

Minnesota Attorney General: Administrative Rules Proceedings

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METROPOLITAN
WASTE CONTROL
COMMISSION
of the Twin Cities Area

INDUSTRIAL COST RECOVERY SYSTEM

1977

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September 23, 1977

Metropolitan Waste Control Commission
350 Metro Square Building
St. Paul, MN 55101

Attention: Mr. Richard J. Dougherty
Chief Administrator

Gentlemen:

Submitted herewith is the report entitled, Industrial Cost Recovery System, Metropolitan Waste Control Commission, 1977.

This document has been prepared in accordance with our Contract No. 413 and conforms to the requirements of Public Law 92-500 and follows the federal guidelines as established by the Environmental Protection Agency.

Appreciation is herewith acknowledged to members of your staff for information, assistance and courtesies extended during the preparation of this report. Special thanks are extended to Dr. Walter K. Johnson and Donald R. Madore, Director and Deputy Director of Quality Control for their contributions.

Respectfully submitted,

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Enclosure

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METROPOLITAN WASTE CONTROL COMMISSION

INDUSTRIAL COST RECOVERY SYSTEM

- INTRODUCTION -

The Metropolitan Waste Control Commission (MWCC) was created in 1969 as the Metropolitan Sewer Board through enactment of the Metropolitan Sewer Act, Minnesota Session Laws, Chapter 473C. The legislature at that time determined that the serious water pollution and sewage disposal problems within the seven county, 3000 square mile metropolitan area could not be effectively or economically dealt with by the existing local government units. In order to protect the public health, safety, and welfare of the area, to preserve and best use the waters and natural resources within the area, and to prevent, control, and abate water pollution through efficient and economic collection, treatment and disposal of wastewaters, it was determined that the legislature establish a sewer service board, which, together with the Metropolitan Council, could assume the responsibility of acquiring, constructing, operating and maintaining all interceptors and treatment works necessary for the collection, treatment and disposal of sewage in the seven county metropolitan area. Six (6) Sewer Service Areas were established to serve the urbanized portion of the seven counties with each of the Service Areas served by a metropolitan interceptor or group of interceptors.

After six years of operating the regional wastewater control system of the Twin Cities Area, the Commission has achieved substantial progress in meeting the objectives set forth in the 1969 legislative mandate. The original thirty-three (33) wastewater treatment plants acquired during 1970 have now been

reduced to nineteen (19) operational treatment facilities through planned capital improvement programs which have resulted in dramatic improvements to the regional water pollution control system. Included in that disposal system are a total of approximately four hundred fifty (450) miles of metropolitan interceptor sewers together with numerous support facilities. The metropolitan interceptor system presently serves nearly 5000 miles of locally-owned sewers by treating an estimated 1977 total flow of 95,100 million gallons of wastewater from 100 municipalities.

The Commission was able to initiate and carry out its progressive program by qualifying for, and receiving, substantial Federal and State grants for capital construction projects. However, with passage of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500 (PL 92-500), it is now obligatory that the Commission adopt and establish user strength charge and industrial cost recovery systems in order to establish eligibility for treatment works and associated facilities construction grants.

- STATUTORY AND LEGAL CONSIDERATIONS -

Regulations embodied within PL 92-500 require that procedures for the establishment of an Industrial Cost Recovery (ICR) System to recover an industrial user's share of the capital costs of a federal grant award must be considered separately from that required to meet operation and maintenance costs recovered through a User Strength Charge (USC) System. The Commission's User Strength Charge System was implemented on January 1, 1977 throughout the seven county metropolitan area.

Section 204(b)(1)(B) of PL 92-500 further requires that industrial users of the treatment works make payments for "that portion of the cost of construction

of such treatment works (as determined by the Administrator) which is allocable to the treatment of such industrial wastes to the extent attributable to the federal share of the cost of construction." The congressional intent of such provision was that "it is inappropriate in a large Federal grant program providing a high percentage of construction funds to subsidize industrial users from funds provided by taxpayers at large" (legislative history).

Rules and regulations covering the industrial cost recovery intent of PL 92-500 were implemented in the Code of Federal Regulations at 40 CFR Part 35, Subpart E, promulgated by the Environmental Protection Agency (EPA) on February 11, 1974.

In summary, Section 204(b)(1)(B) of PL 92-500 prohibits the EPA from approving a construction grant after March 1, 1973, unless the grant applicant has made provision for repayment by the industrial users of the treatment works, of that portion of the Federal grant which is allocable to the construction of facilities for treatment of wastes from those users.

The Commission is expressly authorized pursuant to Minnesota Statutes, Section 473.504, Subdivision 5, with the consent of the Metropolitan Council, to comply with the provisions of PL 92-500. Metropolitan Council action of December 9, 1976 provided such consent approval with respect to the Commission's Strength Charge System.

- DEFINITIONS: Used in MWCC ICR System -

Definitions of terminology used in the MWCC ICR System have the meanings given them within the context of the Commission's "Rules and Regulations For The

Metropolitan Disposal System" plus those codified in Title 40 CFR, part 35, of PL 92-500 as follows:

1) Industrial User - "Any nongovernmental user of publicly owned treatment works identified in the Standard Industrial Classification (SIC) Manual, 1972, Office of Management and Budget, as amended and supplemented, under the following divisions:

   a) Division A. Agriculture, Forestry, and Fishing
   b) Division B. Mining
   c) Division D. Manufacturing
   d) Division E. Transportation, Communications, Electric, Gas, and Sanitary Services
   e) Division I. Services"

   A user in the Divisions listed may be excluded if it is determined that it will introduce primarily segregated domestic wastes or wastes from sanitary conveniences.

2) Industrial Cost Recovery - "Recovery by the grantee from the industrial users of a treatment works of the grant amount allocable to the treatment of wastes from such users pursuant to section 204(b) of the Act ----------."

3) Industrial Cost Recovery Period - "That period during which the grant amount allocable to the treatment of wastes from industrial users is recovered from the industrial users of such works."

- PENALTIES FOR NON-COMPLIANCE -

Pursuant to 40 CFR 35.935-13(c) compliance with an approved ICR system is a fundamental condition of the Federal grant award. If the grantee fails to implement and maintain an approved ICR system, the EPA Regional Administrator will take appropriate action, which may include (1) withholding of grant funds for current projects, (2) determination of non-responsibility for purpose of future grants, and (3) seeking a judicial remedy such as a suit for recovery of funds already granted, criminal prosecution, or other appropriate action.

Inasmuch as the Commission's capital improvements program is presently inclusive of construction projects totaling an estimated 260 million dollars in federal grant monies under PL 92-500, the Commission is obligated to meet all of the requirements and provisions with respect to grant conditions. For the Commission to ignore the availability and use of these grant monies would be detrimental to and inconsistent with its responsibilities for providing this metropolitan area with an economically sound regional wastewater treatment system for the protection of the public health, safety, and welfare of the area. In essence, the citizens of the metropolitan area could not afford to pay for this regional wastewater treatment system without the benefit of federal grants.

- MWCC INDUSTRIAL WASTE SECTION -

The MWCC Industrial Waste Section activities were first developed late in 1972 as a function of the Quality Control Department. The primary purpose was for the accumulation of program and data support for development of User Strength Charge and Industrial Cost Recovery Systems in accordance with the then enacted PL 92-500. The initial phases of these programs included the

registration and data reporting of the many companies located in the metropolitan area then connected to the Metropolitan Disposal System (MDS). A total list of 3,148 companies have been currently registered and comprise virtually every SIC code included in EPA's definition of an industrial user. Many of these industrial users will not be chargeable under application of the Commission's ICR System.

It is expected that with the establishment of approved UCS and ICR systems industrial users of the MDS will be alerted to the needs for water reuse or recycling, wastewater pretreatment practices, and a necessity to institute process or housekeeping improvements in order to modify discharges so as to result in a reduction or possible elimination of solids and organics loadings to the disposal system. Attainment of such objectives could provide increased reserve capacities in the disposal system and possibly delay the time period involved in future treatment facilities expansions.

- INDUSTRIAL COST RECOVERY SYSTEM -

The first determination made in the development of the ICR program was that the Commission's system-wide cost allocation procedures should be followed in a similar manner as that used with respect to its operation, maintenance, user charge, debt service, and strength charge programs. In other words, since costs to each user of the Metropolitan Disposal System are allocated on a system-wide approach, then to be consistent the Commission must allocate the ICR on the same cost allocation principle. The location of the user, whether residential or industrial, is not a factor in determining costs; i.e., the users can be served by any one of the existing 20 wastewater treatment plants and their share of the capital cost is uniform. The basic assumptions for a regional system are that all users uniformly benefit from the system's capital improvements and all users share uniformly in the capital costs of such improvements, including economies of scale.

Decisions regarding the planning, financing, construction and operation of the system are made systemwide based on cost-effectiveness and environmental compatibility. Each treatment works and interceptor is part of an integrated regional system, and each new capital project is reviewed, not as a separate project but as an addition or modification to the system. The present method for allocating the capital costs results in a uniform distribution of these costs on a systemwide basis. ICR is only one additional cost factor for recovery of capital costs from a particular class of users of the system.

Sections 201 and 208 of Public Law 92-500 require regional planning, financing and management of wastewater treatment plants. Application of ICR is compatible with these requirements for the following reasons:

1) Application of ICR on anything less than the system-wide basis would create cost inequities between industrial users of the system. An industrial user would contribute to many, or perhaps no, federally granted projects, depending on the user's location in the system. Consequently, similar industrial users could have significantly different costs, with location being the only variable.

2) Flexibility in planning and management of the regional system would be reduced substantially by the application of ICR on less than a system-wide basis. The revision of service areas for treatment works and interceptors would be influenced by the impact of ICR on individual industrial users rather than on the basis of the best planning and management practices for the entire regional system.

3) The concept of ICR on less than a system-wide basis is contrary to the uniform user charge systems required by EPA regulations. This inconsistency would result in applying different charges in different parts of the system. Regional systems are based on applying economies of scale to all users on a uniform basis. The application of ICR on less than a system-wide basis would violate this concept.

4) The Metropolitan Disposal System is a regional system, and this system is being further integrated by the elimination of small treatment plants and consolidation of the system into larger treatment plants. Joint laboratory facilities provide services to all treatment plants. Maintenance for interceptors and treatment plants is provided by centralized regional facilities and personnel. Sludge is moved from one treatment plant site to another plant for further processing prior

to ultimate disposal. All of these factors contribute to a single regional treatment system.

On a system-wide basis the ICR would require one allocation each year to all industrial users discharging to the system. Each industrial user would be uniformly allocated its share of ICR in the same manner as that for other capital, operating, replacement and maintenance costs of the system. Therefore, ICR will be implemented on a system-wide basis in order to conform to the Commission's enabling legislation for the allocation of other use and reserve capacity costs.

In the formulation of the MWCC ICR system the most basic consideration was that the method of allocating ICR to industrial users fit into the present MWCC cost allocation system. In other words, a cost pool must be established and broken down into a present use cost pool; the user's share of the present use cost pool is then determined by that user's actual loading on the system in relation to the total actual use of the system.

Under the present cost allocation system, costs are allocated to users in proportion to the total volume estimated to be discharged by each user; however provision exists to adjust the user's volume to take into account higher than normal strength wastes which requires more than normal treatment. In fitting the ICR system into the present cost allocation system, several considerations were used.

Design Capacity

The design capacity of the Metropolitan Disposal System (MDS) must be determined in terms of hydraulic (volume), organics (COD or BOD) and

solids (SS). The capacity for which the MDS is designed, and for which construction projects are underway, is the following:

Hydraulic (volume)	127,000 Million Gallons per Year or 348 Million Gallons per Day (MGD)
Organics (COD)	1,868,000 Pounds per Day or 643 mg/l
Solids (SS)	936,000 Pounds per Day or 322 mg/l

Present Use

The present actual usage of the MDS must be determined. The MWCC estimates and continuously meters the actual waste volumes received at each of the wastewater treatment plants in the MDS. Therefore, the actual usage of the MDS is determined each and every year.

Industrial Users

The identification of industrial users is handled through the MWCC industrial waste registration program as discussed earlier. Classification of industrial users registered with the MWCC will be handled in accordance with EPA regulations. Appendix C is a listing of all SIC codes falling under the EPA definition of industrial users.

