

# **CLEAN WATER ACT**

## **FINAL FY'94 GUIDANCE**



### **MARYLAND**



**EPA REGION III**  
**APRIL 1993**



## **MARYLAND**

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APPENDIX A

APPENDIX B

APPENDIX C

I. GENERAL GUIDANCE FOR DEVELOPING WORK PROGRAM PLANS AND GRANT APPLICATIONS

A. Milestones for FY'94 Program Grants Actions for Water Quality Management and Planning (WQMP).

The following milestones for the Section 106 and 604(b) WQMP grant awards process is to assure that all State and interstate agency grants are awarded by September 30, or as soon as funds are made available.

- 3/1 Region 3 will issue WQMP funding targets to State and Interstate agencies based upon the President's budget request by March 1, if possible.
- 4/1 Prior to April 1, Region will conduct senior level meetings with States to discuss mutual priorities, long-term objectives, and work program development.
- 4/1 By April 1 Region will issue final work program and funding guidance to State and Interstate agencies for WQMP reflective of prior Region/State senior level planning discussions. If EPA Headquarters Agency Operating Guidance is not final by April 1, Regions will use the Headquarters draft guidance in preparing State guidance.
- 6/1 State and Interstate agencies will submit draft WQMP work programs and grant applications to EPA by the first of June.
- 7/15 Regions will respond to draft work programs within 30-45 days of receipt. Regional Water Management Division staff will conduct work program negotiations, but unresolved issues will be elevated as they occur in the process to allow for issue resolution in time to complete the grant work program negotiation and be ready for funding by September 30.
- 9/15 By September 15, the Regions will notify State and Interstate agencies of the status of their WQMP grant applications and work programs which will serve as the official notification of the need to finalize the documents.
- 9/30 WQMP grant applications and work programs will be finalized and forwarded to the Regional Grants Management Office by September 30, pending award upon the availability of funds.

40 CFR 35.140 states that each applicant will submit an application at least 60 days before the beginning of the new budget period. However, the timetable described above was jointly developed by EPA and State representatives to assure timely grant awards.

## B. National Guidance and Priorities

1. The draft FY'94 EPA Office of Water Operating Guidance - Office of Water is enclosed. This guidance package lists the overall national water program priorities and directions for carrying out programs mandated under Federal water protection statutes including

- Clean Water Act (CWA)
- Safe Drinking Water Act (SDWA)
- Marine Protection, Research, and Sanctuaries Act (MPRSA)
- Ocean Dumping Ban Act
- Shore Protection Act
- Marine Plastics, Pollution, Research and Control Act
- Coastal Zone Management Act
- Great Lakes Critical Program Act.

If the final guidance is substantially different from the draft, EPA will advise your agency as expeditiously as possible.

## 2. The Watershed Protection Approach

The fundamental philosophy and goal of the 1994 water quality program is a risk-targeted approach to pollution prevention and control. A predominant EPA goal for FY'94 is to integrate the Watershed Protection Approach into all water programs.

The Watershed Protection Approach is built on three main principles:

- The target watersheds should be those where pollution poses the greatest risk to human health, ecological resources, desirable uses of the water, or a combination of these.
- All parties with a stake in the specific local situation should participate in the analysis of problems and the creation of solutions.
- The actions undertaken should draw on the full range of methods and tools available, integrating them into a coordinated, multi-organization attack on the problems.

Although State and Federal water protection programs have been very successful in reversing or preventing degradation of water quality throughout the country during the last 20 years, many significant water quality challenges remain, however, including difficult and controversial problems, such as pollutant runoff into waterways or seepage into groundwater from nonpoint sources and the destruction of wetlands and other vital habitats.

Uniform Federal regulations of these problems would be vastly expensive and would impinge on traditional State and local prerogatives, such as land use and economic development. Governments at all levels, therefore, are broadening their outlook on water quality protection' seeking nonconventional, cost-effective ways to address the remaining problems.

The Watershed Protection Approach would require that State, Federal, and local agencies refocus existing water pollution control programs to operate in a more comprehensive and coordinated manner. These concepts are not new and have been applied to a limited extent in the past. There is, however, a growing consensus that the pollution and habitat degradation problems now facing society can best be solved by following a basinwide approach that takes into account the dynamic relationships that sustain natural resources and their beneficial uses.

The Watershed Protection Approach is not a new centralized government program that competes with or replaces existing programs. It is a flexible framework for focusing and integrating current efforts and for exploring innovative methods to achieve maximum efficiency and effect. This framework is derived from the experience gained over the last few years in many States and in collaborative activities, such as the National Estuary Program and the Clean Lakes Program. As experience grows and techniques evolve, this holistic, locally tailored approach gradually will become a routine process for protecting and restoring water quality.

EPA Region III encourages States to begin to integrate water quality management programs on a geographic basis, realized by focusing comprehensive attention of all authorities, program resources and technical resources on individual watersheds. States which have already initiated such efforts will be supported to their comprehensive approach to watershed-focused program implementation. Specific proposals to implement the watershed approach will be considered separately with each State; Region III requests that States identify watershed approach proposals, including recommendations for EPA actions that would facilitate efforts in this regard.

### 3. Integrating Pollution Prevention into WQMP Grants

WQMP grant work programs in FY'94 should emphasize a pollution prevention approach in conducting grant-assisted activities as outlined in Deputy Administrator F. Henry Habicht II's guidance memorandum of November 12, 1992 (Appendix A). The memorandum includes the Agency's definition of pollution prevention. The guidance memorandum encourages and supports State pollution prevention initiatives in grant-assisted activities and promotes the pollution prevention ethic as a way

of conducting environmental management responsibilities under State grant programs. To the degree possible, grant-assisted activities should be conducted according to the environmental management hierarchy which places highest priority on source reduction/pollution prevention, followed in order by recycling, treatment, and disposal.

#### 4. Endangered Species Act and National Historic Preservation Act Issues

Section 106 grant applicants must currently specify the following regarding the Endangered Species Act (ESA), 16 U.S.C. Section 1531-1544, and the National Historic Preservation Act (NHPA), 16 U.S.C. Section 470-1 to 470w-6:

[The applicant] [w]ill comply with environmental standards which may be prescribed pursuant to...protection of endangered species under the Endangered Species Act....

[The applicant] [w]ill assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act....

EPA and the Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) are engaged in ongoing discussions regarding Section 106 grants and the National Pollutant Discharge Elimination System (NPDES) permitting program. Based on these discussions, supplemental guidance on Section 106 grants and the ESA may be necessary at a future date. In addition, the NHPA was recently amended. As with the ESA, supplemental guidance on Section 106 grants and the NHPA may become necessary.

#### C. Regional Guidance and Priorities

1. Specific State and Interstate Agency work program guidance appears later in this document. Suggested components of the FY'94 work program plans are included. EPA Region III staff will contact State program managers to develop program priorities and to negotiate work program plan output commitments.

##### a. Strategically Targeted Activities for Results System (STARS)

(1) The work program plan must reflect all pertinent STARS commitments, formerly the Strategic Planning and Management System.

##### b. Quality Assurance/Quality Control (QA/QC)

(1) In accordance with 40 CFR 31.45, the grantee must continue to implement and adhere to its EPA-approved

Quality Assurance (QA) Program Plan and annually update this plan for those activities that involve environmental measurements or data generation. Individual QA Project Plans will be submitted to EPA for approval at least 30 days prior to initiation of each field or laboratory activity. The recipient must implement its EPA-approved project plans in performing environmental monitoring activities.

c. Locational Accuracy Policy

(1) EPA has developed a policy which establishes principles for collecting and documenting latitude/longitude coordinates for facilities, sites and monitoring and observation points regulated or tracked under the environmental programs under the jurisdiction of EPA. During FY'91 and FY'92, EPA Region III distributed copies of various Regional and national guidance to State and Interstate Agencies. It is EPA's goal to achieve a level of locational accuracy of 25 meters by January 1, 1995.

Each grant awarded for FY'94 which involves environmental measurement will contain a grant condition which is identical to the one used in FY'93:

"In accordance with EPA's Locational Data Policy, the recipient agrees to ensure that latitude and longitude coordinates (given in degrees, minutes, and seconds) are provided for all EPA regulated facilities and sites for which data are collected and are accurate within 500 meters of true position (+/- 15 seconds). This includes activities undertaken through contract, grant and interagency agreement. The recipient further agrees to document, in writing, that site location data were derived using U.S. Geological Survey (USGS) 7.5 minute topographic quadrangles or other scientifically approved methods, recorded in accordance with Federal regulations and EPA requirements referenced in Chapter 13, Locational Data, directive of May 17, 1990, of the EPA Information Resources Management Policy Manual, copies of which will be provided by EPA. This information should be available for inspection by EPA during site visits."

In order to assist grantees in determining latitude and longitude, EPA obtained copies of a USGS map-reading device called an interpolation grid for use in reading location from USGS 7.5 minute topographic quadrangles. These devices were provided to grantees by the EPA Grant Project Officer, as will the appropriate policy documents, during FY'93.

## D. Grant Work Program Content

### 1. Section 106 Background Information

Section 106 of the Clean Water Act (CWA) authorizes assistance to States and interstate agencies to administer programs for the prevention, reduction, and elimination of water pollution including programs for the development and implementation of ground water protection strategies. The CWA in Section 106(d) requires States and interstate agencies to sustain a maintenance of effort (MOE), to expend annually for recurrent 106 program expenditures an amount of non-Federal funds which are at least equal to expenditures during the fiscal year ending June 30, 1971. Since 1978 they have been required by regulation to maintain at least FY'77 levels in order to receive funds for construction grants management under Section 205(g). (See 40 CFR 35.305 Maintenance of Effort.)<sup>1</sup>

Section 106(e) of the CWA requires States to establish and maintain adequate monitoring programs as prerequisites for Section 106 grant awards and to maintain provisions for updating the Section 305(b) report. (See 40 CFR 35.260 Limitations).

2. State and Local Assistance Regulations at 40 CFR 35.130 specify the structure of the WQMP work program as does the Water Quality Management Regulations at 40 CFR 130.11 (a) through (e). The work program is part of the grant application and serves as the basis for the management and evaluation of performance under the grant. The grantee must provide in the work program:

- the work years
- amount, and source of funding estimated to be needed for each program element
- outputs committed to under each program element
- schedule for accomplishment
- identification of the agency responsible for each of the elements and outputs.

For consolidated grant applications see the regulation requirements at 40 CFR 35.145. The terms work program, program element, and outputs are defined under 40 CFR 35.105.

Regions have the flexibility to negotiate specific program elements for use in developing WQMP application program element

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<sup>1</sup> Until Section 205(g) funds obligated to a State by EPA in all fiscal years, including fiscal years after 1990 have been spent by the State or returned to EPA, the State is required to maintain at least its FY'77 water pollution control program spending level.



budgets and work programs with States. However, the Regions must assure that all grantees comply with current statutory and EPA regulatory requirements by providing in their WQMP grant applications a program element budget and a work program which supports it. A recommended list of program elements for use in developing WQMP grant work programs and program element budgets is provided in Appendix B.

#### **E. Progress Reports and Management Oversight**

In accordance with 40 CFR 35.150, Regions will oversee performance under WQMP assistance agreements. Grantees are responsible for performing activities and completing outputs outlined in the negotiated grant work program within the specified timelines. The Regional project officer will (1) evaluate each recipient's performance and progress toward completing the outputs in the approved work program according to the schedule, (2) provide the findings of the evaluation to each recipient, and (3) will include the findings in the grant file. If the evaluation reveals deficiencies in a work program, the Region will in coordination with the Regional Grants Management Office, develop an action plan as needed for addressing performance problems. The Regional Administrator will impose sanctions only when corrective actions have failed to solve significant performance deficiencies.

1. Each grant award will contain a grant condition requiring quarterly progress reports such as the following:

"A status report shall be submitted each quarter to the EPA Project Officer. This report will contain a progress summary, justification for any outputs not completed in accordance with the agreed upon schedules and a discussion of anticipated program problems in the upcoming quarter. The first status report should contain a listing of each milestone (output) with scheduled completion dates."

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**SPECIAL NOTE:** Under Part III: PROGRAM-SPECIFIC GUIDANCE, each activity paragraph is coded to indicate whether activity is New (N), Changed (C), or On-going (O).

## II. GRANT SPECIFIC GUIDANCE

### A. 106 Guidance

#### 1. Separate Section 106 Awards for Ground Water

a. Since 1985, funds have been made available for ground water work under Section 106--EPA has generally awarded one program grant to the States which includes both the base and the ground water program. Program complexity increased in FY'90 as the ground water set-asides also included funds for wellhead protection and pesticides/ground water. In order to better service and manage the individual program components, EPA will negotiate with States to determine whether there are to be separate grants for the surface water and the ground water programs or whether they are funded by one grant. Recipients of separate ground water grants are encouraged to provide the status of projected unexpended funds with the grant application and again with the fourth quarter report in view of the critical implications of the carry-over policy (explained below).

#### 2. Grants Carry-over Policy for Section 106 Grants

##### a. National Policy

(1) There are special EPA procedures on the use of unexpended 106 funds reported by recipients on their final FSRs. EPA may exercise one of two options where a recipient reports unexpended funds on a final FSR when the two-year appropriation for those funds has not expired. They are:

(a) To carry over the funds to the recipient's next budget period by a formal amendment of the assistance agreement to either increase the Federal share or to offset an amount previously awarded for that budget period; or

(b) To deobligate the unexpended funds in which case the funds revert to EPA Headquarters, where they may be recovered by the Region for use in other States, or they may be retained at the national level.

##### b. Carry-over Practices for Section 106

(1) Any funds which remain unspent by grantees after the end of the budget period are to be directed to the highest environmental beneficial use. As a consequence, they are not automatically returned to the current grantee. The grantee must advise EPA as early as possible that there may be unspent funds. If the grantee wishes to have unspent funds reawarded in the next budget period (i.e. the budget period which follows the one in which there are unspent funds), then that

agency should provide the EPA project officer with documentation at an appropriate level of detail.

c. The Risks Attendant with Unspent Funds

(1) If the two-year appropriation during which the funds are available has expired, any unexpended funds reported on an FSR by a recipient must be deobligated since they will not be available for carry over to a subsequent budget period. Those agencies with separate ground water grants may be particularly vulnerable to this risk. Whereas the surface water program is a mature program which has been Federally supported since the Clean Water Act of 1972, the ground water program has experienced and may continue to experience start-up problems. Where there are combined grants, the surface water program can provide a buffer for the expenditure shortfalls under the ground water component. It is likely that the 106 funds are being used for the State continuing environmental program--activities which carry on year after year. Secondly, the surface water program activities are many times larger than the ground water component. This generally means that older unspent ground water funds can be used by the surface water program without difficulty--the surface water program current year awards can be used to replace the older ground water funds.

B. 604(b) Guidance

1. Continuation of FY'93 Initiatives

- Planning will continue in FY'94 toward integration of the watershed approach into all water program activities and to carrying out the intent of the President's Economic Stimulus Program initiated in FY'93. See Appendix D for additional detail.

2. Reserves Requirements for FY'94

- Section 604(b) of the Clean Water Act requires that each State reserve one percent of Title VI allotments or \$100,000, whichever is greater, for water quality management planning under 205(j) and 303(e) of the Act.

- Pursuant to 205(j)(3), States must provide at least 40 percent of their 205(j)(1) and 604(b) funds to Regional Public Comprehensive Planning Agencies (RPCPAs) and Interstate Organizations (IOs), unless the Governor, in consultation with RPCPAs/IOs and with the approval of the EPA Regional Administrator, determines the provision of such an amount will not result in significant participation by such organizations in water quality management planning and will not

significantly assist in development and implementation of the water quality management plan.

- Only in such situations may State allocations to RPCPAs/IOs be less than 40 percent of the State grant amount. Although the statute directs States to pass through 40 percent of the funds reserved and awarded in a specific fiscal year, the intent of the statute will be met if at least 40 percent of any given year's reserves is passed through (even if awarded over two fiscal years).

- In managing the process of selecting and funding RPCPAs/IOs, States should clearly communicate their water quality goals, program priorities and expectations for RPCPA/IO participation in ongoing and prospective projects. In the case of more localized problems (e.g., in lakes and aquifers where RPCPAs/IOs may be most familiar with the issues), States can provide technical and other forms of assistance.

## 2. Developing Work Programs for 205(j)(2) Grants

a. States should jointly develop with RPCPAs/IOs an annual work program for use of 205(j)(2) grants. Prior to development of their water quality management work programs, States should invite eligible organizations to submit applications for the forthcoming fiscal year. Once States have received and analyzed all RPCPA/IO funding projects, they should select those RPCPA/IO activities to be included as part of their work programs to be submitted to EPA.

When considering RPCPA/IO proposals for funding, States should assess the capacity of each agency's current or proposed water quality staff to manage the proposed work. Furthermore, they should consider any previous water quality or environmental experience, the potential of the proposed work to abate significant water quality problems, the degree of proposed coordination between ongoing or prospective State activities and those proposed by the RPCPA/IO, and other relevant criteria.

In accordance with EPA's "Policy on Performance Based Assistance," State, RPCPA and IO work products should be expressed in the work program as quantified outputs wherever possible. The State work program should contain the evaluation plan required by the same policy. Because the amount of funds available for RPCPAs/IOs in a State may not be sufficient to provide adequate funds to all applications, Regions and States should assure that applicants which are selected receive enough funding to undertake significant projects-- generally such funding should at a minimum be sufficient to pay the direct and indirect costs of supporting one full time staff person.

Work to be done by RPCPAs/IOs with 604(b) funds provided by States must be embodied in legally binding written agreements which specify in detail the work to be performed and a schedule with quantified outputs related to each task wherever possible. Copies of these agreements must be transmitted by the State to the EPA Regional Office within 10 days after they have been signed by the State and the RPCPA/IO.

The portion of the State work program which contains RPCPA/IO activities should have the same level of detail as the portion related to State activities, and the work program should include a description of the State's process for oversight and evaluation of RPCPA/IO tasks funded by 205(j)(2) grants.

### 3. Management Oversight

a. In the event that RPCPA/IOs fail to perform satisfactorily, the State should apply appropriate measures, including sanctions when warranted. In the event of a RPCPA's or IO's substantial and continuing failure to produce outputs or carry out activities according to the work plan it has negotiated with the State, the State should consider recovering pass through funds. However, 205(j)(2) grant funds passed through to RPCPAs/IOs must be redistributed to other RPCPAs or IOs to the extent such funds made up a part of the annual 40 percent minimum pass through required under 205(j)(3).

### 4. Waiver From Pass Through Requirements

The Water Quality Act (WQA) of 1987 directs States to allocate at least 40 percent of the funds available to a State for water quality management planning under Sections 205(j)(3) and 604(b) to Regional Public Comprehensive Planning Organizations and/or Interstate Organizations. The shift to exclusive reliance on Title VI reserves does not change the authority under which planning grants are awarded that is, the authority continues to be Section 205(j)(2). It also includes the provision that allows the State, after consultation with potential funding recipients, to request a level of less than 40 percent, if a determination is made that

- a. the funding will not result in significant participation by the intended organizations and
- b. will not significantly assist water quality management planning in the State.

The WQA does not consider the level of State funding as a justification for reducing pass-through requirements. That is to say, diminished Federal funding to a State does not constitute a basis for a waiver.

5. Demonstration of Compliance with Pass Through Requirements

Final financial status reports (FSR), which are due within 90 days after the end of the budget period, should be supplemented by information which provides comprehensive information on compliance with the statutory pass-through requirements for §§205(j)(1)/604(b).

If the end-of-year program progress report did not contain the following information for pass through activities, it should be included as a supplement to the final FSR:

- The name of each recipient agency
- The amount(s) awarded to each recipient agency
- Brief description of the project(s) for which the awards were made
- Brief description and evaluation of progress achieved during the year, delays encountered (if applicable), and prognosis for the coming year.

a. Uses of Previously Awarded but Unspent 205(j)(1) and/or 604(b) Funds

The State should develop a list of eligible uses for these funds which is fully coordinated with all the appropriate State program managers early in the fiscal year following the identification of these unspent funds. EPA Region III encourages consideration of the following usages:

- Integrated cross-media approaches to environmental management.
- Pollution prevention approaches, such as land use controls which target efforts in priority watersheds and wellhead protection areas.
- Geographic targeting of environmental programs.

C. The Management Process for Section 319(h) Funds for Nonpoint Sources

1. Separate guidance for nonpoint source (NPS) grants is being provided by EPA. The agency is also in the process of refining the manner in which it develops funding targets and awards these grants.

2. The following summarizes the funding situation:

a. The Clean Water Act Amendments of 1987 included a provision to authorize funding for State Nonpoint Source (NPS) Implementation Grants. The FY'93 budget includes \$52.5 million nationally while the computed target for Region III is about \$4 million.

b. In addition to the Section 319 funds, State nonpoint source program development and implementation activities may be funded from discretionary funds under Section 201(g)(1)(B) and 603(c). Funding under 106, 314 and 604(b) can be used, to varying degrees, for nonpoint sources work.

D. The Management Process for Section 117 Funds:  
Chesapeake Bay Program

1. Section 117 of the 1987 Clean Water Act authorizes grant-making authority for the Chesapeake Bay Program to the EPA Region III Administrator. Specifically, the authority to approve grants or cooperative agreements for projects for research, investigations, experiments, training, demonstrations, surveys and studies related to the reduction of pollution and the improvement of living resources in the Chesapeake Bay is provided pursuant to Section 117(a). Authority for projects for the purpose of implementing the Chesapeake Bay interstate management programs is provided pursuant to Section 117(b).

There are three categories of grants:

- Implementation Grants
- Mainstem Monitoring Grants
- Program Support Grants

The EPA Chesapeake Bay Program Office provides guidance on application and work plan content, program and administrative guidelines, funding levels, and submittal dates for timely awards. Since the time frames for the Bay grants differ from many of the other Clean Water Program Grants, the Bay Office provides separate guidance to potential applicants.

### III. PROGRAM SPECIFIC GUIDANCE

#### A. Water Quality Assessment and Ambient Water Monitoring Programs

##### 1. Program Objectives

The objectives of monitoring and quality assurance efforts are to develop and implement surface and ground water monitoring strategies that provide for the design, collection, storage, retrieval and assessment of water and ecological data necessary to support the programs and activities designed to achieve the goals and objectives of the Clean Water Act and other environmental initiatives. This includes trend analysis and other appropriate statistical applications necessary to support the programs and activities designed to achieve the environmental goals and objectives.

##### 2. Regulatory Requirements

a. 40 CFR Part 130.4 requires that States must establish appropriate monitoring methods and procedures necessary to compile and analyze data on the quality of waters of the United States.

b. 40 CFR Part 35.260 limits the award (if any) under Section 106 of the Clean Water Act to any State which does not monitor and compile, analyze, and report water quality as described under Section 106(e)(1).

c. 40 CFR Part 35.360(b) does not allow the award under Section 205(j)(1) funds to a State agency which does not report annually on the nature, extent and causes of water quality problems in various areas of the State and Interstate region.

d. 40 CFR Part 130.11 stipulates the program management aspects of these grant programs and the contents of the State work programs.

e. 40 CFR Part 130.6 identifies the need for continuing water quality planning and the defines the content of the water quality management plans. Continuing water quality planning shall be based upon the water quality management plans and the problems identified in the latest section 305(b) report. State water quality plans should focus annually on priority issues and geographic areas and on development of water quality controls leading to implementation measures.

f. 40 CFR Part 130.8(d) specifies that in the years that the section 305(b) is not required, States may satisfy



the annual Section 205(j) report requirement by certifying that the most recently submitted section 305(b) report is current or by supplying an update of the sections of the most recently submitted section 305(b) report which require updating.

g. 40 CFR Part 31.45 states that the grantee shall develop and implement quality assurances practices consisting of policies, procedures, specifications, standards, and documentation sufficient to produce data of quality to adequately to meet project objectives and to minimize loss of data due to out-of-control conditions or malfunctions. Quality assurance practices are identified in 40 CFR Part 30.503.

h. 40 CFR Part 30.503 identifies the necessary quality assurances Practices.

### 3. Other Requirements

State workplans should include all costs of developing and implementing monitoring strategies and programs for assessing water quality conditions and trends in the State or Tribal waters, including event related, habitat, physical, chemical, and biological monitoring should be reported under this program element. Applicants should also summarize all program specific monitoring activities such as nonpoint source, lakes, ground water, and wet weather surveys (CSO/stormwater) and describe the coordination/relationship with the Section 106 and other monitoring programs such as Section 319. A current ambient monitoring program strategy should be submitted with the grant application. For this the States can develop or revise their existing water monitoring strategy in conjunction with Regional monitoring staff. To the extent possible, use information already available, such as 305(b) report information. Additional application and reporting requirements are listed below.

4. Key Activities- Reviewer's attention is directed to the fact that the monitoring activities section has been modified to be consistent with EPA national monitoring program objectives (still under development). There are additional outputs required when compared to past years.

#### a. Development and Update of Monitoring Strategy (suggested length: 5 page document)

##### (1) Purpose

- (a) Define monitoring program objectives. (N)
- (b) Identify water quality problems. (O)
- (c) Document information needs and expectations of scientists, managers, and policy makers. (N)

- (d) Identify agency lead for quality assurance, field and laboratory activities, water quality assessments, and data management. (N)
- (e) List and briefly describe all quality assurance project plans. (N)
- (f) Describe how the various monitoring programs are integrated to achieve overall monitoring objectives. (N)
- (g) Develop timelines to accomplish program objectives. (N)

(2) Strategic Goals

- (a) Assess all significant waters (defined by the State) on a periodic basis to support the development of water quality standards, NPDES permit limitations, and nonpoint source controls. For example, some States use a five-year cycle on a watershed approach. (C)
- (b) Collect chemical, physical, biological and habitat data and use data to: assess use attainment, determine status and trends, identify sources of water quality problems, and determine effectiveness of pollution control measures. These surveys should use the latest water quality assessment techniques including fish tissue and population surveys, habitat assessments, sediment data, and toxicity testing. (N)
- (c) States should move towards establishing reference stations for their biological monitoring programs in order to provide baseline data for water quality assessments and development of biocriteria. (N)
- (d) Support special geographic/watershed initiatives. (O)
- (e) Coordinate planned monitoring activities with existing Federal, State, and local organizations. (N)

**b. Monitoring Workplan**

- (1) Identify sampling approach (fixed station, synoptic, intensive survey). (N)
- (2) Describe fixed station sampling program.
  - (a) Summarize monitoring parameters (chemical, biological, physical parameters), sampling frequency, and location of sites. (C)
  - (b) Reference or develop appropriate quality assurance project plans using guidance provided in Guidelines and Specifications for Preparing Quality Assurance Project Plans, QAMS-005/80 (currently being updated to EPA QA-R5; will distribute when available) and Guidance for Preparation of Combined Work/Quality Assurance Project Plans for Environmental Monitoring (OWRS QA-1). (C)
- (3) Estimate the number of intensive or synoptic surveys planned to be initiated or completed during the fiscal year in the workplan and provide a status report on these activities in at least an annual report which should include:
  - (a) stream (or basin) name and location of study,
  - (b) objective(s) of study,
  - (c) method of data collection and analysis,
  - (d) reference to appropriate quality assurance project plan,
  - (e) whether it was part of an intensive survey, fixed station network, facility specific survey, or independent study, and
  - (f) final report date. (C)

**c. Development and Use of Written Protocols for Field Activities**

- (1) Review and revise (as necessary) field methods, including sampling procedures for physical, chemical and biological monitoring activities. (O)
- (2) A Standard Operating Procedures manual should be prepared and submitted to the Regional Quality Assurance Officer to

document collection methodologies and to ensure that those methods are comparable to EPA guidance. (N)

- (3) Any modification to collection methods or problems associated with the implementation of the methods should be reported on an annual basis to the Regional Quality Assurance Officer. (O)

d. Laboratory Analytical Support

- (1) Review and revise laboratory analytical methods currently being used to ensure comparability with the requirements of 40 CFR, Part 136, as revised in October 1991. (C)
- (2) State Laboratory personnel should continue participation in EPA's Performance Evaluation studies. (O)

e. Quality Assurance and Quality Control Documentation

- (1) Review, revise, and implement the existing Quality Assurance Management Plans (QMP) and Project Plans (QAPP) to reflect new parameters and methods, including toxicity testing, biological surveys, fish tissue analysis, habitat surveys and sediment analytical protocols. State QMP and QAPP must be implemented in a manner consistent with EPA guidance (see Section B.2.b), regulations (see Attachment A), and Regional grant conditions. (C)
- (2). The QAPP should address the newest approved methods for both toxicant and conventional pollutant sampling and analysis and biomonitoring methods. All QMP and QAPP revisions undertaken during the fiscal year should be submitted to Regional Office for review and approval. Also, any problems encountered in implementing the approved QMP and QAPP should be reported. (C)
- (3) A monitoring program audit and a QA systems audit may be conducted by EPA to verify compliance with EPA regulations. (O)

f. Development and maintenance of Data Storage, Management and Sharing

- (1) Quality assured data should be available in ADP systems to determine progress towards achieving environmental goals. Biological data should be entered and stored into BIOS unless the State demonstrates an acceptable alternative system. All monitoring data should be available for review in hardcopy. (O)
- (2) Water-quality monitoring data should be entered into STORET within 6 months of data collection. (O)
- (3) Fish tissue data should be entered into Ocean Data Evaluation System (ODES). Training for the ODES database will be available in 1994. (N)
- (4) Toxicity test data should be entered into ODES or comparable database. (O)

g. Water Quality Assessments

- (1) Report all assessments of waterbodies for designated use support including causes and sources of impairments in the section 305(b) Waterbody System. (O)
- (2) Identify waters where water quality is known or suspected of being impaired due to toxics/toxicity and conventional pollutants and list such waters in accordance with section 304(1) and 303(d). (O)

h. Reporting

- (1) Each State is required to submit a final Section 305(b) Report to EPA by April 1, 1994. All States are requested to follow the Guidelines for the Preparation of the 1994 State Water Quality Assessment (Section 305(b) Report) for all aspects of report preparation including using the Waterbody System. In order to facilitate the completion of the report, States are requested to submit draft reports to the Regional 305(b) Coordinator by January 3, 1994 for review and comment. (N)

- (2) Submit, annually, a listing of all final reports, site-specific evaluations, biological survey reports, and special monitoring projects to the Regional Office. The listing should include information on the study objective, contact name, location of study, and reference to the associated QA project plan. (See Section B.3 of this guidance. Ongoing and final reports should be listed separately.) (O)
- i. Monitoring and Data Management Training
  - (1) Adequate resources should be made available to provide the necessary training of staff for field activities, data assessment and data management training. (N)
- j. Support and Coordinate Volunteer Monitoring Programs
  - (1) Volunteer monitoring programs should be encouraged to provide data as screening level indicators, and used as an educational tool. (N)
  - (2) Identify and report on citizen monitoring activities involving State personnel in the quarterly reports or at least annual basis. (N)
  - (3) Where volunteer monitoring data is used by the State for water quality assessments, a quality assurance project plan should be prepared by the volunteer group and revised for approval by the appropriate State agency.
- k. Evaluation
  - (1) Provide an assessment of the effectiveness of the ambient monitoring program in providing data suitable to meet program objectives in the 305(b) Report. (N)
  - (2) Annually review and update State strategies and quality assurance management plans and project plans. (O)

#### **A. Water Quality Standards**

1. Complete any followup actions arising from the triennial review of water quality standards scheduled to be completed by September 30, 1993.

2. Implement an acceptable antidegradation policy and make refinements to antidegradation implementation procedures, as necessary.

3. Refine or adopt new policies affecting application of criteria, particularly metals, adopted or promulgated under Section 303(c)(2)(B) of the Clean Water Act.

4. Continue to develop the basis for future development of numeric biological criteria, including development of methodologies, acquisition of baseline data, and refinement of ongoing State programs.

5. Continue to develop the basis for future development of numeric wetlands criteria, including development of methodologies and appropriate use designations, acquisition of baseline data, and refinement of ongoing State programs.

6. Review State water quality standards provisions to insure that they are adequate to protect threatened or endangered species and make changes or revisions as appropriate to insure that adequate protection is provided.

7. Assess the State's regulatory framework for controlling nutrients in order to facilitate adoption of appropriate nutrient criteria for fresh water by September 30, 1996. Appropriate nutrient criteria could be management strategies developed by utilizing existing models, site-specific data, and State-adopted dissolved oxygen criteria or other appropriate methods.

8. The Water Resources Development Act of 1992 requires EPA to conduct a comprehensive national survey of data regarding aquatic sediment quality and to report the findings by November 1994 and biennially thereafter. The State should participate in this process by provided State-generated or identified data, as appropriate. EPA expects that by September 30, 1996, States will identify contaminated sediment sites from the 1994 Contaminated Sediment Inventory and supplements to target revisions in State water quality standards during the next triennium and to target implementation of control programs.

