufactured are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality for the particular project. The Regional Administrator may also waive the Buy American provision if it is determined that application of this provision is contrary to multilateral government procurement agreements. Such evidence as the EPA Regional Administrator may deem relevant shall be furnished to justify use of nondomestic construction material.

Step 3 contracts must include the following paragraph in addition to Appendix C-2:

BUY AMERICAN

> In accordance with the Buy American provision in Public Law 95-217 (section 215 of Public Law 92-500 as amended) and implementing EPA regulations and guidelines, the Contractor agrees that preference will be given to domestic construction material by the contractor, subcontractors, materialmen, and suppliers in the performance of this contract.

The Regional Administrator may waive the Buy American provision based upon those factors that are deemed relevant, including: (i) such use is not in the public interest; (ii) the cost is unreasonable; (iii) the available resources of the Agency are not sufficient to implement the provision (subject to the concurrence of the Deputy Administrator); or (iv) the articles, materials, or supplies of the class or kind to be used or the articles, materials, or supplies from which they are manufactured are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality for the particular project.

If the Regional Administrator believes that application of the Buy American provision would be contrary to multilateral government procurement agreements, the Regional Administrator may request the Deputy Administrator to waive the provision.

The amount of cost differential by which domestic construction material may be given preference shall generally be the sum determined by computing up to six percent of the bid or offered price of materials of foreign origin including all costs of delivery to the construction site, including any applicable duty, whether or not assessed. Computations will normally be based on costs on the date of opening of bids or proposals.

The Regional Administrator may utilize the appropriate procedures of 40 CFR 35.939 in making determinations, and the "Buy-American" procedures, regulations, precedents and requirements of other Federal departments and agencies shall generally be observed.

The Buy American provision is new to the EPA municipal wastewater construction grants program, and no specific EPA precedents exist. To help create such precedents, where it is determined that the Buy American provision should be waived, or when problems or questions arise, it should be brought to the attention of the Director of the Municipal Construction Division and the Assistant General Counsel-Grants.

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Construction Grants
Program Requirements Memorandum
PRM No. 78-4

SUBJECT: Grant Eligibility of Land Acquired for Storage in Land Treatment Systems

FROM: John T. Rhett, Deputy Assistant Administrator for Water Program Operations (WH-546)

TO: Regional Administrators
Regions I thru X

PURPOSE

This memorandum provides additional guidance concerning grant eligibility of land acquired by purchase, leasing, or easements for use in land treatment systems.

DISCUSSION

The Agency has previously issued three PRM's on acquiring land for use in land treatment of wastewaters and sludges. PRM 75-25 (formerly PGM-49) covers the interpretation of the eligibility of land acquisition costs for land treatment processes (wastewaters). PRM 75-39 (formerly PGM-67) covers the eligibility of land acquisition costs for the ultimate disposal of residues from wastewater treatment processes (sludges). PRM 77-5 covers the eligiblity of leasing or easements in lieu of fee simple purchase for use in either wastewater treatment alternatives or sludge management systems. The Clean Water Act of 1977 (P.L. 95-217) requires changes in Section 35.905-23 (definition of treatment works) and 35.940-3 (costs allowable, if approved) of the construction grants regulations (40 CFR Part 35). These changes in the construction grants regulations require a change in eligibility of land costs as described by PRM 75-25, but do not affect PRM 75-39 or PRM 77-5.

POLICY

The Federal Water Pollution Control Act Amendments of 1977 (P.L. 95-217) make the land that will be used for storage of treated wastewater in land treatment systems prior to land application an eligible cost as of December 27, 1977. Previously, the cost of land for the temporary storage of effluent was not eligible (PRM 75-25). Acquirement of land for storage purposes must be by purchase rather than lease or easement.

There are two approaches for providing temporary storage that will be cost eligible.

1. The cost of land will be eligible for all ponds constructed specifically to meet storage needs due to climate or a seasonal imbalance between wastewater supply and application schedules. The period and total volume of storage provided should be commensurate with the discussion in Section 5.3 (pages 5-30 thru 5-38) of the Design Manual on Land Treatment of Municipal Wastewater (EPA 625/1-77-008). These storage ponds should be designed with the maximum depth appropriate for site conditions.