Industrial User Loading

The actual loading of an industrial user on the MDS is handled through the MWCC industrial waste routine reporting program as discussed earlier. In accordance with existing Commission rules and regulations, industrial users are required to submit quarterly or semi-annual reports to the MWCC on the quality and quantity of wastes discharged to the sewer system. These reports are used to determine an industrial user's actual loading on the MDS each year.

Credits

EPA regulations (40 CFR 35.905-8) state, in the definition of an industrial user, that "a user in the Divisions listed may be excluded if it is determined that it will introduce primarily segregated domestic wastes or wastes from sanitary conveniences." It should be noted that the wording of the regulation is open for interpretation, but it does allow the MWCC, as grantee and developer of the ICR System, the flexibility of establishing credits for non-process wastes.

Considering the intent of EPA regulations that ICR payments be based on waste other than normal sanitary waste from employees, industrial users subject to the ICR System should receive an offsetting credit for the waste flow and strength contributed by their employees. It has been MWCC staff experience to estimate employee contribution at 20 gallons per employee per operating day (ged). It is therefore the intention for ICR purposes that employee sanitary waste contribution be calculated based on this 20 ged and a waste strength equivalent to the system average. However, if an industrial user can establish, to the satisfaction of the MWCC staff, that the actual employee waste volume and strength is different for that industrial user, it follows that the actual employee contributions so established should be used.

Eligible Federal Grant Pool

Each project assisted by a federal grant under Public Law 92-500 must be reviewed on an individual basis; the capital cost share of each treatment works component in relation to the principal parameters which

influence the project's cost of construction must be determined. Generally these parameters include, but are not limited to, volume of flow (V), biochemical oxygen demand (BOD) or chemical oxygen demand (COD), and suspended solids (SS). In other words, MWCC must break apart each federal grant into portions attributable to V, COD and SS. This is done on the basis of long-time experience in the field of wastewater treatment and is subjective by nature.

To elaborate on the procedures for the parameter allocations, interceptors and other projects not designed specifically to treat organics and/or solids must be allocated entirely to volume. Other projects, such as aeration tanks, are designed to handle organics and solids, but hydraulic considerations also influence the sizing of units and hence the capital costs. In that case, an experienced judgement must be made to allocate grant shares to all 3 parameters. For still other projects, such as incineration, facilities are designed to handle solids, but during the treatment process a portion of the dissolved organics are converted to solids and require handling. In that case, an experienced judgment must be made to allocate grant shares to the COD and SS parameters.

Each federal grant project is also reviewed regarding adjustment of grant awards associated with the projects designed and constructed with significant provision for treatment of stormwaters originating from the combined sewer systems of the MDS tributary area. Costs associated with handling stormwaters should be, and are, eligible exclusions from application of an ICR system.

The computations for the determination of the adjustment factor to be used with grant awards that include facilities to collect and treat stormwaters at the Metro Plant were furnished by Toltz, King, Duvall, Anderson and Associates, consultants on the design of the expansion of the Metro Plant. The design maximum day flow of 347 MGD is the 24-hour maximum flow through the new facility under dry weather conditions. The design peak flow of 435 MGD is the sustained design maximum flow through the new facility which would occur under storm flow conditions. The proportional design capacity for the treatment of storm water is $\frac{435-347}{435}$ or 20.23% of the grant award. Therefore, the total grant awards for Metro Plant projects should be adjusted by 20.23%; i.e., 79.77% of grant awards should be assigned to the ICR pool for those Metro Plant projects so involved.

In addition, the federal grant pool must be divided between current use and unused (reserve) pools. The reserve pool is not applicable to ICR; these costs are reserved for future users of the MDS, and present industrial users should not be liable for costs associated with providing reserve capacity. The current use portion, already adjusted for storm water considerations where applicable, is the eligible federal grant pool.

Finally, an ICR System must consider the federal regulations 40 CFR 35.928-1(d), which states that as a minimum, an industrial user's share shall be proportional to its flow, in relation to treatment works flow capacity. In essence, this requirement prevents the MWCC from allowing credits for less than design strengths.

Based upon the foregoing considerations, the following formulae are intended to be implemented to calculate ICR payments under the ICR System:

$$V_e = V_i + V_i \left[\left(\frac{COD_i - COD_d}{COD_d} \right) \frac{G_{cod}}{G_a} + \left(\frac{SS_i - SS_d}{SS_d} \right) \frac{G_{ss}}{G_a} \right]$$

and,

$$\frac{V_e}{V_t} \times \frac{G_t}{U} = \text{ICR Annual Payment}$$

where:

V_e = Equivalent volume loading capacity of industrial user's discharge on disposal system in million gallons per day (MGD)

V_i = Volume of industrial user's discharge in million gallons per day (MGD)

COD_i = Chemical Oxygen Demand Concentration, in mg/l, of industrial user's discharge ($COD_i \geq COD_d$).

COD_d = Chemical Oxygen Demand Concentration, in mg/l, of MDS design loadings.

SS_i = Suspended Solids Concentration, in mg/l, of industrial user's discharge ($SS_i \geq SS_d$).

SS_d = Suspended Solids Concentration, in mg/l, of MDS design loadings.

G_a = Grant awards, in dollars, adjusted for stormwater collection and treatment.

G_{cod} = COD related share of adjusted Federal grant awards, in dollars.

G_{ss} = SS related share of adjusted Federal grant awards, in dollars.

V_t = Current year hydraulic loading of MDS, in million gallons per day (MGD)

G_t = ICR eligible grant pool, in dollars. (Federal grant awards in dollars, adjusted for stormwater treatment and unused MDS capacity).

U = Industrial cost recovery period, in years, as useful life of facility.

- APPLICATION OF ICR SYSTEM -

Table I represents a summary of the MWCC projects that will be completed during 1977 and therefore will comprise the ICR pool for the year 1978. The second column indicates the federal grants received by MWCC for each project, and the third column indicates the federal grant adjusted for projects designed in part to handle storm waters. The last three columns summarize the adjusted grant amounts allocated between volume, organics and solids.

Considering that each of the projects in Table I have a useful life of greater than 30 years, and using the estimated 1978 MDS waste volume received of 251 MGD, the ICR formulae can be estimated.

MDS design capacity	=	348 MGD
1978 estimated volume to MDS	=	251 MGD
Unused capacity	=	97 MGD

Therefore, $\frac{97}{348}$ = 27.87% of MDS capacity is unused

or, 72.13% of MDS capacity is presently used.

Consequently, the eligible grant funds to be assessed for the 1978 ICR year are computed by further adjusting the federal grants (already adjusted for collection and treatment of storm waters) to account for unused capacity as follows:

Total federal grant	=	\$81,071,265
Federal grant adjusted for storm water collection and treatment = G_a	=	\$65,300,548
G_t for 1978 = \$65,300,548 x 0.7213	=	\$47,101,285

TABLE I

1978 COMPLETED MWCC PROJECTS SUBJECT TO ICR SYSTEM

MWCC Project No.	Name	Federal Grant	Fed. Grant Adjusted For Stormwater	Related Parameter Allocations					
				Flow = Q		Organic = COD		Solids = SS	
				%	$	%	$	%	$
71-02-2	Newport-St.P. Pk. Int.	$ 1,646,754	$ 1,646,754	100	1,646,754	0	-	0	-
71-04	Metro-Flood Protection	6,647,593	5,302,785	100	5,302,785	0	-	0	-
71-05	Metro-Eff. Pump. Sta.	4,855,050	3,872,873	100	3,872,873	0	-	0	-
71-06	Metro-Pretrtmt. Units	11,528,625	9,196,384	80	7,357,107	0	-	20	1,839,277
71-07	Metro-Primary Tanks	16,594,800	13,237,671	80	10,590,137	0	-	20	2,647,534
71-08	Metro-Aer. & Final Tks.	38,331,000	30,576,638	30	9,172,991	50	15,288,319	20	6,115,328
75-08	Waconia Interceptor	1,467,443	1,467,443	100	1,467,443	0	-	0	-
7 Projects		81,071,265	65,300,548	60	39,410,090	24	15,288,319	16	10,602,139

All of the annual factors are now estimated for the first year (1978) of ICR as follows:

$$COD_d = 643$$

$$SS_d = 322$$

$$\frac{G_{cod}}{G_a} = 0.24$$

$$\frac{G_{ss}}{G_a} = 0.16$$

$$V_t = 251$$

$$G_t = \$47,101,285$$

$$U = 30$$

The ICR formulae become:

$$V_e = V_i + V_i \left[\left(\frac{COD_i - 643}{643} \right) 0.24 + \left(\frac{SS_i - 322}{322} \right) 0.16 \right]$$

and,

$$\text{ICR Annual Payment} = \frac{V_e}{251} \times \frac{\$47,101,285}{30}$$

- ICR CALCULATIONS - EXAMPLES -

Using the proposed ICR formulae for the first year (1978) of ICR, the following illustrates how ICR payments are determined for 3 hypothetical industrial users:

Industry "A" (low volume, low organics, high solids)

Volume = 27,500 gal/day = 0.0275 MGD

COD = 60 lb/day = 262 mg/l

SS = 200 lb/day = 872 mg/l

$$V = 0.0275 + 0.0275\left[\left(\frac{872-322}{322}\right) 0.16\right]$$

$$V = 0.0275 + 0.0075 = 0.0350$$

$$\text{ICR Annual payment} = \frac{0.0350}{251} \times \frac{\$47,101,285}{30} = \$219 \text{ per Year}$$

Industry "B" (high volume, high organics, low solids)

Volume = 800,000 gal/day = 0.8 MGD

COD = 10,000 lb/day = 1500 mg/l

SS = 1,500 lb/day = 225 mg/l

$$V_e = 0.8 + 0.8\left[\left(\frac{1500-643}{643}\right) 0.24\right]$$

$$V_e = 0.8 + 0.256 = 1.056$$

$$\text{ICR Annual Payment} = \frac{1.056}{251} \times \frac{\$47,101,285}{30} = \$6,605 \text{ per Year}$$

Industry "C" (high volume, high organics, high solids)

Volume = 5 MGD

COD = 5000 mg/l

SS = 2000 mg/l

$$V_e = 5 + 5\left[\left(\frac{5000-643}{643}\right) 0.24 + \left(\frac{2000-322}{322}\right) 0.16\right]$$

$V_e = 5 + 12.30 = 17.30$

$$\text{ICR Annual Payment} = \frac{17.30}{251} \times \frac{\$47,101,285}{30} = \$108,214 \text{ per Year}$$

- BILLING -

Pursuant to 40 CFR 35.928-1(c) the MWCC, as the grantee, must assure the EPA Administrator that billings shall be made to and payments received from industrial users at least annually. The initial payment by the industrial user must be made by the date which coincides with the anniversary of the start-up of the grant project or of the completion of an improvement such as an expansion or upgrading.

ICR billings can be on an annual basis or can be more frequent. Each individual user's ICR billings may vary from year to year if usage increases or decreases.

- RECOVERED FUNDS -

All funds recovered by the MWCC through its ICR System during the annual accounting period are subject to 40 CFR 35.928-2(c) requirements and are to be deposited in interest-bearing accounts which are fully collateralized

by obligations of the U. S. Government or by obligations fully guaranteed as to principal and interest by the U. S. Government or any agency thereof.

- RETAINED AMOUNTS -

In accordance with 40 CFR 35.928-2(a) the MWCC is to retain fifty (50) percent of the amounts recovered from industrial users with the remainder, inclusive of any interest earned thereon, to be returned to the U. S. Treasury on an annual basis. In accordance with EPA "Federal Guidelines - ICR Systems" (Publication MCD-45) this shall be no later than four (4) months after the end of the MWCC's annual accounting period. Further, as detailed in 40 CFR 35.928-2(b), a minimum of eighty (80) percent of the retained funds (40% of the total), together with the interest earned thereon, is to be used solely for the eligible costs of the expansion or reconstruction of MWCC treatment facilities associated with the grant projects and necessary to meet the requirements of PL 92-500. A grantee must obtain the written approval of the EPA Regional Administrator prior to the commitment of any such retained funds. The remaining twenty (20) percent of the retained funds (10% of the total) may be used as the grantee sees fit.