B. Permits and Enforcement

1. Permits--For the items below list the NPDES number, the name of the facility and the quarter of issuance, reissuance or modification in the work plan that Maryland will submit to Region III for review.

a. Reissue all major permits expiring in FY'94. As of March 1993, EPA records indicate that Maryland has 12 major permits expiring in FY'94. (O)

b. Reissue the backlog of expired major permits. (O)

c. In accordance with EPA regulations, include toxic controls for both whole effluent toxicity and pollutant specific to attain and maintain both numeric and narrative criteria of Water Quality Standards in all issued and reissued NPDES permits. (O)

d. Issue permits to priority sludge facilities containing sludge conditions necessary to meet the requirements of Section (405)(d)(4) of the Water Quality Act of 1987. If not already delegated, prepare program delegation package for EPA approval. 40 C.F.R. Part 501 and a subsequent EPA Guidance Document entitled State Sludge Management Program Guidance Document describe the components of an approvable State sludge program. EPA will assist the State's development of a delegation package or implementation of new programs with contract or grant funds as they become available. (O)

e. Incorporate specific and enforceable pretreatment requirements in issued and reissued NPDES permits for POTWs with approved pretreatment programs. (O)

f. Issue/modify permits for Combined Sewer Overflow (CSO) dischargers based on strategies developed in FY'91. Revise CSO Strategy to comply with new EPA CSO policy (issued in draft December 1992) within 90 days of the policy becoming final. (C)

g. Resolve NPDES permit appeals for all major permits appealed as of 9/30/93 and report quarterly progress. (O)

h. Develop municipal storm water permit for designated municipalities. Base the permit on Part I and Part II storm water applications and other EPA guidance. (C)

i. Continue to implement baseline general permits. Incorporate new storm water conditions as existing applicable NPDES permits expire. Issue storm water permits



(individual or general permit) to cover group permits applicants. Develop storm water permits for significant individual storm water applications where water quality problems are possible. (C)

j. Participate in storm water Outreach activities. (N)

k. Submit revised 303(d) TMDL list in April 1994 that incorporates streams affected by both point and non-point sources. Establish priorities as to development of TMDLs for these streams for the next two years. (C)

l. Submit to EPA the TMDLs Maryland has developed for waterbodies included in the current TMDL strategy. (C)

m. Actively participate in the implementation of Chesapeake Bay tributary nutrient control strategies developed in FY'93. This includes modification of any NPDES permits to include nutrient controls. (N)

n. Develop model pollution prevention language for NPDES permits. (N)

2. Compliance/Enforcement--For permittees impacted by the following items list the NPDES number, the permittee name and the quarter (projected or actual) of the action.

a. Ensure compliance with all formal enforcement actions. (O)

b. Take timely and appropriate enforcement actions to address Significant Noncompliance (SNC) violations with the goals of maintaining an exceptions list at or near zero and continuously reducing the number of facilities in SNC. Submit copies of formal enforcement actions to EPA along with monthly enforcement reports. Monthly enforcement reports should include: State enforcement actions (including State administrative orders or equivalent); penalties assessed and collected; indication of whether Administrative Orders were issued for failure to implement pretreatment requirements. Report at least quarterly all civil and criminal referrals sent to SAG, and cases filed and concluded. (O)

c. Focus inspections of permittees, especially major permittees, to assess permit compliance, biomonitoring capabilities, TRE procedures/techniques and multi-media concerns. Target inspections on violators and in environmentally sensitive areas where/when resources are limited. (O)

d. Report the number of major permittees inspected each quarter and submit the inspection reports to EPA. As of 3/31/93 EPA's records indicate that there are 98 major

NPDES permittees in Maryland. Indicate on reports if inspections were conducted with another environmental compliance program. (O)

e. Incorporate and/or continue the compliance monitoring and enforcement of requirements of sludge programs, pretreatment programs and pollution prevention programs (O)

f. Enter accurate data for all WENDB data elements into PCS within appropriate time frames to ensure QNCR can be pulled from PCS by 11/28, 2/28, 5/28 and 8/28. Develop for each quarter an exceptions list for SNC facilities. (O)

g. Continue to work with EPA and the other Bay States to implement the long-term NPDES Compliance Strategy for the Chesapeake Bay. (O)

h. For facilities which discharge to the Chesapeake Bay area, work towards the goals of maintaining an exceptions list at or near zero and continuously reducing the number of facilities in SNC. Report the number and names of the facilities in the Bay area in SNC. (O)

i. Develop a statewide penalty policy that will recoup, where appropriate, economic benefit and gravity of violations. (O)

j. Implement a municipal wastewater pollution prevention program appropriate for Maryland. (N)

k. Meet with EPA quarterly for enforcement meetings to discuss strategies to address non-compliance. (O)

l. Submit quarterly federal facility compliance status reports to EPA. (O)

h. Develop, with EPA participation, a storm water enforcement strategy to address the needs of Maryland. (N)

3. Pretreatment--The following pretreatment requirements apply:

a. Conduct audits of approved pretreatment programs at least once every 5 years. For those facilities not audited, conduct a pretreatment compliance inspection (PCI). Provide copies of the reports to EPA as soon as Maryland completes them. As of March 1993, Region III's records indicate that there are 16 approved pretreatment programs in Maryland. (O)

b. Evaluate and revise, as necessary, pretreatment program implementation requirements in NPDES permits to ensure adoption of DSS rule and PIRT rule requirements. (O)

c. Use the 9/27/89 "Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation Requirements" to report POTWs on the QNCR for failing to implement approved pretreatment programs. (O)

d. Enter industrial user inspections into PCS under the IUs POTW. Provide quarterly targets for IU inspections. (O)

e. Provide a list of POTWs required to have an approved program but which do not; provide a schedule for pretreatment program approval for these POTWs. (O)

f. Use the Pretreatment Permit Enforcement Tracking System (PPETS/PCS) to enter all WENDB, RDN1 and RDN2 data elements for each PCI, audit and annual report. (O)

g. Ensure that all POTWs have technically based local limits. Submit quarterly the names of POTWs required to reevaluate local limits. Provide schedule dates for when each POTW will have adequate local limits. (O)

h. Provide a list of categorical IUs discharging to POTWs without approved programs. Take steps to ensure State oversight of categorical users in non-pretreatment cities meet minimum implementation requirements for POTWs implementing approved pretreatment programs. (O) Use PPETS/PCS to enter data on categorical users in non-pretreatment cities. In order to enter summary-level PPETS WENDB data for State-run pretreatment programs without approved local pretreatment programs or for States directly overseeing SIUs in non-pretreatment cities, these steps should be followed:

(1) Create a new facility record with a new permit number (NPID) containing the letter "C" in the third character (e.g., MDC0000001); the facility name (FNMS) should indicate that this is summary-level pretreatment data; (O)

(2) Create a PPS record (using the PPS 1 data entry screen or batch cards) for the new facility, inputting the start and end dates of the reporting period covered as PSSD and PSED respectively, and entering the WENDB data elements SSNC through IUPN (entry of additional data elements may be requested by Regions); (O)

(3) Create an inspection record (using the INSP data entry screen or batch cards) for the new facility, coding in DTIN as the end date of the period covered by the

report, TYPI = F, INSP = R or S (Region or State), and inspection comments indicating that the data is actually summary-level pretreatment data for a particular time period; in the bottom right corner of the INSP data entry, indicate PRETREATMENT DATA? = Y to automatically proceed to the next screen (PAU1); and, (O)

(4) On the PAU1 screen, enter the WENDB data elements NOCM through SNIN (excluding the data elements ADLL and EVLL) (entry of additional data elements may be requested by Regions). (O)

i. Enter pretreatment enforcement actions, schedules and milestone achievement dates into PCS. (O)

j. Evaluate and revise State pretreatment regulations to incorporate DSS and PIRT amendments, as necessary. (O)

k. Submit semiannually the compliance status of Baltimore electroplating and metal finishing facilities. (O)

#### 4. General

a. Revise PCS work plans by January 1, 1992, to clarify EPA/Maryland program responsibilities, training and support needs. (O)

b. Place biomonitoring requirements into PCS. (O)

c. Integrate pollution prevention practices through Outreach and training of POTWs and industrial dischargers. (N)

d. Include a Commitment Summary as part of the 106 work plan consisting of specific dates that reports will be submitted and dates of permits issued/reissued and target numbers for inspections. (O)

e. Work with EPA Region III to improve program coordination, reduce conflict and enhance overall quality of the work product. (O)

#### C. Clean Lakes Program

1. Update State Lake Assessment, expanding and updating information required under Section 314(a)(1)A - F. Coordinate with Lake Water Quality Assessment Grant activity. (O)

2. Use monitoring information (chemical and biological) which assesses pollution from point and nonpoint sources in the lake watersheds and, to the extent possible, describe the magnitude of these sources for each public lake. Incorporate the information into "Control Methods" and "Restoration Efforts" sections. (O)

3. Include lake monitoring for toxics in water, sediment and fish tissue, where appropriate. (O)

4. Continue incorporation of program into other State programs (NPS, 305(b), 205(j), etc.). (O)

#### D. Pollution Prevention

1. In recognition that a more effective and inexpensive solution to the improvement of water quality is to prevent pollution from occurring in the first instance, the State should consider using Water Quality Management Planning funds to develop strategies and measures to prevent the entry of point and nonpoint pollutants from entering surface and ground waters.

Opportunities for integrating pollution prevention into WQMP program areas include, but are by no means limited to, water quality standards, permitting, inspection, enforcement settlement, multi-media coordination, reporting and training activities. Each recipient of Section 106 grant funds for surface water programs should provide a summary report of activities associated with pollution prevention. The report should also identify any barriers or impediments to including pollution prevention in the Section 106 grant work program. (N)

#### E. Comprehensive State Ground Water Protection Programs

The December 1992 Final Guidance for the development of Comprehensive State Ground Water Protection Programs (CSGWPP) describes the Strategic Activities of a CSGWPP and the process for developing a Core CSGWPP program. It also describes the coordinated approach that both the States and EPA should follow.

In FY'94, States should build on their FY'93 Ground Water Protection (GWP) program activities to further their comprehensive approach to protecting the ground water resource. It is expected that States can most effectively build on their programs' activities and successes by committing to the CSGWPP approach.

EPA has had a number of successful experiences using the CSGWPP approach--i.e., bringing together a number of programs to work on common needs and priorities. For example, the Nonpoint Source and GWP programs work closely together to identify projects and activities which will benefit both programs and

protect both surface water and ground water. Such coordination also occurs very effectively at the State level. In addition, the Pesticides program has adopted an approach toward State Management Plans which ensures cross-program coordination for the protection of the ground water resource. In Jefferson County, WV, and Lancaster County, PA, nearly a dozen agencies--Federal, State, County, and Local--are developing cross-program approaches to Best Management Practices, Wellhead Protection (WHP), and other water resource protection activities within a commonly targeted, significant watershed. Finally, in West Virginia, the legislature mandated a CSGWPP approach by enacting the West Virginia Ground Water Protection Act (1991). The Act established a Ground Water Coordinating Committee, enabled collection of ground water protection and remediation fees from individuals or industries who potentially impact ground water quality, authorized setting of ground water quality standards, established a central ground water database, ambient ground water monitoring State-wide, among other ground water and coordination activities.

In FY'93, States developed a coordination mechanism or committee involving all ground water-related programs and developed self-assessments of their existing programs. Because the Final Guidance was issued later than expected, States may not have completed their final self-assessments as expected in FY'93.

Based on the CSGWPP Guidance, states are encouraged to conduct the following activities in FY'94:

- Continue ensuring a coordinated approach across all ground water-related programs and agencies, through the state's coordination mechanism. This coordination mechanism or committee should meet on a regular basis to identify common priority program activities and commonly targeted geographic areas. The coordination mechanism or committee should also task programs funded by EPA to identify how various grant funds could be used more effectively, e.g., funding common activities through several grants.
- Complete self-assessments developed in FY'93. The self-assessment should be based on the State's profile document, CSGWPP Guidance and the vision it has established for itself through the coordination mechanism. The State should complete its self-assessment, by comparing its current situation with its vision, using the adequacy criteria as a guide to identify gaps which prevent achievement of a Core CSGWPP.
- Submit a Core CSGWPP to EPA or, if the self-assessment identifies significant gaps that are unable to be adequately addressed in FY'94, a plan to reach a Core by FY'95. The CSGWPP Guidance document encourages states to develop Core CSGWPPs by 1995.

- Hold a workshop focusing on the ground water resource for all programs and agencies affecting ground water quality. Such a workshop, suggested by the States at an EPA/States meeting in February 1993, would be to encourage information exchange and network building.
- Participate in discussions with EPA programs regarding CSGWPP. This may take the form of formal meetings held at both EPA and the States to identify adequate responses to the six Strategic Activities and specific negotiations with each State on individual flexibilities in particular ground water-related programs.

State program managers, across all ground water-related programs, will be expected to document in their quarterly progress reports the progress they are making in the activities listed above. It is critical that all ground water-related programs be actively involved in these steps to ensure that the States are developing programs and activities that are protective to the entire resource and that reflect jointly developed goals.

Based on existing State ground water protection programs and activities, States are encouraged to undertake other cross-program activities that support elements of a CSGWPP, e.g., resource assessment activities, data management, and source identification.

#### F. Wellhead Protection

1. Wellhead protection is mandated under the SDWA. EPA provides funds which may be used for WHP under 106 of the CWA. EPA continues to encourage all States to incorporate their WHP programs into their CSGWPP strategies. An approved WHP program is an important part of the CSGWPP Program. Additionally, WHP should be incorporated into all other environmental activities that involve the monitoring and remediation of sources of contamination which affect ground water quality. States should support local communities in establishing their WHP programs.

#### G. Nonpoint Sources Management (NPS) Program

Section 319 funds will continue to be focused upon those particular nonpoint source control activities that are of highest priority. Section 319(h)(5) of the Clean water Act establishes four categories that the EPA Administrator will give priority to in making grants:

- Control particularly difficult or serious nonpoint source problems, including but not limited to problems

resulting from agriculture, mining and urban nonpoint source pollution problems.

- Implement innovative methods or practices for controlling nonpoint sources of pollution, including regulatory programs where appropriate.
- Control interstate pollution problems.
- At least ten percent of the State's overall work program should be devoted to addressing priority ground water quality NPS activities which EPA determines are part of a comprehensive nonpoint source pollution control program. These activities may include research, planning, ground water assessments, demonstration programs, enforcement, technical assistance, education and training programs to protect ground water from nonpoint sources of pollution.

While a State may choose to undertake ground water activities beyond the minimum of ten percent of its work program, those States that choose not to undertake ground water protection activities or choose to undertake activities below that level should explain their reasons.

There are additional priorities which were established by EPA in Nonpoint Source Guidance issued by the Administrator in December 1987, and in EPA 319(h) Grant Guidance dated December 15, 1989, which remain in effect:

- Address nationally significant, high-risk point source problems.
- Comprehensively integrate existing programs to control nonpoint source pollution.
  - Integrate Clean Water Act requirements such as approved Clean Water strategies.
  - Address surface/ground water (cross media issues).
  - Integrate Federal, State and local programs including multi-jurisdictional efforts such as the water quality initiatives of the U. S. Department of Agriculture, the Forest Service, and the Office of Surface Mining.
- Provide for monitoring and evaluation of program effectiveness, including adoption of rigorous water quality protocols.



- Demonstrate a long-term commitment to building the institutions necessary for effective nonpoint source management and to continue such institutions beyond the authorization period.
- Emphasize effective pollution prevention mechanisms to control nonpoint source pollution at the source.
- Protect particularly sensitive and ecologically significant waters, such as wetlands, estuaries and other coastal waters, wild and scenic rivers, and exceptional fisheries.
- Promote comprehensive watershed management, including the establishment and maintenance of protective corridors such as greenways, filter strips and wetlands along streams, lakes, and estuaries and the use of conservation easements and other land conservancy measures.
- Provide antidegradation provisions and other measures necessary to assure that population growth, new development, and new and expanded economic activity do not result in impairment of high quality waters and waters currently meeting water quality standards.
- Address urban stormwater that is not regulated by NPDES permits.

State Agencies are encouraged to

1. Initiate or expand monitoring activities through their traditional programs, such as Section 106, to assess nonpoint source pollution loads.
2. Set up monitoring activities which specifically measure the effectiveness of NPS control measures.
3. Leverage other Federal Agencies (e.g. U.S. Department of Agriculture, the Forest Service, Office of Surface Mining, National Park Service, Fish and Wildlife Service) to support implementation of the approved NPS Management Programs.  
(0)
4. Strive to develop/improve inter-agency and intra-agency coordination by integrating the objectives of nonpoint source control with stormwater management, ground water protection, clean lakes, wetlands and near coastal waterways and estuary program activities. (0)
5. Encourage and work with Federal, local and other State Agencies to raise the levels of public awareness about the

effects of nonpoint source pollution on water quality and to provide the information and tools needed to educate the public.  
(0)

6. State Agencies responsible for nonpoint source programs should work closely with the State Agencies responsible for developing comprehensive ground water protection programs. Nonpoint Source Agencies should ensure the inclusion of the State lead ground water Agencies on nonpoint source interagency work groups. Conversely, Agencies responsible for nonpoint source programs should participate in development of comprehensive State ground water protection programs, including wellhead protection programs and pesticide management. Proposed ground water related NPS management activities should reflect the priorities cited in the State's comprehensive ground water programs. These priorities should be based on State assessments of ground water use, value and vulnerability. These assessments are eligible for funding under CWA §§ 106, 604(b) and 319(h) and should be used to update the State NPS Assessment Reports to reflect ground water priorities. (0)

There are several key priorities under Comprehensive Ground Water Protection (CGWP) Programs that can be partially addressed through the State NPS program. These priorities include:

- a) Development of State Pesticides-in-Ground Water Management Plans.
- b) Controlling pollution from NPS within the Wellhead (WHP) Protection Areas.
- c) Working with USDA to implement the 1990 Farm Bill by providing maps of WHP areas and priority vulnerable aquifers to USDA so that USDA can prioritize pollution control activities in these areas.

IV. FUNDING RESERVES AND TARGETS

TOTAL \$ 106 TARGETS FY'94 PRESIDENTIAL BUDGET			
AGENCY	\$ 106 SURFACE WATER TARGETS	\$ 106 GROUND WATER TARGETS	TOTAL \$ 106 TARGETS
		1	
DC	\$568,294	\$99,062	\$667,356
DE	568,294	176,712	745,006
MD	1,124,234	196,418	1,320,652
PA	2,989,720	408,117	3,397,837
VA	1,680,173	259,505	1,939,678
WV	852,441	176,712	1,029,153
DRBC	240,000		240,000
ICPRB	160,000		160,000
SRBC	80,000		80,000
TOTALS	\$8,263,156	\$1,316,526	\$9,579,682

1 Both the surface water and ground water figures are based upon the application of the funding formulae to the amounts proposed in the Presidential budget for FY'94. EPA Regional program managers reserve the right to negotiate funding targets which differ from formula-computed amounts.

<b>§ 604(b) RESERVES-ACTUAL AND POTENTIAL</b>			
<b>STATE</b>	<b>CURRENT RESERVES UNDER FY'93 BUDGET</b>	<b>ADDITIONAL ALLOTMENT UNDER SUPPLE. APPROPRIATION</b>	<b>FY'94 FUNDING TARGETS PRESIDENTIAL BUDGET</b>
	1	2	3
DE	\$100,000	\$100,000	\$100,000
DC	100,000	100,000	100,000
MD	469,564	206,000	292,300
PA	769,048	337,000	478,800
VA	397,328	174,000	247,400
WV	302,651	133,000	188,400
<b>TOTALS</b>	<b>\$2,138,591</b>	<b>\$1,050,000</b>	<b>\$1,406,900</b>

<sup>1</sup> These reserves are actual amounts available for FY'93. They do not have to be obligated in grant awards to States until September 30, 1994.

<sup>2</sup> These potential reserves are based upon the President's Economic Stimulus Package for FY'93. These funds would have to be obligated in grant awards to States no later than September 30, 1993.

<sup>3</sup> These potential reserves for FY94 are based upon proposed State Revolving Fund wastewater funding of \$1.2 billion.

## V. GLOSSARY OF ACRONYMS

ADP	Automatic Data Processing
BMP	Best Management Practice
CETIS	Complex Effluent Toxicity Information System
CSO	Combined Sewer Overflow
DSS	Domestic Sewage Study
ICS	Individual Control Strategy
IO	Interstate Organization
IU	Industrial User
IUPN	IUs from which a penalty has been collected
MERITS	Managing for Environmental Results Initiatives
NOI	Notice of Intent
NPDES	National Pollution Discharge Elimination System
NPS	Nonpoint Source
PCI	Pretreatment Compliance Inspections
PCS	Permits Compliance System
PIRT	Pretreatment Implementation review Task Force
POTW	Publicly-Owned Treatment Works
PPETS	Pretreatment Enforcement Tracking System
PPS	Pretreatment Performance Summary
PSER	PCS Annual report end date
PSSD	PCS Annual report start date
QA/QC	Quality Assurance/Quality Control
QAPjP	Quality Assurance Project Plan
QNCR	Quarterly Noncompliance report
RDN1	SIUs in SNC without formal enforcement
RDN2	Failure to take formal enforcement against SIUs causing pass-through or interference
RPCPO	Regional Public Comprehensive Planning Organization
SAG	State Attorney General
SIU	Significant Industrial User
SNC	Significant Noncompliance
SSNC	SIUs in SNC with a pretreatment compliance schedule
STARS	Strategically Targeted Activities for Results System
STORET	Storage and Retrieval (water quality data system)
TMDL	Total Maximum Daily Load
TRE	Toxics Reduction Evaluation
WENDB	Water Enforcement National Data Base
WLA	Waste Load Allocation
WQS	Water Quality Standards

**APPENDIX A**

**POLLUTION**

**PREVENTION**

**POLICY**

**INFORMATION**



# Pollution Prevention Fact Sheet

## Pollution Prevention Act of 1990

### Purpose

The Pollution Prevention Act of 1990, signed into law in November 1990, establishes pollution prevention as a "national objective." The Act notes that:

There are significant opportunities for industry to reduce or prevent pollution at the source through cost-effective changes in production, operation, and raw materials use. . . The opportunities for source reduction are often not realized because existing regulations, and the industrial resources they require for compliance, focus upon treatment and disposal, rather than source reduction . . . Source reduction is fundamentally different and more desirable than waste management and pollution control.

### Pollution Prevention Hierarchy

The Act establishes the pollution prevention hierarchy as national policy, declaring that pollution should be prevented or reduced at the source wherever feasible, while pollution that cannot be prevented should be recycled in an environmentally safe manner. In the absence of feasible prevention or recycling opportunities, pollution should be treated; disposal or other release into the environment should be used as a last resort.

### Definition of Source Reduction

Source reduction is defined in the law to mean any practice which reduces the amount of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment or disposal; and which reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

## **Requirements**

The Pollution Prevention Act formalizes the establishment of EPA's Office of Pollution Prevention, independent of the single medium programs, to carry out the functions required by the Act and to develop and implement a strategy to promote source reduction. Among other provisions, the law directs EPA to:

- facilitate the adoption of source reduction techniques by businesses and by other federal agencies;
- establish standard methods of measurement for source reduction;
- review regulations to determine their effect on source reduction;
- investigate opportunities to use federal procurement to encourage source reduction;
- develop improved methods for providing public access to data collected under federal environmental statutes;
- develop a training program on source reduction opportunities, model source reduction auditing procedures, a source reduction clearinghouse, and an annual award program.

## **Grant Program**

The Act authorizes an \$8 million state grant program to promote source reduction by businesses, with a 50 percent state match requirement.

## **TRI Reporting**

Under the Act, facilities required to report releases to EPA for the Toxic Release Inventory (TRI) must also now provide information on pollution prevention and recycling, for each facility and for each toxic chemical. The information includes: the quantities of each toxic chemical entering the waste stream and the percentage change from the previous year, the quantities recycled and percentage change from the previous year, source reduction practices, and changes in production from the previous year.

## **Report to Congress**

The Act requires EPA to report to Congress within 18 months (and biennially afterwards) on the actions needed to implement the strategy to promote source reduction, and providing an assessment of the clearinghouse and the grant program.

## **Implementation**

EPA's Office of Pollution Prevention will be providing supplemental guidance concerning state pollution prevention grants that incorporate the new Act's requirements. (Grants already awarded are not affected by the legislation.) For further information, contact the Office of Pollution Prevention, 202-245-4164.





# Pollution Prevention Fact Sheet

## EPA's Pollution Prevention Strategy

### Overview

EPA's Pollution Prevention Strategy, released in February 1991, was developed by the Agency in consultation with all program and regional offices. The strategy provides guidance on incorporating pollution prevention into EPA's ongoing environmental protection efforts and includes a plan for achieving substantial voluntary reductions of targeted high risk industrial chemicals. The strategy is aimed at maximizing private sector initiative while challenging industry to achieve ambitious prevention goals.

### Industrial Toxics Project

A major component of the strategy is the Industrial Toxics Project. EPA has identified 17 high risk industrial chemicals that offer significant opportunities for prevention (see box on back of this page). *The Agency has set a goal of reducing environmental releases of these chemicals by 33 percent by the end of 1992 and by at least 50 percent by the end of 1995.*

The 17 pollutants identified as targets of the industrial toxics project present both significant risks to human health and the environment and opportunities to reduce such risks through prevention. The list was drawn from recommendations submitted by program offices, taking into account such criteria as health and ecological risk, potential for multiple exposures or cross-media contamination, technical or economic opportunities for prevention, and limitations of treatment.

All of the targeted chemicals are included on EPA's Toxic Release Inventory (TRI); thus, reductions in their releases can be measured in each year's TRI reports. Several hundred companies who have reported releases of the target chemicals have already been contacted by EPA. EPA is seeking their cooperation in making voluntary commitments to reduce releases and in developing pollution prevention plans to carry out these commitments.

## Guidance for EPA Activities

The strategy also provides guidance on incorporating pollution prevention into the Agency's existing programs, emphasizing the need for continued strong regulatory and enforcement programs.

At the same time, the strategy favors flexible, cost-effective approaches that involve market-based incentives where practical. For example, the strategy calls for the use of "regulatory clusters," through which EPA will categorize the rules it intends to propose over the next several years for certain chemicals and their sources. The clusters are intended to foster improved

cross-media evaluation of the cumulative impact of standards, more certainty for industry, and early investment in prevention activities.

Target Chemicals (million pounds released in 1988)	
Benzene	33.1
Cadmium	2.0
Carbon Tetrachloride	5.0
Chloroform	26.9
Chromium	56.9
Cyanide	13.8
Dichloromethane	153.4
Lead	58.7
Mercury	0.3
Methyl Ethyl Ketone	159.1
Methyl Isobutyl Ketone	43.7
Nickel	19.4
Tetrachloroethylene	37.5
Toluene	344.6
1,1,1-Trichloroethane	190.5
Trichloroethylene	55.4
Xylenes	201.6

## Institutional Barriers

The strategy outlines several short-term measures that will address various institutional barriers within the Agency's own organization that limit its ability to develop effective prevention strategies. Such measures include designating special assistants for pollution prevention in each Assistant Administrator's office, developing incentives and awards to encourage Agency staff to engage in pollution prevention efforts, incorporating prevention into the comprehensive 4-year strategic plans by each program office, and providing pollution prevention training to Agency staff.

## Other Sectors

The industrial toxics project for the manufacturing sector represents the first focus of a comprehensive Agency strategy. EPA will be seeking to work with the Departments of Agriculture, Energy, and Transportation to develop strategies for preventing pollution from agricultural practices and energy and transportation use. EPA has already begun several joint initiatives, including a cooperative grants program for sustainable agriculture research with the Department of Agriculture and a joint program with the Department of Energy to demonstrate energy efficiency and waste reduction in key sectors.

## For More Information

Copies of the strategy document are available from Julie Shannon in the Office of Pollution Prevention, 202-382-2736.

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## Pollution Prevention: EPA's Preferred Choice

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**WHY** EPA has devoted two decades to treatment and clean up of pollutants after they are generated. While this approach has proved successful and will always play a significant role in environmental protection, we have learned that, in many instances, pollution can be avoided at the outset, thereby eliminating or minimizing the need for end-of-pipe controls.

The SAB Report, *Reducing Risk*, which was designed to help us identify the most important environmental problems and best solutions, recommends that "EPA should emphasize pollution prevention as the preferred option for reducing risk."

Today EPA is dedicated to examining ways of preventing pollution at the source as the first line of defense. Experience shows it can be a cheaper, more effective way to reduce environmental risk.

For example, pollution prevention can be socially and economically advantageous because it can

- Eliminate the risk associated with generating pollutants.
- Reduce waste.
- Decrease worker exposure to high risk chemicals.
- Eliminate cross-media transfer of pollutants that can occur with treatment and disposal.
- Increase efficiency and performance.
- Reduce consumption of energy, natural resources, virgin materials, and hazardous toxic inputs.
- Reduce costs of treatment and disposal.
- Reduce the costs of ongoing regulatory compliance and liability that result when control systems fail.
- Decrease long-term liability associated with off-site disposal.

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**WHAT** Pollution prevention means "source reduction," as defined under the 1990 Pollution Prevention Act, and other practices that reduce or eliminate the creation of pollutants through:

- Increased efficiency in the use of raw materials, energy, water, or other resources,
- Protection of natural resources by conservation, or
- Substitution of non-toxic for toxic inputs in industrial processes.

The Pollution Prevention Act defines "source reduction" to mean any practice which:

- Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise

released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal.

- Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

Pollution prevention includes: equipment technology modifications; process or procedure modifications; reformulation or redesign of products; substitution of raw materials; and improvement in housekeeping, maintenance, training, or inventory control.

Under the Pollution Prevention Act, recycling, energy recovery, treatment, and disposal methods of managing waste once it has been generated and, therefore, are not included with definition of pollution prevention. (Sometimes commonly described as "in-process recycling," or "quality as pollution prevention.")

## HOW

EPA is fully committed to pollution prevention as its preferred alternative for environmental protection. To achieve its objectives, EPA will:

### Reduce Pollution

**Strategic:** apply pollution prevention to all environmental problems and concerns; incorporate the strategy across existing regulatory and non-regulatory programs; implement the core requirements of the Pollution Prevention Act.

**Tactical:** target high-risk problems both within and beyond the traditional scope of EPA's programs and regulatory authorities; use a broad range of approaches, both voluntary and regulatory, to promote pollution prevention.

### Institutionalize Pollution Prevention:

Incorporate pollution prevention into the Agency's planning, budget, policy, regulatory development, and permitting, enforcement, and implementation processes.

Build public understanding and gain support for pollution prevention in the environmental, business, industry, agriculture, and Federal communities.

Use comparative risk and the SAB Report to target pollution prevention opportunities.

Establish challenging, measurable goals for problem areas that have been identified.

Build Federal, state, local, and tribal capacity.

Key pollution prevention activities either currently underway or anticipated for the near future include the following:

**Source Reduction Review Project**, under which the Agency will target and review regulations in 17 key industries to identify opportunities to promote source reduction.

**Innovative Pollution Prevention initiatives**, such as:

**33/50 Project**, which encourages voluntary participation by industry to reduce toxic releases and off-site transfers of 17 specified chemicals in all media (seeking 33% reductions by 1993 and 50% reductions by 1995) using source reduction as the preferred approach.

**Green Lights Program**, which encourages industry and states to install high-efficiency lighting. The Agency is extending this program to encompass Green Cooling, Green Computers, and other opportunities to promote energy efficiency.

**Pollution Prevention Enforcement Settlements**, which obtain commitments by violators to return to compliance through pollution prevention measures or to engage in supplemental projects that will achieve other environmentally beneficial improvements.

**Design for the Environment (DfE) pilot project**, which involves working cooperatively with industry to identify and promote safer substitutes for toxic chemicals, along with other prevention approaches. A pilot project, which will test out the DfE model, is underway with the printing industry.

**Pollution Prevention Act: implementation of requirements to facilitate the adoption of source reduction by:** Pollution Prevention Incentive grants for states, the Pollution Prevention Clearinghouse, and training.

**Pollution Prevention Reporting Requirements Under the Toxic Release Inventory provisions of Emergency Preparedness Citizen Right to know Act (EPCRA).**

**Pollution Prevention Sector Strategies** in the agriculture, energy and transportation, federal government, and consumer areas.



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

MAY 28 1992

OFFICE OF  
THE ADMINISTRATOR

**MEMORANDUM**

**SUBJECT:** Integration of Pollution Prevention into Media State Grants

**FROM:** F. Henry Habicht II  
Deputy Administrator

A handwritten signature in dark ink, appearing to read "F. Henry Habicht II", is written over the printed name and title of the Deputy Administrator.

**TO:** Grants Administration Personnel

This memorandum expresses EPA's intention to encourage pollution prevention in our media State grant programs. The decision to issue this memorandum on pollution prevention was made by the Senior Policy Council--whose members include Assistant and Regional Administrators--at its March 19, 1992 meeting. While we recognize that workplan negotiations for FY'93 may be underway, the memorandum should be considered in addition to existing guidance documents to the extent possible in this grants cycle. It is not intended to disrupt completed or on-going workplan negotiations.

The statement reflects EPA's overall policy plan to integrate pollution prevention into the Agency's activities generally. In the longer term, we hope that this memorandum will prompt development of more pollution prevention-oriented activities in the FY'94 grants cycle. A more detailed program-specific strategy for the FY'94 grants cycle and beyond is being considered and developed by a cross-agency workgroup with the advice of the State/EPA Operations Committee.

Where possible we ask that you approach each proposed workplan and negotiate each award with a creative eye toward building in pollution prevention. The principles stated below will guide your efforts in this regard. Clearly, these principles must be applied in the context of statutory and program purposes and limitations, and may be used to encourage coordination of complementary activities between media programs.

As a matter of policy and practice EPA defines pollution prevention consistent with the Pollution Prevention Act of 1990 as elaborated on by the 1991 EPA Pollution Prevention Strategy. Accordingly, pollution prevention is the first step within the

environmental management hierarchy of: 1) preventing or reducing pollution at the source, 2) recycling, 3) treatment, and 4) disposal or release into the environment. Preventing or reducing pollution at the source is the first step in the hierarchy of options for reducing the risks to human health and the environment from pollution. Source reduction also includes practices commonly called in-process recycling. EPA recognizes that the remaining steps are not undesirable in themselves and may adequately protect human health and the environment; the point is to emphasize and make use of pollution prevention opportunities where possible.

Consistent with the national policy established by the Pollution Prevention Act of 1990, the pollution prevention ethic must become an integral part of EPA's way of doing business, including our grant awards. Our media State grants programs provide us the opportunity to promote this ethic outside of EPA, assisting State efforts to eliminate or reduce the amount of pollution they must deal with in their environmental programs. Although activities that can be identified as discrete pollution prevention activities are important, it is equally important for all environmental activities to integrate the pollution prevention ethic to the maximum potential.

Where consistent with statutory and regulatory requirements, the following principles are provided for consideration to the extent deemed feasible by the parties when developing FY'93 media State grant workplans:

- 1) The proposed workplan reflects an explicit preference for pollution prevention (reduction at the source) when feasible or appropriate, and identifies pollution prevention activities as appropriate.
- 2) The proposed workplan incorporates pollution prevention as a priority in decisionmaking done as part of the activity.
- 3) The proposed workplan encourages opportunities to modify existing or develop new equipment, technology, processes, procedures, products, or educational or training materials to promote pollution prevention.
- 4) The proposed workplan encourages institutional and multi-media coordination when appropriate.
- 5) The proposed workplan identifies measures of pollution prevention success (for example, opportunities for measurable pollution prevention, specific method of quantifying and documenting quantities and/or toxicity of pollutants prevented, consideration of other environmental benefits).