2. All or part of the land will be eligible for ponds which are constructed for combination treatment and storage purposes if such combination ponds meet the definitions and criteria as listed in (a) through (d) below:

   (a) Storage volume is defined as that portion of the pond designed to provide the total storage needs due to climate or a seasonal imbalance between wastewater supply and application schedules as for (1) above. Storage volume could represent the entire volume of a separate cell or that portion above the treatment volume in a combined treatment/storage cell.

   (b) Treatment volume is that portion of the pond specifically designed for biological stabilization of the wastewater. It may be the entire volume of a treatment cell or the depth below the liquid level that was designed for treatment in a combined treatment/storage cell.

   (c) If the volume provided for storage is greater than the volume provided for treatment in any cell of the pond, then the total land area for that cell is eligible.

   (d) If the volume provided for storage is equal to or less than the volume provided for treatment in any cell of the pond, then the eligible area will be determined as the ratio of the storage volume to the total volume of that cell.

IMPLEMENTING PROCEDURE

The provisions of this program requirements memorandum apply to all projects which had not been given Agency approval of the Step 1 facilities plan as of December 27, 1977. These provisions supplement PRM #75-25, which remains in effect.

REFERENCES

Program Requirements Memorandum 75-25 of July 18, 1975 (formerly PGM-49)
Program Requirements Memorandum 75-39 of April 2, 1975 (formerly PGM-67)
Program Requirements Memorandum 77-5 of December 15, 1976
40 CFR 35.905-23
40 CFR 35.940-3
EPA 625/1-77-008: Land Treatment of Municipal Wastewater

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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17 FEB 1978

Construction Grants
Program Requirements Memorandum
PRM No. 78-5

SUBJECT: Interim Management of FY 1978 State Priority Lists Under the 1977 Amendments

FROM: John T. Rhett, Deputy Assistant Administrator for Water Program Operations (WH-546)

TO: Regional Administrators

PURPOSE

This memorandum outlines EPA policy concerning annual State project priority list management for the remainder of FY 1978 under the Clean Water Act Amendments of 1977. Except as indicated herein, the policy and procedures for priority list management are still reflected in PRM 77-7, Management of State Project Priority Lists.

BACKGROUND

The Clean Water Act of 1977 included several amendments to P.L. 92-500 that could potentially affect existing State priority systems and State priority list management. The scope of these changes will not be known until interim regulations implementing the priority list provisions are published. The current situation is as follows:

1. The FY 1978 priority lists are the basis for considering project funding through September 30, 1978. Most FY 1978 priority lists, under the $4.5 billion expected appropriation, have been submitted and reviewed by EPA pursuant to the policies and procedures outlined in PRM 77-7. Many FY 1978 lists have been approved or are approvable, pending receipt of the FY 1978 funds.

2. The FY 1978 authorization for $4.5 billion, contained in the 1977 Amendments, has been allotted (subject to appropriation) in accordance with the regulation published in the Federal Register on January 10, 1978. An appropriation of $4.5 billion is expected to be enacted in the next couple of months.

3. Regulations in response to the 1977 Amendments are currently in formulation, and will not be published in interim final form before May, 1978.

4. No projects may be funded using the expected FY 1978 appropriation until a FY 1978 priority list has been approved by the Regional Administrator under current policy and procedures.

POLICY

1. States and Regions are to continue to process grant applications up to the point of grant award for projects which reasonably can be expected to receive grants during FY 78, either because the projects are on or expected to be on an approved or approvable priority list. States may submit but not actually certify the application to EPA for award, however, until funds are available and the priority list approved.

2. Nothing in the 1977 Amendments mandates immediate changes to current State priority planning for the FY 1978 planning year. States may elect to propose changes based on the 1977 Amendments for FY 1978, but should be advised that such changes cannot be considered by EPA until publication of interim regulations in May, 1978. As a general policy, the Regions should follow the procedures for interim management of the FY 1978 priority lists as outlined below:

- o For those States with currently approved or approvable FY 78 priority lists, no modification for compliance with the 1977 Amendments is required or expected.