- APPEAL PROCEDURES -

The Federal Guidelines - ICR Systems stipulate that "the grantee's ICR system and plans must provide for an administrative appeal procedure by which individual industrial users will have an opportunity to be heard regarding the reasonableness of the allocations and ICR assessments imposed upon them." It is recommended that such MWCC Appeal or Review Board be named immediately after approval of its proposed ICR system by the Regional Administrator.

"TITLE II—GRANTS FOR CONSTRUCTION OF TREATMENT WORKS

"PURPOSE

"SEC. 201. (a) It is the purpose of this title to require and to assist the development and implementation of waste treatment management plans and practices which will achieve the goals of this Act.

"(b) Waste treatment management plans and practices shall provide for the application of the best practicable waste treatment technology before any discharge into receiving waters, including reclaiming and recycling of water, and confined disposal of pollutants so they will not migrate to cause water or other environmental pollution and shall provide for consideration of advanced waste treatment techniques.

"(c) To the extent practicable, waste treatment management shall be on an areawide basis and provide control or treatment of all point and nonpoint sources of pollution, including in place or accumulated pollution sources.

"(d) The Administrator shall encourage waste treatment management which results in the construction of revenue producing facilities providing for—

"(1) the recycling of potential sewage pollutants through the production of agriculture, silviculture, or aquaculture products, or any combination thereof;

"(2) the confined and contained disposal of pollutants not recycled;

"(3) the reclamation of wastewater; and

"(4) the ultimate disposal of sludge in a manner that will not result in environmental hazards.

"(e) The Administrator shall encourage waste treatment management which results in integrating facilities for sewage treatment and recycling with facilities to treat, dispose of, or utilize other industrial and municipal wastes, including but not limited to solid waste and waste heat and thermal discharges. Such integrated facilities shall be designed and operated to produce revenues in excess of capital and operation and maintenance costs and such revenues shall be used by the designated regional management agency to aid in financing other environmental improvement programs.

"(f) The Administrator shall encourage waste treatment management which combines 'open space' and recreational considerations with such management.

"(g)(1) The Administrator is authorized to make grants to any State, municipality, or intermunicipal or interstate agency for the construction of publicly owned treatment works.

"(2) The Administrator shall not make grants from funds authorized for any fiscal year beginning after June 30, 1974, to any State, municipality, or intermunicipal or interstate agency for the erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works unless the grant applicant has satisfactorily demonstrated to the Administrator that—

"(A) alternative waste management techniques have been studied and evaluated and the works proposed for grant assistance will provide for the application of the best practicable waste treatment technology over the life of the works consistent with the purposes of this title; and

"(B) as appropriate, the works proposed for grant assistance will take into account and allow to the extent practicable the application of technology at a later date which will provide for the reclaiming or recycling of water or otherwise eliminate the discharge of pollutants.

"(3) The Administrator shall not approve any grant after July 1, 1973, for treatment works under this section unless the applicant shows to the satisfaction of the Administrator that each sewer collection system discharging into such treatment works is not subject to excessive infiltration.

"(4) The Administrator is authorized to make grants to applicants for treatment works grants under this section for such sewer system evaluation studies as may be necessary to carry out the requirements of paragraph (3) of this subsection. Such grants shall be made in accordance with rules and regulations promulgated by the Administrator. Initial rules and regulations shall be promulgated under this paragraph not later than 120 days after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972.

"LIMITATIONS AND CONDITIONS

"SEC. 204. (a) Before approving grants for any project for any treatment works under section 201(g)(1) the Administrator shall determine—

"(1) that such works are included in any applicable areawide waste treatment management plan developed under section 208 of this Act;

"(2) that such works are in comformity with any applicable State plan under section 303(e) of this Act;

"(3) that such works have been certified by the appropriate State water pollution control agency as entitled to priority over such other works in the State in accordance with any applicable State plan under section 303(e) of this Act;

"(4) that the applicant proposing to construct such works agrees to pay the non-Federal costs of such works and has made adequate provisions satisfactory to the Administrator for assuring proper and efficient operation, including the employment of trained management and operations personnel, and the maintenance of such works in accordance with a plan of operation approved by the State water pollution control agency or, as appropriate, the interstate agency, after construction thereof;

"(5) that the size and capacity of such works relate directly to the needs to be served by such works, including sufficient reserve capacity. The amount of reserve capacity provided shall be approved by the Administrator on the basis of a comparison of the cost of constructing such reserves as a part of the works to be funded and the anticipated cost of providing expanded capacity at a date when such capacity will be required;

"(6) that no specification for bids in connection with such works shall be written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing or to provide for necessary interchangeability of parts and equipment, or at least two brand names or trade names of comparable quality or utility are listed and are followed by the words 'or equal'.

"(b)(1) Notwithstanding any other provision of this title, the Administrator shall not approve any grant for any treatment works under section 201(g)(1) after March 1, 1973, unless he shall first have determined that the applicant (A) has adopted or will adopt a system of charges to assure that each recipient of waste treatment services within the applicant's jurisdiction, as determined by the Administrator, will pay its proportionate share of the costs of operation and maintenance (including replacement) of any waste treatment services provided by the applicant; (B) has made provision for the payment to such applicant by the industrial users of the treatment works, of that portion of the cost of construction of such treatment works (as determined by the Administrator) which is allocable to the treatment of such industrial wastes to the extent attributable to the Federal share of the cost of construction; and (C) has legal, institutional, managerial, and financial capability to insure adequate construction, operation, and maintenance of treatment works throughout the applicant's jurisdiction, as determined by the Administrator.

"(2) The Administrator shall, within one hundred and eighty days after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, and after consultation with appropriate State, interstate, municipal, and intermunicipal agencies, issue guidelines applicable to payment of waste treatment costs by industrial and nonindustrial recipients of waste treatment services which shall establish (A) classes of users of such services, including categories of industrial users; (B) criteria against which to determine the adequacy of charges imposed on classes and categories of users reflecting all

factors that influence the cost of waste treatment, including strength, volume, and delivery flow rate characteristics of waste; and (C) model systems and rates of user charges typical of various treatment works serving municipal-industrial communities.

"(3) The grantee shall retain an amount of the revenues derived from the payment of costs by industrial users of waste treatment services, to the extent costs are attributable to the Federal share of eligible project costs provided pursuant to this title as determined by the Administrator, equal to (A) the amount of the non-Federal cost of such project paid by the grantee plus (B) the amount, determined in accordance with regulations promulgated by the Administrator, necessary for future expansion and reconstruction of the project, except that such retained amount shall not exceed 50 per centum of such revenues from such project. All revenues from such project not retained by the grantee shall be deposited by the Administrator in the Treasury as miscellaneous receipts. That portion of the revenues retained by the grantee attributable to clause (B) of the first sentence of this paragraph, together with any interest thereon shall be used solely for the purposes of future expansion and reconstruction of the project.

"(4) Approval by the Administrator of a grant to an interstate agency established by interstate compact for any treatment works shall satisfy any other requirement that such works be authorized by Act of Congress.

"AREAWIDE WASTE TREATMENT MANAGEMENT

"SEC. 208. (a) For the purpose of encouraging and facilitating the development and implementation of areawide waste treatment management plans—

"(1) The Administrator, within ninety days after the date of enactment of this Act and after consultation with appropriate Federal, State, and local authorities, shall by regulation publish guidelines for the identification of those areas which, as a result of urban-industrial concentrations or other factors, have substantial water quality control problems.

"(2) The Governor of each State, within sixty days after publication of the guidelines issued pursuant to paragraph (1) of this subsection, shall identify each area within the State which, as a result of urban-industrial concentrations or other factors, has substantial water quality control problems. Not later than one hundred and twenty days following such identification and after consultation with appropriate elected and other officials of local

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governments having jurisdiction in such areas, the Governor shall designate (A) the boundaries of each such area, and (B) a single representative organization, including elected officials from local governments or their designees, capable of developing effective areawide waste treatment management plans for such area. The Governor may in the same manner at any later time identify any additional area (or modify an existing area) for which he determines areawide waste treatment management to be appropriate, designate the boundaries of such area, and designate an organization capable of developing effective areawide waste treatment management plans for such area.

"(3) With respect to any area which, pursuant to the guidelines published under paragraph (1) of this subsection, is located in two or more States, the Governors of the respective States shall consult and cooperate in carrying out the provisions of paragraph (2), with a view toward designating the boundaries of the interstate area having common water quality control problems and for which areawide waste treatment management plans would be most effective, and toward designating, within one hundred and eighty days after publication of guidelines issued pursuant to paragraph (1) of this subsection, of a single representative organization capable of developing effective areawide waste treatment management plans for such area.

"(4) If a Governor does not act, either by designating or determining not to make a designation under paragraph (2) of this subsection, within the time required by such paragraph, or if, in the case of an interstate area, the Governors of the States involved do not designate a planning organization within the time required by paragraph (3) of this subsection, the chief elected officials of local governments within an area may by agreement designate (A) the boundaries for such an area, and (B) a single representative organization including elected officials from such local governments, or their designees, capable of developing an areawide waste treatment management plan for such area.

"(5) Existing regional agencies may be designated under paragraphs (2), (3), and (4) of this subsection.

"(6) The State shall act as a planning agency for all portions of such State which are not designated under paragraphs (2), (3), or (4) of this subsection.

"(7) Designations under this subsection shall be subject to the approval of the Administrator.

"(b)(1) Not later than one year after the date of designation of any organization under subsection (a) of this section such organization shall have in operation a continuing areawide waste treatment management planning process consistent with section 201 of this Act. Plans prepared in accordance with this process shall contain alternatives for waste treatment management, and be applicable to all wastes generated within the area involved. The initial plan prepared in accordance with such process shall be certified by the Governor and submitted to the Administrator not later than two years after the planning process is in operation.

"(2) Any plan prepared under such process shall include, but not be limited to—

"(A) the identification of treatment works necessary to meet the anticipated municipal and industrial waste treatment needs of the area over a twenty-year period, annually updated (including an analysis of alternative waste treatment systems), including any requirements for the acquisition of land for treatment purposes; the necessary waste water collection and urban storm water runoff systems; and a program to provide the necessary financial arrangements for the development of such treatment works;

"(B) the establishment of construction priorities for such treatment works and time schedules for the initiation and completion of all treatment works;

"(C) the establishment of a regulatory program to—

"(i) implement the waste treatment management requirements of section 201(c),

"(ii) regulate the location, modification, and construction of any facilities within such area which may result in any discharge in such area, and

"(iii) assure that any industrial or commercial wastes discharged into any treatment works in such area meet applicable pretreatment requirements;

"(D) the identification of those agencies necessary to construct, operate, and maintain all facilities required by the plan and otherwise to carry out the plan;

"(E) the identification of the measures necessary to carry out the plan (including financing), the period of time necessary to carry out the plan, the costs of carrying out the plan within such time, and the economic, social, and environmental impact of carrying out the plan within such time;

"(F) a process to (i) identify, if appropriate, agriculturally and silviculturally related nonpoint sources of pollution, including runoff from manure disposal areas, and from land used for livestock and crop production, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

"(G) a process to (i) identify, if appropriate, mine-related sources of pollution including new, current, and abandoned surface and underground mine runoff, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

"(H) a process to (i) identify construction activity related sources of pollution, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

"(I) a process to (i) identify, if appropriate, salt water intrusion into rivers, lakes, and estuaries resulting from reduction of fresh water flow from any cause, including irrigation, obstruction, ground water extraction, and diversion, and (ii) set forth procedures and methods to control such intrusion to the extent feasible where such procedures and methods are otherwise a part of the waste treatment management plan;

"(J) a process to control the disposition of all residual waste generated in such area which could affect water quality; and

"(K) a process to control the disposal of pollutants on land or in subsurface excavations within such area to protect ground and surface water quality.

"(3) Areawide waste treatment management plans shall be certified annually by the Governor or his designee (or Governors or their designees, where more than one State is involved) as being consistent with applicable basin plans and such areawide waste treatment management plans shall be submitted to the Administrator for his approval.