6) When appropriate, the proposed workplan increases the flexibility afforded to States to incorporate pollution prevention approaches into their grant-assisted activities, e.g. through numbers or types of required outputs, or timing of EPA deadlines.

7) When appropriate, the proposed workplan includes specific pollution prevention activities or approaches that may serve as innovative models for other State programs and nationally. In the alternative, the proposed workplan encourages the use of innovative activities or approaches already developed by other programs or States, including coordinating with them in order to build on the existing success.

8) The proposed workplan includes a mechanism to make pollution prevention data and experience available to other States and the Pollution Prevention Information Clearinghouse.

Finally, the attached list of examples of pollution prevention-oriented activities may prove useful.

**Attachment**

**cc: Assistant Administrators  
Associate Administrators  
Regional Administrators**

## EXAMPLES OF STATE-BASED POLLUTION PREVENTION ACTIVITIES

### **RCRA Programs**

Since 1989, OSWER has allowed Regions and states to trade off activities that would otherwise carry national RCRA priorities for specific activities desired by a Region or state. Currently, up to 25% of enforcement resources may be traded off. The remainder of the RCRA program also has a flexibility process that favors activities: a) identified by Regions and states as high priority environmental needs (pollution prevention (P2) may be included here), and b) involving facilities ranked by Regions and states as priorities for environmental benefit and significance.

This flexible approach has been used in a variety of ways to promote P2 by:

- funding a waste minimization position in a state to establish a newsletter and information clearinghouse, provide technical assistance through workshops and RCRA inspections, and provide coordination and program development through waste exchange forums, trade association meetings and conferences and training courses;
- compiling a technical resource library in a state to serve as a state-wide clearinghouse, developing and presenting industry specific seminars, developing industry specific fact sheets, and performing individual site visits. Industries targeted in this case include equipment maintenance, auto repair and autobody repair, metal finishing, printing, and laundries and dry cleaning;
- in a Region, working with industries on P2 and waste minimization, compiling industry-specific waste minimization manuals, and assisting states with regulations and strategies for P2;
- establishing a P2 library, disseminating P2 technical information, publicizing RCRA P2 successes in permit and enforcement actions, developing a compendium of state P2 activities and identifying grant flexibility opportunities for states to conduct P2 activities as part of their FY 93 RCRA grants;
- supporting a state multimedia permit program that encourages the incorporation of P2 into water, air, and RCRA permits;
- promoting voluntary toxics reduction through the 33/50 program, enforcing RCRA requirements for certifications of waste reduction, and incorporating P2 strategies into enforcement case settlements.

### **Water Programs**

**POTWs:** In FY 91, the Office of Water and the Pollution Prevention Division awarded P2 grants to five states under the "Pollution Prevention in POTWs" program. The purpose of these grants is to demonstrate how municipal POTWs, through their pre-treatment programs and facility operations, can promote source reduction activities. These grants funded such activities as:

- creating state level program infrastructures by integrating P2 techniques into pre-treatment programs;



- providing challenge grants to indirect dischargers to solve discharge problems by using source reduction techniques and technologies;
- providing education and technical assistance to industrial dischargers;
- characterizing wastestreams, prioritizing industries for reduction opportunities, and identifying methods for measuring progress;
- conducting energy audits at specific POTWs;
- establishing water conservation programs in the community.

Grants ranging from \$50,000 to \$100,000 were awarded to the States of North Carolina, Utah, Massachusetts, Minnesota, and New Mexico. These demonstrations are intended to support the development of a national pollution prevention in POTWs program.

**Other Water Programs:** The following are EPA HQ and Regional activities, funded by the P2 2% program, that might serve as models for grant-funded activities in the states:

- reviewing state laws to identify pollution prevention authorities and providing examples of pollution prevention requirements in NPDES permits – products include a report on the review of state legal authorities and model permit language for NPDES permits;
- conducting pollution prevention workshops for NPDES permit writers and updating NPDES BMP manual for use in workshop – products include workshops and updated manual;
- assisting POTWs in identifying pollutants, determining sources of targeted pollutants, and instituting changes to reduce pollutant loadings at POTWs and IUs – products include reports on recommended changes, successes, and problems geared towards POTWs;
- developing a conference for the iron and steel industry to discuss pollution prevention activities – products include workshop and companion notebook.

## **Pesticides and Toxics Program**

The pesticide compliance program encourages states to consider pollution prevention activities which a violator could undertake in exchange for appropriate enforcement penalty reductions.

In both pesticide and toxics programs, states could achieve pollution prevention objectives through inspection targeting and inspection procedures.

FIFRA groundwater protection grants support development of Pesticide State Management Plans (SMPs). The plans outline environmentally sound use of pesticides that might pose a high risk of groundwater contamination. Prevention actions, such as adoption of Integrated Pest Management (IPM) and other measures to reduce the quantity and toxicity of pesticide use, may be components of SMPs.

The pesticide certified applicator education and training program also has pollution prevention components in that pesticide applicators are instructed in the proper use of pesticides. Certified applicator programs for protection of groundwater are provided in many states.

## **Air and Radiation Programs**

An underlying goal of the 1990 Clean Air Act (CAA) is the prevention of pollution at its source. Rather than simply relying on a traditional command and control approach, the CAA provides a variety of ways to foster reductions at the source: through market-based, emission offset and trading programs; through economic incentives and disincentives; through the provision of technical and financial assistance to industry to develop and utilize cleaner technology; through the use of leaner fuels and vehicles; and through public education and outreach.

The CAA recognizes that the primary responsibilities for ensuring the success of these efforts rests with state and local governments. Accordingly, reduction at the source is the motivating force behind many of the Act's strategies and programs being carried out by state and local agencies and for which EPA is providing financial assistance.

The CAA contains numerous provisions intended to reduce pollution at its source and which are effected through grants to states and local agencies. For example, OAR has awarded or will award grants to state and local agencies to:

- incorporate early reductions provisions in their air toxics programs to encourage sources to reduce heavily upfront in order to receive an extension for compliance and more time to investigate and adopt alternative control technologies;
- implement state-of-the-art air toxics source control technology requirements which include source reduction options, and where not promulgated by EPA, to do case by case source determinations or encourage those sources to secure emissions offsets to avoid such determinations;
- revise their VOC regulations to incorporate acceptable alternative production processes and materials;
- establish or expand efforts to further reduce or avoid generation of VOCs, CO and air toxics through enhanced motor vehicle inspection and maintenance programs, oxygenated fuel, reformulated gas, vapor recovery, clean vehicle and clean fuels programs;
- promote and implement alternative transportation measures including the use of mass transit and ride-sharing;
- enable the provision of technical assistance to aid small businesses in understanding and complying with the CAA in a cost effective way, including the consideration of source reduction options;
- understand and participate in an innovative market-based acid deposition allowance program and in efforts to conserve energy and promote renewable sources of energy by utilities and the manufacturing sector;
- encourage other market-based approaches to the reduction of pollution, including joint initiatives with the public and private sectors; and
- work with EPA in targeting compliance activities and resources on the basis of risk, and in seeking compliance agreements that result in the institution of pollution prevention practices or investments.

In the area of radiation, OAR has utilized the Radon Abatement Act to institute a non-

regulatory program that relies heavily on pollution prevention as its philosophical underpinning in order to mitigate or avoid naturally occurring radon gas. This includes working with state or local agencies on public outreach and education and on modification of building codes and with industry on the use of different construction materials and techniques.

## **Examples of Coordinating State Activities to Achieve a Multimedia Focus**

### **Cross-Media Inspections: Massachusetts' Blackstone Project**

Objectives of the Blackstone Project, a pilot conducted jointly by the Massachusetts Office of Technology Assessment (non-regulatory, technical assistance program) and Massachusetts Department of Environmental Protection (regulatory agency), include determining if 1) multimedia trained inspectors could more efficiently conduct inspections than separate teams of air quality, water, and waste inspectors and 2) a multimedia inspection could more readily identify opportunities for pollution prevention. Major challenges of the project were to develop cross-media inspection teams from existing regulatory staff and develop and conduct a cross-media inspection process. Inspectors participated in almost a year of extensive instruction using classroom training, case studies, and practice field inspections. Blackstone field inspectors are able to:

- conduct field inspections for minor source categories of air and water pollution, hazardous waste, and SARA Title III TRI compliance (inspectors finding complicated issues relating to another program would refer the issue to a specialist in the program (inspectors finding complicated issues relating to another program refer the issue to a specialist in the program));
- identify source reduction opportunities during multimedia inspections;
- write multimedia inspection reports that include process descriptions, flow diagrams, discharge point descriptions, and violation reports;
- recommend source reduction-biased enforcement strategies and draft enforcement documents for non-compliance with air, water, and hazardous waste regulations.

### **Multimedia Permit Reviews: New Jersey**

The State of New Jersey is currently examining the potential for multimedia permit reviews. The New Jersey Dept. of Environmental Protection and Energy recently signed agreements with three industrial companies to examine pollution prevention options and to streamline the way facilities are regulated. The three companies participating in the pilot projects will conduct in-depth inventories and audits of how they use hazardous substances. They will then explore P2 options such as process changes and the use of new, less polluting manufacturing equipment. They will also investigate the substitution of non-toxic raw materials for toxic ones. These facilities will be the first in New Jersey to begin complying under a "facility-wide" permit. Rather than issue separate permits for each discharge into air, water, and land, the facilities will receive a single permit, designed to build P2 into the process.



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

NOV 2 1992

**MEMORANDUM**

OFFICE OF  
THE ADMINISTRATOR

**SUBJECT:** State Grants Guidance: Integration of Pollution Prevention

**FROM:** F. Henry Habicht II *FH*  
Deputy Administrator

**TO:** Assistant Administrators  
Regional Administrators

This memorandum announces the Agency-wide pollution prevention Guidance, beginning with the FY'94 State grants cycle. It has four goals:

- Promoting pollution prevention in State programs supported through Federal grants by establishing National Principles to guide workplans negotiated between Regional Offices and States;
- Ensuring that grant requirements as interpreted by EPA/State workplans are flexible enough to support innovative State pollution prevention activities;
- Establishing a simple accounting process to share information on successful State projects, and identify statutory or other barriers to funding state proposals; and
- Building sustained State capacity in pollution prevention to the extent consistent with statutory grant requirements.

All of these objectives are subject to any statutory and regulatory limitations that apply in specific circumstances.

The Guidance should help integrate pollution prevention into the Agency's activities as required by the Pollution Prevention Act of 1990. By emphasizing flexibility, the Guidance complements other Agency efforts to build a productive environmental management system in partnership with the States, and improve coordination with existing State pollution prevention programs.

In general, this Guidance applies to all of the Agency's media-specific State grant programs, but particularly to the following: Clean Air Act §105--Air Pollution Planning and Control; Resource Conservation and Recovery Act §3011--Hazardous Waste; Federal Insecticide, Fungicide, and Rodenticide Act §23(a)(1)--Pesticides; Toxic Substances Control Act §28--Enforcement and Enforcement Activities under §313 of the Emergency Planning and Community Right-to-Know Act; and Clean Water Act §106--Surface Water, §104(b)(3)--Wetlands and Water Quality Management, and §319(h)--Non-Point Source Management.

Building on the Agency's many successful pollution prevention efforts, beginning in FY'94 EPA's grant programs--working with States--should explicitly promote pollution prevention in State workplans (also called agreements). This memorandum will be incorporated into the annual Agency Operating Guidance as well as program-specific Guidance developed this winter with the advice of the State/EPA Operations Committee. Program Guidance, intended to tailor the Agency-wide commitment to each grant program, will be applied by Regional Offices and States in the development of grant-assisted work.

The National Principles stated below should help guide development of EPA/State workplans. These should be reflected in program-specific guidance, weighed in workplan discussions, and used to qualitatively assess program progress in integrating pollution prevention. In applying these Principles, Regional Offices should use or expand upon the menu of flexibility options below to respond to State needs to the extent possible. Annual accomplishment reports, discussed below, will help assess EPA's progress in supporting pollution prevention-oriented State workplans and initiatives.

### National Principles

Guidance for each grant program covered by this document should make clear that pollution prevention--as defined in the Agency-wide memorandum of May 28, 1992 (attached)--is EPA's preferred approach to environmental management where technically and economically feasible. Consistent with the Pollution Prevention Act, the Guidance should further the integration of pollution prevention into State activities--e.g. inspections and permits--that are supported by EPA grants. While pollution prevention is not mandated, the Principles are intended to ensure that it is considered fairly in EPA/State workplans.

Specific proposals from States that are consistent with these Principles should be considered good candidates for funding through the grant programs. In addition, Regional Offices should take the initiative to suggest pollution prevention approaches, drawing upon program-specific Guidance and implementation workshops. Regional Offices and States are expected to use their

discretion in applying these Principles; they are not obligatory elements of every negotiated workplan, but rather factors for serious consideration in the negotiation process.

The Principles are:

- 1) The workplan applies the EPA definition of pollution prevention (see memorandum of May 28, 1992) consistent with the Pollution Prevention Act of 1990 and the 1991 EPA Pollution Prevention Strategy.
- 2) The workplan reflects an explicit preference for pollution prevention and identifies pollution prevention activities, products, or approaches.
- 3) The workplan incorporates pollution prevention as a priority in environmental management decisions made by the grantee as part of the grant-assisted activities.
- 4) The workplan encourages opportunities to modify existing or to develop new equipment, technology, processes, procedures, products, or educational or training materials to promote pollution prevention.
- 5) The workplan encourages institutional coordination--including coordination with existing State pollution prevention programs--and multi-media opportunities for pollution prevention.
- 6) The workplan complements or builds upon existing EPA pollution prevention projects (e.g. the work of multi-media industry clusters such as the Source Reduction Review Project, and the use of pollution prevention in enforcement settlements).
- 7) The workplan identifies and applies measures and ways of documenting pollution prevention progress as part of the grant-assisted activities (e.g. provides opportunities for measurable pollution prevention).
- 8) The workplan includes activities or approaches that may serve nationally as innovative models for other State or local programs. Workplans also should encourage innovative approaches already developed by other State or local programs, and improve coordination to build on existing successes.
- 9) The workplan structures grant output information so that EPA can make pollution prevention data and experience available to other States and the Pollution Prevention Information Clearinghouse.

Clearly, both partners must comply with any applicable statutory or regulatory requirements and take into account other factors that may be important. Regional Offices and States may identify

Additional Principles to guide workplan requirements.

Flexibility

Many Regional Offices already have made adjustments to accommodate flexibility needs. The purpose of this Guidance is to encourage such flexibility. Whenever possible, workplans should accommodate State flexibility needs associated with incorporating pollution prevention approaches into their grant-assisted activities. That means working within the parameters of statutory and regulatory requirements to arrive at an agreement that is practical and meets the parties' needs. Options for flexibility include (but are not limited to):

- a) Adjustments in numbers or types of required outputs including, for example, (1) tradeoffs or disinvestment from traditional requirements (non-statutory and non-regulatory) and (2) multiple credit for a single "multi-media" inspection that emphasizes pollution prevention.  
 --An example of (1) is RCRA's RIP-Flex Guidance, which allows disinvestment from national priority activities and re-investment in Regional or State priorities; up to 25% of enforcement resources in FY'92 and '93.  
 --An example of (2) is being tested in Region One with Massachusetts' Blackstone project. The key issue is how to "bean-count" a single multi-media inspection claiming to satisfy enforcement requirements under multiple statutes and promote pollution prevention technical assistance.
- b) Adjustments in timing of non-statutory and non-regulatory EPA deadlines.
- c) Identification of a percentage of funds for pollution prevention within each media program, coordinated by a pollution prevention office.  
 --For example, Region 10 has agreed to Alaska's request to allow the State to identify 3% (5% over the next two years) of grant program monies--RCRA, air, and water--for pollution prevention, to be coordinated by the pollution prevention office. The monies will be reflected in specific activities reasonably related to each program's contribution and statutory objectives. The annual EPA/State Agreement will explicitly identify pollution prevention activities and specific disinvestments in each program.
- d) Adjustments in traditional or administrative procedures or schedules to ease EPA/State interaction.

Annual Accomplishment Report

To allow EPA to evaluate progress in integrating pollution prevention into State grant programs, each Regional Office should

provide an annual report summarizing pollution prevention accomplishments (e.g. activities, products, approaches, etc.), as reflected in grants-assisted work. The report may take any form and may draw upon reports developed to satisfy other requirements.

While program-specific Guidance may elaborate further, each report should identify: a) success stories, including innovative State projects funded under this Guidance; and b) any barriers (statutory or otherwise) that led a program to reject State proposals or to decide against including pollution prevention approaches. In addition, recommendations on regulatory, administrative, or other changes to improve flexibility would be helpful. Your contribution of this information is key to making pollution prevention a reality in EPA's on-going bread and butter work.

#### Conclusion

Incorporating pollution prevention into EPA's policies and programs is a collaborative effort requiring EPA to work in concert with our State partners. The National Principles and Annual Reports described above will help us to measure our progress and build on our successes.

Attachment





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

NOV 12 1992

**MEMORANDUM**

OFFICE OF  
THE ADMINISTRATOR

**SUBJECT:** State Grants Guidance: Integration of Pollution Prevention

**FROM:** F. Henry Habicht II *FH*  
Deputy Administrator *felt*

**TO:** Assistant Administrators  
Regional Administrators

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- Promoting pollution prevention in State programs supported through Federal grants by establishing National Principles to guide workplans negotiated between Regional Offices and States;
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- Establishing a simple accounting process to share information on successful State projects, and identify statutory or other barriers to funding State proposals; and
- Building sustained State capacity in pollution prevention to the extent consistent with statutory grant requirements.

All of these objectives are subject to any statutory and regulatory limitations that apply in specific circumstances.

The Guidance should help integrate pollution prevention into the Agency's activities as required by the Pollution Prevention Act of 1990. By emphasizing flexibility, the Guidance complements other Agency efforts to build a productive environmental management system in partnership with the States, and improve coordination with existing State pollution prevention programs.



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In general, this Guidance applies to all of the Agency's media-specific State grant programs, but particularly to the following: Clean Air Act §105--Air Pollution Planning and Control; Resource Conservation and Recovery Act §3011--Hazardous Waste; Federal Insecticide, Fungicide, and Rodenticide Act §23(a)(1)--Pesticides; Toxic Substances Control Act §28--Enforcement and Enforcement Activities under §313 of the Emergency Planning and Community Right-to-Know Act; and Clean Water Act §106--Surface Water, §104(b)(3)--Wetlands and Water Quality Management, and §319(h)--Non-Point Source Management.

Building on the Agency's many successful pollution prevention efforts, beginning in FY'94 EPA's grant programs--working with States--should explicitly promote pollution prevention in State workplans (also called agreements). This memorandum will be incorporated into the annual Agency Operating Guidance as well as program-specific Guidance developed this winter with the advice of the State/EPA Operations Committee. Program Guidance, intended to tailor the Agency-wide commitment to each grant program, will be applied by Regional Offices and States in the development of grant-assisted work.

The National Principles stated below should help guide development of EPA/State workplans. These should be reflected in program-specific Guidance, weighed in workplan discussions, and used to qualitatively assess program progress in integrating pollution prevention. In applying these Principles, Regional Offices should use or expand upon the menu of flexibility options below to respond to State needs to the extent possible. Annual accomplishment reports, discussed below, will help assess EPA's progress in supporting pollution prevention-oriented State workplans and initiatives.

### National Principles

Guidance for each grant program covered by this document should make clear that pollution prevention--as defined in the Agency-wide memorandum of May 28, 1992 (attached)--is EPA's preferred approach to environmental management where technically and economically feasible. Consistent with the Pollution Prevention Act, the Guidance should further the integration of pollution prevention into State activities--e.g. inspections and permits--that are supported by EPA grants. While pollution prevention is not mandated, the Principles are intended to ensure that it is considered fairly in EPA/State workplans.

Specific proposals from States that are consistent with these Principles should be considered good candidates for funding through the grant programs. In addition, Regional Offices should take the initiative to suggest pollution prevention approaches, drawing upon program-specific Guidance and implementation workshops. Regional Offices and States are expected to use the

discretion in applying these Principles; they are not obligatory elements of every negotiated workplan, but rather factors for serious consideration in the negotiation process.

The Principles are:

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- 2) The workplan reflects an explicit preference for pollution prevention and identifies pollution prevention activities, products, or approaches.
- 3) The workplan incorporates pollution prevention as a priority in environmental management decisions made by the grantee as part of the grant-assisted activities.
- 4) The workplan encourages opportunities to modify existing or to develop new equipment, technology, processes, procedures, products, or educational or training materials to promote pollution prevention.
- 5) The workplan encourages institutional coordination--including coordination with existing State pollution prevention programs--and multi-media opportunities for pollution prevention.
- 6) The workplan complements or builds upon existing EPA pollution prevention projects (e.g. the work of multi-media industry clusters such as the Source Reduction Review Project, and the use of pollution prevention in enforcement settlements).
- 7) The workplan identifies and applies measures and ways of documenting pollution prevention progress as part of the grant-assisted activities (e.g. provides opportunities for measurable pollution prevention).
- 8) The workplan includes activities or approaches that may serve nationally as innovative models for other State or local programs. Workplans also should encourage innovative approaches already developed by other State or local programs, and improve coordination to build on existing successes.
- 9) The workplan structures grant output information so that EPA can make pollution prevention data and experience available to other States and the Pollution Prevention Information Clearinghouse.

Clearly, both partners must comply with any applicable statutory or regulatory requirements and take into account other factors that may be important. Regional Offices and States may identify

additional Principles to guide workplan requirements.

### Flexibility

Many Regional Offices already have made adjustments to accommodate flexibility needs. The purpose of this Guidance is to encourage such flexibility. Whenever possible, workplans should accommodate State flexibility needs associated with incorporating pollution prevention approaches into their grant-assisted activities. That means working within the parameters of statutory and regulatory requirements to arrive at an agreement that is practical and meets the parties' needs. Options for flexibility include (but are not limited to):

a) Adjustments in numbers or types of required outputs including, for example, (1) tradeoffs or disinvestment from traditional requirements (non-statutory and non-regulatory) and (2) multiple credit for a single "multi-media" inspection that emphasizes pollution prevention.

--An example of (1) is RCRA's RIP-Flex Guidance, which allows disinvestment from national priority activities and re-investment in Regional or State priorities: up to 25% of enforcement resources in FY'92 and '93.

--An example of (2) is being tested in Region One with Massachusetts' Blackstone project. The key issue is how to "bean-count" a single multi-media inspection claiming to satisfy enforcement requirements under multiple statutes and promote pollution prevention technical assistance.

b) Adjustments in timing of non-statutory and non-regulatory EPA deadlines.

c) Identification of a percentage of funds for pollution prevention within each media program, coordinated by a pollution prevention office.

--For example, Region 10 has agreed to Alaska's request to allow the State to identify 3% (5% over the next two years) of grant program monies--RCRA, air, and water--for pollution prevention, to be coordinated by the pollution prevention office. The monies will be reflected in specific activities reasonably related to each program's contribution and statutory objectives. The annual EPA/State Agreement will explicitly identify pollution prevention activities and specific disinvestments in each program.

d) Adjustments in traditional or administrative procedures or schedules to ease EPA/State interaction.

### Annual Accomplishment Report

To allow EPA to evaluate progress in integrating pollution prevention into State grant programs, each Regional Office should

provide an annual report summarizing pollution prevention accomplishments (e.g. activities, products, approaches, etc.), as reflected in grants-assisted work. The report may take any form and may draw upon reports developed to satisfy other requirements.

While program-specific Guidance may elaborate further, each report should identify: a) success stories, including innovative State projects funded under this Guidance; and b) any barriers (statutory or otherwise) that led a program to reject State proposals or to decide against including pollution prevention approaches. In addition, recommendations on regulatory, administrative, or other changes to improve flexibility would be helpful. Your contribution of this information is key to making pollution prevention a reality in EPA's on-going bread and butter work.

### Conclusion

Incorporating pollution prevention into EPA's policies and programs is a collaborative effort requiring EPA to work in concert with our State partners. The National Principles and Annual Reports described above will help us to measure our progress and build on our successes.

Attachment

# **APPENDIX B**

**SECTIONS 106 AND 604(b)**

**SUGGESTED**

**WORK PROGRAM ELEMENTS**

**RECOMMENDED LIST OF PROGRAM ELEMENTS FOR 106 and 604(b) GRANTS**

1. **OUTREACH/TECHNICAL ASSISTANCE** - All costs associated with public participation and providing technical assistance should be included in this program element.
  - a. Technical assistance
  - b. Public participation
    - Public notice of regulations
    - Workshops
  - c. Training
  - d. Operator certification
  - e. Operation and Maintenance (O&M)
  - f. Outreach
    - Providing assistance to communities (including schools and volunteer groups)
    - Public meetings
    - Public education on EPA policies (beneficial use of sludge, stormwater, etc.)
  
2. **WATER QUALITY PLANNING** - All costs of preparing and updating water quality management plans, assuring the consistency of permits and construction grants with them, and of meeting other point and non-point source planning requirements of the Clean Water Act belong to this program element.
  - a. Geographic/Watershed planning
  - b. Basin Plans/Water Quality Management (WQM) Plan certification
  - c. Nonpoint Source (NPS) planning activities  
Total Maximum Daily Loads (TMDLs)
  - e. State Continuing Planning Process (CPP)
  - f. State Capacity
  - g. Interstate/international consistency (EIS, Clearinghouse)
  - h. 304(l) List
  - i. 303(d) List
  - j. Contingency plan development revision
  - k. Coastal Zone Management (CZM) NPS program planning

3. **ENFORCEMENT AND COMPLIANCE** - All costs of State/Tribal enforcement of general permit and National Pollution Discharge Elimination System (NPDES) permit conditions and compliance schedules (including sludge), and other legislative and regulatory requirements under the Clean Water Act and directly related legislation belong under this program element.
  - a. Compliance monitoring evaluation (source monitoring)
  - b. Inspections (Sampling/Non-sampling)
  - c. Special Investigations
  - d. Performance audits
  - e. Lab and field support for enforcement
  - f. Emergency response/contingency plans
  - g. Legal support
  - h. Discharge Monitoring Report (DMR) Coding/DMR Mailing
    - Violation evaluations
    - Data maintenance (PCS/PPETS)
    - Submission of DMR QA information independent of national studies
  - i. Quarterly Non-compliance Report (QNCR) preparation
  - j. Preparation case documents/coordination to establish clear administrative record
  - k. Issue State administrative and consent decrees (compliance penalty)
  - l. Respond to EPA notices of violation
  - m. Civil/criminal referrals to State Attorney General/follow-up
  - n. Draft judicial consent agreements
  - o. Development/updating of program authorization
  - p. Technical support to judicial actions
  - q. Administrative and judicial order tracking and follow-up



4. **PERMITS** - (other than Sludge, Pretreatment, CSO, Stormwater).

All costs of issuing, reissuing and modifying NPDES permits, including general permits belong under the Permits program element. Also, costs of reviewing and processing CWA section 402 applications and section 404 permit programs should be included.

- a. Processing NPDES permits and general permits
- b. Develop NPDES permit conditions, compliance schedules
- c. Re-issuance of existing National Pollutant Discharge Elimination System (NPDES) permits/terminations
- d. Processing NPDES permit modifications
- e. Review and process 402 applications
- f. Public Notice of permit activities
- g. 401 Certification (State permit certification)
- j. 404 Permits (dredge and fill)
- i. Permit tracking system operations
- k. Final Determination Finding (FDF) review/decision
- l. Evidentiary hearing resolutions
- m. 316 Determinations
- n. Review of TRE/TIE
- o. Application review

5. **COMBINED SEWER OVERFLOW (CSO)** - All costs of establishing and operating a State/Tribal NPDES program for combined sewer overflows (CSO's) belong to this program element.

- a. Enforcement activities
- b. Processing NPDES permits
- c. Re-issuance of existing NPDES permits
- d. Processing NPDES permit modifications
- e. Review and process 402 application

6. **STORMWATER** - All costs of establishing and operating a State/Tribal NPDES program for stormwater belong to this program element.

- a. Enforcement activities
- b. Processing NPDES permits and general permits
- c. Re-issuance of existing NPDES permits
- d. Processing NPDES permit modifications
- e. Review and process 402 application
- f. Review pollution prevention plans
- g. Review group applications
- h. Pre-permit inspections or site visits
- i. Development and updating of State stormwater program

7. **SLUDGE MANAGEMENT** - All costs of establishing and operating a State/Tribal program to ensure that sludge from waste water treatment facilities meets sludge use and disposal requirements belong to this program element.
  - a. Compliance monitoring and enforcement activities
  - b. Processing NPDES or other approved State sludge management permits and general permits
  - c. Re-issuance of existing NPDES or other approved State sludge management permits
  - d. Processing NPDES or other approved State sludge management permit modifications
  - e. Development of sludge permit conditions
  - f. Development of delegated sludge management programs
8. **PRETREATMENT** - All costs of State pretreatment programs and oversight of technical assistance of local pretreatment programs belong under this program element.
  - a. Enforcement activities
  - b. Processing NPDES permits
  - c. Re-issuance of existing NPDES Permits
  - d. Review and process 402 application
  - e. Legal support
  - f. Review local CWA POTW pretreatment program
  - g. Establish State authority/program to include PT in POTW permits
  - h. Develop pretreatment programs for municipalities

9. **GROUNDWATER** - All costs of establishing and operating a Comprehensive State Groundwater Protection Program (CSGWPP) consistent with EPA's National CSGWPP guidance, including the Well Head Protection Program (WHPP) belong in this program element.
- a. **Groundwater Protection Goal**
    - Strategies
    - State ground water policy
  - b. **Priority-Setting**
    - Classification (including Sole Source Aquifers)
    - Wellhead Protection Area Delineations
    - Geographic targeting
    - State management areas/recharge areas
    - Mapping and vulnerability
    - Source inventories and assessments
    - Formal adoption of standards and measures of ground water protection
  - c. **Roles, Authorities, Coordinating Mechanisms**
    - Legislation
    - Regulations development
    - Local ordinances
    - State funding
    - Local funding
    - Delegation
    - Coordinating committees (intrastate)
    - International and interstate activities
    - Tribal programs
  - d. **Strategic Implementation Activities**
    - Permit programs
    - Regulations/ordinances related to WHPP and other priority areas
    - Well standards program
    - Source control programs (e.g., Pesticides, RCRA, CERCLA, UIC, UST, etc.)
    - Spill response program
    - Program evaluation and planning
  - e. **Integrated Information Collection and Management**
    - Geographic information systems
    - Integrated data management, including monitoring, record keeping, QA/QC plans, Minimum Set of Data Elements
  - f. **Public Education and Participation**
    - Outreach/information
    - Public education

10. **NPS IMPLEMENTATION** - All costs of carrying out State/Tribal programs to implement non-point source controls belong in this program element. (Note: Some NPS programs are regulatory)
  - a. Establish NPS legal/administrative capabilities
  - b. Regulatory NPS control programs management
  - c. Implementation of Coastal Zone Management (CZM) NPS Program
  - d. Education and information activities
  - e. Federal consistency reviews
  - f. BMP audits
  
11. **AMBIENT MONITORING** - All costs of developing and implementing monitoring strategies and programs for assessing water quality conditions and trends in the State or Tribal waters, including event related, habitat, and biological monitoring belong under this program element. Summarize all monitoring activities under other program elements such as nonpoint source, lakes, estuaries, wetlands, groundwater and wet weather surveys (CSO/stormwater).
  - a. Development and Continued Planning of Monitoring Strategies and Plans (Objectives)
  - b. Monitoring Design (including stations, parameters)/frequency
    - Fixed station network
    - Intensive surveys
    - Targeted areas under watershed, multi-program and individual programs
    - Biological and physical integrity monitoring (including reference site characterization)
  - c. Development of written protocols (field/lab/assessment)
  - d. Laboratory analytical support
  - e. Quality assurance/quality control (field/lab/data)
  - f. Data storage, management and sharing
  - g. Assessment
  - h. Reporting (including 305(b))
  - i. Monitoring and data management training
  - j. Volunteer monitoring
  - k. Evaluation

12. **WATER QUALITY STANDARDS** - All costs of developing and adopting and administering State/Tribal water quality standards, including numeric and narrative criteria, and anti-degradation policies, including use attainability analyses, belong under this program element.
  - a. Setting beneficial use/water quality standards
  - b. Review/revision of water quality standards (WQS)
  - c. Antidegradation policy formulation and implementation
  - d. Use attainability analyses
  - e. Development of biocriteria and bioassessment methodologies
  
13. **ADMINISTRATION** - All necessary costs of program administration, including allowable indirect costs, not assigned to categorical program elements belong under this program element.
  - Work program development
  - Preparation for EPA mid-year, year-end program reviews
  - Financial/administrative tracking
  - Program oversight
  - Activities related to assuming delegations
  - Updating State statutes rules, and delegation documents of delegated programs.
  - Public participation not in other PEs
  - Supervisory/clerical costs not in other PEs
  - Billing/fee collection
  - State capacity studies
  
14. **OTHER** - All costs of State/Tribal specific priority water quality activities and outputs included in a work program belong under this program element, but only if they cannot be assigned to any of the categorical program elements. This should be considered the category-of-last-resort, and be used primarily to avoid distorting the resource levels addressing national priorities.
  - a. Wetlands
  - b. Statewide Lakes Program
  - c. Bays/Estuary Studies

**APPENDIX C**

**EPA**

**OFFICE OF**

**WASTEWATER ENFORCEMENT**

**AND**

**COMPLIANCE**

**FY94 SECTION 106**

**SURFACE WATER**

**GRANT GUIDANCE**

## **MEMORANDUM**

**SUBJECT: FY 1994 Section 106 Surface Water Grant Guidance**

**FROM: Michael B. Cook, Director  
Office of Wastewater Enforcement and Compliance  
(WH-546)**

**TO: Water Management Division Directors  
Regions I-X**

## **PURPOSE**

This guidance, pertaining to the procedures and principles for award and oversight of the Section 106 Surface Water grant funds to States and interstate agencies, is intended to supplement the FY 1994 Agency Operating Guidance.<sup>1 2</sup>

## **BACKGROUND**

Section 106 of the Clean Water Act (CWA) authorizes assistance to States and interstate agencies to administer programs for the prevention, reduction, and elimination of water pollution including programs for the development and implementation of ground water protection strategies. The CWA in Section 106(d) requires States and interstate agencies to sustain a maintenance of effort (MOE), to expend annually for recurrent 106 program expenditures an amount of non-Federal funds which are at least equal to expenditures during the fiscal year ending

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<sup>1</sup> This guidance should be used in conjunction with: the Administrator's Policy on Performance-Based Assistance, May 31, 1985; 40 CFR Part 31 General Grant Regulations; 40 CFR Part 35, Subpart A, Regulations for Financial Assistance for continuing Environmental Programs; 40 CFR Part 130 Water Quality Planning and Management Regulations; and the annual Agency Operating Guidance (AOG) which identifies specific priorities for Section 106 eligible activities.