- o States which are currently without an approved or approvable FY 1978 priority list should be directed to comply with the State program planning regulations (40 CFR 35.563 through 35.566) and the existing procedures in PRM 77-7 to avoid delay in making awards once funds are made available. The Region should be ready to approve all FY 1978 lists under the existing policy as soon as funds are appropriated. Projects may not be funded in any State in the absence of an approved priority list.

IMPLEMENTATION

All States should immediately be informed of this interim priority list policy. States should continue to process grant applications as provided above. Guidance on preparation of FY 1979 priority systems and lists under the proposed priority list regulations will be issued by Headquarters no later than May, 1978.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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17 FEB 1978

CONSTRUCTION GRANTS
PROGRAM REQUIREMENTS MEMORANDUM
PRM No. 78-6

SUBJECT: Industrial Cost Recovery--Interim Guidance

FROM: John T. Rhett, Deputy Assistant Administrator for Water Program Operations (WH-546)

TO: Regional Administrators, Regions I thru X

ATTN: Water Division Directors

I. ISSUE:

This memorandum establishes interim guidance on the implementation of industrial cost recovery (ICR) requirements under the Clean Water Act of 1977.

II. DISCUSSION:

Section 24 of the Clean Water Act exempts from ICR requirements, any industrial user which discharges 25,000 gpd or less of sanitary waste or a volume of process waste, or combined process and sanitary waste equivalent to 25,000 gpd or less, of sanitary waste if the discharge does not contain pollutants which interfere, or are incompatible with, or contaminate, or reduce the utility of sludge. Regardless of any subsequent change in the Act which might lower the volume of discharge exempted from ICR, industrial users exempt under the current law will never be liable for payments which might have been due after December 31, 1977, until a change in the Act. In addition, an ICR system can be based on a system wide approach, instead of being based on each individual project (regulations to be issued in May will provide guidance on this provision).

Section 75 of the Clean Water Act requires EPA to study the efficiency of, and the need for, the payment by industrial users. A report of findings from this study must be submitted to the Congress by December 27, 1978. Until June 30, 1979, EPA can not require grantees to enforce provisions which require industrial users to make ICR payments. Any payment by industrial users which is due after December 31, 1977, but before July 31, 1979, (the moratorium) shall be paid after the moratorium

in accordance with the applicable ICR requirement at that time. The payment may be made in equal annual installments prorated over the remaining useful life of the treatment works.

The Conference Report on section 75 states that:

(1) EPA is to continue to make grants and not to withhold any funding due to failure to comply with current ICR requirements.

(2) The moratorium on ICR payments does not exempt any grantee from the requirement to develop an ICR system.

(3) At the end of the moratorium, if the Congress has not changed the ICR provisions, grantees must begin to collect ICR.

Regulations implementing these sections and detailed guidelines will be issued at a later time, but the following policies are established for immediate use.

III. POLICY:

1. Any grant payments withheld due to ICR requirements shall be released. (However, grant payments being withheld for any other requirements are not to be released.)

2. Grantees should be advised that they are not exempt from the requirement to develop ICR systems during the moratorium, and that the cost of developing the system is grant eligible. Any ICR system approved by the Regional Administrator must exempt users discharging the equivalent of 25,000 gpd or less of sanitary waste.

3. EPA officials shall not require grantees to enforce the payment of ICR by industrial users for the period between December 28, 1977, and June 30, 1979. Grantees may collect ICR from users discharging more than the equivalent of 25,000 gpd of sanitary waste, but no payment to the Federal government shall be made. If grantees choose to collect ICR they shall hold 50 percent (the portion which would be sent to EPA in the absence of a moratorium) of the amounts they collect until June 30, 1979, or until EPA provides disbursement guidance, and shall invest those amounts in accordance with ICR Guidelines.

4. Grantees must continue to monitor industrial users during the moratorium to determine their ICR payment obligation in case ICR payments resume after June 30, 1979.