"(4) Whenever the Governor of any State determines (and notifies the Administrator) that consistency with a statewide regulatory program under section 303 so requires, the requirements of clauses (F)

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through (K) of paragraph (2) of this subsection shall be developed and submitted by the Governor to the Administrator for application to all regions within such State.

"(c)(1) The Governor of each State, in consultation with the planning agency designated under subsection (a) of this section, at the time a plan is submitted to the Administrator, shall designate one or more waste treatment management agencies (which may be an existing or newly created local, regional, or State agency or political subdivision) for each area designated under subsection (a) of this section and submit such designations to the Administrator.

"(2) The Administrator shall accept any such designation, unless, within 120 days of such designation, he finds that the designated management agency (or agencies) does not have adequate authority—

"(A) to carry out appropriate portions of an areawide waste treatment management plan developed under subsection (b) of this section;

"(B) to manage effectively waste treatment works and related facilities serving such area in conformance with any plan required by subsection (b) of this section;

"(C) directly or by contract, to design and construct new works, and to operate and maintain new and existing works as required by any plan developed pursuant to subsection (b) of this section;

"(D) to accept and utilize grants, or other funds from any source, for waste treatment management purposes;

"(E) to raise revenues, including the assessment of waste treatment charges;

"(F) to incur short- and long-term indebtedness;

"(G) to assure in implementation of an areawide waste treatment management plan that each participating community pays its proportionate share of treatment costs;

"(H) to refuse to receive any wastes from any municipality or subdivision thereof, which does not comply with any provisions of an approved plan under this section applicable to such area; and

"(I) to accept for treatment industrial wastes.

"(d) After a waste treatment management agency having the authority required by subsection (c) has been designated under such subsection for an area and a plan for such area has been approved under subsection (b) of this section, the Administrator shall not make any grant for construction of a publicly owned treatment works under section 201(g)(1) within such area except to such designated agency and for works in conformity with such plan.

"(e) No permit under section 402 of this Act shall be issued for any point source which is in conflict with a plan approved pursuant to subsection (b) of this section.

"(f)(1) The Administrator shall make grants to any agency designated under subsection (a) of this section for payment of the reasonable costs of developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section.

"(2) The amount granted to any agency under paragraph (1) of this subsection shall be 100 per centum of the costs of developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section for each of the fiscal years ending on June 30, 1973, June 30, 1974, and June 30, 1975, and shall not exceed 75 per centum of such costs in each succeeding fiscal year.

"(3) Each applicant for a grant under this subsection shall submit to the Administrator for his approval each proposal for which a grant is applied for under this subsection. The Administrator shall act upon such proposal as soon as practicable after it has been submitted, and his approval of that proposal shall be deemed a contractual obligation of the United States for the payment of its contribution to such proposal. There is authorizd to be appropriated to carry out this subsection not to exceed $50,000,000 for the fiscal year ending June 30, 1973, not to exceed $100,000,000 for the fiscal year ending June 30, 1974, and not to exceed $150,000,000 for the fiscal year ending June 30, 1975.

"(g) The Administrator is authorized, upon request of the Governor or the designated planning agency, and without reimbursement, to consult with, and provide technical assistance to, any agency designated under subsection (a) of this section in the development of areawide waste treatment management plans under subsection (b) of this section.

"(h)(1) The Secretary of the Army, acting through the Chief of Engineers, in cooperation with the Administrator is authorized and directed, upon request of the Governor or the designated planning organization, to consult with, and provide technical assistance to, any agency designed under subsection (a) of this section in developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section.

"(2) There is authorized to be appropriated to the Secretary of the Army, to carry out this subsection, not to exceed $50,000,000 per fiscal year for the fiscal years ending June 30, 1973, and June 30, 1974.

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PART III

ENVIRONMENTAL PROTECTION AGENCY

■

WATER POLLUTION CONTROL

Construction Grants for Waste Treatment Works

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER B—GRANTS

PART 35—STATE AND LOCAL ASSISTANCE

Final Construction Grant Regulations

Title II of the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92-500, 33 U.S.C. 1251 et seq.) authorizes the award of construction grants for waste treatment works. The award of these grants creates a contractual obligation of the United States for payment of the Federal share of the construction costs of such projects.

Interim regulations were published in the FEDERAL REGISTER for this program on February 28, 1973 (38 FR 5329). Written comments received from interested parties are on file with the Environmental Protection Agency. The agency has carefully considered all comments submitted by the public, as well as comments made by EPA and State Agency personnel on the basis of their experience under the interim construction grant regulations. A number of these comments have been adopted or substantially satisfied by editorial changes in, deletions from, or additions to this subpart. An effort has been made to conform the procedures and requirements of the new grant system to the construction grants program established under section 8 of the prior Federal Water Pollution Control Act, as well as to ensure that new statutory requirements will be met.

Major changes in this subpart are the following:

(1) The three-step grant process has been clarified to reflect that a basic grant application is submitted for the initial award of grant assistance, and that subsequent related projects will be funded through amendment of this grant. In addition, in accordance with section 2 of Pub. L. 93-243, enacted December 28, 1973, the requirement that a Step 3 project had to result in an "operable" treatment works has been deleted. A project may be awarded for any "segment" of treatment works construction as that term is defined in new § 35.905-24, which provides that a segment may consist of any portion of the treatment works construction associated with a discrete contract or subcontract to be awarded for Step 1, 2, or 3 project work.

(2) Section 35.915 has been revised and expanded to explain more clearly EPA requirements under applicable statutory provisions for State priority systems and the interrelationship between this subpart and regulations which have been issued under section 106 and 303(e) of the Act. Each State will develop and submit a single project priority list which will remain in effect until a new list is approved as a part of the annual section 106 State program submission; once priority has been established for a project, the project will retain this priority until funded, unless the State otherwise provides through its priority system. Two new provisions have also been added. Section 35.915(g) requires that each State reserve not less than 5 percent of fiscal year 1975 and subsequent State allotments of contract authority in order to adequately provide for cost overruns which are being experienced under the construction grant program. Section 35.915(i) permits (but does not require) the State to establish a separate reserve for grant assistance for Step 1 and Step 2 projects whose selection for funding will be determined by the State agency subsequent to approval of the project list, since experience has demonstrated that States require more flexibility than is permitted by an annual priority determination.

(3) Facilities planning requirements are set forth in new §§ 35.917 through 35.917-9. In order to permit a transition into these new requirements, full compliance with substatutory requirements will not be required except with respect to Step 1 work which is initiated after April 30, 1974. After October 31, 1974, a "plan of study" must be approved prior to the initiation of Step 1 work. These new procedures are designed to assure better accomplishment of the objectives of the new Federal Water Pollution Control Act and collateral statutory requirements (such as the National Environmental Policy Act of 1969). These statutory requirements must be addressed by the applicant during the facilities planning process.

(4) New procedures have been established in revised § 35.927-5 to assure that the infiltration/inflow requirements derived from section 201(g) (3) and (4) of the 1972 FWPCA Amendments are met without unnecessary documentation and expense.

(5) New provisions in §§ 35.925-18 and 35.905-4 delineate the Agency's position with respect to the initiation of project construction prior to the award of grant assistance for Steps 1, 2, or 3. Section 206 of the FWPCA Amendments of 1972 clearly precludes the type of reimbursement previously authorized under section 8 of the former FWPCA with respect to projects (as defined under the program authorized by the prior statute) on which construction was initiated after June 30, 1972. Due to the institution of the three-step grant process under the new FWPCA, it has become necessary to address the issue of reimbursement with respect to "initiation of construction" (as defined in 35.905-4) for Steps 1 and 2. For this reason, and to permit better program management by EPA and State agencies, and to permit better accomplishment of statutory objectives, procedures are set forth in § 35.925-18 which will phase out the possibility of a reimbursement claim. Eligible Step 1 or Step 2 project work initiated prior to November 1, 1974, will be fully reimbursed in conjunction with the next award of grant assistance, if reimbursement is requested (see § 35.945(a)). Prior approval will be required with respect to Step 1 and Step 2 work which is initiated after October 31, 1974. Step 1 or Step 2 work initiated after June 30, 1975, must be preceded by award of grant assistance or, in the case of Step 1 work, prior approval of a plan of study accompanied by reservation of funds for the grant award.

State agencies are requested to furnish detailed comment through EPA Regional Administrators with respect to any difficulties which may be encountered in the application of § 35.925-18. This section will be revised, if necessary, to permit an orderly transition into a fully nonreimbursable program and at the same time to assure that the development of projects necessary to comply with applicable effluent and water quality related requirements will not be hindered.

(6) Section 35.930-6 has been added to clarify the extent of the Federal Government's obligation to pay 75 percent of approved project costs. The Section emphasizes the grantee's obligation to notify EPA and the State of unavoidable cost overruns and to avoid the incurrence of costs in excess of the approved grant amount, which operates as a ceiling upon Federal participation until and unless revised through funding of grant amendments from State allotments, for project changes for which timely notification has been received. The statutory provision for funding of this program solely through a system of State-by-State allotments operates to limit the possibility of funding for cost overruns incurred under these grants in a more rigid manner than cost overrun funding under Federal contracts; cost overruns under these grants must be funded from State allotments, in addition to the funding of new projects.

(7) Section 35.908 has been restated to encourage more explicitly the use of advanced technology and accelerated construction techniques. The section now provides that "* * * processes or methods which have been successfully demonstrated under less than full scale conditions may be utilized in the construction of treatment works * * *." Under the interim regulations, only processes which had been demonstrated under "comparable" conditions could be used.

(8) New § 35.938 codifies EPA procedures pertaining to the award of construction contracts by grantees during Step 3. The basic intent of these procedures is to assure free and open competition among bidders and to assure compliance with the nonrestrictive specification requirement of section 204(a) (6) of the Act. Section 35.937 which would address procurement by grantees of professional and personal services, is being separately issued as a proposed regulation, which will not be effective until an interim or final regulation is adopted.

In addition, a considerable number of technical revisions have been made throughout the subpart. Accordingly, for the convenience of users, the entire subpart is being republished.

Construction grant regulations adopted under Section 8 of the former FWPCA

(§ 35.800 et seq. of this part) remain in effect and are applicable to construction grants awarded prior to January 1, 1973, under the authority of section 8. This Subpart E establishes policies and procedures applicable only to construction grant awards from fiscal year 1973 and later contractual obligation authority allotments under Title II of the FWPCA Amendments of 1972.

Regulations have been promulgated separately as Subpart D of this part to implement the reimbursement provisions of section 206 of the 1972 FWPCA Amendments.

This subpart is promulgated as a final regulation and will replace the interim regulations previously promulgated. However, because of the numerous changes and additions which have been made throughout this subpart, public comment is again invited. In particular, comment is invited upon the new provisions of the following sections: 35.903, 35.908, 35.915, 35.917 to 35.917–9, 35.930–6, 35.938, 35.939, and 35.960. Interested parties are encouraged to submit written comments, views, or data concerning this subpart to the Director, Grants Administration Division, Environmental Protection Agency, Washington, D.C. 20460. All such submissions received on or before April 15, 1974, will be considered with respect to the need for amendment of this subpart.

Effective date. This subpart shall become effective February 11, 1974. All EPA construction grants awarded pursuant to sections 109(b) and 201(g)(1) shall be subject to this subpart. It is necessary that this subpart take effect immediately in order to accomplish the objectives of the Act and to assure optimum achievement of the effluent and water quality objectives established pursuant to the Act.

Dated: February 4, 1974.

RUSSELL E. TRAIN,
Administrator.

Subpart E—Grants for Construction of Treatment Works—Federal Water Pollution Control Act Amendments of 1972

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AUTHORITY: Secs. 109(b), 201 through 205, 207, 210 through 212, and 501(a), 502, and 511 of Pub. L. 92–500 (86 Stat. 816; 33 U.S.C. 1251) as amended by Pub. L. 93–243.

§ 35.900 Purpose.

This subpart supplements the EPA general grant regulations and procedures (Part 30 of this chapter) and establishes policies and procedures for grants to assist the construction of publicly owned waste treatment works in compliance with the Federal Water Pollution Control Act.

§ 35.903 Summary of construction grant program.