<sup>2</sup> The September 27, 1989, guidance for grants to Indian Tribes under Section 106 and 314 of the Clean Water Act (CWA) is still in effect (Attachment 2). Supplemental FY 1994 guidance for grant awards under Section 106 for ground water protection will be developed by the Headquarters Office of Ground Water and Drinking Water.

June 30, 1971. Since 1978 they have been required by regulation to maintain at least FY 1977 levels in order to receive funds for construction grants management under Section 205(g). (See 40 CFR 35.305 Maintenance of Effort.)<sup>3</sup> In accordance with Section 106(f)(3) of the CWA, States and interstate agencies must submit annually for approval, prior to July 1, their water pollution control programs.

Section 106(e) of the CWA requires States to establish and maintain adequate monitoring programs as prerequisites for Section 106 grant awards and to maintain provisions for updating the Section 305(b) report. (See 40 CFR 35.260 Limitations.)

#### WORK PROGRAM

State and Local Assistance Regulations at 40 CFR 35.130 specify the structure of the Section 106 work program as does the Water Quality Management Regulations at 40 CFR 130.11 (a) thru (e). The work program is part of the grant application and serves as the basis for the management and evaluation of performance under the grant. The grantee must provide in the work program:

- the work years;
- amount, and source of funding estimated to be needed for each program element;
- outputs committed to under each program element;
- schedule for accomplishment; and
- identification of the agency responsible for each of the elements and outputs.

For consolidated grant applications see the regulation requirements at 40 CFR 35.145. The terms work program, program element, and outputs are defined under 40 CFR 35.105.

Regions have the flexibility to negotiate specific program elements for use in developing Section 106 grant application program element budgets and work programs with States. However, the Regions must assure that all grantees comply with current statutory and EPA regulatory requirements by providing in their Section 106 grant applications a program element budget and a work program which supports it. A recommended list of program elements for use in developing Section 106 grant work programs and program element budgets is provided in Appendix A (Attachment 1).

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<sup>3</sup> Until Section 205(g) funds obligated to a State by EPA in all fiscal years, including fiscal years after 1990 have been spent by the State or returned to EPA, the State is required to maintain at least its FY 1977 water pollution control program spending level.



### MANAGEMENT OVERSIGHT

In accordance with 40 CFR 35.150, Regions will oversee performance under Section 106 assistance agreements. Grantees are responsible for performing activities and completing outputs outlined in the negotiated grant work program within the specified timelines. The Regional project officer will (1) evaluate each recipient's performance and progress toward completing the outputs in the approved work program according to the schedule, (2) provide the findings of the evaluation to each recipient, and (3) will include the findings in the grant file. If the evaluation reveals deficiencies in a work program, the Region will in coordination with the Regional Grants Management Office, develop an action plan as needed for addressing performance problems. The Regional Administrator will impose sanctions only when corrective actions have failed to solve significant performance deficiencies.

### INTEGRATING POLLUTION PREVENTION INTO SECTION 106 GRANTS

The Section 106 grant work programs in FY 1994 should emphasize a pollution prevention approach in conducting grant-assisted activities as outlined in Deputy Administrator F. Henry Habicht II's guidance memorandum of November 12, 1992 (Attachment 3). The memorandum also has an attachment that provides the Agency's definition of pollution prevention and is included in Attachment 3. The guidance memorandum encourages and supports State pollution prevention initiatives in grant-assisted activities and promotes the pollution prevention ethic as a way of conducting environmental management responsibilities under State grant programs. To the degree possible, grant-assisted activities should be conducted according to the environmental management hierarchy which places highest priority on source reduction/pollution prevention, followed in order by recycling, treatment, and disposal. Opportunities for integrating pollution prevention into Section 106 program areas include, but are by no means limited to, water quality standards, permitting, inspection, enforcement settlement, multi-media coordination, reporting and training activities. Each grantee should provide a summary report of activities associated with pollution prevention. The report should also identify any barriers or impediments to including pollution prevention in the Section 106 grant work program.

### ENDANGERED SPECIES ACT AND NATIONAL HISTORIC PRESERVATION ACT ISSUES

Section 106 grant applicants must currently specify the following regarding the Endangered Species Act (ESA), 16 U.S.C. Section 1531-1544, and the National Historic Preservation Act (NHPA), 16 U.S.C. Section 470-1 to 470w-6:

[The applicant] [w]ill comply with environmental standards which may be prescribed pursuant to...protection of endangered species under the Endangered Species Act...

[The applicant] [w]ill assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act...

EPA and the Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) are engaged in ongoing discussions regarding Section 106 grants and the National Pollutant Discharge Elimination System (NPDES) permitting program. Based on these discussions, supplemental guidance on Section 106 grants and the ESA may be necessary at a future date. In addition, the NHPA was recently amended. As with the ESA, supplemental guidance on Section 106 grants and the NHPA may become necessary.

#### REVISED POLICY REGARDING TREATMENT AS A STATE (TAS) FOR INDIAN TRIBES

Deputy Administrator F. Henry Habicht II issued a policy memorandum dated November 10, 1992, which will affect our TAS process and current regulations at 40 CFR Parts 35 and 130. (See Attachment 4.) Office of General Counsel has advised that until our current existing regulations are amended, they remain in effect. Therefore, the September 27, 1989, guidance memorandum entitled "Guidance for Grants to Indian Tribes Under Section 106 and 314 of the Clean Water Act" also remains in effect. Revised Section 106 Indian Grant Guidance will be developed following the amendments to current Agency regulations. The Office of Water will be taking the lead in revising affected program regulations.

#### MILESTONES

The following milestones for the Section 106 grant awards process was developed to assure that all State Section 106 grants are awarded by September 30, or as soon as funds are made available.

- 3/1 OWEC will issue Section 106 State funding targets to Regional Program and Grants Management Office (GMOs) based upon the President's budget request by March 1.
- 4/1 Prior to April 1, Regions/States are encouraged to conduct senior level meetings to discuss mutual priorities, long-term objectives, and work program development. It is recommended that 106 work programs support long-range strategic plans which are mutually agreed to by the Regions and States.

- 4/1 By April 1 Regions will issue final work program and funding guidance to their States for the Section 106 program reflective of prior Region/State senior level planning discussions. If EPA Headquarters Agency Operating Guidance is not final by April 1, Regions will use the Headquarters draft guidance in preparing State guidance.
- 6/1 All States will submit draft Section 106 work programs and grant applications to EPA by the first of June.
- 7/15 Regions will respond to draft State work programs within 30-45 days of receipt. Regional Water Management Division staff will conduct work program negotiations, but unresolved issues will be elevated as they occur in the process to allow for issue resolution in time to complete the grant work program negotiation and be ready for funding by September 30.
- 9/15 By September 15, the Regions will notify the States on the status of their Section 106 grant applications and work programs which will serve as the official notification of the need to finalize the documents.
- 9/30 Section 106 grant applications and work programs will be finalized and forwarded to the Regional Grants Management Office by September 30, pending award upon the availability of funds.

**Attachments (4)**

- 1) Appendix A -- Revised Program Element List for Section 106 and 604(b) Grants
- 2) September 27, 1989, Guidance for Grants to Indian Tribes for Section 106 and 314 of the Clean Water Act
- 3) Deputy Administrators' State Grants Guidance: Integration of Pollution Prevention dated November 12, 1992, including the attachment (Deputy Administrator F. Henry Habicht II's memorandum dated May 28, 1992, Subject: EPA Definition of "Pollution Prevention")
- 4) Deputy Administrators' November 10, 1992, memorandum "Simplification of EPA's Process for Treating Indian Tribes as States"

cc: Water Quality Branch Chiefs, Regions I-X  
 Water Quality Coordinators, Regions I-X  
 Water Program Indian Coordinators, Regions I-II, IV-X

# ENVIRONMENTAL PROTECTION AGENCY

## Policies and Procedures for the State Continuing Planning Process

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### Preparation of Water Quality Management Plans

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### Procedures for Providing Grants to State and Designated Areawide Planning Agencies

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#### SURCHAPTER D—POLICIES AND PROCEDURES FOR STATE CONTINUING PLANNING PROCESS

[FRL 461-4]

#### PART 130—POLICIES AND PROCEDURES FOR CONTINUING PLANNING PROCESS

##### Policies and Procedures for the State Continuing Planning Process

On July 16, 1975, notice was published in the *FEDERAL REGISTER*, 40 FR 29882, that the Environmental Protection Agency was proposing to amend the policies and procedures for the State continuing planning process (40 CFR Part 130) pursuant to sections 208 and 303(e) of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500, 86 Stat. 816 (1972); (33 U.S.C. 1251 et seq.) (hereinafter referred to as the Act).

On September 8, 1975, notice was published in the *FEDERAL REGISTER*, 40 FR 41649, that the Environmental Protection Agency was proposing to amend the regulations (40 CFR Part 128) which describes the policies and procedures for designating areas and agencies in accordance with section 208(a) (2), (3), or (4) of the Act. The designation regulations have now been incorporated into 40 CFR Part 130. Part 131 of this Chapter has also been amended. The amend-

ments are in accordance with a Court Order issued by Judge John Lewis Smith, Jr., in *Natural Resources Defense Council et al. v. Train, et al.*, D.C. D.C. Civ. Act. No. 74-1485, which stipulates that Section 208 planning must be conducted by the States in all areas that are not designated in accordance with section 208(a) (2) through (4) of the Act.

Sections 303(e) and 208 of the Act require State and designated areawide planning agencies to submit a continuing planning process which is consistent with the Act. The continuing planning process directs the development of water quality management plans and implementing programs pursuant to sections 208 and 303(e) of the Act and Part 131 of this Chapter (Preparation of Water Quality Management Plans). All States have a continuing planning process which has been approved previously by EPA; these amended regulations, however, will necessitate revision of the States continuing planning process.

The amendments to 40 CFR Parts 130 and 131 are specifically designed to incorporate section 208 requirements for both State and designated areawide planning agencies into a single set of regulations that describes the policies and procedures for such planning. Regulations under 40 CFR Part 35, Subpart A describe the procedures for providing grants to both State and areawide planning agencies for the conduct of section 208 planning. This consolidation of the requirements of section 208 for areawide planning agencies and sections 303(e) and 208 for State planning agencies will establish a single Statewide process that fulfills all applicable requirements for water quality management planning and implementation under the Act.

These amended regulations describe the necessary elements of, and provide procedures for review, revision, and approval of a State's continuing planning process. In addition, these regulations now provide the mechanism for States to satisfy the Statewide requirements of section 208. They also provide the States with a mechanism for satisfying portions of sections 303(c) (Review and revision of water quality standards); 303(d) (Critical waters and total maximum daily loads); 305(b) (Assessment and projection of water quality and related information, including nonpoint sources); 314(a) (Clean lakes); and 516 (b) (Federal/State estimate of publicly owned treatment works construction needs); they also provide data for 104 (a) (5) (Federal report on water quality).

The broad goals of the continuing planning process are to assure that the necessary institutional arrangements and management programs are established to make and implement coordinated decisions designed to achieve water quality goals and standards; to develop a Statewide (State and areawide) water quality assessment; and to establish water quality goals and State water quality standards which take into account overall State and local policies and programs, in-

cluding those for management of land and other natural resources; and to develop the strategic guidance for preparing the annual State program plan required under Section 106 of the Act. Assistance to State and local agencies under Section 106 is dealt with in Subpart B of 40 CFR Part 35.

The level of detail of water quality management plans will be tailored to the water quality problems of the area, varying from intensive planning in designated, complex problem areas to minimal planning where the State certifies that no water quality problems exist.

The timing for development and the content of plans will be established by agreement between the State and the Regional Administrator, consistent with the following:

(a) Phase I plans consist of those plans submitted prior to July 1, 1975, or those plans submitted prior to July 1, 1976, where an extension of up to one year has been granted by the Regional Administrator for specific basins or other approved planning areas. For Phase I, the requirements for planning are those requirements set forth in 40 CFR Parts 130 and 131, "Water Quality Management Basin Plans," promulgated on June 3, 1974.

(b) Phase II plans consist of those plans, or portions thereof, submitted after Phase I plans are approved. Initial Phase II State water quality management plans and areawide water quality management plans must be completed, adopted, certified, and submitted to the Regional Administrator for approval no later than November 1, 1978. The plans are to conform with the requirements of Parts 130 and 131 as amended.

Regulations under Part 131 of this Chapter describe requirements for the preparation of State and areawide water quality management plans pursuant to the State's continuing planning process. Such plans form a basis for implementing applicable point and nonpoint source controls in order to achieve the requirements of the Act. These plans are to consist of such elements as are necessary for sound planning and program management in the area covered by the plan. Regulations under Part 35, Subpart A of this Chapter set forth the procedures for obtaining grants for State and areawide water quality management planning.

Regulations under Part 35, Subpart B of this Chapter describe requirements for the preparation of the annual State program plan. Part 131 and Part 35, Subpart B regulations should be consulted during the review and revision of the continuing planning process under this Part 130. Additional guidelines concerning the continuing planning process, the development of State and areawide water quality management plans, and the development of the annual State program plans will be prepared to assist the State and areawide planning agencies in carrying out the provisions of these regulations.

Federal properties, facilities, and activities are subject to Federal, State, interstate, and local standards and effluent

limitations for control and abatement of pollution. The State's planning process should include provision for Federal sources. It is contemplated that Federal agencies will provide information to the States in accordance with procedures established by the Administrator.

Written comments on the proposed rulemaking were invited and received from nearly 100 interested groups, including EPA Regional Offices, State and local governments, other Federal agencies, industrial organizations and special interest groups. In addition, verbal comments were obtained from representatives of State and local government. All written comments are on file with the Agency. Most of these comments have been adopted or substantially satisfied by editorial change, deletions from, or additions to the regulations. The majority of substantive comments centered around the issues discussed below.

#### 1. State and Local Governmental Interrelationships.

From the outset of the development of these regulations, State and local government representatives have suggested that EPA describe in the regulations the specific responsibilities and relationships between State, local and Federal governments relating to 208 planning and implementation requirements.

The final regulations reflect the primary role of the States in coordinating planning on a Statewide basis, consistent with Judge Smith's Court Order, and describe the general requirements for coordinating integration and communication between State and local governments. The regulations provide the flexibility to allow and, indeed, encourage State and local government to work out their own appropriate institutional arrangements relating to water quality management planning and implementation. In this regard, the regulations reflect the specific mandates of the Act and, additionally contain a requirement for establishment of State and local policy advisory committees in order to assure that adequate and appropriate results from local, State and Federal governments will be included in the development and implementation of water quality management plans.

#### 2. Relationship of Planning Process and Other Programs.

Because State and designated areawide water quality management planning will ultimately serve as the basis for implementation of essentially all programs under the Act, the relationship of and impact on other programs was carefully formulated in the proposed regulations.

The major concern relating to provision of legal sanctions (i.e., withholding of construction grants and/or permits in the absence of complete planning) was resolved prior to the proposed regulations as a result of an EPA legal opinion. Thus, the final regulations do not incorporate sanctions for noncompliance, but provide that once a plan has been approved by the Regional Administrator no permits shall be issued or construction grants approved which are in con-

dict with the plan. Recognizing that other determinations outside the planning process by EPA and/or the States could lead to inconsistencies with approved plans, the final regulations clarify how such determinations are to be dealt with in revising the plans.

### 3. Designation Procedures for Area-wide Planning Areas and Agencies.

Many comments indicated that the proposed procedures were unclear as to whether the Governor made the final decisions on designations or whether the chief elected officials could override the Governor's decision. In addition, many comments also indicated that the proposed regulations put an undue burden on States that have already designated the eligible areas and agencies within their States by requiring them to reopen the designation process.

The designation procedures have now been clarified to indicate that the Governor makes the final designation decisions. However, the chief elected officials are given the opportunity to fully participate in the Governor's decision. In addition, the designation procedures have been revised to provide for a waiver for those States where the Regional Administrator determines that the initial designation process resulted in the designation of all eligible areas and agencies within the State.

### 4. Lack of Adequate Manpower and Funding.

Concern was raised regarding the lack of adequate manpower and funding needed for the State and areawide planning agencies to conduct 203 planning. The final regulations recognize that the ability to conduct this planning in the nonpoint source area will be dependent upon the availability of additional resources. Thus, these regulations have been amended to allow flexibility for the States in reorienting their water quality management programs. The State/EPA agreement on timing and level of detail and the areawide planning agency work plan are to be used as the mechanisms to identify the specific planning to be conducted by agreement with the EPA Regional Administrator. The timing of plan preparation, however, is constrained by the November 1, 1978 deadline. Thus, the States and areawide planning agencies, are required to tailor their individual planning processes to fit the specific planning constraints facing the agency as well as the specific water quality problems to be solved.

### 5. Water Quality Standards Revisions/Antidegradation

State and areawide planning agencies have been concerned throughout the development of these regulations that EPA has not adequately addressed the issue of revisions to water quality standards and development of a Statewide policy on anti-degradation. These regulations set forth clearly EPA's policy regarding the role of water quality standards in achieving the goals of the Act and the Agency's anti-degradation position.

EPA strongly supports the establishment of water quality standards which

will support the protection and propagation of fish, shellfish and wildlife and recreation in and on the water. In furtherance of this objective, EPA believes that water quality standards should be established at levels consistent with the national water quality goal of section 101(a)(2) of the Act for every stream segment wherever those levels are attainable. The guidance to the States in these regulations regarding revisions of their water quality standards is based on this general principle. While standards at these levels may not be attainable now for some stream segments, EPA expects the State to continue to review their standards and upgrade them to the national water quality goal whenever such standards become attainable.

EPA Regional Administrators will review the actions of the States regarding these revisions and will, when appropriate, request additional information from the States to evaluate the basis for establishing standards at levels less stringent than the national water quality goal.

These regulations further provide that existing water uses shall be maintained, and where existing water quality standards do not specify and protect the existing uses, that the State shall upgrade its standards to achieve such specification and protection of these uses. These regulations also provide that designated uses in existing water quality standards shall be maintained and that the existing standards shall not be downgraded to designate and protect less restrictive uses unless one or more of the criteria listed in § 130.17(c)(3) are met.

It should also be emphasized that in addition to the water quality standards established by the States, EPA's commitment to achieving the national water quality goal will also be implemented through the application of section 302 of the Act. That provision allows the Administrator to establish effluent limitations for point sources more stringent than the technology-based limitations mandated for 1983 when a greater reduction in discharges is necessary to achieve the national water quality goal for a particular stream segment. The statute allows a discharger to request adjustments of such limitations if the discharger demonstrates that there is no reasonable relationship between the economic and social costs and the benefits to be obtained. EPA is convinced, however, that the adoption of stringent water quality standards, supplemented with appropriate use of Section 302 limitations will make the achievement of the national water quality goal a reasonable prospect.

The Agency's anti-degradation policy is the same in many respects as the policy that EPA and its predecessor Agency have encouraged the States to adopt in the past. The policy provides for protection of existing instream water uses and, for water whose quality exceeds the national water quality goals, prohibits degradation except to allow necessary and justifiable economic and social development. In no event may degradation of water quality interfere with or become injurious to existing instream water uses.

The effect of including anti-degradation requirements in these regulations is to require the States to review their current anti-degradation policies and to establish a mechanism, including a public process, for implementing the State anti-degradation policies.

As discussed above, these regulations are issued in response to an Order of the District Court for the District of Columbia, and contain a provision for plan submission no later than November 1, 1978, as required by the Order of the Court. Given the limited amount of time for the plans to be completed, and the consequent need for both State and areawide agencies to move forward quickly to adjust their planning processes to these regulations, good cause is hereby found for making these regulations effective upon publication.

In consideration of the foregoing, 40 CFR is hereby amended by deleting the existing parts 126 and 130 by adding a new Part 130 to read as follows.

Dated: November 21, 1975.

RUSSELL E. TRAIN,  
Administrator.

#### Subpart A—Scope and Purpose; Definitions

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#### Subpart B—General Requirements

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| 130.10 | Planning process requirements.  |
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| 130.12 | Designation of State planning agency.   |
| 130.13 | Designation of areawide planning areas and agencies.  |
| 130.14 | Delegation of planning responsibilities.  |
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| 130.16 | Intergovernmental cooperation and coordination.   |
| 130.17 | Water quality standards.  |

#### Subpart C—Requirements for State Strategy

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| 130.20 | State strategy; contents and submission. |
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#### Subpart D—Relationship of Planning Process and Other Programs

- |        |   |
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| 130.31 | Relationship to municipal facilities program.                           |
| 130.32 | Relationship to National Pollutant Discharge Elimination System.        |
| 130.33 | Relationship of State and designated areawide planning programs.        |
| 130.34 | Relationship to other local, State, and Federal planning programs.      |
| 130.35 | Planning requirements for Federal properties, facilities or activities. |

#### Subpart E—State Planning Process Adoption, Approval and Revisions Procedures; Separability

- |        |   |
|--------|---|
| 130.40 | Adoption and submission of State process description. |
| 130.41 | Review and approval or disapproval of State process.  |
| 130.42 | Withdrawal of approval of State process.              |
| 130.43 | Review and revision of State process.                 |
| 130.44 | Separability.   |

**AUTHORITY:** Secs. 106, 208, 303(d), 303(e), 305(b), 314, 501, 516(b) of the Federal Water Pollution Control Act, as amended; Pub. L.

92-500, 86 Stat. 816 (1972); (33 U.S.C. 1251 et. seq.).

**Subpart A—Scope and Purpose; Definitions**

**§ 130.1 Scope and purpose.**

(a) This part establishes regulations specifying policies, procedures, and other requirements for the continuing planning process for the State pursuant to sections 208 and 303(e) of the Act and for designated areawide agencies pursuant to section 208(b) of the Act. The regulations established in this part and in Part 131 of this Chapter define and implement the requirements for State and areawide planning and implementation pursuant to section 208 of the Act and for carrying out other provisions of the Act. These regulations apply to State and designated areawide planning agencies that are responsible for planning pursuant to section 208 and 303(e) of the Act.

(b) The intent of this part is to unify and integrate the State and areawide water quality management planning and implementation requirements of section 208 and other provisions of the Act.

(c) The broad goals of the continuing planning process are to assure that necessary institutional arrangements and management programs are established to make and implement coordinated decisions designed to achieve water quality goals and standards; to develop a Statewide (State and areawide) water quality assessment, and to establish water quality goals and State water quality standards which take into account overall State and local policies and programs, including those for management of land and other natural resources; and to develop the strategic guidance for preparing the annual State program plan required under section 106 of the Act.

(d) The "continuing planning process" is a time-phased process by which the State, working cooperatively with designated areawide planning agencies:

(1) Develops a water quality management decision-making process involving elected officials of State and local units of government and representatives of State and local executive departments that conduct activities related to water quality management.

(2) Establishes an intergovernmental process which provides for water quality management decisions to be made on an areawide or local basis and for the incorporation of such decisions into a comprehensive and cohesive Statewide program. Through this process, State regulatory programs and activities will be incorporated into the areawide water quality management decision process.

(3) Develops a broad based public participation aimed at both informing and involving the public in the water quality management program.

(4) Prepares and implements water quality management plans, which identify water quality goals and established State water quality standards, define specific programs, priorities and targets

for preventing and controlling water pollution in individual approved planning areas and establish policies which guide decision-making over at least a twenty-year span of time (in increments of five years).

(5) Based on the results of the Statewide (State and areawide) planning process, develops the State strategy, to be updated annually, which sets the State's major objectives, approach, and priorities for preventing and controlling pollution over a five-year period.

(6) Translates the State strategy into the annual State program plan (required under section 106 of the Act), which establishes the program objectives, identifies the resources committed for the State program each year, and provides a mechanism for reporting progress toward achievement of program objectives.

(7) Periodically reviews and revises water quality standards as required under section 303(c) of the Act.

**§ 130.2 Definitions.**

As used in this part, the following terms shall have the meanings set forth below.

(a) The term "Act" means the Federal Water Pollution Control Act, as amended; Pub. L. 92-500, 86 Stat. 816 (1972); (33 U.S.C. 1251 et seq.).

(b) The term "EPA" means the United States Environmental Protection Agency.

(c) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(d) The term "Regional Administrator" means the appropriate EPA Regional Administrator.

(e) The term "continuing planning process" means the continuing planning process, including any revision thereto, required by sections 208 and 303(e) of the Act for State agencies and section 208(b) of the Act for designated areawide agencies.

(f) The term "water quality management plan" means the plan for managing the water quality, including consideration of the relationship of water quality to land and water resources and uses, on an areawide basis, for each EPA/State approved planning area and for those areas designated pursuant to section 208a (2), (3), or (4) of the Act within a State. Preparation, adoption, and implementation of water quality management plans in accordance with regulations under this part and Part 131 of this Chapter shall constitute compliance with State responsibilities under sections 208 and 303(e) of the Act and areawide responsibilities under section 208 of the Act.

(g) The term "State planning area" means that area of the State that is not designated pursuant to section 208(a) (2), (3), or (4) of the Act. State planning areas are to be identified in the planning process description that is submitted by the State for approval by the Regional Administrator. Depending upon the requirement being considered,

the State planning area may be subdivided into "approved planning areas" that may include the entire State or portions of the State defined by hydrologic, political, or other boundaries.

(h) The term "designated areawide planning area" means all areas designated pursuant to section 208(a) (2), (3), or (4) of the Act and § 130.13.

(i) The term "State planning agency" means that State agency designated pursuant to section 208(a) (6) of the Act and § 130.12(a).

(j) The term "designated areawide planning agency" means that agency designated in accordance with section 208(a) (2), (3), or (4) of the Act.

(k) The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable water, waters of the contiguous zone, or the oceans.

(l) The term "schedule of compliance" means in reference to point and non-point sources of pollutants, a sequence of actions or operations leading to compliance with applicable effluent limitations, other limitations, prohibitions, practices, or standards which are contained in a National Pollutant Discharge Elimination System permit or in a State permit or other regulatory program which is legally binding on the owner or operator of the source.

(m) The term "target abatement dates" means:

(1) For point sources, a sequence of actions or control measures which have not yet been formally adopted through the permit process.

(2) For nonpoint sources, a sequence of remedial measures, actions, or operations which have not been formally adopted through implementation of management or regulatory programs established pursuant to approved State water quality management plans, or portions thereof.

(n) The term "National Pollutant Discharge Elimination System" means the national permitting system authorized under section 402 of the Act, including any State permit program which has been approved by the Administrator pursuant to section 402 of the Act.

(o) The term "segment" means a portion of an approved planning area, the surface waters of which have common hydrologic characteristics (or flow regulation patterns); common natural physical, chemical and biological characteristics and processes; and common reactions to external stresses, such as the discharge of pollutants. Segments will be classified as either a water quality segment or an effluent limitation segment as follows:

(1) *Water quality segment.* Any segment where it is known that water quality does not meet applicable water quality standards and/or is not expected to meet applicable water quality standards even after the application of the effluent limitations required by sections

301(b)(1)(B) and 301(b)(2)(A) of the Act.

(2) *Effluent limitation segment.* Any segment where it is known that water quality is meeting and will continue to meet applicable water quality standards or where there is adequate demonstration that water quality will meet applicable water quality standards after the application of the effluent limitations required by sections 301(b)(1)(B) and 301(b)(2)(A) of the Act.

(p) The term "significant discharge" means any point source discharge for which timely management action must be taken in order to meet the water quality objectives within the period of the operative water quality management plan. The significant nature of the discharge is to be determined by the State, but must include any discharge which is causing or will cause water quality problems.

(q) The term "Best Management Practices" (BMP) means a practice, or combination of practices, that is determined by a State (or designated areawide planning agency) after problem assessment, examination of alternative practices, and appropriate public participation to be the most effective, practicable (including technological, economic, and institutional considerations) means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals.

(r) The term "residual wastes" means those solid, liquid, or sludge substances from man's activities in the urban, agricultural, mining and industrial environment remaining after collection and necessary treatment.

(s) The definitions of the terms contained in Section 502 of the Act shall be applicable to such terms as used in this part unless the context otherwise requires.

#### Subpart B—General Requirements

##### § 130.10 Planning process requirements.

(a) The State and designated areawide planning agencies shall establish a planning process which provides for the establishment of necessary institutional arrangements and management programs to make and implement coordinated decisions designed to achieve water quality goals and standards. The planning process shall include:

(1) Public participation during plan development, review, and adoption in accordance with section 101(e) of the Act and in accordance with Part 105 of this Chapter;

(2) Adequate intergovernmental input in the development and implementation of water quality management plans as described in § 130.17;

(3) The coordination and integration of the water quality management planning in State planning areas and in designated areawide planning areas as described in § 130.33, and coordination of water quality management planning with related Federal, State, interstate, and local comprehensive, functional, and

other developmental planning activities, including land use and other natural resources planning activities, as described in § 130.34;

(4) The preparation, adoption, and revision, of water quality management plans for the appropriate areas and waters within the State that fulfill the requirements contained in Part 131 of this Chapter;

(5) The establishment and implementation of regulatory programs identified in approved water quality management plans prepared pursuant to Part 131 of this Chapter;

(b) In addition to the requirements of § 130.10(a), the State agency planning process shall provide for the following:

(1) The development, review and adoption of water quality standards in accordance with § 130.17(a) and with section 303(c)(1) and (2) of the Act;

(2) The development, adoption and implementation of a Statewide policy on antidegradation, consistent with the criteria identified in § 130.17(d);

(3) The review, and certification of plans for designated areawide planning areas as required pursuant to § 130.33; and

(4) The annual preparation of the State strategy as described in Subpart C of this part.

(c) The description of the State planning process that is to be submitted by the Governor pursuant to § 130.40(b) shall contain, as a minimum, the following:

(1) A description of how each of the requirements specified in § 130.10(a) and (b) will be achieved.

(2) A listing(s) and a map(s) of the State showing proposed State planning areas in which planning is to be conducted by the State pursuant to this part and Part 131 of this Chapter and a listing(s) and a map(s) showing those areawide planning areas that have been designated (including a timetable for designation) under section 208(a)(2), (3), or (4) of the Act in which planning is to be conducted by areawide planning agencies pursuant to § 130.13.

(3) A listing(s) and map(s) of the State showing each segment and its classification.

(4) A State/EPA agreement on the level of detail and the schedule for preparation of State water quality management plans as described in § 130.11.

(5) A schedule for review and revision, where necessary, of water quality standards and for development and adoption of a Statewide policy on antidegradation, together with a schedule of milestones which includes proposed dates for public hearings on the revisions and antidegradation policy. The schedule shall provide that the water quality standards and the antidegradation policy will be reviewed and revised in ample time to be used as a basis for 1977-1983 management and regulatory decisions.

(6) The identification of the State planning agency designated pursuant to § 130.12(a).

(7) A listing of the areawide planning agencies that have been designated by the Governor or the identification of areawide planning agencies that will be designated by the Governor (including a timetable for designation) to perform planning in areawide planning areas designated pursuant to section 208(a)(2) or (3) of the Act and § 130.13(b).

(8) A description of the State's management program to oversee water quality management planning conducted by designated areawide planning agencies, including the monitoring of progress and accomplishment of key milestones specified in the areawide planning agency's work plans, and to otherwise assure timely and meaningful State involvement in the areawide planning process.

(9) A listing of the delegations made pursuant to § 130.14(a) to the agency or agencies that will perform the planning under this part and Part 131 of this Chapter.

(10) A listing of proposed representatives on the policy advisory committee(s) established in accordance with § 130.16(c) for each approved planning area.

(11) A statement that legal authorities required at the local and/or State levels to prepare, adopt, and implement State water quality management plans as required by the planning process exist or will be sought.

##### § 130.11 Agreement on level of detail and timing of State water quality management plan preparation.

(a) The appropriate level of detail and timing of State water quality management plan preparation for each proposed State planning area will depend on the water quality problems of the area and the water quality decisions to be made, and shall be established by agreement between the State and the Regional Administrator, after appropriate public participation pursuant to § 130.40.

(b) The agreement shall include an indication of those proposed State planning areas, or portions thereof, wherein the State, with supporting data, certifies that particular water quality and/or source control problems do not exist or are not likely to develop within the timeframe of the plan and, therefore that certain types of planning and implementation will not be undertaken.

(c) The agreement shall provide a sequence for phasing of planning at the appropriate level of detail and in sufficient time to meet the 1983 national water quality goal specified in section 101(a)(2) of the Act, consistent with the provisions of § 130.17. The agreement should assure the orderly integration of applicable past and present planning efforts (including designated areawide planning) with the planning efforts and needs established in this part and Part 131 of this Chapter. The agreement shall define the State's priorities for the development of State water quality management plans, or portions thereof, pursuant to the process and shall be consistent with projected planning resources; provided that initial State and



areawide water quality management plans shall be completed, adopted, certified, and submitted to the Regional Administrator in accordance with § 130.20 no later than November 1, 1978.

**§ 130.12 Designation of State planning agency.**

(a) The Governor shall designate, in accordance with § 130.10(c) (6), a State planning agency to be responsible for the conduct and coordination of the required planning under this part and Part 131 of this Chapter.

(b) Although the State planning agency designated pursuant to § 130.12 (a) may delegate portions of its responsibilities to other State, Federal, local, or interstate agencies in accordance with § 130.14, the State planning agency shall assure that each element of the State's approved planning process is achieved.