5. Any ICR due for the grantee's ICR year ending before January 1, 1978, must be collected and disbursed in accordance with current ICR requirements.

IV. IMPLEMENTATION:

These policies are effective retroactive to December 27, 1977.

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OFFICE OF WATER AND
HAZARDOUS MATERIALS

17 FEB 1978

Construction Grants
Program Requirements Memorandum
PRM No. 78-7

SUBJECT: Combined Step 2 and Step 3 Construction Grant Awards (Step 2+3)

FROM: John T. Rhett, Deputy Assistant Administrator for Water Program Operations (WH-546)

TO: Regional Administrators
ATTN: Water Division Directors

I. PURPOSE

This memorandum establishes Agency policy on award of Step 2+3 construction grants during FY 1978 as provided in the Clean Water Act of 1977, prior to the promulgation of regulations implementing the combined grant provisions of the Act.

II. DISCUSSION

Section 203(a) of the Clean Water Act of 1977 provides for award of a single construction grant for the combination of Step 2 and Step 3 work for construction of treatment works for communities with populations of 25,000 or less and an estimated total Step 3 construction cost of $2,000,000 or less ($3,000,000 or less in States with unusually high costs of construction as determined by the Administrator). The effect of this provision on construction grant funds is to obligate the funds for both design and construction at the time of award of the Step 2+3 grant.

III. POLICY

Municipal applicants that meet the minimum requirements set forth in this memorandum are eligible for award of a Step 2+3 construction grant, and the Regional Administrators are authorized to make such an award upon their determination that these requirements have been satisfactorily met.

In most cases, separate contracts are entered into for Step 2 and for Step 3 work. A grantee may continue to do so when it receives a Step 2+3 grant. A grantee is not required to enter into a single contract for preparation of plans and specifications along with construction when it receives a Step 2+3 grant.

IV. MINIMUM REQUIREMENTS

EPA Regional Offices will review all Step 2+3 applications for compliance with the following:

1. Population. The population of the applicant municipality must be 25,000 or less as determined by most recent United States Census information.

2. Cost. The total estimated Step 3 construction cost of treatment works necessary to comply with the requirements of the Clean Water Act of 1977 must not exceed $2,000,000 (the cost is exclusive of supporting costs such as technical or administrative services) or $3,000,000 in States determined by the Deputy Assistant Administrator for Water Program Operations to have unusually high costs of construction. At the present time, Alaska, California, Hawaii, Illinois, Minnesota and New York are so designated. Based upon Needs Survey standard cost curves, cost in these States were determined to be more than one standard deviation from the norm.

3. Priority Certification. The States must provide priority certification for the combined Step 2 and 3 project. Projects which appear on an approved priority list for Step 2 funding but not for Step 3 funding are not eligible for a Step 2+3 award. States may amend their project priority list to provide priority for the combined steps; however, such amendments must be consistent with the approved State priority system.

The total amount of the Step 2+3 award must derive from the current State allocation.

V. GRANT CONDITIONS

Step 2+3 grants are subject to all requirements that apply to separate Step 2 and Step 3 grants except that only a single application is required and plans and specifications are not required prior to grant award. Additional requirements of a Step 2+3 grant award are:

1. That the grantee identify and maintain a firm schedule for the submission of construction plans and specifications, suitable for bidding purposes, Operation and Maintenance Manual, and an approvable user charge/industrial cost recovery system (UC/ICR); and

2. Plans and specifications and the UC/ICR systems must be submitted and approved in writing by the Regional Administrator prior to advertisement for bids for the Step 3 construction work; and

3. The cost of all Step 3 construction work initiated prior to approval of plans and specifications shall be disallowed with the exception of the cost of those items specifically authorized in accordance with procedures established under §35.925-18(b) of the current construction grant regulation.

VI. IMPLEMENTATION

States are to be advised at once of the Agency's policy with regard to this subject area and are to be requested to begin immediately reviewing individual grant applications to implement the requirements set forth above. This policy shall not apply to Step 2 grant applications received by the Regions prior to the effective date of this PRM.

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