(a) The construction of Federally financed waste treatment works is generally accomplished in three steps: Step 1 facilities plans and related elements; Step 2 preparation of construction drawings and specifications; and Step 3 fabrication and building of a treatment works.

(b) The Regional Administrator may award grant assistance for a Step 1, Step 2, or Step 3 project, or, under special conditions, for a project involving a combination of Steps 2 and 3. A "project" (see § 35.905–16) may consist of an entire step or any "segment" (see § 35.905–24) of construction within a step.

(c) Grants are awarded from State allocations (see § 35.910) pursuant to statute. No grant assistance may be awarded unless priority for a project has been determined in accordance with an approved State priority system pursuant to § 35.915. The State is responsible for determining the amount and timing of Federal assistance to each municipality for which treatment works funding is needed.

(d) The scope of a project will be initially defined by a prospective applicant. This initial project scope may be revised by the State when priority for the project is established. The final determination of project scope will be made by the Regional Administrator when grant assistance is awarded (see § 35.930–4).

(e) An application must first be submitted to the State agency for each proposed grant. The basic grant application must meet the requirements for the project set forth in § 35.920–3. Submissions required for grant assistance for subsequent related projects shall be provided in the form of amendments to the basic application. The State agency will forward to the appropriate EPA Regional Administrator complete project applications or amendments thereto for which priority has been determined by the State agency. The grant will consist of the grant agreement resulting from the basic application and grant amendments awarded for subsequent related projects.

(f) Generally, grant assistance for projects involving Steps 2 or 3 will not be awarded unless the Regional Administrator first determines that the facilities planning requirements of §§ 35.917 to 35.917–9 of this subpart have been met. After October 31, 1974, written approval of a "plan of study" (see § 35.920–3(a)(1)) must be obtained prior to initiation of facilities planning. After June 30, 1975, facilities planning may not be initiated prior to approval of a Step 1 grant (see §§ 35.925–18 and 35.905–4).

(g) If initiation of Step 1, 2, or 3 construction (see § 35.905–4) has occurred prior to award of grant assistance, costs incurred prior to the approved date of initiation of construction will not be paid and award will not be made except under the circumstances set forth in § 35.925–18.

(h) The Regional Administrator may not award grant assistance unless the project application requirements of § 35.920–3 have been met and he has made the determinations required by § 35.925 et seq.

(i) A grant or grant amendment awarded for a project under this subpart shall constitute a contractual obligation of the United States to pay the Federal share of allowable project costs up to the amount approved in the grant agreement (including amendments) in accordance with § 35.930–6 of this subpart, subject to the grantee's compliance with the conditions of the grant (see § 35.935 et seq.) and other applicable requirements of this subpart.

(j) Section 35.945 authorizes prompt payment for incurred project costs in accordance with a negotiated payment schedule. The initial request for payment may cover unpaid allowable costs of work completed prior to award except as otherwise provided in § 35.925–18. All allowable costs incurred prior to initiation of project construction must be claimed in the application for grant assistance for that project prior to the award of such assistance or no subsequent claim for payment may be made for such costs. The estimated amount of any grant or grant amendment, including any prior costs, must be established in conjunction with determination of priority for the project. The Regional Administrator must determine that the project costs are reasonable and allowable, in accordance with § 35.940.

(k) Pursuant to section 204(b) of the Act, the grantee must comply with applicable user charge and industrial cost recovery requirements; see §§ 35.925–11, 35.925–12, 35.928, 35.935–13, and Appendix B of this subpart.

(l) Sewage collection systems for new communities, new subdivisions, or newly developed urban areas must be addressed in the planning of such areas and should be included as part of the development costs of the new construction in these areas. Such costs will not be allowed under the construction grant program, pursuant to section 211 of the Act; see § 35.925–13.

(m) The approval of a plan of study for Step 1, a facilities plan, or award of grant assistance for Step 1, Step 2, or Step 3, or any segment thereof, will not constitute a Federal commitment for approval of grant assistance for any subsequent project.

(n) Where justified, a deviation from any substatutory requirements of this subpart may be granted pursuant to § 30.1001 of this chapter.

(o) It is the policy of the Environmental Protection Agency to promote adequate public participation in the construction grant process. Opportunity for public participation is required: (1) In the development of the State water pollution control strategy and State project priority list, pursuant to §§ 35.556 and 35.915; and (2) in the development of facilities plans, pursuant to § 35.917–5.

§ 35.905 Definitions.

As used in this subpart, the following words and terms shall have the meaning set forth below:

§ 35.905–1 The Act.

The Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended by the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92–500) and Pub. L. 93–243.

§ 35.905–2 Combined sewer.

A sewer intended to serve as a sanitary sewer and a storm sewer, or as an industrial sewer and a storm sewer.

§ 35.905–3 Complete waste treatment system.

A complete waste treatment system consists of all the connected treatment works necessary to meet the requirements of Title III of the Act and involved in: (a) The transport of wastewaters from individual homes or buildings to a plant or facility wherein treatment of the wastewater is accomplished; (b) the treatment of the wastewaters to remove pollutants; and (c) the ultimate disposal, including recycling or reuse, of the treated wastewaters and residues resulting from the treatment process. One complete waste treatment system would, normally, include one treatment plant or facility, but in instances where two or more treatment plants are interconnected, all of the interconnected treatment works will be considered as one waste treatment system.

§ 35.905–4 Construction.

Any one or more of the following: Preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items. The phrase "initiation of construction," as used in this subpart means with reference to a project for:

(a) The preparation of a facilities plan or completion of other Step 1 elements:

(1) Prior to November 1, 1974, the execution of an agreement for any element of Step 1 project work (including facilities planning); or, if an agreement covering Step 1 work has previously been entered into, the issuance of a notice to proceed with the Step 1 work; or a work order for the execution of any element of Step 1 work;

(2) After October 31, 1974, the date of approval of a plan of study (see § 35.925–18(a)(1));

(b) the preparation of construction drawings and specifications (Step 2):

(1) Prior to November 1, 1974, the execution of an agreement for the preparation of construction drawings and specifications; or, if an agreement covering both Step 1 and Step 2 elements has been previously entered into, the issuance of a notice to proceed; or a work order for the preparation of construction drawings and specifications;

(2) After October 31, 1974, the date of approval of a facilities plan (see § 35.925–18(a)(2));

(c) the building and erection of a treatment works segment (Step 3): the issuance of a notice to proceed under a construction contract for any segment of Step 3 project work, or, if notice to proceed is not required, execution of the construction contract.

§ 35.905–5 Excessive infiltration/inflow.

The quantities of infiltration/inflow which can be economically eliminated from a sewer system by rehabilitation, as determined by a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions with the total costs for transportation and treatment of the infiltration/inflow, subject to the provisions in § 35.927.

§ 35.905–6 Industrial cost recovery.

Recovery by the grantee from the industrial users of a treatment works of the grant amount allocable to the treatment of wastes from such users pursuant to section 204(b) of the Act and this subpart.

§ 35.905–7 Industrial Cost Recovery Period.

That period during which the grant amount allocable to the treatment of wastes from industrial users is recovered from the industrial users of such works.

§ 35.905–8 Industrial user.

Any nongovernmental user of publicly owned treatment works identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented, under the following divisions:

(a) *Division A.* Agriculture, Forestry, and Fishing.

(b) *Division B.* Mining.

(c) *Division D.* Manufacturing.

(d) *Division E.* Transportation, Communications, Electric, Gas, and Sanitary Services.

(e) *Division I. Services.* A user in the Divisions listed may be excluded if it is determined that it will introduce primarily segregated domestic wastes or wastes from sanitary conveniences.

§ 35.905–9 Infiltration.

The water entering a sewer system, including sewer service connections, from the ground, through such means as, but not limited to, defective pipes, pipe joints, connections, or manhole walls. Infiltration does not include, and is distinguished from, inflow.

§ 35.905–10 Infiltration/inflow.

The total quantity of water from both infiltration and inflow without distinguishing the source.

§ 35.905–11 Inflow.

The water discharged into a sewer system, including service connections from such sources as, but not limited to, roof leaders, cellar, yard, and area drains, foundation drains, cooling water discharges, drains from springs and swampy areas, manhole covers, cross connections from storm sewers and combined sewers, catch basins, storm waters, surface run-off, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

§ 35.905–12 Interceptor sewer.

A sewer whose primary purpose is to transport wastewaters from collector sewers to a treatment facility.

§ 35.905–13 Interstate agency.

An agency of two or more States established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of water pollution.

§ 35.905–14 Municipality.

A city, town, borough, county, parish, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created by or pursuant to State law, or an Indian tribe or an authorized Indian tribal organization, having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency under section 208 of the Act. This definition excludes a special district, such as a school district, which does not have as one of its principal responsibilities the treatment, transport, or disposal of liquid wastes.

§ 35.905–15 Operable treatment works.

An operable treatment works is a treatment works that:

(a) Upon completion of construction will treat wastewater, transport wastewater to or from treatment, or transport and dispose of wastewater in a manner which will significantly improve an objectionable water quality related situation or health hazard in existence prior to construction of the treatment works, and

(b) Is a component part of a complete waste treatment system which, upon completion of construction for the complete waste treatment system (or completion of construction of other treatment works in the system in accordance with a schedule approved by the Regional Administrator) will comply with all applicable statutory and regulatory requirements.

§ 35.905–16 Project.

The scope of work for which Federal assistance is awarded by a grant or grant amendment pursuant to this subpart. For the purposes of this subpart, the scope of work is defined as Step 1, Step 2, or Step 3 of treatment works construction or segments thereof (see § 35.905–24 and § 35.930–4).

§ 35.905–17 Replacement.

Expenditures for obtaining and installing equipment, accessories, or appurtenances which are necessary during the service life of the treatment works to maintain the capacity and performance for which such works were designed and constructed. The term "operation and maintenance" includes replacement.

§ 35.905–18 Sanitary sewer.

A sewer intended to carry only sanitary or sanitary and industrial waste waters from residences, commercial buildings, industrial plants, and institutions.

§ 35.905–19 Sewage collection system.

For the purpose of § 35.925–13 of this subpart, each, and all, of the common lateral sewers, within a publicly-owned treatment system, which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual structures or from private property, and which include service connection "Y" fittings designed for connection with those facilities. The facilities which convey wastewater from individual structures or from private property to the public lateral sewer, or its equivalent, are specifically excluded from the definition, with the exception of pumping units, and pressurized lines, for individual structures or groups of structures when such units are cost effective and are owned and maintained by the grantee.

§ 35.905–20 State.

A State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

§ 35.905–21 State agency.

The State water pollution control agency designated by the Governor having responsibility for enforcing State laws relating to the abatement of pollution.

§ 35.905–22 Storm sewer.

A sewer intended to carry only storm waters, surface run-off, street wash waters, and drainage.

§ 35.905–23 Treatment works.

Any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 201 of the act, or necessary to recycle or reuse water at the most economical cost over the useful life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment and their appurtenances; extensions, improvement, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal or residues resulting from such treatment; or any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water run-off, or industrial waste, including waste in combined storm water and sanitary sewer systems.

§ 35.905–24 Treatment Works Segment.

A treatment works segment may be any portion of an operable treatment works described in an approved facilities plan, pursuant to § 35.917, and which can be identified as a discrete contract or subcontract for Step 1, 2, or 3 work. Completion of construction of a treatment works segment may, but need not, result in an operable treatment works.

§ 35.905–25 Useful life.

Estimated period during which a treatment works will be operated.

§ 35.905–26 User charge.

A charge levied on users of a treatment works for the cost of operation and maintenance of such works, pursuant to Section 204(b) of the Act and this subpart.

§ 35.908 Advanced technology and accelerated construction techniques.

It is the policy of the Environmental Protection Agency to encourage and, where possible, to assist in the development of accelerated construction techniques and new or advanced processes, methods, and technology for the construction of waste treatment works. New or advanced processes or methods may be utilized in the construction of treatment works under this subpart. New technology or processes may be developed or demonstrated with the assistance of EPA research or demonstration grants awarded under Title I of the Act. New processes or methods which have been successfully demonstrated under less than full scale conditions may be utilized in the construction of treatment works under this subpart.

§ 35.910 Allocation of funds.

§ 35.910–1 Allotment.