**§ 130.13 Designation of areawide planning areas and agencies.**

(a) The Governor(s) shall identify areawide planning areas pursuant to section 208(a) (2) or (3) of the Act which, as a result of urban-industrial concentrations or other factors, have substantial water quality control problems. A substantial water quality control problem will be deemed to exist when water quality has been or may be degraded to the extent that existing or desired designated water uses are impaired or precluded and when the water quality control problem is complex.

(NOTE: In approving such designations of areawide planning areas, the Administrator shall give preference to areas of urban-industrial concentration.)

(b) The Governor(s) shall, after consultation with appropriate elected and other officials of local governments having jurisdiction in those areas identified in accordance with § 130.13(a), designate areawide planning areas provided that:

(1) The affected general purpose or other appropriate units of local government within the boundaries of the areawide planning area have in operation a coordinated waste treatment management system, or show their intent, through a demonstrated effort to obtain and submit resolutions of intent from those governmental units believed to be critical in the planning and implementation of the areawide 208 plan.

(NOTE: In those cases where it is not possible to obtain the necessary resolutions of intent, the Governor, in the designation process, must stipulate that the authorities of the State will be used to assure adequate compliance with the planning and management process requirements of section 208 of the Act.)

(2) The affected units of local government have legal authority to enter into agreements for coordinated wastewater management in compliance with section 208 of the Act.

(3) The water quality problem for the area is not associated with a water pollution control problem for which the State has pre-empted areawide planning pursuant to section 208(b) (4) of the Act.

(c) The Governor(s) shall designate a single representative organization capable of developing effective areawide plans in accordance with section 208 of the Act for each area designated pursuant to § 130.13(b). Each areawide planning agency shall:

(1) Be a representative organization whose membership shall include, but need not be limited to, elected officials of local governments or their designees having jurisdiction in the designated areawide planning area;

(2) Have waste treatment planning jurisdiction in the entire designated areawide planning area;

(3) Have the capability to have the water quality management planning process fully underway no later than one year after approval of the designation;

(4) Have the capability to complete the initial water quality management plan no later than two years after the planning process is in operation; and

(5) Have established procedures for adoption, review, and revision of plans and resolution of major issues, including procedures for public participation in the planning process.

(d) The procedures for designating areawide planning areas and agencies shall be as follows:

(1) Within 60 days after these regulations become effective, the Governor shall:

(i) After communication with chief elected officials of local or regional general purpose units of government in areas not yet designated, identify areas and agencies which he determines to be eligible for designation pursuant to § 130.13 (b) and (c).

(ii) Notify the chief elected officials of local or regional general purpose units of governments of those areawide planning areas and agencies he intends to designate pursuant to § 130.13(d) (1) (i) and request their comments and recommendations.

(2) In areas where the chief elected officials feel that the Governor acted inappropriately in his determination of eligible areas and agencies pursuant to § 130.13(d) (1) (i), such officials may petition the Governor for reconsideration of his determination.

(3) Within 150 days after these regulations become effective and after consideration of recommendations of chief elected officials of local or regional general purpose units of government, the Governor shall:

(i) Hold public meetings or hearings in those areas where he intends to designate an areawide planning area and agency.

(ii) Hold public meetings or hearings in those areas where chief elected officials request designation, but the Governor does not intend to designate.

(iii) Submit his final determination on designations to be made to the Regional Administrator. A record of the public meetings or hearings pursuant to § 130.13 (d) (3) (i) and (ii) shall be made available to the Regional Administrator and the public on request.

(NOTE: The Governor may allow self-designation by chief elected officials of local or regional general purpose units of government pursuant to section 208(a) (4) of the Act. In those cases where the Governor allows a self-designation, the chief elected officials shall submit the request for designation to the Regional Administrator pursuant to § 130.13 (e) or (f).)

(4) The designation procedures set forth in § 130.13(d) (1), (2), and (3) may be waived by the Regional Administrator where he determines that the initial designation process required pursuant to section 208(a) of the Act resulted in the designation of all areas and agencies in the State that meet the criteria set forth in § 130.13 (b) and (c).

(5) The identification and designation of interstate areas shall be in accordance with the provisions of § 130.13 (a) through (d) provided, however, that appropriate interstate agencies shall be consulted, and the designation shall be the joint action of the Governors of all the affected States.

(e) Within 150 days after these regulations become effective, for each areawide planning area and agency to be designated during FY 1976, the Governor shall provide the following information to the Regional Administrator:

(1) An exact description of the boundaries of each area including a statement relating the boundaries of any area to the boundaries of the SMSA(s) contained within or contiguous to the area or, for those areas not within a SMSA, a statement relating the boundaries of the area to the nearest SMSA, and a statement indicating:

(i) Population of the area;

(ii) Nature of the concentration and distribution of industrial activity in the area;

(iii) Degree to which it is anticipated that the area could improve its ability to control water quality problems were it designated as an areawide planning area; and

(iv) Factors responsible for designation of the areawide planning area as described in § 130.13(a).

(2) Identification and supporting analysis of each water quality segment included in each area, as identified pursuant to § 130.10(c) (3).

(3) For each area a copy of the character of existing regional waste treatment management agencies or formally adopted resolutions, if available, which demonstrate that the general purpose units of local government involved will join together in the planning process to develop and implement a plan which will result in a coordinated waste treatment management system for the area. The resolutions shall also state that all applications for grants for construction of a publicly owned treatment works will be consistent with the approved plan and will be made only by the designated management agency.

(4) For each area, the name, address, and official contact for the agency designated to carry out the planning.

(5) A statement on the factors considered in agency designation as described in § 130.13(c).

(6) A summary of public participation in accordance with the requirements set forth in Part 105 of this Chapter.

(f) For areawide planning areas and agencies to be designated after FY 1976, the information received by § 130.13(e) shall be submitted at a later date to be established by the Administrator.

(g) The Regional Administrator and the Administrator shall review each submission pursuant to § 130.13 (e) and (f) to determine compliance with the Act and the criteria set forth in § 130.13 (a) through (d).

(h) Upon completion of his review, the Administrator shall publish notice in the *FEDERAL REGISTER* and shall notify in writing the appropriate Governor(s) of his approval. The effective date of designation is the date of the Administrator's approval of each designation. In the event that the Administrator disapproves any of the designations, he shall specify his reasons with his notice of disapproval.

(i) The appropriate Governor(s) may from time to time designate additional areawide planning areas and agencies. In such cases, approval of the designation shall be at the discretion of the Administrator, taking into account its consistency with the State continuing planning process. The Administrator will also take into account the ability of any such designated areawide planning agency to develop and submit the areawide plan no later than November 1, 1978.

#### § 130.14 Delegation of planning responsibilities.

(a) The State planning agency designated pursuant to § 130.12(a) may delegate responsibility, with the approval of the Regional Administrator, to other State, Federal, local, or interstate agencies for the conduct, where appropriate, of any portion of the State's required water quality management planning under this part and Part 131 of this Chapter.

(NOTE: The States are encouraged particularly to delegate water quality management planning responsibilities to Federal agencies where those agencies express a willingness to accept delegation of State planning responsibilities and possess adequate capability and resources to undertake such planning.)

(b) Locally elected officials of major general purpose units of government, and other pertinent local and areawide organizations within the jurisdiction of a proposed local or interstate planning agency, shall be consulted prior to any delegation of planning responsibility to an agency made pursuant to § 130.14 (a).

(c) Each delegation of planning responsibility to an agency made pursuant to § 130.14(a) of this section shall include:

(1) The agency's name, address, and name of the director; and

(2) The agency's jurisdiction (geographical coverage and extent of planning responsibilities).

(d) In the event that responsibility for preparation of a portion of a State water quality management plan is delegated pursuant to § 130.14(a) to an agency other than the State water pollution control agency, evidence from such other agency shall be supplied which shows acceptance of such delegation of planning responsibility and the agency's capability and intent to comply with the time schedules set forth in the planning process and to develop a plan, or portion thereof, consistent with the laws of the respective State, the requirements of this part, Part 131 of this Chapter, and the Act.

(e) The State planning agency may make additional delegations, as set forth in this section, from time to time. Such delegations shall be accomplished by revising the planning process as provided in § 130.43.

#### § 130.15 Designation of management agencies.

(a) Upon completion and submission of a water quality management plan, the Governor shall designate Federal, State, interstate, regional, or local agency(ies) appropriate to carry out each of the provision(s) of the water quality management plan(s).

(b) In the event the State or designated areawide planning agency determines that cooperation from a Federal agency(ies) is required to carry out certain provisions of the plan, the State or designated areawide planning agency shall identify such Federal agency and seek cooperation in accordance with § 130.35.

(c) The Governor may designate a specific agency(ies) to begin implementing an approved portion(s) of the water quality management plan(s) prior to completion of the plan(s).

(d) The Regional Administrator shall accept and approve all designated management agency(ies) unless, within 120 days of a designation, he finds that, the agency(ies) does not have adequate authority, including the requirement that statutory and regulatory provisions required to implement the plan be adopted by the date of plan approval by the Regional Administrator, and capability, as required in § 131.11(4)(2) of this Chapter, to accomplish its assigned responsibilities under the plan. The Regional Administrator shall approve, conditionally approve or disapprove such management agency designations in accordance with the same procedures to be used in approving water quality management plans (see § 131.21 of this Chapter).

(e) The Regional Administrator may withdraw his approval made pursuant to § 130.15(d) in the event that a designated management agency(ies) fails to implement the provision(s) of an approved water quality management plan for which the agency(ies) is assigned responsibility.

#### § 130.16 Intergovernmental cooperation and coordination.

(a) The process shall assure that adequate and appropriate areawide and

local planning results will be included in the development and implementation of water quality management plans for the State.

(b) Local governments within the State are to be encouraged to utilize existing, or develop, appropriate institutional or other arrangements with local governments in the same State in the development and implementation of water quality management plans, or portions thereof.

(c) The State shall provide a mechanism for meaningful and significant results from local, State, interstate, and Federal units of government. As an element of this mechanism, a policy advisory committee(s) shall be established to advise the responsible planning or implementing agency during the development and implementation of the plan on broad policy matters, including the fiscal, economic, and social impacts of the plan. Use of existing policy advisory committees is encouraged; however as a minimum, this policy advisory committee shall include a majority membership of representatives of chief elected officials of local units of government.

(NOTE: The Regional Administrator may, at the request of a State, agree to a lesser percentage of representation on the policy advisory committee from chief elected officials of local units of government provided there is no substantial disagreement with such a request from the affected local jurisdictions. Any proposal for lesser representation should consider the elements of planning that are being conducted and the traditional local role or interest in the activities covered by the planning.)

(d) The policy advisory committee for designated areawide planning areas shall include representatives of the State and public and may include representatives of the U.S. Departments of Agriculture, Army, and the Interior, and such other Federal and local agencies as may be appropriate in the opinion of EPA, the State(s), and the designated areawide planning agency.

(e) The State shall provide for interstate cooperation (and where necessary, in conjunction with and under the direction of appropriate Federal agencies should provide for international cooperation) whenever a plan involves the interests of more than one State. When a water quality management plan or portion of a plan is under development or is being implemented in the State for an area affecting or affected by waters of one or more other States, the State shall cooperate and coordinate with each such other State in the development and implementation of the water quality management plan pertinent to such area. EPA will provide assistance, upon request, to assure the appropriate cooperation and coordination between other States and Federal agencies.

#### § 130.17 Water quality standards.

(a) The State shall hold public hearings for the purpose of reviewing water quality standards and shall adopt revisions to water quality standards, as appropriate, at least once every three years and submit such revisions to the appro-

private Regional Administrator pursuant to section 303(c) of the Act.

(b) The water quality standards of the State shall:

(1) Protect the public health or welfare, enhance the quality of water and serve the purposes of the Act;

(2) Specify appropriate water uses to be achieved and protected, taking into consideration the use and value of water for public water supplies, propagation of fish, shellfish, and wildlife, recreation purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation; and

(3) Specify appropriate water quality criteria necessary to support those water uses designated pursuant to § 130.17(b) (2).

(c) In reviewing and revising its water quality standards pursuant to § 130.17 (a), the State shall adhere the following principles:

(1) The State shall establish water quality standards which will result in the achievement of the national water quality goal specified in section 101(a)(2) of the Act, wherever attainable. In determining whether such standards are attainable for any particular segment, the State should take into consideration environmental, technological, social, economic, and institutional factors.

(2) The State shall maintain those water uses which are currently being attained. Where existing water quality standards specify designated water uses less than those which are presently being achieved, the State shall upgrade its standards to reflect the uses actually being attained.

(3) At a minimum, the State shall maintain those water uses which are currently designated in water quality standards, effective as of the date of these regulations or as subsequently modified in accordance with § 130.17(c) (1) and (2). The State may establish less restrictive uses than those contained in existing water quality standards, however, only where the State can demonstrate that:

(i) The existing designated use is not attainable because of natural background;

(ii) The existing designated use is not attainable because of irretrievable man-induced conditions; or

(iii) Application of effluent limitations for existing sources more stringent than those required pursuant to section 301(b) (2) (A) and (B) of the Act in order to attain the existing designated use would result in substantial and widespread adverse economic and social impact.

(4) The State shall take into consideration the water quality standards of downstream waters and shall assure that its water quality standards provide for the attainment of the water quality standards of downstream waters.

(d) The Regional Administrator shall approve or disapprove any proposed revisions of water quality standards in accordance with the provisions of section 303(c) (2) of the Act.

(e) The State shall develop and adopt a Statewide antidegradation policy and

identify the methods for implementing such policy pursuant to § 130.10(b) (2). The antidegradation policy and implementation methods shall, at a minimum, be consistent with the following:

(1) Existing instream water uses shall be maintained and protected. No further water quality degradation which would interfere with or become injurious to existing instream water uses is allowable.

(2) Existing high quality waters which exceed those levels necessary to support propagation of fish, shellfish and wildlife and recreation in and on the water shall be maintained and protected unless the State chooses, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process, to allow lower water quality as a result of necessary and justifiable economic or social development. In no event, however, may degradation of water quality interfere with or become injurious to existing instream water uses. Additionally, no degradation shall be allowed in high quality waters which constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance. Further the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and feasible management or regulatory programs pursuant to section 208 of the Act for nonpoint sources, both existing and proposed.

(3) In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with section 316 of the Act.

#### Subpart C—Requirements for State Strategy

##### § 130.20 State strategy; contents and submission.

(a) Based on current water quality conditions, evaluation of program achievement to date, water quality management plans developed under this part and Part 131 of this Chapter (including basin water quality management plans), and the annual EPA guidance (described in Subpart B of Part 35 of this Chapter), each State shall prepare and update annually a State strategy for preventing and controlling water pollution over a five-year period. The strategy shall contain:

(1) A Statewide assessment of water quality problems and the causes of these problems.

(NOTE: This assessment may be based on the water quality analysis used to prepare the State's report required under Section 305(b) of the Act. Once the water quality assessment pursuant to § 131.11(b) of this Chapter and the nonpoint source assessment pursuant to § 131.11(d) of this Chapter are developed, the Statewide assessment of water quality problems and causes of these problems should be based on the plan assessments. Such assessments should then be reflected in the State's annual report under section 305(b) of the Act.)

(2) A ranking of each segment based on the Statewide assessment of water quality problems.

(3) An overview of the State's approach to solving its water quality problems identified in paragraph (b) (1) of this section, including a discussion of the extent to which nonpoint sources of pollution will be addressed by the State program.

(4) A year-by-year estimate of the financial resources needed to conduct the program in the State, by major program element (as defined in Subpart B of Part 35 of this Chapter).

(5) A listing of the priorities, and scheduling of the State's water quality management plan preparation and implementation, areawide plans, and other appropriate program actions to carry out § 130.20(a) (4).

(6) A brief summary of the State monitoring strategy (described in Appendix A to Subpart B of Part 35 of this Chapter).

(b) The State strategy shall be submitted annually as part of the annual State program submission pursuant to § 35.555 of this Chapter.

#### Subpart D—Relationship of Planning Process and Other Programs

##### § 130.30 Relationship to monitoring and surveillance program.

(a) The State shall assure that an appropriate monitoring program will be established in accordance with provisions of Appendix A to Subpart B of Part 35 of this Chapter.

(b) The process shall provide that each water quality management plan shall be based upon the best available monitoring and surveillance data to determine the relationship between instream water quality and sources of pollutants and, where practicable, to determine the relationship between disposal of pollutants on land and groundwater quality.

(c) In areas where a State or designated areawide planning agency determines that a groundwater pollution or contamination problem exists or may exist from the disposal of pollutants on land, or in subsurface excavations, the State or designated areawide planning agency, to support the establishment of controls or procedures to abate such pollution or contamination as identified in § 131.11 (j)-(l) of this Chapter, shall conduct (or the State shall require to be conducted by the disposing person), a monitoring survey or continuing program of monitoring to determine present or potential effects of such disposal, where such disposal is not prohibited. Groundwater monitoring conducted under this paragraph shall be coordinated with groundwater monitoring programs established pursuant to the Safe Drinking Water Act (Pub. L. 93-523).

##### § 130.31 Relationship to municipal facilities program.

(a) Before awarding initial grant assistance for any project for any treatment works under section 201(g) of the

Act, where an applicable State water quality management plan, or relevant portion thereof, has been approved in accordance with this part and Part 131 of this Chapter, the Regional Administrator shall determine, pursuant to section 208(d) of the Act, that the applicant for such grant is the appropriate designated management agency approved by the Regional Administrator pursuant to § 130.15.

(b) Before approving a Step II or Step III grant for any project for any treatment works under section 201(g) of the Act, the Regional Administrator shall determine, pursuant to § 35.925-2 of this Chapter, that such works are in conformance with any applicable State water quality management plan or relevant portion thereof, approved by the Regional Administrator in accordance with this part and Part 131 of this Chapter.

(c) The Regional Administrator may elect not to approve a grant for any municipal treatment works under section 201(g) of the Act where an incomplete or a disapproved water quality management plan does not provide an adequate assessment of the needs and priorities for the area in which the project is located, consistent with the Act's planning requirements.

(d) The Regional Administrator and the State, through the agreement described in § 130.11, shall assure that planning under this part and Part 131 of this Chapter related to any municipal treatment works is accomplished in a timely manner, consistent with State priorities for construction of such municipal treatment works.

#### § 130.32 Relationship to National Pollutant Discharge Elimination System.

(a) State participation in the National Pollutant Discharge Elimination System pursuant to section 402(b) of the Act shall not be approved for any State which does not have a continuing planning process approved by the Regional Administrator pursuant to § 130.41.

(b) Approval of State participation in the National Pollutant Discharge Elimination System pursuant to section 402(b) of the Act may be withdrawn in accordance with the provisions of section 402(c)(3) of the Act and § 124.93 of this Chapter from any State if approval of the continuing planning process is withdrawn pursuant to § 130.42.

(c) No permit under section 402 of the Act shall be issued for any point source which is in conflict with a plan approved by the Regional Administrator in accordance with this part and Part 131 of this Chapter, provided however, that no such permit shall be deemed to be in conflict with any provision of such plan or portion thereof, hereafter approved, which relates specifically to the discharge for which the permit is proposed, unless the State has provided the owner or operator of the discharge and the interested public with notice and the opportunity to appeal such provision.

#### § 130.33 Relationship of State and designated areawide planning programs.

(a) The State planning agency designated by the Governor pursuant to § 130.12(a) is responsible for assuring that the requirements of section 208 of the Act, this part, and Part 131 of this Chapter are achieved Statewide.

(NOTE: Where a designated areawide planning agency fails to achieve the requirements of section 208 of the Act, this part or Part 131 of this Chapter, the State planning agency is responsible for assuring that such requirements are achieved in the designated areawide planning area.)

(b) In order to assure that designated areawide planning agencies achieve the requirements specified in § 130.33(a) in a timely manner and that such agencies conduct planning that is consistent with planning developed by the State, the State planning agency designated pursuant to § 130.12(a) is expected to provide leadership and support to designated areawide planning agencies and to monitor progress of such agencies.

(c) Designated areawide planning under section 208 of the Act shall be incorporated in the water quality management plan for the State. The State planning agency shall provide the review and certification of such designated areawide planning pursuant to § 131.20(f) of this Chapter prior to formal incorporation into the State's water quality management plan.

#### § 130.34 Relationship to other local, State, and Federal planning programs.

(a) The process shall assure that State water quality management plans are coordinated, and shall describe the relationship with plans for designated areawide planning areas within the State, with planning required in adjacent States under section 208 of the Act, with affected State, local, and Federal programs, and with other applicable resource and developmental planning including:

(1) State and local land use and development programs.

(2) Activities stemming from applicable Federal resource and developmental programs including:

(i) The Solid Waste Disposal Act, as amended (Pub. L. 91-512).

(ii) The Safe Drinking Water Act (Pub. L. 93-523).

(iii) The Clean Air Act, as amended (Pub. L. 91-604).

(iv) The Coastal Zone Management Act (Pub. L. 92-583).

(v) The Watershed Protection and Flood Protection Act (Pub. L. 83-566).

(vi) The Rural Development Act of 1972 (Pub. L. 92-419).

(vii) The Land and Water Conservation Fund Act, as amended (Pub. L. 88-578).

(viii) The National Historic Preservation Act (Pub. L. 89-665).

(ix) The Fish Restoration Act (Pub. L. 81-681) and the Federal Aid in Wildlife Restoration Act (Pub. L. 75-415).

(x) The Endangered Species Act (Pub. L. 93-205).

(xi) Wastewater Management Urban Studies Programs administered by the U.S. Army Corps of Engineers (Pub. L. 685, 1938, Pub. L. 429, 1913).

(xii) Transportation Planning administered by the Department of Transportation (Pub. L. 87-866, Pub. L. 93-366, Pub. L. 93-503).

(xiii) The Housing and Community Development Act of 1974 (Pub. L. 93-383).

(xiv) Other Federally assisted planning and management programs.

(b) Approved section 201 facilities plans are to be considered detailed portions of the water quality management plan(s) providing in-depth analysis of specific municipal and storm drainage related water quality problems. The State or areawide planning agency is responsible for assuring compatibility of 201 facilities planning with the State or areawide water quality management plan.

(c) In the event that a "Level B" study (as required under section 209 of the Act) is underway or has been completed, the State or designated areawide planning agency shall consider the following outputs of the study, and where appropriate, provide for integration of the outputs with the water quality management plan(s):

(1) Existing and projected future water withdrawals and consumptive demand over a 20-year period.

(2) Facilities and management measures to be undertaken to meet demands on the water supply program.

(3) The effects of the water supply program on water quality.

(4) Impact of authorized water development measures.

(5) Identification of proposed or designated wild and scenic stream reaches.

(6) Watershed management and land treatment measures.

(7) Energy development and production related factors.

(d) In the event that a "Level B" plan has not been initiated, the State or designated areawide planning agency shall identify the appropriate constraints on water quality management which would be brought about by:

(1) Current and projected future (20-year period) water demands.

(2) Designated and desired wild and scenic river segments.

(3) Energy development and production factors.

#### § 130.35 Planning requirements for Federal properties, facilities or activities.

(a) Pursuant to section 313 of the Act and Presidential Executive Order Number 11752, Federal properties, facilities or activities are required to be in compliance with State, interstate, and local substantive requirements respecting control and abatement of pollution to the same extent that any person is subject to such requirements.

(b) Federal agencies shall cooperate and give support to State or designated areawide planning agencies in the for-

mulation and implementation of water quality management plans relating to Federal properties, facilities or activities and land areas contiguous with Federally-owned lands.

(c) The Regional Administrator shall assist in coordination of substantive planning requirements for Federal properties, facilities or activities between the appropriate State and Federal agency (ies).

(d) Disputes or conflicts between Federal agencies and State, interstate, or local agencies in matters affecting the application of or compliance with an applicable requirement for control and abatement of pollution shall be mediated by EPA. In such cases, if attempted mediation is unsuccessful the matter will be referred to the Office of Management and Budget under provisions of Executive Order 11752.

**Subpart E—State Planning Process Adoption, Approval and Revisions Procedures; Separability**

**§ 130.40 Adoption and submission of State process description.**

(a) The description of the State continuing planning process developed pursuant to § 130.10(c) or revisions to the description of the State continuing planning process made pursuant to § 130.43 shall be adopted as the official continuing planning process of the State after appropriate public participation in accordance with section 101(e) of the Act and with Part 105 of this Chapter.

(b) The Governor shall submit the adopted State continuing planning process description to the Regional Administrator for approval. Subsequent revisions to the continuing planning process description, however, shall be submitted as a part of the State program submittal pursuant to § 35.555 of this Chapter.

(c) Submission shall be accomplished by delivering to the Regional Administrator the adopted planning process description, as specified in § 130.10(c) of this part, and a letter from the Governor notifying the Regional Administrator of such action.

**§ 130.41 Review and approval or disapproval of State process.**

(a) The Regional Administrator shall approve, conditionally approve, or disapprove, the State planning process description submitted pursuant to § 130.40 of this part within 30 days after the date of receipt, as follows:

(1) If the Regional Administrator determines that the State planning process conforms with the requirements of the Act and this part, he shall approve the process and so notify the Governor by letter.

(2) If the Regional Administrator determines that the State planning process fails to conform with the requirements of the Act and this part, he shall either conditionally approve or disapprove the process and so notify the Governor by letter and shall state:

(i) The specific revisions necessary to obtain approval of the process; and

(ii) The time period for resubmission of the revised process or portions thereof.

(b) The Regional Administrator shall not approve any State continuing planning process description which will not result in timely State water quality management plans that conform with the applicable requirements of the Act and Part 131 of this Chapter for all areas within the State.

**§ 130.42 Withdrawal of approval of State process.**

Substantial failure of any plan or plans prepared pursuant to the approved State planning process to conform with applicable requirements of this part and Part 131 of this Chapter, including gross failure to comply with the schedule for State water quality management plan preparation, may indicate that the planning process by which such plan or plans were developed was deficient and shall be revised. Failure to accomplish necessary revisions of the State planning process may result in withdrawal of approval of part or all of the process.

**§ 130.43 Review and revisions of State process.**

(a) The State shall review annually its continuing planning process and shall revise the process as may be necessary to assure the development and maintenance of a State strategy and State program for preventing and controlling water pollution, based on current State and areawide water quality management plans which will accomplish national water quality objectives in conformity with the requirements of the Act.

(b) In addition to any other necessary revisions identified by the State or the Regional Administrator, the Governor shall submit, within 150 days after these regulations become effective, whatever revisions to the planning process description are necessary to insure conformity with this part.

(c) Subsequent revisions to the planning process description shall be submitted by the State as a part of the State program submittal pursuant to § 35.555 of this Chapter.

**§ 130.44 Separability.**

If any provision of this part, or the application of any provision of this part to any person or circumstance, is held invalid, the application of such provision to other person or circumstance, and the remainder of this part, shall not be affected thereby.

[FR Doc.75-32012 Filed 11-26-75; 8:45 am]

[FRL 461-5]

**PART 131—PREPARATION OF WATER QUALITY MANAGEMENT PLANS**

On July 16, 1975, notice was published in the FEDERAL REGISTER, 40 FR 29887, proposing amendments to the policies and procedures for the preparation of water quality management basin plans (40 CFR Part 131) pursuant to Section 303(e) of the Federal Water Pollution Control Act Amendments of 1972; Pub.

L. 92-500, 86 Stat. 816 (1972); 33 U.S.C. 1251 et. seq. (hereinafter referred to as the Act). Part 130 of this Chapter has also been amended. The amendments are in accordance with a Court Order issued by Judge John Lewis Smith, Jr., in *Natural Resources Defense Council, et. al. v. Train, et. al.*, D.C. D.C. Civ. Act. No. 74-1485, which stipulates that Section 208 planning must be conducted by the States in all areas that are not designated in accordance with Section 208 (a) (2) through (4) of the Act.

Sections 303(e) and 208 of the Act require State and designated areawide planning agencies to have a continuing planning process which is consistent with the Act. State water quality management plans are to be prepared in accordance with the State's continuing planning process submitted and approved pursuant to Part 130 of this Chapter.

These amended regulations describe the requirements for preparation of water quality management plans and the procedures governing plan adoption, submission, revision, and EPA approval. These regulations now specifically include the provisions for the State as well as areawide water quality management planning responsibilities under Section 208 of the Act and are designed to assure that the plans prepared pursuant to this Part 131 will be appropriate for water quality management both in areas having complex water quality problems and in less complicated situations.

The primary objective of the water quality management plans will be to achieve the 1983 national water quality goal of the Act, where attainable. In those areas where the 1983 water quality goal may not be attainable, the plans shall identify the water quality goals to be achieved and, where necessary, provide appropriate information (such as wasteload allocation information) which may be relevant in making water quality related effluent limitation determinations pursuant to Section 302 of the Act.

The water quality management plan will serve as a management document which identifies the water quality problems of a particular basin or other approved planning areas and sets forth an effective management program to alleviate those problems and preserve water quality for all intended uses. Thus, development of the plans will involve an iterative process of establishing attainable water quality goals, identifying necessary controls and regulatory programs, and determining the resulting environmental, social, and economic impact.

EPA will prepare guidelines concerning the development of water quality management plans to assist the State and areawide planning agencies in carrying out the provisions of these regulations.

Written comments on the proposed rulemaking were invited and received from nearly 100 interested groups, including EPA Regional Offices, State and local governments, other Federal agencies, industrial organizations and special interest groups. In addition, verbal com-

ments were also obtained from representatives of State and local government. All written comments are on file with the Agency. Most of these comments have been adopted or substantially satisfied by editorial changes, deletions from, or additions to these regulations. The majority of substantive comments centered around the issues discussed below.

#### 1. Timing of Plan Preparation.

Many of the comments received indicated that the November 1, 1978 deadline for plan submission was unrealistic. This deadline has not been changed due to the above mentioned Court Order which imposed a time schedule requiring "final submission to EPA of complete Section 208 plans for nondesignated areas no later than November 1, 1978."

The final regulations require the States to submit initial plans for the entire State (including areawide plans developed by designated areawide planning agencies) to EPA for final approval no later than November 1, 1978. Although the final regulations no longer require the States to submit plans for pre-adoption review, the regulations make it clear that areawide plans must be submitted to the States for certification and the State, in turn, must submit the certified areawide plans to EPA for approval within two years from the date the areawide planning process is in operation (and no later than November 1, 1978). Pre-adoption review of areawide plans by the State is required; pre-adoption review of plans for the entire State by EPA is encouraged although not required in order to assure a minimal amount of conflict once the plans are formally adopted.

#### 2. Nonpoint Source Controls.

Many of the comments received indicated that planning for the management of nonpoint sources of pollution will be the most difficult and complex water quality control problem confronting the State and areawide planning agencies due to insufficient funding, manpower and technology.

Taking these insufficiencies into account, EPA, in conjunction with a number of State representatives, has developed a strategy for management of nonpoint sources of pollution as part of the third edition of the "Water Quality Strategy Paper". This strategy for nonpoint source management has been incorporated into the final regulations.

As discussed above, these regulations are issued in response to an Order of the District Court for the District of Columbia, and contain a provision for plan submission no later than November 1, 1978, as required by the Order of the Court. Given the limited amount of time for the plans to be completed, and the consequent need for both State and areawide agencies to move forward quickly to adjust their planning processes to these regulations, good cause is hereby found for making these regulations effective upon publication.

In consideration of the foregoing, 40 CFR Part 131 is hereby amended by de-

leting the existing part and substituting a new Part 131 to read as follows.

Dated: November 21, 1975.

RUSSELL E. TRAIN,  
Administrator.

#### Subpart A—Scope and Purpose; Definitions

Sec.

- 131.1 Scope and purpose.
- 131.2 Definitions.

#### Subpart B—Plan Content Requirements

- 131.10 General requirements.
- 131.11 Plan content.

#### Subpart C—Plan Adoption, Approval, and Revision Procedures; Separability

- 131.20 Adoption, certification, and submission of plans.
- 131.21 Review and approval or disapproval of plans.
- 131.22 Review and revision of plans.
- 131.23 Separability.

AUTHORITY: Secs 106, 208, 303(d), 303(e), 305(b), 314, 501, 516(b) of the Federal Water Pollution Control Act, as amended; Pub. L. 92-500, 86 Stat. 816 (1972); (33 U.S.C. 1251 et seq.).

#### Subpart A—Scope and Purpose; Definitions

##### § 131.1 Scope and purpose.

(a) This part establishes regulations specifying procedural and other requirements for the preparation of water quality management plans and the establishment of regulatory programs designed to achieve the goal specified in Section 101(a)(2) of the Act. The water quality management plans and implementing programs are to be prepared and established by State planning agencies pursuant to Sections 208 and 303(e) of the Act and by designated areawide planning agencies pursuant to Section 208 of the Act.

(b) These regulations describe the requirements for State and designated areawide planning agency planning and implementation under Section 208 of the Act; water quality management plans developed by State and designated areawide planning agencies pursuant to this part and the implementation of these plans must comply fully with the requirements of Section 208 of the Act.

(c) A water quality management plan is a management document which identifies the water quality problems of a particular approved State planning area or designated areawide planning area and sets forth an effective management program to alleviate those problems and to achieve and preserve water quality for all intended uses. The value of the water quality management plan lies in its utility in providing a basis for making sound water quality management decisions and in establishing and implementing effective control programs. To achieve this objective, the detail of the water quality management plan(s) should provide the necessary analysis and information for management decisions. Moreover, there must be a flexible revision mechanism to reflect changing conditions in the area of consideration. A water quality management plan

should be a dynamic management tool, rather than a rigid, static compilation of data and material. In addition the plan should be as concise as possible, thereby minimizing unnecessary paperwork.

(d) A water quality management plan will provide for orderly water quality management by:

(1) Identifying Problems: assessing existing water quality, applicable water quality standards, point and nonpoint sources of pollution, and identifying constraints on the plan.

(2) Assessing Needs/Establishing Priorities: assessing water quality and abatement needs, including coordination with ongoing construction grant award and NPDES programs, and establishing priorities, including consideration of existing construction grant and NPDES requirements.