Allotments shall be made among the States from funds authorized to be appropriated pursuant to section 207 in the ratio that the most recent congressionally approved estimate of the cost of constructing all needed publicly owned treatment works in each State bears to the most recent congressionally approved estimate of the cost of construction of all needed publicly owned treatment works in all of the States. Computation of a State's ratio shall be carried out to the nearest ten thousandth percent (0.0001 percent) and allotted amounts will be rounded to the nearest thousand dollars except for Fiscal Year 1975 which will be rounded to the nearest fifty dollars.

§ 35.910–2 Reallotment.

(a) Sums allotted to a State under § 35.910–1 shall be available for obligation on and after the date of such allotment and shall continue to be available to such State for a period of one year after the close of the fiscal year for which such sums are authorized. Funds remaining unobligated at the end of the allotment period will be immediately reallotted by the Administrater, on the basis of the most recent allotment ratio to those States which have used their full allotment.

(b) Reallotted sums shall be added to the last allotments made to the States and shall be in addition to any other funds otherwise allotted, and be available for obligation in the same manner and to the same extent as such last allotment.

(c) Any sums which have been obligated under this subpart which remain after final payment, or after termination of a project, shall be credited to the State to which such sums were last allotted. Such released sums shall be added to the amounts last allotted to such State and shall be available for obligation in the same manner and to the same extent as such last allotment.

§ 35.910–3 Fiscal Years 1973 and 1974 Allotments.

(a) For Fiscal Years ending June 30, 1973 and June 30, 1974, sums of $2 billion and $3 billion, respectively, have been allotted on the basis of Table III of House Public Works Committee Print No. 92–50.

(b) The percentages used in computing the State allotments set forth in paragraph (c) of this section for Fiscal Years 1973 and 1974 are as follows:

State	Percentage	State	Percentage
Alabama	0.3612	North Carolina	.9229
Alaska	.2232	North Dakota	.0467
Arizona	.1346	Ohio	5.7737
Arkansas	.3536	Oklahoma	.4608
California	9.8176	Oregon	.8494
Colorado	.3166	Pennsylvania	5.4214
Connecticut	1.6810	Rhode Island	.4889
District of Columbia	.7114	South Carolina	.6455
Delaware	.6565	South Dakota	.0048
Florida	3.6264	Tennessee	1.1605
Georgia	.9730	Texas	2.7694
Hawaii	.3303	Utah	.1403
Idaho	.2177	Vermont	.2218
Illinois	6.2480	Virginia	2.9143
Indiana	3.3662	Washington	.8906
Iowa	1.1557	West Virginia	.4999
Kansas	.3742	Wisconsin	1.7415
Kentucky	.6599	Wyoming	.0263
Louisiana	.9428	Guam	.0872
Maine	0.9675	Puerto Rico	.8845
Maryland	4.2582	Virgin Islands	.0893
Massachusetts	3.7576	American Samoa	.0048
Michigan	7.9814	Trust Territory of Pacific Islands	.0378
Minnesota	2.0310		100.0000
Mississippi	.3935		
Missouri	1.6556		
Montana	.1662		
Nebraska	.3708		
Nevada	.2877		
New Hampshire	.8309		
New Jersey	7.7040		
New Mexico	.2108		
New York	11.0578		

(c) Based upon the percentages, the sums allotted to the States as of July 1, 1973, for Fiscal Years 1973 and 1974 are as follows:

State	Fiscal year 1973	Fiscal year 1974
Alabama	$7,234,000	$10,836,000
Alaska	4,504,000	6,756,000
Arizona	2,692,000	4,038,000
Arkansas	7,072,000	10,608,000
California	196,352,000	294,528,000
Colorado	6,332,000	9,498,000
Connecticut	33,620,000	50,430,000
Delaware	13,130,000	19,695,000
District of Columbia	14,228,000	21,342,000
Florida	72,528,000	108,792,000
Georgia	19,460,000	29,190,000
Hawaii	6,606,000	9,909,000
Idaho	4,354,000	6,531,000
Illinois	124,978,000	187,467,000
Indiana	67,324,000	100,986,000
Iowa	23,114,000	34,671,000
Kansas	7,484,000	11,226,000
Kentucky	13,198,000	19,797,000
Louisiana	18,856,000	28,284,000
Maine	19,350,000	29,025,000
Maryland	85,164,000	127,746,000
Massachusetts	75,152,000	112,728,000
Michigan	159,628,000	239,442,000
Minnesota	40,638,000	60,957,000
Mississippi	7,870,000	11,805,000
Missouri	33,112,000	49,668,000
Montana	3,324,000	4,986,000
Nebraska	7,416,000	11,124,000
Nevada	5,754,000	8,631,000
New Hampshire	16,618,000	24,939,000
New Jersey	154,080,000	731,120,000
New Mexico	4,216,000	6,324,000
New York	221,156,000	331,734,000
North Carolina	18,458,000	27,657,000
North Dakota	934,000	1,401,000
Ohio	115,471,000	173,211,000
Oklahoma	9,216,000	13,824,000
Oregon	16,988,000	25,482,000
Pennsylvania	108,428,000	162,642,000
Rhode Island	9,778,000	14,667,000
South Carolina	12,910,000	19,365,000
South Dakota	1,826,000	2,844,000
Tennessee	23,210,000	34,815,000
Texas	55,388,000	83,082,000
Utah	2,816,000	4,224,000
Vermont	4,436,000	6,654,000
Virginia	58,286,000	87,429,000
Washington	17,812,000	26,718,000
West Virginia	9,998,000	14,997,000
Wisconsin	31,830,000	52,245,000
Wyoming	536,000	804,000
Guam	1,744,000	2,616,000
Puerto Rico	17,680,000	26,535,000
Virgin Islands	1,786,000	2,679,000
American Samoa	96,000	144,000
Trust Territory of Pacific Islands	756,000	1,134,000
Total	2,000,000,000	3,000,000,000

§ 35.910–4 Fiscal Year 1975 Allotments.

(a) For the Fiscal Year ending June 30, 1975, a sum of $4 billion has been allotted based 50 percent on the ratios of Table I and 50 percent of Table II of House Public Works Committee Print No. 93–28, pursuant to Pub. L. 93–243.

(b) The percentages used in computing the State allotments set forth in paragraph (c) of this section, for Fiscal Year 1975 are as follows:

State	Percentage	State	Percentage
Alabama	0.8016	Delaware	0.5548
Alaska	9.3830	District of Columbia	0.9724
Arizona	0.4066	Florida	4.1638
Arkansas	0.6069	Georgia	1.9369
California	11.6340	Hawaii	1.0463
Colorado	0.7867	Idaho	0.2009
Connecticut	1.7687		

State	Percentage	State	Percentage
Illinois	6.4173	Pennsylvania	5.6652
Indiana	1.6196	Rhode Island	0.5306
Iowa	1.0012	South Carolina	1.4223
Kansas	1.0322	South Dakota	0.0907
Kentucky	1.6579	Tennessee	1.2303
Louisiana	0.7245	Texas	1.6534
Maine	0.6870	Utah	0.4217
Maryland	1.3767	Vermont	0.3001
Massachusetts	2.2945	Virginia	2.5096
Michigan	4.7978	Washington	1.6463
Minnesota	1.6341	West Virginia	0.9598
Mississippi	0.5355	Wisconsin	1.3317
Missouri	1.8960	Wyoming	0.0768
Montana	0.1421	Guam	0.0478
Nebraska	0.5314	Puerto Rico	1.0385
Nevada	0.4755	Virgin Islands	0.0796
New Hampshire	0.8920	American Samoa	0.0147
New Jersey	6.4789	Trust Territory of the Pacific Islands	0.0133
New Mexico	0.1869		
New York	12.4793		
North Carolina	1.7029		
North Dakota	0.0818		
Ohio	4.9184		
Oklahoma	1.1953		
Oregon	0.8682		

(c) Based upon the percentages set forth in paragraph (b) of this section and allotment adjustments the sums allotted to the States as of January 1, 1974, are as follows:

Alabama	$33,785,150
Alaska	15,059,100
Arizona	17,695,750
Arkansas	23,860,100
California	457,420,100
Colorado	30,930,900
Connecticut	69,542,900
Delaware	21,815,300
District of Columbia	38,233,800
Florida	164,496,400
Georgia	76,153,000
Hawaii	41,140,000
Idaho	7,898,400
Illinois	252,311,700
Indiana	63,678,100
Iowa	39,364,800
Kansas	40,192,500
Kentucky	65,183,600
Louisiana	35,551,850
Maine	26,227,000
Maryland	54,128,100
Massachusetts	90,215,900
Michigan	188,637,400
Minnesota	64,247,300
Mississippi	22,346,700
Missouri	74,546,400
Montana	7,534,600
Nebraska	20,894,000
Nevada	18,693,600
New Hampshire	35,072,950
New Jersey	234,656,200
New Mexico	10,670,500
New York	490,654,200
North Carolina	70,494,200
North Dakota	6,876,100
Ohio	193,378,700
Oklahoma	48,997,400
Oregon	34,136,700
Pennsylvania	222,744,100
Rhode Island	20,864,000
South Carolina	55,932,000
South Dakota	7,308,800
Tennessee	48,371,800
Texas	106,900,250
Utah	16,579,600
Vermont	11,800,800
Virginia	98,673,400
Washington	64,730,500
West Virginia	$37,735,700
Wisconsin	52,360,400
Wyoming	4,049,450
Guam	2,172,000
Puerto Rico	40,892,900
Virgin Islands	3,130,900
American Samoa	576,700
Trust Territory of Pacific Islands	524,300

Allotment adjustment has been made for those States that would receive an allotment that would be less than their Fiscal Year 1972 allotment. The allotment of those States which fall below their Fiscal Year 1972 allotment will be restored to their Fiscal Year 1972 allotment using funds from the total allotment. Remaining funds will be allocated to States (excluding the States with allotment adjustment) based on adjusted percentages. Minimum allotment amounts are determined on the basis of Table III of House Public Works Committee Print 93-28.

§ 35.912 Delegation to State agencies.

It is the policy of the Environmental Protection Agency to utilize staff capabilities of State agencies to the maximum extent practicable through optimum utilization of available State and Federal resources and to eliminate unnecessary duplicative reviews of documents that are required as a part of the construction grant process. Accordingly, the Regional Administrator may enter into a written agreement, where appropriate, with a State agency within his Region for certification by the State agency of the technical and or administrative adequacy of specified documents. *Provided*, That an applicant or grantee may request review by the Regional Administrator of an adverse recommendation by a State agency.

§ 35.915 State determination of project priority list.

Construction grants will be awarded from allotments available pursuant to § 35.910 in accordance with the approved State project priority list which is derived from the approved State priority system.

(a) *State priority system.* The State priority system must be designed to achieve optimum water quality improvement consistent with the goals and requirements of the Act. It shall be submitted and revised in accordance with Subpart B of this part.

(b) *State municipal discharge inventory.* Pursuant to § 130.43 of this Chapter, the State agency shall prepare a municipal discharge inventory which sets forth for the entire State a ranking of all significant municipal discharges (including, for example, eligible municipal septic systems). Such list must be submitted as part of the annual State program for the approval of the Regional Administrator under § 35.557. This State municipal discharge inventory shall be updated annually and submitted with the State program pursuant to § 35.555 of this part.

(c) *Project priority list.* The State agency shall prepare a listing of the projects for which Federal assistance may be requested. This listing should include a sufficient number of projects to permit funding to proceed in an orderly fashion through the period between the next allotment of construction grant funds to the next approval of a revised project priority list. The Regional Administrator shall consider for approval that portion of the project priority list from which grant awards may be made from currently available allotments, pursuant to the approval procedures of § 35.555.

(1) In determining which projects to fund the State shall consider the severity of pollution problems, the population affected, the need for preservation of high quality waters, and national priorities as well as total funds available, project and treatment works sequence and additional factors identified by the State in its priority system. The list of projects to be funded should be developed in conjunction with the municipal discharge inventory. It should be consistent with the municipal discharge inventory but need not rigidly follow the ranking of discharges in the inventory. The net result should be a concentration of projects to be funded in high priority areas. The Regional Administrator may require the State agency to explain the basis for priority determination for specific projects located in low priority areas (e.g., court orders, critical dischargers on lower priority segments, etc.).

(2) The project priority list shall set forth, as a minimum, the following information for each project:

(i) Name of municipality;

(ii) State assigned EPA project number;

(iii) Brief description of type of project and anticipated scope of project (Step 1, 2, or 3 or combination thereof);

(iv) Estimated total project cost; and

(v) Estimated Federal assistance.

(3) A project which is included within the approved portion of the list shall retain its priority until a grant is awarded, unless the State otherwise provides through its priority system. Accordingly, in developing a revised list, the State must generally include thereon all projects from the approved portion of the prior list or amendments thereto for which grant assistance has not been awarded at the time the revision is prepared. The priority for all other projects will be determined in accordance with the approved State priority system.

(4) A project will be removed from the project priority list if (i) the project has been fully funded, (ii) a final and conclusive determination of project ineligibility has been made by the Regional Administrator, or (iii) the project has been removed by the State through amendment or revision of the list.

(5) In order to provide a list of projects which can be funded from available allotments in the period after January 1, 1974, until the approval of the next list, a State may add projects to the approved fiscal year 1974 list. Projects for which fiscal year 1975 contract authority will

be utilized must be identified since projects initially funded with fiscal year 1975 funds will be subject to best practicable waste treatment technology requirements (see § 35.930–4).

(d) *Submission, amendment and approval of project priority list.* The project list shall be submitted and approved annually as part of the State Program and may be amended pursuant to § 35.555 and § 35.557.

(e) *Application of additional funds.* If the State has submitted a project priority list containing more projects than could be funded under the original allotment, upon allocation of additional funds, the Regional Administrator's approval of the project priority list will be extended to the required number of projects. If there is an insufficient number of projects on the list, projects may be added to the list, pursuant to §§ 35.555 and 35.557 to account for additional funds which are available.

(f) *Public participation.* The Regional Administrator may not approve a project priority list or any significant amendment thereto unless he determines that a public hearing pursuant to § 35.556 of this Part has been held on such list prior to approval. This public hearing may be conducted in conjunction with a regular public meeting of the State agency, provided that adequate and timely Statewide notice of the meeting, including publication of the proposed project priority list is given, and attendees at the meeting are afforded adequate opportunity to express their views concerning the list. A public hearing is not required with respect to any amendment of the list (including deletion of a project) which the State agency and the Regional Administrator agree is not significant.

(g) *Reserve for grant increases.* In developing the project priority list the State must make provision for grant increases for projects awarded grant assistance under this subpart. A reasonable portion, not less than five percent, of each allotment for fiscal year 1975 and later years made pursuant to § 35.910 shall be reserved for grant amendments to increase grant amounts pursuant to §§ 35.935–11 and 35.955. A statement specifying the amount to be reserved for grant amendments shall be submitted by the State with the project priority list. The reserve period must be for not more than eighteen months after the date of such allotment. If any of the reserved amount remains, this amount may be utilized for the funding of additional projects, in accordance with the procedures set forth in paragraph (e) of this section.

(h) *Grant increases.* The Regional Administrator may approve a grant increase, upon application by the grantee, and upon written confirmation by the State for each application, that the grant increase is justified. The grant increases will be made from the amount reserved, by the State, for that purpose, from currently available allotments pursuant to paragraph (g) of this section.

(i) *Reserve for Step 1 and Step 2 Projects.* In developing the project priority list, the State may (but need not) make provision for an additional reserve for grant assistance for Step 1 and Step 2 projects whose selection for funding will be determined by the State agency subsequent to approval of the project list. A reasonable portion, but not more than ten percent, of each allotment for fiscal year 1975 and later years made pursuant to § 35.910 may be reserved for this purpose. A statement specifying the amount to be reserved for such grant assistance shall be submitted by the State with the project priority list. The reserve period may be for not more than eighteen months after the date of such allotment. If any of the reserved amount remains, this amount may be utilized for the funding of additional projects, in accordance with the procedures set forth in paragraph (e) of this section. The funding of Step 1 and Step 2 projects from this reserve should be consistent with the approved State strategy and should be developed in conjunction with, but need not rigidly follow, the ranking in the municipal discharge inventory.

§ 35.917 Facilities Planning (Step 1)

(a) These regulations set forth the facilities planning required as an element of the construction of publicly owned wastewater treatment works and supplement other provisions of this subpart.

(b) Facilities planning consists of those necessary plans and studies which are directly related to the construction of treatment works, in compliance with section 301 and 302 of the Act. Facilities planning will demonstrate the need for the proposed facilities and, by a systematic evaluation of feasible alternatives, will also demonstrate that the proposed measures represent the most cost-effective means of meeting established effluent and water quality goals, recognizing environmental and social considerations.

(c) Facilities planning, determined by the Regional Administrator to have been initiated prior to May 1, 1974, must be in accordance with applicable statutory requirements (see §§ 35.925–7 and 35.925–8), and such other requirements of this subpart as may be determined to be appropriate by the Regional Administrator.

(d) Full compliance with the facilities planning provisions of this subpart will be required prior to award of grant assistance for Step 2 or Step 3 where the Regional Administrator determines such planning was initiated (as determined pursuant to §§ 35.905–4 and 35.925–18) after April 30, 1974.

Grant assistance for Step 2 or 3 may be awarded prior to approval of a facilities plan for the entire geographic area to be served by the complete waste treatment system of which the proposed treatment works will be an integral part if the Regional Administrator determines that applicable statutory requirements have been met (see § 35.925–7 and 35.925–8); that the facilities planning relevant to the proposed Step 2 or 3 project has been substantially completed; and that the Step 2 or 3 project for which grant assistance is made will not be significantly affected by the completion of the facilities plan and will be a component part of the complete system: *Provided*, That the applicant agrees to complete the facilities plan on a schedule the State accepts (subject to approval by the Regional Administrator), which schedule shall be inserted as a special condition in the grant agreement.

(e) After October 31, 1974, written approval of a plan of study (see § 35.926–3 (a) (1) must be obtained prior to initiation of facilities planning. After June 30, 1975, facilities planning may not be initiated prior to approval of a Step 1 grant or approval of a plan of study accompanied by reservation of funds for a Step 1 grant (see §§ 35.925–13 and 35.905–4).

(f) Facilities planning guidelines published by the Administrator are for advisory information only.

(g) If the information required to be furnished as part of a facilities plan has been developed separately, it should be furnished and incorporated by reference in the facilities plan. Planning previously or collaterally accomplished under local, State or Federal programs will be utilized (not duplicated).

§ 35.917–1 Content of Facilities Plan.

Facilities planning which is initiated after April 30, 1974, must encompass the following to the extent deemed appropriate by the Regional Administrator:

(a) A description of the treatment works for which construction drawings and specifications are to be prepared. This description shall include preliminary engineering data, cost estimates for design and construction of the treatment works, and a schedule for completion of design and construction. The preliminary engineering data may include, to the extent appropriate, such information as a schematic flow diagram, unit processes, design data regarding detention times, flow rates, sizing of units, etc.

(b) A description of the selected complete waste treatment system(s) of which the proposed treatment works is a part. The description shall cover all elements of the system, from the service area and collection sewers, through treatment, to the ultimate discharge of treated wastewaters and disposal of sludge.

(c) Infiltration/inflow documentation in accordance with § 35.927.

(d) A cost-effectiveness analysis of alternatives for the treatment works and for the waste treatment system(s) of which the treatment works is a part. The selection of the system(s) and the choice of the treatment works on which construction drawings and specifications are to be based shall reflect the cost-effectiveness analysis. This analysis shall include:

(1) The relationship of the size and capacity of alternative works to the needs to be served, including reserve capacity;

(2) An evaluation of alternative flow and waste reduction measures;

(3) An evaluation of improved effluent quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to construction of new facilities;

(4) An evaluation of the capability of each alternative to meet applicable effluent limitations. The treatment works design must be based upon not less than secondary treatment as defined by the Administrator pursuant to sections 301 (a)(1)(B) and 304(d)(1) of the Act;

(5) An identification of, and provision for, applying the best practicable waste treatment technology (BPWTT) as defined by the Administrator, based upon an evaluation of technologies included under each of the following waste treatment management techniques:

(i) Biological or physical-chemical treatment and discharge to receiving waters;

(ii) Treatment and reuse; and

(iii) Land application techniques.

All Step 2, Step 3 or combination Step 2–3 projects for publicly-owned treatment works construction from funds authorized for any fiscal year beginning after June 30, 1974, shall be based upon application of BWPTT, as a minimum. Where application of BPWTT would not meet water quality standards, the facilities plan shall provide for attaining such standards. Such provision shall consider the alternative of treating combined sewer overflows.

(6) An evaluation of the alternative means by which ultimate disposal can be effected for treated wastewater and for sludge materials resulting from the treatment process, and a determination of the means chosen.

(7) An adequate assessment of the expected environmental impact of alternatives including sites pursuant to Part 6 of this Chapter. This assessment shall be revised as necessary to include information developed during subsequent project steps.

(e) An identification of effluent discharge limitations, or where a permit has been issued, a copy of the permit for the proposed treatment works as required by the National Pollution Discharge Elimination System.

(f) Required comments or approvals of relevant State, interstate, regional, and local agencies.

(g) A brief summary of any public meeting or hearing held during the planning process including a summary of the views expressed.

(h) A brief statement demonstrating that the authorities which will be implementing the plan have the necessary legal, financial, institutional, and managerial resources available to insure the construction, operation, and maintenance of the proposed treatment works.

(i) A statement specifying that the requirements of Title VI of the Civil Rights Act of 1964 and of Part 7 of this chapter have been satisfied.

§ 35.917–2 State Responsibilities.

(a) *Facilities planning areas.* Facilities planning should focus upon the geographic area to be served by the waste treatment system(s) of which the proposed treatment works will be an integral part. The facilities plan should include that area deemed necessary to prepare an environmental assessment and to assure that the most cost-effective means of achieving the established water quality goals can be planned for and implemented. To assure that facilities planning initiated after April 30, 1974, subsequent to award of a Step 1 grant therefor, and all facilities planning initiated after October 31, 1974, will include the appropriate geographic areas, the State shall:

(1) Delineate, as a preliminary basis for planning, the boundaries of the planning areas. In the determination of each area, appropriate attention should be given to including the entire area where cost savings, other management advantages, or environmental gains may result from interconnection of individual waste treatment systems or collective management of such systems.

(2) Include maps, which shall be updated annually, showing the identified areas and boundary determinations as part of the State submission under section 106 of the Act.

(3) Consult with local officials in making the area and boundary determinations.

(b) *Facilities planning priorities.* The State shall establish funding priorities for facilities planning in accordance with §§ 35.915 and 35.554–3(a)(1).

§ 35.917–3 Federal assistance.

(a) *General.* Facilities planning initiated after April 30, 1974, subsequent to award of a Step 1 grant therefor, and all facilities planning initiated after October 31, 1974, must be developed pursuant to a plan of study (see § 35.920–3(a)(1) approved in accordance with the requirements of this subpart prior to initiation of the facilities planning. A preapplication conference may be held in accordance with § 35.920–2.

(1) An applicant may apply for a grant for a Step 1 project for the preparation of a facilities plan, or any component part, and for other Step 1 elements required to submit a complete application for a Step 2 project (see § 35.920–3(b)). Alternatively, to the extent permitted by § 35.925–18, a grantee may be reimbursed for facilities planning costs and other Step 1 elements for which reasonable costs have been incurred in accordance with this subpart, in conjunction with the award of a grant for the subsequent Step 2, Step 2–3, or Step 3 projects.

(2) State priority determination in accordance with the approved State priority system pursuant to § 35.915 is required for Step 1 projects, just as in the case of Step 2 or Step 3 projects.

(b) *Eligibility.* Only an applicant which is eligible to receive grant assistance for subsequent phases of construction (Steps 2 and 3) and which has the legal authority to subsequently construct and manage the facility may apply for grant assistance for Step 1. If the area to be covered by the facilities plan includes more than one political jurisdiction, a grant may be awarded for a Step 1 project, as appropriate, (1) to the joint authority representing such jurisdictions, if eligible; (2) to one qualified (lead agency) applicant; or (3) to two or more eligible jurisdictions.