(3) Scheduling Actions: setting forth compliance schedules considering all existing schedules issued pursuant to construction grant awards and NPDES permits, and target abatement dates indicating necessary Federal, State, and local actions.

(4) Defining Regulatory Programs: describing existing State/local regulatory programs and defining necessary additional regulatory programs designed to achieve water quality standards and goals.

(5) Defining Management Agency Responsibilities: identifying management agency(ies), including implementing, regulatory and operational agencies, and setting forth specific responsibilities to carry out required actions within the approved planning area and to assure that water quality objectives are made a part of the land management process.

(6) Coordinating Planning and Management: coordinating developmental planning and management related to water quality in order to attain the objectives of the Act.

##### § 131.2 Definitions.

The definitions set forth in § 130.2 of this Chapter shall apply to this Part 131.

#### Subpart B—Plan Content Requirements

##### § 131.10 General requirements.

(a) This subpart describes the required content of water quality management plans to be prepared for each approved State planning area included in the State planning process submitted and approved pursuant to § 130.41 of this Chapter and for each area designated pursuant to Section 208(a)(2), (3), or (4) of the Act. The primary objective of the water quality management plans shall be to define the programs necessary to achieve the 1983 national water quality goal established in Section 101(a)(2) of the Act. The plans shall identify the controls, regulatory programs, and management agencies necessary to attain the water quality goals and the established State water quality standards.

(b) Water quality management plans shall be prepared for all areas and waters



of the State. Generally, water quality management planning elements will be the same throughout each State and designated areawide planning area. However, the level of detail required will vary according to the water quality problems (ranging from intensive planning in areas designated pursuant to Section 208(a)(2), (3), or (4) of the Act and in other areas with similar water quality problems, to essentially no planning in those areas where the State certifies that certain types of planning and implementation will not be undertaken pursuant to § 130.11(b) of this Chapter) and shall be established in the agreement between the State and the Regional Administrator (see § 130.11 of this Chapter) or in the work plan developed by the designated areawide agencies (see § 35.220 of this Chapter).

(c) The water quality management plans shall contain the information and analyses necessary for making sound water quality management decisions and for establishing and implementing effective control programs. Supportive data and calculations need not be included in the plans, but shall be made available to the Regional Administrator and the public upon request.

(d) Initial water quality management plans, or portions thereof, and subsequent refinements shall be prepared pursuant to the approved continuing planning process and submitted to the Regional Administrator in accordance with the State/EPA agreement described in § 130.11 of this Chapter or the work plan for designated areawide planning areas described in § 35.220 of this Chapter.

(e) Each water quality management plan shall incorporate appropriate information concerning other local, State and Federal planning as required under § 130.34 of this Chapter.

(f) Each water quality management plan shall include, where appropriate, a delineation of the relative priority of actions to be taken toward prevention and control of water pollution problems. Such priorities shall reflect the coordination of water quality management plans with other related planning programs including those identified in § 130.33 and § 130.34 of this Chapter.

(g) Water quality management planning elements shall include, but are not limited to:

- (1) Planning boundaries (§ 131.11(a)).
- (2) Water quality assessment and segment classification (§ 131.11(b)).
- (3) Inventories and projections (§ 131.11(c)).
- (4) Nonpoint source assessment (§ 131.11(d)).
- (5) Water quality standards (§ 131.11(e)).
- (6) Total maximum daily loads (§ 131.11(f)).
- (7) Point source load allocations (§ 131.11(g)).

<sup>1</sup> Not necessary in effluent limitation segments.

(8) Municipal waste treatment systems needs (§ 131.11(h)).

(9) Industrial waste treatment systems needs (§ 131.11(i)).

(10) Nonpoint source control needs (§ 131.11(j)).

(11) Residual waste control needs; land disposal needs (§ 131.11(k)).

(12) Urban and industrial storm-water needs (§ 131.11(l)).

(13) Target abatement dates (§ 131.11(m)).

(14) Regulatory programs (§ 131.11(n)).

(15) Management agencies (§ 131.11(o)).

(16) Environmental, social, economic impact (§ 131.11(p)).

Except as otherwise provided in Part 131.11.

#### § 131.11 Plan content.

Recognizing that the level of detail may vary according to the water quality problems, the following elements shall be included in each water quality management plan unless a certification pursuant to § 130.11(b) of this Chapter provides otherwise:

(a) *Planning boundaries.* A delineation, on a map of appropriate scale, of the following: (1) The approved State planning areas included in the State planning process submitted and approved pursuant to § 130.41 of this Chapter and areawide planning areas designated pursuant to § 130.13 of this Chapter.

(2) Those areas in which facilities planning has been deemed necessary by the State pursuant to § 35.917-2 of this Chapter.

(3) The location of each water quality and effluent limitation segment identified in § 131.11(b)(2).

(4) The location of each significant discharger identified in § 131.11(c).

(5) The location of fixed monitoring stations.

(NOTE: Such monitoring station locations may be omitted if such locations are available in the EPA water quality information system).

(b) *Water quality assessment and segment classifications.* (1) An assessment of existing and potential water quality problems within the approved planning area or designated areawide planning area, including an identification of the types and degree of problems and the sources of pollutants (both point and nonpoint sources) contributing to the problems. The results of this assessment should be reflected in the State's report required under Section 305(b) of the Act.

(2) The classification of each segment as either water quality or effluent limitation as defined in § 130.2(o) of this Chapter.

(i) Segments shall include the surrounding land areas that contribute or may contribute to alterations in the physical, chemical, or biological characteristics of the surface waters.

(ii) Water quality problems generally shall be described in terms of existing or

potential violations of water quality standards.

(iii) Each water quality segment classification shall include the specific water quality parameters requiring consideration in the total maximum daily load allocation process.

(iv) In the segment classification process, upstream sources that contribute or may contribute to such alterations should be considered when identifying boundaries of each segment.

(v) The classification of segments shall be based on measurements of in-stream water quality, where available.

(c) *Inventories and projections.* (1) An inventory of municipal and industrial sources of pollutants and a ranking of municipal sources which shall be used by the State in the development of the annual State strategy described in § 130.20 of this Chapter and the "project priority list" described in § 35.915(c) of this Chapter. The inventory shall include a description, by parameter, of the major waste discharge characteristics of each significant discharger of pollutants based on data from the National Pollutant Discharge Elimination System and the associated compliance monitoring systems, whenever available.

(2) A summary of existing land use patterns.

(3) Demographic and economic growth projections for at least a 20-year planning period disaggregated to the level of detail necessary to identify potential water quality problems.

(4) Projected municipal and industrial wasteloads based on § 131.11(c)(1) and (3).

(5) Projected land use patterns based on § 131.11(c)(2) and (3).

(d) *Nonpoint source assessment.* An assessment of water quality problems caused by nonpoint sources of pollutants

(1) The assessment shall include a description of the type of problem, an identification of the waters affected (by segment or other appropriate planning area), an evaluation of the seriousness of the effects on those waters, and an identification of nonpoint sources (by category as defined in § 131.11(j)) contributing to the problem.

(2) Any nonpoint sources of pollutant originating outside a segment which materially affect water quality within the segment shall be considered.

(3) The results of this assessment should be reflected in the States' report required under Section 305(b) of the Act.

(e) *Water quality standards.* The applicable water quality standards, including the Statewide antidegradation policy established pursuant to Section 303(a)(b), and (c) of the Act and any plan for the revision of such water quality standards.

(f) *Total maximum daily loads.* (1) For each water quality segment, or appropriate portion thereof, the total allowable maximum daily load of relevant pollutants during critical flow conditions for each specific water quality criterion being violated or expected to be violated.

(i) Such total maximum daily loads shall be established at levels necessary to achieve compliance with applicable water quality standards.

(ii) Such loads shall take into account:

(A) Provision for seasonal variation; and

(B) Provision of a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.

(2) For each water quality segment where thermal water quality criteria are being violated or expected to be violated, the total daily thermal load during critical flow conditions allowable in each segment.

(i) Such loads shall be established at a level necessary to assure the protection and propagation of a balanced, indigenous population of fish, shellfish, and wildlife.

(ii) Such loads shall take into account:

(A) Normal water temperature;

(B) Flow rates;

(C) Seasonal variations;

(D) Existing sources of heat input; and

(E) The dissipative capacity of the waters within the identified segment.

(iii) Each estimate shall include an estimate of the maximum heat input that can be made into the waters of each segment where temperature is one of the criteria being violated or expected to be violated and shall include a margin of safety which takes into account lack of knowledge concerning the development of thermal water quality criteria for protection and propagation of fish, shellfish and wildlife in the waters of the identified segments.

(3) For each water quality segment, a total allocation for point sources of pollutants and a gross allotment for nonpoint sources of pollutants.

(i) A specific allowance for growth shall be included in the allocation for point sources and the gross allotment for nonpoint sources.

(ii) The total of the allocation for point sources and the gross allotment for nonpoint sources shall not exceed the total maximum daily load.

(4) Where predictive mathematical models are used in the determination of total maximum daily loads, an identification and brief description of the model, and the specific use of the model.

(NOTE: Total maximum daily loads shall not be determined by designated areawide planning agencies except where the State has delegated such responsibility to the designated agency. In those cases where the responsibility has not been delegated, the State shall determine total maximum daily loads for the designated areawide planning area).

(5) No point source load allocation developed pursuant to this section shall be less stringent than effluent limitations standards, or prohibitions required to be established pursuant to Sections 301, 302, 304, 306, 307, 311, and 316 of the Act.

(g) *Point source load allocations.* (1) For each water quality segment, the in-

dividual load allocation for point sources of pollutants, including thermal load allocations, for the next five-year period of the plan.

(NOTE: In those segments where water quality standards are established at levels less stringent than necessary to achieve the 1983 water quality goals specified in Section 101(a)(2) of the Act, the Regional Administrator may request the State to provide appropriate information, such as wasteload allocation information which may be relevant in making water quality related effluent limitation determinations pursuant to Section 302 of the Act).

(2) The total of such pollutant load allocations or effluent limitations for all individual point sources in the water quality segment shall not exceed the total allocation for the five-year period for all point sources of pollutants for each segment determined pursuant to § 131.11 (f)(3).

(3) Each pollutant load allocation established pursuant to this paragraph shall incorporate an allowance for anticipated economic and population growth over at least a five-year period and an additional allowance reflecting the precision and validity of the method used in determining such allowance.

(4) Establishment of pollutant load allocations shall be coordinated with the development of terms and conditions of permits under the National Pollutant Discharge Elimination System and with any hearings pursuant to Section 302 and 316(a) of the Act relating to a source discharging to or otherwise affecting the segment.

(NOTE: Point source load allocations shall not be determined by designated areawide planning agencies except where the State has delegated such responsibility to the designated agency. In those cases where the responsibility has not been delegated, the State shall determine point source load allocations for the designated areawide planning area).

(h) *Municipal waste treatment systems needs.* (1) The municipal wastewater collection and treatment system needs by 5-year increments, over at least a 20-year period including an analysis of alternative waste treatment systems, requirements for and general availability of land for waste treatment facilities and land treatment and disposal systems, total capital funding required for construction, and a program to provide the necessary financial arrangements for the development of such systems.

(2) The identification of municipal waste treatment systems needs shall take into consideration:

(i) Load reductions needed to be achieved by each waste treatment system in order to attain and maintain applicable water quality standards and effluent limitations.

(ii) Population or population equivalents to be served, including forecasted growth or decline of such population over at least a 20-year period following the scheduled date for installation of the needed facility.

(iii) The results of preliminary and completed planning conducted under

Step I and Step II grants pursuant to Title II of the Act.

(NOTE: In the absence of the Title II planning described above, the State is expected to develop the necessary estimates and analyses required under § 131.11(h)(1)).

(i) *Industrial waste treatment systems needs.* (1) The anticipated industrial point source wasteload reductions required to attain and maintain applicable water quality standards and effluent limitations for at least a 20-year planning period (in 5-year increments).

(2) Any alternative considerations for industrial sources connected to municipal systems should be reflected in the alternative considerations for such municipal waste treatment system.

(j) *Nonpoint source control needs.* (1) For each category of nonpoint sources of pollutants to be considered in any specified area as established in the State/EPA agreement (see § 130.11 of this Chapter), an identification and evaluation of all measures necessary to produce the desired level of control through application of best management practices (recognizing that the application of best management practices may vary from area to area depending upon the extent of water quality problems).

(2) The evaluation shall include an assessment of nonpoint source control measures applied thus far, the period of time required to achieve the desired control (see § 131.11(m)), the proposed regulatory programs to achieve the controls (see § 131.11(n)), the management agencies needed to achieve the controls (see § 131.11(o)), and the costs by agency and activity, presented by 5-year increments to achieve the desired controls, and description of the proposed actions necessary to achieve such controls.

(3) The nonpoint source categories shall include: (i) Agriculturally related nonpoint sources of pollution including runoff from manure disposal areas, and from land used for livestock and crop production;

(ii) Silviculturally related nonpoint sources of pollution;

(iii) Mine-related sources of pollution including new, current and abandoned surface and underground mine runoff;

(iv) Construction activity related sources of pollution;

(v) Sources of pollution from disposal on land in wells or in subsurface excavations that affect ground and surface water quality;

(vi) Salt water intrusion into rivers, lakes, estuaries and groundwater resulting from reduction of fresh water flow from any cause, including irrigation, obstruction, groundwater extraction, and diversion; and

(vii) Sources of pollution related to hydrologic modifications, including those caused by changes in the movement, flow, or circulation of any navigable waters or groundwaters due to construction and operation of dams, levees, channels, or flow diversion facilities.

(NOTE: Nonpoint source control needs need not be determined by designated areawide planning agencies where the Governor has determined pursuant to Section 208(b)(4)



of the Act that the State will develop non-source control requirements on a wide basis.)

(c) *Residual waste control needs; land disposal needs.* (1) An identification of the necessary controls to be established over the disposition of residual wastes which could affect water quality and a description of the proposed actions necessary to achieve such controls.

(2) An identification of the necessary controls to be established over the disposal of pollutants on land or in subsurface excavations to protect ground and surface water quality and a description of the proposed actions necessary to achieve such controls.

(NOTE: Residual waste control needs need not be determined by designated areawide planning agencies where the Governor has determined pursuant to Section 208(b)(4) of the Act that the State will develop residual waste control requirements pursuant to Section 208(b)(2) (J) and (K) on a Statewide basis.)

(1) *Urban and industrial stormwater systems needs.* (1) An identification of the required improvements to existing urban and industrial stormwater systems, including combined sewer overflows, that are necessary to attain and maintain applicable water quality standards.

(2) An identification of the needed urban and industrial stormwater systems for areas not presently served over at least a 20-year planning period (in 5-year increments) that are necessary to attain and maintain applicable water quality standards, emphasizing appropriate land management and other non-structural techniques for control of urban and industrial stormwater runoff.

(3) A cost estimate for the needs identified in (1) and (2) above, the reduction in capital construction costs brought about by nonstructural control measures, and any capital and annual operating costs of such facilities and practices.

(m) *Target abatement dates.* Target abatement dates or schedules of compliance for all significant dischargers, nonpoint source control measures, residual and land disposal controls, and stormwater system needs, including major interim and final completion dates, and requirements that are necessary to assure an adequate tracking of progress toward compliance.

(n) *Regulatory programs.* (1) A description of existing State/local regulatory programs which are being or will be utilized to implement the State water quality management plan. The description shall include the regulatory approach to be employed, the statutory basis for the program, and relevant administrative and financial program aspects.

(2) A description of necessary additional State/local regulatory programs to be established in order to implement the State water quality management plan. The description shall include the proposed regulatory approach, the necessary legislation, and anticipated administrative and financial capabilities.

(3) The regulatory programs described in § 131.11(n) (1) and (2) should generally take full advantage of existing legislative authorities and administrative capabilities. However, such programs shall assure that:

(i) To the extent practicable, waste treatment management including point and nonpoint source management shall be on a Statewide and/or an areawide basis and provide for the control or abatement of all sources of pollution including in-place or accumulated deposits of pollutants;

(ii) The location, modification and construction of any facilities, activities, or substantive changes in use of the lands within the approved planning area, which might result in any new or deleterious discharge directly or indirectly into navigable waters are regulated; and

(iii) Any industrial or commercial wastes discharged into any publicly owned treatment works meet applicable pretreatment requirements.

(o) *Management agencies.* (1) The identification of those agencies recommended for designation by the Governor pursuant to § 130.15 of this Chapter to carry out each of the provisions of the water quality management plan. The identification shall include those agencies necessary to construct, operate and maintain all treatment works identified in the plan and those agencies necessary to implement the regulatory programs described in § 131.11(n).

(2) Depending upon an agency's assigned responsibilities under the plan, the agency must have adequate authority and capability:

(i) To carry out its assigned portions of an approved State water quality management plan(s) (including the plans developed for areawide planning areas designated pursuant to Section 208(a)(2), (3), or (4) of the Act) developed under this part;

(ii) To effectively manage waste treatment works and related point and nonpoint source facilities and practices serving such area in conformance with the approved plan;

(iii) Directly or by contract, to design and construct new works, and to operate and maintain new and existing works as required by any approved water quality management plan developed under this part;

(iv) To accept and utilize grants or other funds from any source for waste treatment management or nonpoint source control purposes;

(v) To raise revenues, including the assessment of user charges;

(vi) To incur short and long term indebtedness;

(vii) To assure, in implementation of an approved water quality management plan, that each participating community pays its proportionate share of related costs;

(viii) To refuse to receive any wastes from a municipality or subdivision thereof, which does not comply with any provision of an approved water quality management plan applicable to such areas; and

(ix) To accept for treatment industrial wastes.

(p) *Environmental, social, economic impact.* An assessment of the environmental, social, and economic impact of carrying out the plan.

#### Subpart C—Plan Adoption, Approval, and Revision Procedures; Separability

#### § 131.20 Adoption, certification, and submission of plans.

(a) During development and prior to formal adoption, the State and designated areawide water quality management plans or portions thereof, shall be the subject of appropriate public participation in accordance with Section 101(e) of the Act and with Part 105 of this Chapter requiring public participation in all phases of the water quality management plan development.

(1) The goal of the public participation is to involve the public in the formulation of the plan, including the determination of the planning goals, and to develop public support that will ultimately lead to acceptance and implementation of the plan.

(NOTE: Beyond continuing participation in the development of the plan, a more structured opportunity for public meetings or hearings should be provided at key points in the process.)

(2) State and designated areawide planning agencies may delegate public participation activities to appropriate governmental units within the planning area.

(b) Designated areawide planning agencies shall submit areawide water quality management plans, for review and recommendations to the Governor, or his designee, and to chief elected officials of local units of government that have responsibility for or are directly affected by the plan prior to formal submission of the plan for the Governor's certifications pursuant to § 131.20(f).

(1) The Governor, or his designee, shall provide for timely review and comment in order to minimize potential objections once the plan is formally submitted to the Governor for the certifications. Concurrence with a designated areawide water quality management plan at the time of the review by the Governor, or his designee, will not substitute for formal certifications by the Governor pursuant to § 131.20(f) after the plan has been the subject of further public participation.

(2) In the event that a local unit of government fails to provide a recommendation within 30 days of receipt of the plan for review and comment prior to formal submission to the Governor, or his designee, a favorable recommendation on adoption of the plan shall be assumed.

(c) The State planning agency shall submit State water quality management plans for review and recommendations, to appropriate chief elected officials of local units of government that have responsibility for or are directly affected by the plan prior to formal adoption of the plan by the State pursuant to § 131.20(h).

(d) The State is encouraged (although not required) to submit the water quality management plan(s) for State and designated areawide planning areas to the Regional Administrator for review prior to formally adopting the plan(s). The Regional Administrator shall provide for timely review and comment in order to minimize potential objections once the plan is formally adopted by the State pursuant to § 131.20(h). Concurrence with a water quality management plan at the time of any pre-adoption review will not substitute for approval by the Regional Administrator pursuant to § 131.21 after the plan has been the subject of further public participation and formally adopted by the State.

(e) After comments and recommendations are received from the Governor, or his designee, and from chief elected officials of local units of government pursuant to § 131.20(b), designated areawide planning agencies shall submit the areawide water quality management plans, or portions thereof, to the Governor, or his designee for final review and formal adoption and certification.

(f) The Governor, or his designee, shall review areawide water quality management plans, or portions thereof, submitted by designated areawide planning agencies.

(1) The Governor shall certify that the State has reviewed the plan and:

(i) Has found the plan to be in conformance with the provisions of the approved planning process for the State, including State water quality management plans prepared pursuant to the process, and that the plan will be accepted as a detailed portion of the water quality management plans of the State;

(ii) Has found the plan to be consistent with the water quality management needs of the area;

(iii) Has found the plan to be in conformance with all State and local legislation, regulations, or other requirements or plans regarding land use and protection of the environment, except for those cases where the plan specifically recommends changing such legislation, regulations, or other appropriate requirements;

(iv) Has found that the plan provides adequate basis for selection of management agencies to be designated pursuant to § 130.15(a) of this Chapter and Section 208(c) of the Act; and

(v) Has adopted the plan as the State's official water quality management plan for the designated areawide planning area pursuant to § 131.20(h).

(2) The procedures set forth in § 131.20 (f) (1) shall be followed by intrastate and interstate designated areawide planning agencies, except where the plan has been developed by an interstate agency, the plan shall be submitted to the Governor, or his designee, of the State which includes the largest portion of the designated area's population. The Governor,

or his designee, shall coordinate the plan review and certification process with all other affected States.

(g) If the Governor determines that the water quality management plan for the designated areawide planning area fails to conform with the requirements of the Act, this part, or the approved work plan of the designated areawide planning agency is not consistent with contiguous water quality management plans including those of neighboring States, he shall either conditionally certify or not certify the plan and so notify the Regional Administrator and the designated areawide planning agency by letter and shall state:

(1) The specific revisions necessary to obtain full certification of the water quality management plan; and

(2) The time period for submission of necessary revisions to the water quality management plan or portions thereof.

(h) Each State and areawide water quality management plan, or portion thereof, shall be adopted as the official water quality management plan(s) of the State. Each adopted water quality management plan shall include assurances and a certification by the Governor that the plan is the official water quality management plan for the area covered by such plan, that the plan will be implemented and used for establishing permit conditions, nonpoint source controls, schedules of compliance and priorities for awarding grants for construction of municipal treatment works pursuant to Section 201(g) of the Act, and that the plan meets all applicable requirements of the Act, this part, and Part 130 of this Chapter.

(i) The Governor shall submit adopted water quality management plans to the Regional Administrator, together with a summary of public participation in the development and adoption of the plan (required by Section 101(e) of the Act and Part 105 of this Chapter) and a letter from the Governor notifying the Regional Administrator of such action. Such plans shall be submitted in accordance with the following schedule:

(1) Water quality management plans for the entire State shall be submitted to the Regional Administrator no later than November 1, 1978.

(2) Water quality management plans for designated areawide planning areas shall be submitted no later than two years from the date that the planning process is in operation (pursuant to § 35.222-1 of this Chapter) and no later than November 1, 1978.

(j) Portions of the plan (interim outputs), developed in accordance with the requirements of Parts 130 and 131 may be adopted, certified, and submitted during the development of the plan and approved in the same manner as a plan under § 131.21.

(k) At the time of submission, the Governor shall identify those modifications, if any, that need to be made, as a result of the plan, to the agreement between EPA and a State under Part 124 of this Chapter.

**§ 131.21 Review and approval or disapproval of plans.**

The Regional Administrator shall approve, conditionally approve or disapprove the water quality management plan, or portion thereof, submitted pursuant to § 131.20(i) or (j) within 120 days after the date of receipt, as follows:

(a) If the Regional Administrator determines that the water quality management plan conforms with the requirements of the Act, this part, and the approved continuing planning process (including compliance with any State/EPA agreement or designated areawide planning agency work plans) and is consistent with contiguous water quality management plans, including those of neighboring States, he shall approve the plan and so notify the Governor or his designee by letter.

(b) If the Regional Administrator determines that the water quality management plan fails to conform with the requirements of the Act, this part, or the approved continuing planning process (including compliance with any State/EPA agreements or designated areawide planning agency work plans) or is not consistent with contiguous water quality management plans including those of neighboring States, he shall either conditionally approve or disapprove the plan and so notify the Governor or his designee by letter and shall state:

(1) The specific revisions necessary to obtain full approval of the water quality management plan; and

(2) The time period for submission of necessary revisions to the water quality management plan or portions thereof.

(c) Where water quality management plans involving interstate waters are found to be inconsistent, the Regional Administrator shall notify the Governor of each concerned State of the specific areas of inconsistency and the specific revision(s) necessary to eliminate such inconsistency.

**§ 131.22 Review and revision of plans.**

(a) As a minimum, the State or designated areawide planning agency shall review, and if necessary revise, each water quality management plan at least annually. The Regional Administrator may request specific plan revisions. The water quality management plan shall be revised such that it remains a meaningful and current water quality management document.

(b) Minor revisions, particularly those which incorporate updated information but do not involve substantive change, may be submitted directly to the Regional Administrator by the State planning agency designated under § 130.10 (c) (6) of this Chapter.

(Note: Minor revisions to plans for designated areawide planning areas shall be submitted to the State planning agency, which in turn shall incorporate such revisions in the Statewide plan and notify the Regional Administrator of the revisions).

(c) Changes to the water quality management plan(s) which result from a determination by the Administrator or the State, as appropriate, pursuant to Sections 301(c), 302, or 316 of the Act, an amendment to the Act, or an adjudicatory or judicial proceeding, shall be incorporated into a revised plan. Such revisions need not be subject to formal public participation, adoption, certification and submission, unless the Regional Administrator determines that the revision is of a substantive nature.

(d) Revisions of a substantive nature shall be subject to formal public participation, certification, adoption, and submission as well as review and approval procedures described in § 131.20 and § 131.21. The Regional Administrator may waive requirements for public participation and other formal revision procedures where he determines that such requirements have been met as a result of other proceedings conducted pursuant to the Act and other EPA regulations.

**§ 131.23 Separability.**

If any provision of this part, or the application of any provision of this part to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this part, shall not be affected thereby.

[FR Doc.75-32013 Filed 11-20-75; 8:45 am]

**SUBCHAPTER E—PESTICIDE PROGRAMS**

[FRL 462-2; PP4F1432/R64]

**PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES**

**4-Amino-6-(1,1-Dimethylethyl)-3-(Methylthio)-1,2,4-Triazin-5(4H)-One**

On November 15, 1973, notice was given (38 FR 31559) that Chemagro Agricultural Division, Mobay Chemical Corp., PO Box 4913, Hawthorn Rd., Kansas City MO 64120 (formerly Chemagro Division of Baychem Corp.), had filed a petition (PP 4F1432) with the Environmental Protection Agency (EPA). This petition proposed that 40 CFR 180.332 be amended to establish tolerances for combined residues of the herbicide 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-1,2,4-triazin-5(4H)-one and its triazinone metabolites in or on the raw agricultural commodities sugarcane and tomatoes at 0.1 part per million. Chemagro subsequently amended the petition by deleting the proposed tolerance for residues in or on tomatoes. [Chemagro also submitted a petition requesting the establishment of a regulation to permit the use of this herbicide on sugarcane

in or on the raw agricultural commodity sugarcane also appears in today's *FEDERAL REGISTER*.]

Any person adversely affected by these regulations may on or before December 29, 1975, file written objections with the Hearing Clerk, Environmental Protection Agency, 401 M St. SW, East Tower, Room 1019, Washington DC 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Effective on November 28, 1975, Part 123, § 123.25, and Part 561 are amended as follows.

(Sec. 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348))

Dated: November 20, 1975.

EDWIN L. JOHNSON,  
Deputy Assistant Administrator  
for Pesticide Programs.

Part 123, § 123.25 is amended to include a tolerance limitation in sugarcane molasses as follows.

§ 123.25 4-Amino-6-(1,1-dimethylethyl)-3-(methylthio)-1,2,4-triazin-5(4H)-one.

Tolerance are established for combined residues of the herbicide 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-1,2,4-triazin-5(4H)-one and its triazinone metabolites resulting from application of the herbicide to growing crops as follows:

3 parts per million in processed potatoes (including potato chips).

0.3 part per million in sugarcane molasses.

Part 561 is amended by adding the § 561.41 as follows:

§ 561.41 4-Amino-6-(1,1-dimethylethyl)-3-(methylthio)-1,2,4-triazin-5(4H)-one.

A tolerance of 0.3 part per million is established for combined residues of the herbicide 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-1,2,4-triazin-5(4H)-one and its triazinone metabolites in sugarcane molasses resulting from application of the herbicide to growing sugarcane.

[FR Doc.75-32047 Filed 11-28-75; 8:45 am]

#### Title 29—Labor

#### CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

#### PART 511—WAGE ORDER PROCEDURE FOR PUERTO RICO, THE VIRGIN ISLANDS, AND AMERICAN SAMOA

##### Compensation of Committee Members

Pursuant to authority in section 5 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, as amended; 29 U.S.C. 205) and Reorganization Plan No. 6 of

1950 (3 CFR 1949-53 Comp. p. 1004), I hereby amend 29 CFR 511.4 to read as set forth below. The purpose of this amendment is to increase the compensation of each member of an industry committee from \$108 to \$114 for each day spent in the work of the committee.

As this amendment concerns only a rule of agency practice, and is not substantive, notice of proposed rule making, opportunity for public participation, and delay in effective date are not required by 5 U.S.C. 553. It does not appear that such participation or delay would serve a useful purpose. Accordingly, this revision shall be effective immediately.

#### § 511.4 Compensation of committee members.

Each member of an industry committee will be allowed a per diem of \$114 for each day actually spent in the work of the committee, and will, in addition, be reimbursed for necessary transportation and other expense incident to traveling in accordance with Standard Government Travel Regulations then in effect. All travel expenses will be paid on travel vouchers certified by the Administrator or his authorized representative. Any other necessary expenses which are incidental to the work of the committee may be incurred by the committee upon approval of, and shall be paid upon certification of, the Administrator or his authorized representative.

(Sec. 5, 52 Stat. 1062, as amended; 29 U.S.C. 205)

Signed at Washington, D.C. this 21st day of November, 1975.

WARREN D. LANDIS,  
Acting Administrator,  
Wage and Hour Division.

[FR Doc.75-32154 Filed 11-26-75; 8:45 am]

#### Title 40—Protection of the Environment

#### CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

#### SUBCHAPTER B—GRANTS AND OTHER FEDERAL ASSISTANCE

[FRL 461-4]

#### PART 35—STATE AND LOCAL ASSISTANCE

#### Grants to State and Designated Areawide Planning Agencies—Conditions, Policies and Procedures

On September 8, 1975, notice was published in the *FEDERAL REGISTER*, 40 FR 41644, that the Environmental Protection Agency was proposing to amend the interim 208 grant regulations (40 CFR Part 35, Subpart F) and to publish final regulations setting forth procedures for providing grants to State as well as areawide planning agencies approved pursuant to 40 CFR 130.12 and 130.13 respectively, for the development of a planning process and a section 208 plan for water quality management.

Section 208 of the Federal Water Pollution Control Act Amendments of 1972 is designed to encourage and facilitate the development and implementation of

areawide water quality management plans. The law requires the Governor of each State to designate eligible areawide planning agencies to perform intensive areawide planning for those geographic areas of the State which meet the criteria set forth in Part 130.13 of this Chapter. The State is required to undertake the planning for remaining geographic areas. In accordance with a Court Order issued by Judge John Lewis Smith, Jr. in *Natural Resources Defense Council, et al. v. Train, et al.*, D.C. D.C. Civ. Act. No. 74-1485, grants are authorized for State as well as areawide planning agencies.

Since section 208 planning must be done on a nationwide basis for all surface areas of the United States by either areawide or State planning agencies pursuant to 40 CFR Part 130, it is important to have compatible planning requirements for section 208 planning conducted by both areawide and State planning agencies. Hence, the substantive planning requirements have been deleted from the 208 grant regulations (40 CFR Part 35, Subpart A) and placed in the following regulations to be published in the *FEDERAL REGISTER* concurrently with the 208 grant regulations: *Policies and Procedures for the Continuing Planning Process* (40 CFR Part 130) and *Preparation of Water Quality Management Plans* (40 CFR Part 131). As a result, the 208 grant regulations are solely procedural, referencing the appropriate portions of 40 CFR Parts 130 and 131 for the substantive planning requirements.

Written comments on the proposed rulemaking were invited and received from numerous interested parties. In addition, verbal comments were also obtained from representatives of State and local government. EPA has carefully considered all submitted comments. All written comments are on file with the Agency. Many of these comments have been adopted or substantially satisfied by editorial change, deletions from, or additions to the regulations. The majority of the substantive comments centered around the three issues discussed below.

1. Allocation of Funds. Numerous methods for allocating funds to State and designated areawide planning agencies were considered including: (a) A nationally derived formula based on point and nonpoint source pollution problems; (b) a formula based on the population of each State within a Region; (c) a formula based on the population of each State within a Region minus the population of previously funded designated planning areas; and (d) a formula based on a combination of the population and land area of each State within a Region minus the population and land area of previously funded designated areas.

Many of the commentators indicated that they did not think that an accurate nationally derived formula based on point and nonpoint source pollution problems could be derived and that they

would prefer a formula based on population. The regulations, therefore, contain a formula based on a combination of population and land area. This combination was selected because State and areawide water quality management planning must consider both point and nonpoint source problems and many nonpoint source problems are associated with large land masses and not necessarily with large concentrations of population.

2. Requirement for a Financially Self-Sustaining Planning Process. Many of the comments that were received opposed this requirement, stating that it was impractical to expect the planning agencies to obtain funds from other sources to pay for the required continuing planning, including the annual plan update. The self-sustaining provision, however, has been retained since Federal funding is presently envisioned for only development of the initial plan. The substantial Federal investment is intended to spur continuing planning over the long-term.

3. Establishment of a State Management Role in Areawide Planning Areas. The above mentioned Court Order stipulates that the State is responsible for assuring that the provisions of section 208 of the Federal Water Pollution Control Act Amendments of 1972 are implemented in areawide as well as State planning areas. Many of the comments that were received stated that in order for the States to carry out their responsibilities, it was imperative to provide for a strong State management role in areawide planning areas. These regulations have therefore been revised to clarify previous policy regarding the State management role. The areawide planning agencies are required to obtain State review and comment on their grant applications, work plans and any substantial revisions thereto and interim progress reports. The areawide planning agencies are also required to provide the State with a copy of their plan for pre-adoption review to minimize any conflicts that might arise at the time of formal plan submittal.

As discussed above, these regulations are issued in response to an Order of the District Court for the District of Columbia, and contain a provision for plan submission no later than November 1, 1978, as required by the Order of the Court. Given the limited amount of time for the plans to be completed, and the consequent need for both State and areawide agencies to move forward quickly to adjust their planning processes to these regulations, good cause is hereby found for making these regulations effective November 28, 1975.

In consideration of the foregoing, 40 CFR Part 35 is hereby amended by deleting Subpart F and substituting the following for Subpart A, §§ 35.200 through 35.240.

Dated: November 21, 1975.

RUSSELL E. TRAIN,  
Administrator.

**Subpart A—Planning Grants**  
**GRANTS TO STATE AND DESIGNATED AREA-**  
**WIDE PLANNING AGENCIES—CONDITIONS,**  
**POLICIES AND PROCEDURES**

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**Subpart A—Planning Grants**  
**GRANTS TO STATE AND DESIGNATED AREA-**  
**WIDE PLANNING AGENCIES—CONDITIONS,**  
**POLICIES AND PROCEDURES**

**§ 35.200 Purpose.**

These provisions establish conditions, policies and procedures for grants to State and areawide planning agencies, and reference requirements for the substance of the planning process and the content of required plans. These provisions supplement the EPA general grant regulations and procedures set forth in Part 30 of this Chapter.

**§ 35.202 Definitions.**

The definitions of the terms contained in § 130.2 of this Chapter shall be used herein except as the context otherwise requires.

**§ 35.204 Allocations of funds.**

(a) The Administrator will establish a Regional allotment ratio for each EPA Region in accordance with the following formula:

$$= \frac{[(\text{Population of Region}) - (\text{Population of Region's Previously Funded Designated Planning Areas})]}{[(\text{Population of United States and Territories}) - (\text{Population of Previously Funded Designated Planning Areas Nationally})]}$$

$$+ \frac{[(\text{Land Area of Region}) - (\text{Land Area of Region's Previously Funded Designated Planning Areas})]}{[(\text{Land Area of United States and Territories}) - (\text{Land Area of Previously Funded Designated Planning Areas Nationally})]}$$

(b) The Regional allotment ratio for each Region established pursuant to § 35.204(a) will be applied to sums available for each fiscal year after June 30, 1975 to produce an allotment for each Region.

(c) As soon as practicable after the President's budget has been submitted to the Congress, the Administrator will issue to each Regional Administrator a tentative Regional allowance (planning target) based on the amount of the appropriation requested by the President. The Regional Administrator shall notify each State and appropriate areawide planning agency of the funds available for State and areawide water quality management planning as soon as practicable after receipt.

(d) As soon as practicable after funds are appropriated, the Administrator will issue to each Regional Administrator a final Regional allowance for allotment to State and appropriate areawide planning agencies in each Region. Within the limits of each final Regional allow-

ance, the Regional Administrator shall negotiate grant amounts for each eligible applicant (State and areawide planning agencies) within the Region.

(e) On June 1, 1976, all unobligated funds remaining within a Region will revert back to the Administrator for reallocation to other Regions (for subsequent reallocation to State and areawide planning agencies) which can demonstrate a need for funds in excess of their final Regional allowance. In Fiscal Year 1977 and in subsequent fiscal years, unobligated Regional funds will revert back to the Administrator ninety days after the date the final Regional allowance is issued to the Regional Administrator pursuant to § 35.204(d), or not later than thirty days prior to the end of the fiscal year, whichever date is earlier.

**§ 35.206 Eligibility for grant award.**

(a) Areawide planning agency. Areawide planning agencies shall be eligible for grant award pursuant to these provi-

sions only if designated pursuant to § 130.13 of this Chapter and approved by the Administrator as the official area-wide planning agency for the area. The agency shall further agree to develop a plan and a continuing planning process for the entire area that meets the requirements of these provisions and Parts 130 and 131 of this Chapter.

(b) State planning agency. State agencies designated by the Governors pursuant to § 130.12 of this Chapter and approved by the appropriate Regional Administrator shall be eligible for grant award pursuant to these provisions, provided that the State continuing planning process has been approved by the appropriate Regional Administrator pursuant to § 130.41 of this Chapter.

§ 35.208 Application for grant.

§ 35.208-1 Preapplication requirements.

(a) All agencies applying for section 208 planning grants shall comply with all applicable requirements of Office of Management and Budget (OMB) Circular No. A-95, pursuant to § 30.305 of this Chapter.

(b) Areawide planning agencies designated by the Governor(s) pursuant to § 130.13 of this Chapter shall submit their applications and supporting data to the State planning agency designated pursuant to § 130.12 of this Chapter. Interstate areawide planning agencies shall submit the application to the designated State agency in the State which includes the greatest portion of the area's population, and provide copies to the Governors of other affected states.

§ 35.208-2 Application requirements.

(a) Each agency applying for section 208 planning grants shall meet the following application requirements:

(1) Applications shall be made to EPA on such forms as the Administrator may prescribe pursuant to § 30.315 of this Chapter.

(2) Evidence shall be provided that all requirements of OMB Circular No. A-95 have been met.

(3) A statement shall be provided indicating that provisions have been made or will be made for the establishment of the following appropriate advisory groups:

(i) For State planning areas, a policy advisory committee for each approved planning area; the membership and role of this committee shall be consistent with § 130.16(c) of this Chapter;

(ii) For areawide planning areas, a policy advisory committee whose membership shall be consistent with § 130.16(d) of this Chapter.

(4) A statement shall be provided that the proposed activity takes into account the relationship with affected State, local and Federal programs, and with other applicable resource and developmental planning programs as set forth in § 130.34(a) of this Chapter.

(5) A statement shall be included indicating that the planning process will become financially self-sustaining and provide for annual update of the plan

once the initial plan is developed and approved.

(6) An outline of the work plan which the applicant will submit pursuant to § 35.220 herein shall be provided by State and designated areawide planning agencies.

(7) A statement indicating how matching funds, if required, will be provided.

(b) Areawide planning agencies designated by the Governor(s) shall provide, in addition to the requirements set forth in § 35.208-2(a), a certification document submitted by the State planning agency designated pursuant to § 130.12 of this Chapter, which document shall include a statement that the State has reviewed the application and finds that:

(1) The proposed work complies or does not comply with all State requirements, including any applicable plan(s) prepared pursuant to Part 131 of this Chapter;

(2) The proposed planning work program is or is not adequate and necessary to accomplish the development of a plan pursuant to Part 131 of this Chapter;

(3) Insofar as is known, the planning will or will not duplicate any work which has been done or is being done to meet the facilities planning requirements of § 35.917-35.917-9 of this Part and other water quality management planning requirements of Part 131 of this Chapter; and

(4) That the State either recommends or does not recommend that the grant application should be approved by EPA.

(c) State planning agencies shall submit, in addition to the requirements of § 35.208-2(a), evidence of compliance with the procedures of § 130.13 of this Chapter, including evidence that adequate communication was made with chief elected officials of local units of government in the designation of local areas.

§ 35.210 Review, certification and approval of grant application.

§ 35.210-1 State review and certification of grant applications from areawide planning agencies designated by the Governor(s).

(a) The State planning agency designated pursuant to § 130.12 of this Chapter shall, within 45 days after receipt of a grant application review the application and either certify or refuse to certify the application and proposed work plan outline.

(b) Upon completion of the review required by § 35.210-1(a), the State planning agency shall either:

(1) Return the grant application, including the certification document, to the applicant for forwarding of two copies to the appropriate Regional Administrator, or

(2) Forward two copies of the application, including certification documents, to the appropriate Regional Administrator.

Selection of alternatives (b) (1) or (2) of this section shall be based on the applicant's preference.

(c) If the application is not certified, the State planning agency shall, in addition to its actions pursuant to § 35.210-1(b), notify both the appropriate Regional Administrator and the applicant as to the specific reasons for non-certification and specify the changes which are needed for State certification of the application.

(d) The procedures set forth in § 35.210(1) (a) through (c) shall be followed by intrastate and interstate areawide planning agencies, except that where the applicant is an interstate agency, the State planning agency in the State which includes the largest portion of the area's population shall coordinate the review and certification process and shall have an additional 15 days to complete the process.

§ 35.210-2 EPA review and approval.

(a) No grant application will be accepted for EPA review that is incomplete or not accompanied by the State certification documents required pursuant to § 35.208-2 herein.

(b) The Regional Administrator shall review the application and supporting documentation to determine its compliance with the applicable requirements of the Act and these provisions, the capability of the proposed program to meet the required outputs of section 208 of the Act, and reasonableness of the estimated costs of the proposed program.

(c) Generally within 45 days after receiving the application, and in accordance with the provisions of § 35.212 herein, the Regional Administrator shall:

(1) Award a grant to the applicant in the amount determined to meet the requirements of § 35.214; or

(2) Notify the applicant that the grant application is deficient in one or more respects and specify in which ways the application must be modified to receive EPA approval; copies of such notifications will be forwarded to all concerned States at the time the applicant is notified of EPA action.

§ 35.212 Grant award and adjustment.

(a) *Grant award.* Grants will be awarded in an amount which the Regional Administrator determines is appropriate for the program outlined in the grant application submitted pursuant to § 35.208-2.

(b) *Grant adjustments.* Such grants shall be subject to adjustment by the Regional Administrator, after his review and approval of the work plan submitted pursuant to § 35.220, and after consultation with the appropriate State and the applicants, to reflect his determination of actual approved financial needs.

(c) *Limitation on grant amount.* The grant amount, after adjustment pursuant to § 35.212(b), if any, shall constitute the grantee's final maximum grant amount for a Section 208 grant. In the event of grantee noncompliance, the Regional Administrator may reduce the grant amount or terminate the grant pursuant to § 30.915 and § 30.920 of this Chapter.

**§ 35.212-1 Rate of Federal assistance.**

The rate of Federal assistance furnished to a grantee shall be in accordance with the provisions of the Act.

**§ 35.212-2 Matching.**

Pursuant to § 30.720 of this Chapter, contributions required to match Federal funds may be reflected in contributions to either direct or indirect costs; in-kind contributions are permitted. Contributions to matching are allowable only if they are verifiable from the grantee's records; not included is cost sharing or matching contributions for any other Federally-assisted program; otherwise properly allocable to the project; and are expended for allowable project costs.

**§ 35.212-3 Period of grant.**

Federal assistance shall be for one or more consecutive budget periods, the total grant period beginning on the date of execution of the grant agreement and ending on the date on which the plan is approved by the appropriate Regional Administrator pursuant to § 35.228.

**§ 35.214 Grant conditions and limitations.**

Each grant awarded an areawide planning agency pursuant to these provisions is conditioned upon the subsequent submission of an approvable work plan pursuant to § 35.220-3.

**§ 35.216 Allowable and unallowable costs.**

Grant funds shall be expended by the grantee solely for the reasonable and allowable costs of the approved project in accordance with the terms of the grant agreement pursuant to the requirements of this Subpart and § 30.700 of this Chapter.

Allowable and unallowable costs shall be determined in accordance with § 30.705 of this Chapter and by demonstration that the costs are reasonable for carrying out an approved grant project. While costs incurred as a result of following an approved work program would generally be allowable, provided that they are not prohibited elsewhere by Federal, State or local law or regulations, the costs incurred by activity related to the following shall be unallowable:

(a) Costs incurred in development of a grant application for an areawide planning grant;

(b) Costs incurred in sewer evaluation surveys as required under § 35.927-2 of this Part;

(c) Costs incurred in detailed sewer system mapping and surveys therefor;

(d) Costs related to sewage collection systems at less than the trunk line level;

(e) Costs related to obtaining or providing information for sewer systems, other than the costs of determining the following items in sufficient detail to make informed judgments on the cost effectiveness of available alternatives: tributary or service areas, routes, sizes, capacities and flows, critical control elevations required to show ability to serve tributary areas, lengths, staging, major

impediments to construction, and costs of construction operation; data concerning lift stations shall be limited to location, size, energy requirements and capital and operating costs; costs of gathering and analyzing information required for economic, environmental and social evaluations shall be eligible;

(f) Costs related to obtaining or providing treatment works, other than the costs of determining the following items in sufficient detail to make informed judgments on the environmental impacts and cost effectiveness of available alternatives: size, location, which shows adequacy of the site including provision for expansion, major systems for treatment of influent and disposal of effluent and sludge, flow and waste reduction, anticipated effect of treatment, staging and capital and operating costs and energy requirement;

(g) Costs of special studies for the specific benefit of individual, industrial or commercial establishments; and

(h) Costs of activities which are primarily of a research nature.

**§ 35.218 Payments.****§ 35.218-1 Payment method.**

The Regional Administrator will determine the payment method authorized for each grant award pursuant to § 30.615 of this Chapter. Ordinarily, the advance payment method will be authorized. However, when the Regional Administrator determines it is in the Agency's interest, the reimbursement method may be required.

**§ 35.218-2 Advance payment—letter of credit.**

(a) When the Regional Administrator determines that a grant award will be financed through advance payments, the Regional financial management officer will apply Treasury Department regulations to determine whether payment will be by letter of credit or Treasury check. Generally letter of credit will be used when annual payments under awards providing for advance financing aggregate to \$250,000 or more. When the letter of credit method is selected, it will be stipulated in the grant agreement. The grant agreement will require:

(1) That cash drawdowns be made only when actually needed for payment of the Federal share of liabilities relating to project costs,

(2) Timely reporting as required by § 35.232,

(3) Imposition of the same Treasury Department standards on secondary recipients, and

(4) Obligation of funds in accordance with the grant agreement.

(b) The letter of credit may be issued for the entire award or any part thereof, with subsequent amendments for the balance as the Regional Administrator determines. An initial fund letter of credit, will be issued to State and areawide planning agencies to the extent that the grantees demonstrate the need for For areawide agencies, this initial fund

will generally not exceed five percent (5%) of the total grant award and will be earmarked for work plan development such funds. Subsequent amendments for the balance of the grant amount will be approved only after approval of the work plan by the Regional Administrator. Withdrawal of cash through the letter of credit will be monitored by EPA through the payment vouchers and quarterly financial reports submitted pursuant to § 35.232-2.

**§ 35.218-3 Advance payments—Treasury check.**

If a grant award for which advance financing is authorized does not meet the criteria for letter of credit, payment may be made by Treasury check. In this instance, the Regional Administrator will negotiate an initial cash advance. For areawide agencies, this initial advance will generally not exceed five percent (5%) of the total grant award and will be earmarked for work plan development. If the grantee does not expect to use the advance immediately, payment must be scheduled for a later date when need becomes immediate. Once the initial advance is made, the grantee may request replenishment of funds expended by submitting the Request for Advance or Reimbursement form. This form may be submitted quarterly but no less frequently than annually. It is the policy of EPA that large amounts of cash advances not remain unused in the hands of grantees. Therefore, EPA will monitor use of cash advances through the required financial reports and will request reduction of the outstanding advance where lack of use is indicated.

**§ 35.218-4 Reimbursable payments.**

Where advance financing is not authorized, payment will be made upon the grantee's submission of a Request for Advance or Reimbursement form. Through this form, the grantee will request reimbursement of the Federal share of expenditures related to the grant agreement for the period since the previous request for reimbursement. Submission of reimbursement requests may be made as often as necessary.

**§ 35.218-5 Compliance.**

Where the Regional Administrator determines that the grantee has failed to comply with the requirements for letter of credit, as stated in § 35.218-2, or with reasonable cash management practices with cash advances by Treasury check, or is not in compliance with provisions of the grant agreement, he may convert either payment procedure to the reimbursement method.

**§ 35.218-6 Withholding of funds.**

In accordance with the provisions of § 30.615-3 of this Chapter, an amount not to exceed ten percent (10%) of the grant award amount may be withheld for noncompliance with a program objective, grant condition, or reporting requirement.



**§ 35.220 Work plan development.**

**§ 35.220-1 Applicability.**

The specific requirements of this section are applicable only to work plans related to grants awarded after June 30, 1975.

**§ 35.220-2 Content.**

(a) Planning in State planning areas. State planning agencies must submit a work plan based on the approved continuing planning process, including the State/EPA agreement, prepared pursuant to § 130.10 of this Chapter, and which is consistent with the requirements herein and the requirements of § 130.11 of this Chapter. The work plan shall be included as an element of the State program plan submitted pursuant to section 106 of the Act which will set forth a work schedule, cost and resource budget and disbursement schedule.

(b) Planning in areawide planning areas. Designated areawide planning agencies must submit a work plan which contains:

(1) A description of all work performed to date which will be used in the plan development;

(2) A description of the proposed planning process developed pursuant to § 130.10 of this Chapter which will be utilized to (i) identify and evaluate feasible measures to control point and nonpoint pollution sources, which measures may take into account all source location and review measures necessary to meet State implementation plan requirements in the area, (ii) develop an integrated areawide plan to control these sources, and (iii) establish an areawide management program (including financing) for plan implementation;

(3) A description of any necessary action in the planning to be taken by agencies other than the applicant and procedures to be used in coordination of such activities; documentation of the acceptance by the affected responsible agency of such required work or action shall be included and presented with the work plan;

(4) A schedule showing required interrelationships of work to be accomplished and anticipated dates of completion;

(5) A cost and resource budget, including work to be done under contract or by interagency agreement, and

(6) A proposed disbursement schedule with specific progress milestones related to disbursements.

**§ 35.220-3 Submission.**

As expeditiously as possible, grantees conducting State and areawide planning must submit to the Regional Administrator a written work plan meeting the requirements of § 35.220-2. For areawide planning agencies, the work plan shall be submitted not later than twelve months from the date of the Administrator's approval of the designation. A copy of the areawide planning agency's work plan and future significant modifications thereto shall be provided to the State planning agency designated pursuant to

§ 130.12 of this Chapter for review and comment. Pursuant to § 35.220-3, submission and approval of the work plan is a precondition to release of grant funds for further areawide planning pursuant to Part 131 of this Chapter.

**§ 35.220-4 Funding for work plan development.**

Where the grant agreement, subject to provisions of § 35.212, provides for work plan development, the grantee will obligate generally not to exceed five percent (5%) of the total award for that purpose. Further additional obligation is not authorized until approval of the work plan is granted by the Regional Administrator. Where work plan development is set as a milestone in the grant agreement, the decision on size of the initial advance will take into account this five percent (5%) limitation.

**§ 35.222 Plan development.**

**§ 35.222-1 Plan development period—**  
**areawide planning agencies.**

(a) For each areawide grantee, the Regional Administrator shall establish a date (not more than one year from the date of the Administrator's approval of the designation of the grantee agency) on which he determines that the grantee's planning process becomes operational. The grant agreement shall be amended to include this date. The grantee's areawide plan must be submitted through the Governor to the Regional Administrator for approval no later than two years from the date so established pursuant to § 131.20(i). For grants awarded after June 30, 1975, the date so established will generally be the date of approval of the grantee's work plan submitted pursuant to § 35.220 herein. For grants awarded prior to July 1, 1975, the Regional Administrator shall select the date upon which the planning process becomes operational based on the following four elements:

(1) The hiring of sufficient personnel by the grantee to perform the work as outlined in the work plan required under § 35.220;

(2) The establishment of a policy advisory or other appropriate committee by the grantee;

(3) The initiation of major work elements (or date of award of contracts for one or more such elements) by the grantee; and

(4) Such other work plan requirement(s) the Regional Administrator shall determine as a requirement for the planning process to become operational.

(b) Pursuant to § 130.13(f) of this Chapter, the Governor of each State may make subsequent designations of appropriate areawide planning agencies. Where such a designation occurs after the State has already received a grant for section 208 planning, the plan development period for the areawide planning agency so designated shall end on the earlier of two dates: (1) Two years from the date the planning process of the newly designated areawide planning agency is determined by the Regional

Administrator to be operational pursuant to § 35.22-1(a); or (2) November 1, 1978.

**§ 35.222-2 Plan development period—**  
**State planning agencies.**

Pursuant to § 131.20(i) of this Chapter, State planning agencies must submit section 208 plans to the Regional Administrator for approval no later than November 1, 1978.

**§ 35.224 Content of plan.**

Each State and areawide planning agency shall develop and submit to the Regional Administrator for approval a plan consistent with these provisions and which meets the requirements of Part 131 of this Chapter.

**§ 35.226 Submission of the plan.**

Submission of plans prepared pursuant to these provisions shall be in accordance with § 131.20 of this Chapter.

**§ 35.228 Plan approval.**

EPA approval of plans prepared pursuant to these provisions shall be in accordance with § 131.21 of this Chapter.

**§ 35.230 Authority of States for non-**  
**point source planning in areawide**  
**planning areas.**

Whenever the Governor of any State determines (and notifies the Regional Administrator) that consistency with a Statewide regulatory program under section 303 of the Act so requires, the requirements of § 131.11(j) through (l) of this Chapter shall be developed by the State and submitted by the Governor to the Regional Administrator for application to all regions within such State. All requirements of such State programs shall be incorporated into each affected areawide plan. The plan shall set forth such additional local actions and programs as may be necessary for implementation of the plan developed by the State.

**§ 35.232 Reports.**

During the grant period, grantees will be required to submit interim progress reports and financial status reports at intervals set forth below. Failure to comply with established reporting requirements in a timely manner will result in appropriate action pursuant to § 30.430 of this Chapter.

**§ 35.232-1 Interim progress reports.**

Grantees shall monitor the performance under grant-supported activities to assure that time schedules are being met, projected work units by time periods are being accomplished, and other performance goals and milestones are being achieved. Within 30 days following the end of each quarterly period after the effective date of the grant, the grantee shall prepare and submit to EPA for review a brief interim progress report addressing the milestones in the approved work plan. A copy of this report shall also be submitted to the State planning agency, designated pursuant to § 130.12 of this Chapter, which shall expeditiously review the report and sub-



mit its comments to EPA. The Regional Administrator may, at his discretion, determine that semi-annual reporting is adequate. The report of progress shall include, but should not be limited to, narrative presenting:

(a) A comparison of actual accomplishments to the goals established for the period;

(b) Any problems, delays, or adverse conditions which have (or will) affect the ability of the grantee to attain work plan objectives;

(c) Favorable developments or events which enable the grantee to meet time schedules or milestones sooner than anticipated;

(d) Any major changes in the overall program, work plan, budget, organization or staffing for the period; and

(e) Other pertinent information including, where appropriate, analysis and explanation of cost overruns or high unit costs.

#### § 35.232-2 Financial status reports.

(a) Grantees shall be required to submit the financial status report at the end of each quarter. The report shall be on an accrual basis. However, if a grantee cannot report on this basis, a request for waiver may be submitted to the Regional Administrator. The Regional Administrator may approve reporting on a cash basis. The original and one copy shall be submitted 30 days after the end of each reporting period. In addition, final reports shall be submitted 90 days after the end of the project period.

(b) Grantees financed under a letter of credit or advances by Treasury check will also submit the Federal cash transactions report within 15 days following the end of each quarter. The grantee shall forecast Federal cash requirements for the next quarter in the Remarks section of this report.

#### § 35.234 Suspension and termination.

In accordance with the provisions of §§ 30.915 and 30.920 of this Chapter, the Regional Administrator may suspend or terminate any grant awarded pursuant to these provisions. Areawide planning areas whose grants are terminated pursuant to this section shall become part of the State water quality management planning area for which the State planning agency shall conduct planning pursuant to section 208(a)(6) of the Act; grant funds for which costs have not been incurred by areawide planning agencies prior to termination may be transferred to the State planning agency in accordance with the provisions of § 30.900-3 of this Chapter.

#### § 35.236 Disputes.

Final determinations by the Regional Administrator concerning applicant ineligibility and final determinations by the Regional Administrator concerning disputes arising under a grant pursuant to these provisions shall be final and conclusive unless appealed by the applicant or grantee within 30 days from the date of receipt of such final determination in accordance with the "Disputes" article

of the General Grant Conditions (Article 7 of Appendix A to this Subchapter).

[FR Doc.75-32014 Filed 11-26-75; 8:45 am]

### SUBCHAPTER C—AIR PROGRAMS

[FRL 459-2]

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

### Public Availability of Emission Data

On May 31, 1972 (37 FR 10842), pursuant to section 110 of the Clean Air Act and 40 CFR Part 51, EPA approved with specific exceptions, State implementation plans (SIPs) for attainment of the national ambient air quality standards. Included in these approvals were provisions required by § 110(a)(2)(F) of the Act which provided that emission data reported must be available to the public in a reasonable manner. Many of the plans did provide the public with access to emission data, but some plans also contained confidentiality clauses which by treating information (including emission data) capable of divulging production, manufacturing or processing secrets as being proprietary and, therefore, confidential, could have caused emission data to be withheld from public scrutiny.

Three circuit courts<sup>1</sup> have held that the presence of a confidentiality clause of the variety described above so beclouds the public's right to emission data that any emission disclosure provision which is compromised by such a confidentiality provision must be disapproved. Therefore, on September 26, 1974, the Administrator disapproved all appropriate sections of SIPs which contained such confidentiality clauses and proposed for public comment a replacement regulation for those States.

The only comments received dealt with the applicability of the action for specific States. No general comments were received on the replacement regulation.

The States of Georgia, Indiana, New Hampshire, Oregon, South Carolina and Virginia have, in response to the September 26, 1974, disapproval action, submitted statutory and/or regulatory revisions which were designed to cure all deficiencies in their SIP emission disclosure provisions. Receipt of the Indiana changes was announced in the February 26, 1975, FEDERAL REGISTER at 40 FR 8225. No adverse comments having been received in response to this notice, the Indiana plan revision announced on February 26, 1975, is being approved and the disapproval of the State's legal authority for public access to emission data is being revoked in the regulatory section of this rulemaking.

Receipt of the New Hampshire changes was announced in the October 20, 1975, FEDERAL REGISTER. Should EPA's analysis of the comments submitted in response to the notice confirm EPA's preliminary

<sup>1</sup> NRDC et al. v. EPA, 478 F.2d 875 (CA 1, 1973); NRDC et al. v. EPA, 494 F.2d 519 (CA 2, 1974); and NRDC et al. v. EPA, 489 F.2d 390 (CA 5, 1974).

assessment that the New Hampshire revision is approvable, final approval will be published. Furthermore, as to New Hampshire, the suspended disapproval published on September 26, 1974, may be regarded as revoked since the defective plan provision which necessitated such disapproval no longer exists as State law. Since the revised statutory language is already in effect at the State level, it is assumed that, until final EPA approval of the new State provisions, the dissemination of emission data within the State will be conducted pursuant to such new provisions. Accordingly, the Administrator has determined that an interim Federal regulation for New Hampshire, along the lines of today's rulemaking is unnecessary.

Although the new Georgia, Oregon, South Carolina, and Virginia changes have not yet been proposed for comment, EPA intends to propose such changes as SIP revisions in the near future. Accordingly, EPA believes that the treatment accorded the New Hampshire revision should also apply to Georgia, Virginia, South Carolina, and Oregon. Thus, as to these four States, EPA's disapproval action of September 26, 1974, may be regarded as revoked. Similarly, rather than publish an interim regulation for these four States along the lines of today's rulemaking, EPA will take no action. It will be assumed that the State's new emission disclosure provisions will be operative while the approval process is taking place at the Federal level.

One State, Kentucky, has advised the Agency that it has enacted similar changes which will cure the emission disclosure defects in its implementation plan. EPA has reviewed the statutory change and is in agreement with the State. However, the statutory change has not yet been formally submitted to the Agency as a plan revision, and the Agency is, therefore, not now in a position to propose it for approval. Nevertheless, on the assumption that the State will, in the very near future, submit the new statutory provision to the Agency as a plan revision, EPA deems it appropriate to treat the Kentucky statutory change as the practical equivalent of the submitted Georgia, Virginia, South Carolina, and Oregon plan revisions. Accordingly, as was the case with Georgia, Virginia, South Carolina, and Oregon, no interim regulations will be promulgated for Kentucky and the applicable September 26, 1974, disapproval action may be regarded as withdrawn.

In addition to the seven States noted above, four other States have committed to take all necessary action to cure (by June 30, 1976) legal authority defects in their plans regarding public access to emission data. These States are Arkansas, Louisiana, New Mexico, and Oklahoma. Although the Administrator is pleased with the initiative indicated by these commitments, he also recognizes that, unlike Kentucky where statutory changes have already taken place, it would be premature to assume that the

# **federal register**

**TUESDAY, APRIL 27, 1976**



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**PART IV:**

## **ENVIRONMENTAL PROTECTION AGENCY**



### **PROGRAM GRANTS**

**State and Local Assistance**

## Title 40—Protection of the Environment

CHAPTER I—ENVIRONMENTAL  
PROTECTION AGENCY

[FRL 518-3]

PART 35—STATE AND LOCAL  
ASSISTANCE

## Program Grants

Section 106 of the Federal Water Pollution Control Act, as amended (Pub. L. 92-500; 86 Stat. 816; 33 U.S.C. 1256 (1972)), authorizes the Administrator of the Environmental Protection Agency to make annual allotments from sums appropriated by Congress in each fiscal year on the basis of the extent of the pollution problem in the several States. The Act requires that the Administrator promulgate regulations governing such allotments.

Interim regulations, which provide minimum guidelines for Federal grant assistance to the State and interstate agencies to assist them in administering their water pollution control programs, were published in the *FEDERAL REGISTER* on June 29, 1973 (38 FR 17219). The interim regulations supplement the Environmental Protection Agency general grant regulations (40 CFR Part 30). Also, on August 28, 1974, notice was published in the *FEDERAL REGISTER* (39 FR 31500) that the Environmental Protection Agency was proposing regulations relating to water quality and pollutant source monitoring in State water pollution control programs.

Written comments on the interim State water pollution control program grant regulations and the proposed water quality and pollutant source monitoring regulations were invited and received from numerous interested parties. EPA has carefully considered all comments submitted, as well as comments made by EPA and State and interstate agency personnel on the basis of their experience under the interim regulations. Written comments received from interested parties are on file with the Environmental Protection Agency. Many of these comments have been adopted or substantially satisfied by editorial changes, deletions from, or additions to the regulations.

These regulations, as amended, describe the annual State program for the control and abatement of water pollution and for the allocation of Federal grant assistance to support these State programs. The requirements and procedures should be viewed as one part of an overall management system to be used by the States, interstate agencies, and EPA in carrying out the requirements of the Federal Water Pollution Control Act Amendments of 1972. The system begins with the establishment of the State continuing planning process described in Part 130 of this chapter. The process is to provide States with the basis for developing a "State Strategy" which contains an assessment of their pollution problems, a means for developing their control strategies, and for assessing results. The State strategy, which will be based upon Statewide water quality management plans where they are completed,

and upon available information where the plans are not completed, together with other associated outputs, provides the basis for developing each State's annual program plan.

The annual program plan is a management device which the State uses to identify its expected accomplishments during the year, allocate its resources, and assess its progress toward those accomplishments. At the same time, the State program provides EPA the basis for providing Federal grants to supplement State funds.

Major changes and the majority of substantive comments centered around the issues discussed below:

(1) The Allocation Formula for Determining State and Interstate Allotments. Comments were received from several State water pollution control agencies regarding the allocation formula used to determine State and interstate allotments (see § 35.553). Suggestions were offered regarding potential changes to the allocation formula. For example, it was suggested that the formula take into consideration the volume of waste water processed by treatment plants. This factor was among the twenty-two variables considered when the formula was devised. However, it was judged to be less satisfactory in reflecting the "extent of the pollution problem" than the variables which are currently considered in the formula. Also it was pointed out that the formula does not factor in non-point sources of pollution. This factor remains unquantifiable on a national basis due to a lack of data, and for this reason, it has been decided that the present allocation formula remains the best surrogate measure of the extent of pollution which has been suggested to date. Consequently, this formula is retained as the means of allocating grant funds to the State and interstate agencies. Because of the expressed concerns, however, the Agency intends to consider other alternative allocation formulas over the next year. Criteria which will be considered as additional factors for the formula will be pollution from toxic and hazardous materials and non-point sources.

The State and interstate allotment ratios, to be applied against the total sums available nationally to determine individual State and interstate agency allotments, are based on the previous formula. The allotment ratios contained in the regulation are presented in a different format (i.e., State and interstate agency allotment ratios are separated into two distinct categories). For this reason the individual allotment ratios appear to differ, but they are in effect unchanged from the interim regulation.

The future role of interstate agencies in the national water pollution control program was the subject of a comprehensive study recently completed by EPA. As a result of that study the agency has determined that section 106 interstate agency program grant funds should be made available only for coordinating activities and activities which support the operational responsibilities of the State

agencies. For this reason the future funding for interstate agencies will be specified in EPA's annual operating guidance.

(2) Incentive Grants. The practice of providing incentive grants to State agencies has been used for the past three years to focus State management attention and resources on those program elements which are essential to the national program in each fiscal year. The practice has had limited success since its initiation. At the outset, incentives served to gear up State resources to undertake NPDES activities, Federal construction grant activities and other EPA responsibilities. Now, however, most States have become involved in these programs and incentives appear to have outlived their usefulness.

Comment on this issue from the States was unanimous in favor of eliminating incentive grants. EPA agrees with this comment and has deleted the incentive grant concept from the regulation. This action is consistent with Agency policy to decentralize decision-making to the Regional Office and State level, wherever appropriate.

In the future, Regional Administrators are expected to adopt national guidance regarding program priorities to the particular circumstances and needs of each State. The Regional Administrator has the authority and responsibility under § 35.405 and § 35.565 to require State programs which contain an appropriate program emphasis, but the determination of this emphasis is to be made primarily as a result of a consultation process with the States.

(3) Timing of Public Participation and Program Submission to EPA. A number of State agencies objected to the time frame for public participation contained in the interim regulation. Rather than requiring the completion of public participation prior to an arbitrary date, it was suggested that the public participation requirement be made more flexible. This proposal was judged appropriate and public participation no longer has a time constraint built into the regulation. Instead, an agreement between the Regional Administrator and State agency reached prior to development of the State strategy and program will dictate adequate public participation.

Other changes from the interim regulation include the date changes for preparation and submission of State strategies and program plans to correspond to Agency changes in procedures as a result of the shift to the new Federal fiscal year (October through September) required pursuant to the Congressional Budget Act of 1974 (Pub. L. 93-344).

(4) Monitoring Requirements—Appendix A. Comments were expressly invited on Appendix A as to whether these provisions should be promulgated as regulations or guidelines. An overwhelming majority of comments indicated a preference for guidelines on the grounds that EPA should not attempt to define technical specifics of monitoring activities (such as monitoring survey design and operation) which may be dictated by local conditions. Other letters of com-

ment, while not addressing specifically the question of regulations vs. guidelines, raised similar concerns regarding particular paragraphs of the proposed regulation. Therefore, the provisions containing regulation of monitoring specifics have been deleted from this regulation and the subjects addressed are only those common to all water monitoring programs. Rather than publishing the technical details of monitoring as regulations, EPA will issue guidance documents detailing recommended monitoring practices.

This subpart is promulgated as a final regulation and will replace the interim regulation previously promulgated. However, because of the numerous changes which have been made throughout this subpart, public comment is again invited. Interested parties are encouraged to submit written comments, suggestions, views, or data concerning the final regulation promulgated hereby to: Director, Grants Administration Division, Environmental Protection Agency, Washington, D.C. 20460. All such submissions received on or before October 1, 1976 will be considered with respect to the need for amendment of this subpart.

**Effective date.** The final water program grant regulations promulgated hereby shall become effective upon publication. It is necessary that these regulations take effect prior to a thirty day period following promulgation to insure their implementation without delay and to permit States to submit applications for program grants from funds available in accordance with the new procedures established pursuant to these regulations. These regulations shall govern actions, including grant amendment actions and other actions such as State and interstate agency program planning and evaluation and allocation of Federal funds, which are related to Environmental Protection Agency water program grants to be awarded after the effective date. Prior regulations (38 FR 17219) governing water program grants shall remain applicable to grants awarded prior to the effective date. Prior regulations (39 FR 7785) governing air program grants and 41 FR 2912 governing public water supply system supervision grants remain in effect.

Dated: April 16, 1976.

RUSSELL E. TRAIN,  
Administrator.

40 CFR §§ 35.400 through 35.425 and §§ 35.551 through 35.570 are hereby revised and adopted as final regulations. 40 CFR §§ 35.500—35.550 and 35.600—35.630 remain in effect as previously published.

1. The relevant portions of the table of contents to 40 CFR Part 35 are revised as follows:

Subpart B—Program Grants	
Sec.	Purpose.
35.400	
35.400-1	Air pollution control agency grant awards.
35.400-2	Water pollution control program grant awards.

Sec.	
35.400-3	Public water system supervision program grant awards.
35.403	Authority.
35.404	Annual guidance.
35.405	Criteria for evaluation of program objectives.
35.410	Evaluation of agency performance.
35.415	Report of project expenditures.
35.420	Payment.
35.425	Federal and grantee program support.

WATER POLLUTION CONTROL STATE AND INTERSTATE PROGRAM GRANTS

35.551	Scope and purpose.
35.552	Definitions.
35.553	State and interstate allotments.
35.554	Regional allowances.
35.555	Determination of grant amount by Regional Administrator.
35.556	Reduction of grant amount.
35.557	Grant amount limitation and duration.
35.558	Eligibility.
35.559	Limitations on award.
35.560	State strategy formulation and program development.
35.561	Major program elements and outputs.
35.562	State program submission.
35.563	State project priority list submission.
35.564	Public participation.
35.565	Program approval.
35.566	State project priority list approval.
35.567	Grant conditions.
35.568	Adherence to budget estimates.
35.569	Program changes.
35.570	Program evaluation and reporting.

APPENDIX A—WATER QUALITY AND POLLUTANT SOURCE MONITORING

2. Section 35.400 through 35.425 are revised as follows:

§ 35.400 Purpose.

This subpart establishes and codifies policy and procedures for air pollution, water pollution, and public water system supervision program assistance grants and supplements the EPA general grant regulations and procedures (Part 30 of this Chapter). These grants are intended to aid programs for air pollution control, water pollution control and public water system supervision at the State, interstate, or local level.

§ 35.400-1 Air pollution control agency grant awards.

Grants may be awarded to air pollution control agencies for the planning, development, establishment, improvement, and maintenance of programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards in accordance with the applicable implementation plan.

§ 35.400-2 Water pollution control program grant awards.

Grants may be awarded to State and interstate water pollution control agencies to assist them in developing or administering programs for the prevention, reduction, and elimination of water pollution, including enforcement directly or through appropriate State law enforcement officers or agencies.

§ 35.400-3 Public water system supervision program grant awards.

Grants may be awarded to State agencies to assist them in developing or administering public water system supervision programs.

§ 35.403 Authority.

This subpart is issued under sections 105 and 301(b) of the Clean Air Act, as amended (42 U.S.C. 1857(c) and 1857(g)); sections 106 and 501 of the Federal Water Pollution Control Amendments of 1972 (33 U.S.C. 1256 and 1361); and sections 1443(a) and 1450 of the Safe Drinking Water Act (42 U.S.C. 300j-2).

§ 35.404 Annual guidance.

The Environmental Protection Agency will develop and disseminate annual guidance to be used by the grantee to structure air pollution, water pollution, and public water system supervision programs for the coming Federal fiscal year. The guidance will contain a statement of the national strategy including national objectives and national priorities for the year together with planning figures for Federal program grant assistance based on the EPA budget approved by the President. The annual guidance will be disseminated each year as soon as practicable during the month of February.

§ 35.405 Criteria for evaluation of program objectives.

(a) Programs set out in the application and submitted in accordance with these regulations shall be evaluated in writing by the Regional Administrator to determine:

(1) Consistency and compatibility of objectives and expected results with EPA national and regional priorities in implementing purposes and policies of the Clean Air Act, the Federal Water Pollution Control Act, or the Safe Drinking Water Act.

(2) Feasibility of achieving objectives and expected results in relation to existing problems, past performance, program authority, organization, resources and procedures.

(b) Approval of the program developed pursuant to § 35.526 (air) or § 35.565 (water pollution) or § 35.626 (public water system supervision) shall be based on the extent to which the applicant's program satisfies the above criteria.

§ 35.410 Evaluation of agency performance.

(a) A performance evaluation shall be conducted at least annually by the Regional Administrator and the grantee to provide a basis for measuring progress toward achievement of the approved objectives and outputs described in the program. The evaluation shall be consistent with the requirements of § 35.538 for air pollution control agencies, § 35.570 for water pollution control agencies and § 35.626(d) for public water system supervision agencies.

(b) The Regional Administrator shall prepare a written report of the annual evaluation. The grantee shall be allowed

15 working days from the date of receipt to concur with or comment on the findings.

#### § 35.415 Report of project expenditures.

Within 90 days after the end of each budget period, the grantee must submit to the Regional Administrator an annual report of all expenditures (Federal and non-Federal) which accrued during the budget period. Beginning in the second quarter of any succeeding budget period, grant payments may be withheld pursuant to § 30.615-3 of this Chapter until this report is received.

#### § 35.420 Payment.

Grant payments will be made in accordance with § 30.615 of this Chapter. Notwithstanding the provisions of § 30.345 of this Chapter, the first grant payment subsequent to grant award may include reimbursement of all allowable costs incurred from the beginning of the approved budget period, provided that monthly costs incurred from the beginning of the budget period to the date of grant award do not exceed the level of costs incurred in the last month of the prior budget period.

#### § 35.425 Federal and grantee program support.

(a) For purposes of establishing the amount of resources which will be committed by the agency to particular budget categories or program elements under §§ 35.527 (air), 35.561(a) (water) and § 35.626-1 (public water system supervision), federal and grantee financial contribution shall be considered as combined sums, and shall not be separately identified for each budget category or program element. For purposes of this subpart, and pursuant to Section 30.700 (a) of this Chapter, all project expenditures by the grantee shall be deemed to include the Federal share.

(b) A grantee may not unilaterally reduce the non-Federal share of project costs. In the event of a significant proposed or actual reduction in the non-Federal contribution, the Regional Administrator must consider a reduction in the Federal share or an increase to the Federal percentage.

3. Sections 35.551 through 35.570 are revised as follows:

#### WATER POLLUTION CONTROL STATE AND INTERSTATE PROGRAM GRANTS

#### § 35.551 Scope and purpose.

This subpart establishes regulations containing policies and procedures by which program grant funds may be provided to State and interstate agencies as authorized by Section 106 of the Federal Water Pollution Control Act Amendments of 1972 (PL 92-500; 36 Stat. 816; 33 U.S.C. 1256). These regulations are intended to foster development of effective State programs which implement PL 92-500.

#### § 35.552 Definitions.

As used herein, the following words and terms shall have the meaning set forth below:

(a) The term "allotment" means the sum reserved for each State or interstate agency from funds appropriated by Congress. The allotment is determined by formula based on the extent of the water pollution problem in the several States. It represents the maximum amount of money potentially available to the State or interstate agency for its program grant.

(b) The term "State program grant" means the amount of Federal assistance awarded to a State or interstate agency to assist in administering approved programs for the prevention, reduction and elimination of water pollution.

(c) The term "State program" means the annual submission, including revisions, which describe the State or interstate agencies' planned activities to control water pollution in conformance with § 35.562.

(d) The term "number of pollution sources" means a count of the sources of discharge associated with any:

(1) One of the twenty-seven Standard Industrial Classification (SIC) codes listed in section 306(b)(1)(A) of the Act (the number of establishments are reported in the 1967 edition of "Census of Manufacturers," U.S. Department of Commerce);

(2) Municipality (as reported in the EPA Municipal Waste Facilities Directory, dated April 6, 1972);

(3) Power plant (Nuclear, oil, coal or gas) (as reported in "STEAM ELECTRIC PLANT FACTORS," NATIONAL COAL ASSOCIATION, 1971 edition);

(4) Feedlot (of more than 1000 head capacity) (as reported in "CATTLE ON FEED," U.S. Department of Agriculture, January, 1972).

(e) The term "Act" means the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1256 and 1361).

(f) The term "State agency" means that agency designated by the Governor to apply for and receive the State's program grant and responsible for coordinating the water quality control program or primarily responsible for coordinating implementation of the State water quality laws.

(g) The term "interstate agency" means that agency defined in section 502(2) of the Act which is determined eligible for receipt of a grant under these regulations by the Administrator.

(h) The term "reasonable cost" means the allowable costs (See § 30.705 of this chapter) up to a level of the annual allocation as determined by the Administrator, of developing and administering a water pollution control program by a State or interstate agency consistent with the intent and purposes of the Act.

(i) The term "recurrent expenditures" means those expenditures necessary for normal operations of the entity in the daily conduct of operations which would not be classed as unusual or extraordinary and would be expected to recur on a periodic basis. Recurrent expenditures would not include items such as procurement of real property, extraordinary equipment purchases, nor one time management studies.

#### § 35.553 State and interstate allotments.

(a) Funds appropriated for each fiscal year will be allocated to State and interstate agencies on the basis of the extent of the pollution problem. State allotment ratios are based on a count of pollution sources for each State compared to a count of pollution sources in the Nation. Interstate allotment ratios are based on the level of funding received in fiscal year 1973. The table below lists the allotment ratios for each State and interstate agency, which will be applied against the total sums available nationally to determine individual State and interstate agency allotments:

#### STATE ALLOTMENT RATIOS

Alabama	0.02732	New York	0.05653
Alaska	0.0311	North Carolina	0.03768
Arizona	0.00836	Ohio	0.03914
Arkansas	0.01517	North Dakota	0.0444
California	0.06044	Oklahoma	0.01136
Colorado	0.00963	Oregon	0.01681
Connecticut	0.01572	Pennsylvania	0.04593
Delaware	0.00867	Rhode Island	0.01071
District of Columbia	0.00855	South Carolina	0.02042
Florida	0.02644	South Dakota	0.00461
Georgia	0.03198	Tennessee	0.01856
Hawaii	0.00727	Texas	0.03791
Idaho	0.00799	Utah	0.00631
Illinois	0.03837	Vermont	0.00510
Indiana	0.02150	Virginia	0.02581
Iowa	0.01492	Washington	0.02197
Kansas	0.01082	West Virginia	0.01303
Kentucky	0.01509	Wisconsin	0.02907
Louisiana	0.01730	Wyoming	0.0033
Maine	0.01131	Am. Samoa	0.0016
Maryland	0.01731	Virgin Islands	0.00763
Massachusetts	0.02441	Guam	0.00760
Michigan	0.03672	Puerto Rico	0.01670
Minnesota	0.01923	Trust Territory	0.00346
Mississippi	0.01527		
Missouri	0.01809		
Montana	0.00704		
Nebraska	0.01180		
Nevada	0.00359		
New Hampshire	0.00697		
New Jersey	0.02810		
New Mexico	0.00593		

#### INTERSTATE ALLOTMENT RATIOS

ORRANCO	0.26231	INCOPT	0.11141
DRBC	0.17357	NEIWPC	0.17563
ISC	0.21346	SRBC	0.06379

(b) The amount of funds set aside for interstate commissions in a given fiscal year will be specified in EPA's annual Operating Guidance. The minimum level of funding for these commissions will be the level of fiscal year 1973 (\$1,022,400) unless the annual § 106 appropriation is less than the fiscal year 1973 level (\$40 million), in which case the total amount of funding for the commissions will be reduced by the proportional amount that the annual appropriation is reduced below \$40 million.

#### § 35.554 Regional allowances.

(a) Tentative Regional allocations or final Regional allowances will be the sum of the tentative or final State and interstate allotments within each EPA Region, calculated by applying the individual State and interstate agency allotment

ratios against the total sums available nationally.

(b) The Administrator will issue to each Regional Administrator, as a part of the EPA annual guidance, tentative Regional allocations and State and interstate agency allotments for the next fiscal year. These tentative allocations (planning targets) will be based on the amount of the appropriation requested by the President for the next fiscal year. The Regional Administrator shall notify each State and interstate agency of its tentative allotment for the next fiscal year as soon as practicable after receipt.

(c) As soon as practicable after funds are appropriated, the Administrator will issue to each Regional Administrator final Regional allowances for allotment from the funds appropriated for each fiscal year.

**§ 35.555 Determination of grant amount by Regional Administrator.**

(a) Each State and interstate agency shall receive a grant from its final allotment in an amount not to exceed the reasonable cost of carrying out its approved program.

(b) Should the Regional Administrator's evaluation of the State program submission reveal that the output commitment is not consistent with the level of funding requested and/or the national priorities contained in the EPA annual guidance, he shall negotiate with the agency to change the output commitment or to reduce the grant amount. However, should a State or interstate agency propose a different set of outputs than suggested in the EPA annual guidance due to unique regional or Statewide pollution problems, the Regional Administrator may approve the State program provided he determines the outputs can and should be produced and the proposed funding is appropriate.

(c) At the end of each program year, unobligated funds will be reissued as carryover funds to the same Region and will in effect remain with that Region for reallocation to State and interstate agencies within that Region as determined by the Regional Administrator.

**§ 35.556 Reduction of grant amount.**

(a) In the event a State or interstate agency fails to submit its final program on or before the dates specified in § 35.562(b), the grant amount may be reduced by one-twelfth of the agency's available allotment for each full month's delay.

(b) If the Regional Administrator's program evaluation reveals that the grantee will not achieve or has not achieved the outputs specified in the approved program, an effort should be made to resolve the situation through mutual agreement by amending the approved program. If mutual agreement is not feasible the Regional Administrator may reduce the grant amount in proportion to the estimated program cost to produce such outputs pursuant to § 30.920 of this chapter.

(c) Funds recovered pursuant to § 35.556 (a) or (b) or § 35.559 will be

available for reallocation to other State and interstate agencies within the Region by the Regional Administrator.

**§ 35.557 Grant amount limitation and duration.**

Following approval of the State program by the Regional Administrator, the budget period of the grant shall be the entire Federal fiscal year and Federal assistance shall not exceed the final allotment limits determined pursuant to § 35.554(c) plus sums made available pursuant to provisions of § 35.555(c), § 35.556(c) and § 35.559.

**§ 35.558 Eligibility.**

A grant may be awarded to a State or interstate water pollution control agency provided the agency has submitted a grant application pursuant to § 35.562(b) and such program satisfies the requirements of this Chapter and has been approved by the Regional Administrator.

**§ 35.559 Limitations on award.**

(a) No grant shall be made under these regulations to any State or interstate agency for any fiscal year unless the agency has certified that the expenditures of non-Federal funds by such State or interstate agency during each fiscal year for the recurrent program expenditures for carrying out its water pollution control program are not less than the expenditures by such State or interstate agency of non-Federal funds for recurrent program expenditures during the fiscal year ending June 30, 1971 or the last year of Federal support if such Federal support was initiated subsequent to the fiscal year ending June 30, 1971.

(b) No grant shall be made under these regulations to any State which has not provided or is not carrying out as part of its program:

(1) The establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, and to compile and analyze data on (including classification according to eutrophic condition) the quality of navigable waters and to the extent practicable, ground waters including biological monitoring; and provision for annually updating such data and including it in the report required under Section 305(b) of the Act. (Appendix A sets forth the minimum requirements for an acceptable monitoring strategy under the Act.)

(2) Authority comparable to that in Section 504 of the Act, "Emergency Powers," and adequate contingency plans to implement such authority.

**§ 35.560 State strategy formulation and program development.**

(a) The annual State strategy is an important and integral part of the State program. Each State shall prepare and update annually, pursuant to the approved State continuing planning process (See 40 CFR Part 130), a State strategy for preventing and controlling water pollution over a five year period and shall include the State strategy in the State program submission in accordance with § 35.562. The contents of the

required State strategy are delineated in § 130.20 of this Chapter.

**NOTE:** The monitoring strategy described in Appendix A herein shall be part of and consistent with the State strategy.

(b) Each State shall develop, in consultation with the Regional Administrator, an annual program based on its strategy in accordance with § 35.562(a). Interstate agencies shall develop in consultation with the Regional Administrator, an annual program based on the strategies and programs of those States served by the interstate agencies. The objective of program development is to relate available resources—both Federal and non-Federal—to the outputs to be achieved.

**§ 35.561 Major program elements and outputs.**

(a) The major program elements to be included, as applicable, in each State program are:

- (1) Municipal facilities construction.
- (2) Point source permits.
- (3) Non-point source management activities.
- (4) Water quality management planning (to include water quality standards).
- (5) Monitoring (to include ambient and effluent monitoring).
- (6) Enforcement (to include compliance assurance activities).
- (7) Training and facilities operation and maintenance.
- (8) Public participation.
- (9) Administration.

(b) The State program shall identify the specific outputs to be produced by each program element for the year. A listing of required outputs for each program element will be included in EPA's annual guidance pursuant to § 35.404.

**§ 35.562 State program submission.**

Each State and interstate agency shall submit to the Regional Administrator:

(a) An initial program by May 1 for each year consisting of:

(1) The State strategy, described in § 130.20 of this Chapter for the coming year.

(2) A description by program element of the work to be conducted, including the work, if any, to be funded under Section 208(f) of the Act (See § 35.220-2). The program description shall consist of:

(i) A summary of the current year's program;

(ii) A description of the work to be performed (including an identification of person-years to be expended), and its relationship to the State strategy;

(iii) The expected outputs to be achieved;

(iv) An identification of all general operating funds, both Federal and non-Federal, which the State anticipates receiving during the fiscal year for use by the State agency in achieving the expected outputs. Each major State revenue source (for example general State revenue funds, State fees, Federal grants

or contracts and other sources of funding shall be identified.

(3) Changes in the State continuing planning process made pursuant to § 130.40 of this Chapter.

(4) Changes in the State priority system, described in § 35.915(a) of this Chapter, including the criteria used by the State in determining priority for construction grant projects pursuant to § 35.915(c)(1).

**NOTE:** The State priority system may be amended by a State, as necessary at any time, provided the Regional Administrator approves each revision.

(5) A preliminary State project priority list pursuant to § 35.563(a).

(b) A final program (grant application) by September 1 for each fiscal year consisting of the initial program (not including the final State project priority list to be submitted pursuant to § 35.563(b)) described in § 35.562(a), modified as appropriate to reflect the results of public participation, and comments of the Regional Administrator. In addition, pursuant to the requirements of § 30.305 of this Chapter, the final program shall incorporate comments received through the State office with clearinghouse responsibilities.

**§ 35.563 State project priority list submission.**

(a) Each State shall submit to the Regional Administrator a preliminary State project priority list described in § 35.915(c) by May 1 of each year as part of the initial program submission (See § 35.562(a)).

(b) Each State shall submit to the Regional Administrator a final State project priority list by July 15 for his approval which reflects the results of public participation and comments of the Regional Administrator.

**NOTE:** The State project priority list may be amended by a State, as necessary, at any time pursuant to § 35.915(f).

**§ 35.564 Public participation.**

The final State program submission described in § 35.562 shall be the subject of public participation pursuant to 40 CFR Part 105 and in accordance with any time schedules and procedures agreed upon by the Regional Administrator and the State or Interstate agency prior to initiation of development of the State strategy and program.

**§ 35.565 Program approval.**

(a) The Regional Administrator shall review the initial program submission and provide written comments to the State within thirty calendar days of its receipt.

(b) The Regional Administrator shall approve, conditionally approve or disapprove a final State program submission within thirty calendar days of its receipt, notwithstanding the provisions of § 30.345 of this Chapter. Such program shall be approved only if the program is in compliance with the requirements set forth in the Act and this Chapter.

(c) The Regional Administrator may award a grant based on conditional ap-

proval of a State program which requires minor changes to qualify for approval. In the event conditional approval is granted, the Regional Administrator shall provide the State with an explicit statement regarding the deficiency found in the State program submission and include, as a part of the grant award, a statement of the conditions which must be met to secure final approval and the date by which such conditions shall be met. Non-compliance with such conditions may result in a reduction in the grant amount as reflected in the grant agreement.

(d) Approval of the State program submission shall be reflected by execution of the grant agreement.

**§ 35.566 State project priority list approval.**

(a) The Regional Administrator shall review the preliminary project priority list submission and provide written comments to the State within thirty calendar days of its receipt.

(b) The Regional Administrator shall approve or disapprove a final project priority list submission within thirty calendar days of its receipt. Such lists shall be approved only if it is in compliance with the requirements set forth in the Act and with § 35.915(c) of this Chapter.

**NOTE:** The State priority system described in § 35.915(a) and the project list described in § 35.915(c) may not be conditionally approved.

(c) The Regional Administrator shall approve or disapprove any amendment to the State priority system and project priority list within thirty calendar days of the date of receipt. If either is disapproved, the Regional Administrator shall detail to the State the specific reasons for disapproval.

**§ 35.567 Grant conditions.**

In addition to the requirements set forth in Part 30 of this Chapter, each grant for a State water pollution control program shall be subject to the following condition:

The Regional Administrator may unilaterally suspend or terminate this grant pursuant to 40 CFR Parts 30 and 35 where Federally assumed enforcement as defined in section 309(a)(2) of the Act is in effect.

**§ 35.568 Adherence to budget estimates.**

Grantee expenditures shall be consistent with the resource estimates contained in the approved State program. In the event that rebudgeting of funds among program elements becomes necessary, the provisions of § 30.610 of this Chapter shall be applied.

**§ 35.569 Program changes.**

The grantee shall conduct its program in a manner consistent with the approved State program. In the event that changes to the approved State program become necessary, such changes shall be made in accordance with § 30.900 of this Chapter.

**§ 35.570 Program evaluation and reporting.**

Program evaluation is primarily a State and Interstate agency responsibility

and should be conducted periodically throughout the program year. It is EPA policy to limit evaluation to that which is necessary for responsible management of the national effort to control water pollution. Therefore, joint Federal/State evaluations are decentralized to the Regional level. Each Regional Administrator shall review and evaluate State and Interstate programs at least twice each year as follows:

(a) *Mid-year evaluation.* By May 1 of each year, the Regional Administrator shall conduct a joint on-site evaluation meeting with the appropriate State and Interstate agency officials to review and evaluate the program accomplishments of the current budget period pursuant to § 35.410.

(b) *End-of-Year-Review.* The Regional Administrator should conduct an evaluation meeting with appropriate State and Interstate agency officials to review the accomplishments of the program year and the accomplishments projected for the coming year. This review is essential to program approval pursuant to § 35.565.

#### APPENDIX A—WATER QUALITY AND POLLUTANT SOURCE MONITORING

##### A. PURPOSE

This Appendix sets forth the description of the minimum acceptable State monitoring strategy and program required by § 35.559(b)(1), pursuant to Section 106(e)(1) of the Act.

##### B. OBJECTIVES AND GENERAL REQUIREMENTS

The objectives of the State monitoring program required by the Act are provision of the data, information, or reports necessary to determine compliance with permit terms and conditions, to develop and maintain an understanding of the quality (and causes and effects of such quality) of the waters in the State for the purpose of supporting State water pollution control activities in relation to the achievement of National goals according to the Act, to report on such quality and its causes and effects, and to assess the effectiveness of the State's pollution control program. To this end each State shall establish and maintain the capacity and competence to carry out a broad range of monitoring activities both before and after implementing pollution controls, including measurement of pollutant sources, water quality (physical, chemical, and biological), the factors affecting water quality, and the specific effects of such quality upon beneficial uses of the State's waters. Conduct of such monitoring programs and activities shall be carried out according to normally accepted practices consistent with practices promulgated or otherwise issued by the Administrator in the form of regulations, guidelines, technical manuals and handbooks, or other guidance which from time to time may be published and revised or amended.

##### C. DEFINITIONS

As used in this Appendix, the following terms shall have the meaning set forth below:

- (1) The definitions of the following terms contained in Section 502 of the Act shall be applicable to such terms as used herein unless the context requires otherwise: "State water pollution control agency," "State," "interstate agency," "pollutant," "biological monitoring," "discharge," and "pollution."
- (2) The term "parameter" means a quantitative or characteristic element which de-



scribes physical, chemical, or biological conditions of water.

(3) The term "representative point" means:

(a) A location in surface waters or ground waters at which specific conditions or parameters may be measured in such a manner as to characterize or approximate the quality or condition of the water body; or

(b) A location in process or waste waters at which specific conditions or parameters are measured and will adequately reflect the actual condition of those waters or waste waters for which analysis was made.

(4) The term "NPDES" means the National Pollutant Discharge Elimination System which is the national permitting system authorized under Section 402 of the Act, including any State or interstate permit program approved by the Administrator pursuant to Section 402 of the Act.

(5) The term "compliance monitoring" means measuring and analyzing pollutant sources, review of reports and information obtained from dischargers, and all other activities conducted by the State to verify compliance with effluent limits and compliance schedules.

(6) The term "intensive survey" means the frequent sampling or measurement of parameters at representative points for a relatively short period of time to determine water quality conditions, causes, effects, or cause and effect relationships of such conditions.

(7) The term "fixed station monitoring" means the repeated, long-term sampling or measurement of parameters at representative points for the purpose of determining water quality trends and characteristics.

(8) The term "State continuing planning process or planning process" means the continuing planning process required by Section 303(e) of the Act, as developed and approved pursuant to 40 CFR Part 130.

(9) The term "monitoring activity" includes but is not limited to, the following: the collection of samples, including preservation and transport, and the collection of information concerning the quality or condition of ambient waters, including ground waters, or aquatic biota; the collection of samples, including preservation and transport, and the collection of information concerning the physical, chemical, or biological character of waste discharges to ambient waters, including ground waters; the operation and maintenance of field and laboratory support facilities including approved quality assurance practices; the processing, analysis, interpretation, and reporting of resulting data and information; and the management of such activities in terms of staffing, funding, scheduling, and coordination with other agencies, including other State, interstate, Federal, local, and private entities or agencies.

(10) The term "monitoring program" includes, but is not limited to the monitoring activities described in (9) above applied in support of the State's water pollution control program.

#### D. MONITORING STRATEGY

The State shall develop, maintain, and implement a Statewide monitoring strategy as part of, and consistent with, the overall State strategy for preventing and controlling water pollution (described in § 130.20 of this chapter). The monitoring strategy, or revisions thereof, shall conform with the requirements of this Appendix and shall be included as a part of the State strategy required pursuant to § 36.562(a)(1), and shall:

(1) Describe the rationale by which the

data needs of the State's water pollution control program are identified and prioritized;

(2) Describe the present and projected monitoring activities being carried out by the State as well as those being carried out by other entities insofar as the State relies or intends to rely upon them to satisfy the monitoring needs of the State's water pollution control program; and

(3) Describe the plan to progress systematically toward development of the capacity and competencies necessary to satisfy fully the monitoring needs of the State's water pollution control program; set the priorities for satisfaction of such monitoring needs, and describe generally what will be done in each of the monitoring activities for the next fiscal year.

#### E. PROGRAM ACCOMPLISHMENT PLANNING AND REVIEW

The States shall develop and include as a part of its State program submission required pursuant to § 35.562(a):

(1) Estimates of expenditures in terms of percentage of the total water monitoring budget for each of the monitoring program activities of field sampling, laboratory analysis including quality assurance, data handling, interpretation and reporting, and program management.

(2) Estimates of expenditures in terms of percentages of the total water monitoring budget for each monitoring program component described in Paragraph G herein.

#### F. COORDINATION WITH OTHER ENTITIES

Insofar as monitoring activities by other agents, including other State, interstate, Federal, local, or private entities or agencies, meet the laboratory support and quality assurance requirements set forth in this Appendix, and where sampling frequency, parameter coverage, station locations, and data availability meet pollution control program requirements, such activities should be integrated into the State's water monitoring program and, when approved by the Regional Administrator, will aid in satisfying the monitoring needs of the State's water pollution control program.

#### G. COMPONENTS OF THE STATE'S WATER MONITORING PROGRAM

The water monitoring program of the State shall include, but is not limited to, the following components:

(1) Compliance monitoring in accordance with 40 CFR Part 124 Subpart G and 40 CFR Part 125.27 of this Chapter.

(2) Intensive surveys of surface waters.

(3) Fixed station monitoring at representative points in surface waters.

#### H. LABORATORY SUPPORT AND QUALITY ASSURANCE

The State water monitoring program shall produce valid data and information. The State shall ensure that the monitoring program is staffed, equipped, maintained, and operated in a manner to support the activities of the State or interstate pollution abatement program.

Quality assurance procedures shall be adopted as an integral part of the monitoring program and shall be described in the monitoring strategy required in Paragraph D of this Appendix.

Specific requirements for field and laboratory procedures are:

(1) For the NPDES program and where else appropriate, sample collection, preservation, transportation and laboratory analysis shall be in compliance with 40 CFR Part 136, promulgated pursuant to Section 304(g) of the Act.

(2) Unless otherwise specifically authorized by the Regional Administrator, physical, chemical, biological, and microbiological parameters not identified in 40 CFR Part 136 shall be analyzed in accordance with those generally accepted methods cited in the latest editions of the following references:

(a) *Standard Methods for the Examination of Water and Wastewater*, American Public Health Assn., American Water Well Assn., Water Pollution Control Federation, Published by APHA, 1940 Broadway, New York, New York, 1972.

(b) *Annual Book of Standards, Part 23, Water; Atmospheric Analysis*, Published by American Society for Testing and Materials, Philadelphia, Pa., 1973.

(c) *Methods for Chemical Analysis of Water and Wastes*, U.S. Environmental Protection Agency, Methods Development and Quality Assurance Research Laboratory, and National Environmental Research Laboratory, Cincinnati, Ohio, July, 1973.

(d) *Biological Field and Laboratory Methods for Measuring the Quality of Surface Waters and Effluents*, U.S. Environmental Protection Agency, Methods Development and Quality Assurance Research Laboratory, Cincinnati, Ohio, July, 1973.

(e) *Recommended Methods for Water Data Acquisition*, Office of Water Data Coordination, U.S. Department of Interior, Washington, D.C., December, 1972.

(f) *Methods for Collection and Analysis of Water Samples for Dissolved Minerals and Gases*, U.S. Geological Survey, U.S. Department of the Interior, Eugene Brown, M. W. Skougstad, and M. J. Fishman, Washington, D.C. 1970, (U.S. Government Printing Office).

(g) *Methods for Collection and Analysis of Aquatic Biological and Microbiological Samples*, U.S. Geological Survey, U.S. Department of the Interior, E. V. Slack, R. C. Averett, P. E. Greeson, and R. J. Lipcombs, Washington, D.C., 1973.

(h) *Methods for Organic Pesticides in Water and Wastewater*, U.S. Environmental Protection Agency, James J. Lichtenberg, National Environmental Research Center, Cincinnati, Ohio, 1971.

(i) *Methods for Analysis of Organic Substances in Water*, U.S. Geological Survey, U.S. Department of the Interior, Washington, D.C.

(3) If a State wishes to use an analytical method or procedure not cited in either 40 CFR Part 136 or the references listed in subparagraph (2) above, the State shall submit an application to the Regional Administrator for approval pursuant to § 136.5 of this Chapter. Such applications shall include a description of proposed alternative analytical method or procedure together with the reason(s) for seeking to use a method other than according to Subparagraph (1) or (2) above, and a description of the uses to which the data and information collected using such method will be put.

(4) All participating laboratories shall routinely utilize and document intralaboratory analytical quality control procedures including a combination of techniques such as: spiked sample recovery, replicate sample analyses, and reference sample analyses in a manner required by the Regional Administrator. The operation of such intralaboratory analytical quality control activities shall be consistent with practices recommended in the latest edition of EPA's *Handbook for Analytical Quality Control in Water and Wastewater Laboratories*, or other practices as authorized by the Regional Administrator. The laboratories shall participate in and document interlaboratory testing programs, including sample splitting between State monitoring support laboratories and EPA laboratories as required by the Regional Administrator.



## RULES AND REGULATIONS

(5) The State shall make all field operations, monitoring support laboratories, laboratory data records, and records indicating laboratory techniques and quality control procedures used open to EPA review pursuant to the access provisions of 40 CFR Part 30.

## I. DATA HANDLING, STORAGE, AND REPORTING

Data and information resulting from the State's water monitoring program shall be made available to EPA in a form, volume, and manner agreed upon by the State and Regional Administrator.

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