(c) *Payment.* Where a grant has been awarded for the preparation of a facilities plan or other Step 1 elements, the payment schedule in the grant agreement will provide for payment upon completion of the Step 1 work or upon completion of specified tasks within the scope of the project.

(d) *Reports.* Where a grant has been awarded for facilities planning, the completion of which is expected to require more than one year, the grantee must submit a brief progress report to the Regional Administrator at three-month intervals. The progress report is to contain a minimum of narrative description, and is to describe progress in completing the approved schedule of specific tasks for the project.

§ 35.917–4 Planning scope and detail.

(a) Initially, the geographic scope of all facilities planning initiated after October 31, 1974, or facilities planning initiated after April 30, 1974, subsequent to award of a Step 1 grant therefor, shall be based upon the area delineated by the State pursuant to § 35.917–2, subject to review by the Regional Administrator. The Regional Administrator may make the preliminary delineation of the boundaries of the planning area, if the State has not done so, or may revise boundaries selected by the locality or State agency, after appropriate consultation with State and local officials.

(b) Facilities planning shall be conducted only to the extent that the Regional Administrator determines to be necessary to insure that facilities for which grants are awarded will be cost-effective and environmentally sound and to permit reasonable evaluation of grant applications and subsequent preparation of designs, construction drawings and specifications.

§ 35.917–5 Public participation.

(a) Public participation in the facilities planning process shall be consistent with Part 105 of this chapter. One or more public hearings or meetings should be held within the area to obtain public advice at the beginning of the planning process. All governmental agencies and other parties which are known to be concerned or may have an interest in the plan shall be invited to participate.

(b) A public hearing shall be held prior to the adoption of the facilities plan by the implementing governmental units. This provision shall apply to all facilities planning initiated after April 30, 1974. This public hearing for the

facilities plan may satisfy the grantee hearing requirement of Part 6 of this chapter. The Regional Administrator may require the planning entity to hold additional public hearings, if needed, to more fully discuss the plan and alternatives or to afford concerned interests adequate opportunity to express their views.

(c) The time and place of the public hearing shall be conspicuously and adequately announced, generally at least 30 days in advance. In addition, a description of the water quality problems and the principal alternatives considered in the planning process shall be displayed at a convenient local site sufficiently prior to the hearing (approximately 15 days).

(d) Appropriate local and State agencies, State and regional clearinghouses, interested environmental groups and appropriate local public officials should receive written notice of public hearings.

(e) A request to waive the hearings on a facilities plan may be submitted to the Regional Administrator in writing prior to submission of the plan. Any such request will be acted upon within 30 days by the Regional Administrator. Each request must include a brief description of the alternatives, the area that will be serviced, the scope and dates of meetings and hearings previously held, and the reasons the grantee feels a public hearing would not serve the public interest.

§ 35.917–6 Acceptance by implementing governmental units.

A facilities plan submitted for approval shall include adopted resolutions or, where applicable, executed agreements of the implementing governmental units or management agencies providing for acceptance of the plan, or assurances that it will be carried out, and statements of legal authority necessary for plan implementation. Any departures from these requirements may be approved by the Regional Administrator prior to plan submission.

§ 35.917–7 State review and certification of facilities plan.

Each facilities plan must be submitted to the State agency for review. The State must certify that (a) the plan conforms with the requirements set forth in this subpart; (b) the plan conforms with any existing final basin plans approved under section 303(e) of the Act; (c) any concerned 208 planning agency has been afforded the opportunity to comment upon the plan; and (d) the plan conforms with any waste treatment management agreement plan approved pursuant to section 208(b) of the Act.

§ 35.917–8 Submission and approval of facilities plan.

The completed facilities plan must be submitted by the State agency and approved by the Regional Administrator. Where deficiencies in a facilities plan are discovered, the Regional Administrator shall promptly notify the State and the grantee or applicant in writing of the nature of such deficiencies and of the recommended course of action to correct such deficiencies. Approval of a plan of study or a facilities plan will not constitute an obligation of the United States for any Step 2, Step 3, or combination Steps 2 and 3 project.

§ 35.917–9 Revision or amendment of facilities plan.

A facilities plan may include more than one Step 3 project and provide the basis for several subsequent Step 2, Step 2–3, or Step 3 projects. A facilities plan which has served as the basis for the award of a grant for a Step 2, Step 2–3, or Step 3 project shall be reviewed prior to the award of any grant for a subsequent project involving Step 2 or Step 3 to determine if substantial changes have occurred. If in the judgment of the Regional Administrator substantial changes have occurred which warrant revision or amendment, the plan shall be revised or amended and submitted for review in the same manner specified in this subpart.

§ 35.920 Grant application.

Grant applications will be submitted and evaluated in accordance with Part 30, Subpart B of this chapter.

§ 35.920–1 Eligibility.

Municipalities, intermunicipal agencies, States, or interstate agencies may apply for grant assistance.

§ 35.920–2 Procedure.

Preapplication assistance, including, where appropriate, a preapplication conference, should be requested from the State agency or the appropriate EPA Regional Office for each project for which State priority has been determined. An application must be submitted to the State agency for each proposed treatment works. The basic application shall meet the requirements for the project set forth in § 35.920–3. Submissions required for subsequent related projects shall be provided in the form of amendments to the basic application. Each such submission shall be submitted through the State agency, must be complete (see § 35.920–3), and must relate to a project for which priority has been determined in accordance with § 35.915. If any information required pursuant to § 35.920–3 has been furnished with an earlier application, the applicant need only incorporate by reference and, if necessary update or revise such information utilizing the previously approved application.

§ 35.920–3 Contents of application.

(a) *Step 1.* Facilities plan and related elements required to apply for Step 2 grant assistance. An application for a grant for Step 1 shall include:

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

(2) Proposed subagreements, or an explanation of the intended method of awarding subagreements for performance of any substantial portion of the project work;

(3) Required comments or approvals of relevant State, local, and Federal agencies (including "clearinghouse" requirements of OMB Circular A–95, promulgated at 38 FR 32874 on November 28, 1973).

(b) *Step 2.* Preparation of construction drawings and specifications. Prior to the award of a grant or grant amendment for a Step 2 project, the following must have been furnished:

(1) A facilities plan (including an environmental assessment in accordance with Part 6 of this chapter) in accordance with §§ 35.917 through 35.917–9.

(2) Satisfactory evidence of compliance with the user charge provisions of §§ 35.925–11 and 35.935–13;

(3) Satisfactory evidence of compliance with the industrial cost recovery provisions of §§ 35.925–12, 35.928, and 35.935–13, if applicable;

(4) A statement regarding availability of the proposed site, if relevant;

(5) Satisfactory evidence of a proposed or existing program for compliance with the Relocation and Land Acquisition Policies Act of 1970 in accordance with § 30.403(d) and Part 4 of this chapter, if applicable;

(6) Satisfactory evidence of compliance with other applicable Federal statutory and regulatory requirements (see Part 30, Subpart C of this chapter);

(7) Proposed subagreements or an explanation of the intended method of awarding subagreements for performance of any substantial portion of the project work.

(8) Required comments or approvals of relevant State, local, and Federal agencies (including "clearinghouse" requirements of OMB Circular A–95) if a grant application has not been previously submitted.

(c) *Step 3.* Building and erection of a treatment works. Prior to the award of a grant or grant amendment for a Step 3 project, each of the items specified in paragraph (b) of this section, and in addition (1) two sets of construction drawings and specifications, suitable for bidding purposes, and (2) a schedule for or evidence of compliance with §§ 35.925–10 and 35.935–12 concerning an operation and maintenance program, must have been furnished.

(d) *Step 2/3, Design/Construct Project.* Prior to the award of a grant or grant amendment for a design/construct project the items in paragraphs (b) and (c) of this section must have been furnished, except that, in lieu of construction drawings and specifications, the proposed performance specifications and other relevant design/construct criteria for the project must have been submitted.

(e) *Training facility project.* An application for grant assistance for construction of a training facility pursuant to section 109(b) of the Act shall include (1) a statement concerning the suitability of the treatment works facility for

training operation and maintenance personnel for treatment works throughout one or more States; (2) a written commitment from the State agency or agencies to carry out at such facility a program of training approved by the Regional Administrator; and (3) an engineering report, including facility design data, cost estimates for design and construction of the facility, and a schedule for completion of design and construction.

§ 35.925 Limitations on award.

Before awarding initial grant assistance for any project for a treatment works through a grant or grant amendment, the Regional Administrator shall determine that all of the applicable requirements of § 35.920–3 have been met and shall further determine:

§ 35.925–1 Facilities planning.

That the facilities planning requirements set forth in §§ 35.917 through 35.917–9 have been met. Requirements set forth in § 35.150–1 and § 35.150–2 are not applicable.

§ 35.925–2 Basin plan.

That such works are in conformity with any applicable final basin plan approved in accordance with section 303 (e) of the Act.

§ 35.925–3 Priority determination.

That such works have been determined to be entitled to priority in accordance with § 35.915, and that the award of grant assistance for the proposed project will not jeopardize the funding of any treatment works of higher priority.

§ 35.925–4 State allocation.

That the award of grant assistance for the project will not cause the total of all grant assistance awarded to applicants within a State, including grant increases, to exceed the total of all allotments and reallotments available to such State pursuant to § 35.910.

§ 35.925–5 Funding and other capabilities.

That the applicant has:

(a) Agreed to pay the non-Federal project costs, and

(b) Has the legal, institutional, managerial, and financial capability to insure adequate construction, operation, and maintenance of the treatment works throughout the applicant's jurisdiction.

§ 35.925–6 Permits.

That if the award is for a Step 2, Step 3, or combination Step 2 and 3 project, the applicant has provided an identification of effluent discharge limitations or, if available, a copy of a permit as required by the National Pollution Discharge Elimination System.

§ 35.925–7 Design.

That the treatment works design will be (in the case of projects involving Step 2) or has been (in the case of projects for Step 3) based upon the following:

(a) The design, size, and capacity of such works are cost effective and relate directly to the needs to be served by such works, including adequate reserve capacity;

(b) Such works will meet applicable effluent limitations and attain not less than secondary treatment as defined by the Administrator pursuant to section 301(b)(1)(B) and 304(d)(1) of the Act (See Part 133 of this chapter), subject to the limitations set forth in § 35.930–4;

(c) The infiltration/inflow requirements of § 35.927 have been met; and

(d) If the initial grant assistance for the project is to be awarded from funds authorized for any fiscal year beginning after June 30, 1974, subject to the limitations set forth in § 35.930–4; (1) alternative waste treatment management techniques have been studied and evaluated to provide for the application of the best practicable waste treatment technology over the life of the works consistent with the purposes of Title II of the Act, and (2) the design has, as appropriate, taken into account and allowed to the extent practicable for the application of technology, at a later date, which will provide for the reclaiming or recycling of water or otherwise eliminate the discharge of pollutants.

§ 35.925–8 Environmental review.

That the NEPA requirements (Part 6 of this chapter), applicable to the project step, have been met. Such compliance is a basic prerequisite for Step 2, Step 3, and combination Step 2 and 3 projects. An adequate assessment of expected environmental impacts, consistent with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), is required as an integral part of facilities planning initiated after April 30, 1974, in accordance with § 35.917–1.

§ 35.925–9 Civil rights.

That if the award of grant assistance is for a project involving Step 2 or 3, the applicable requirements of Title VI, of the Civil Rights Act of 1964 (See Part 7 of this chapter) have been met.

§ 35.925–10 Operation and maintenance program.

If the award of grant assistance is for a project involving Step 3, that satisfactory provision has been made by the applicant for assuring proper and efficient operation and maintenance of the treatment works, in accordance with § 35.935–12, and that the State will have an effective operation and maintenance monitoring program to assure that treatment works assisted under this subpart, comply with applicable permit and grant conditions.

§ 35.925–11 User charges.

That, in the case of grant assistance awarded after March 1, 1973, for a project involving Step 2 or Step 3, an approvable plan and schedule of implementation have been developed for a system of user charges to assure that each recipient of waste treatment services within the applicants service area will pay its proportionate share of the costs of operation and maintenance (including replacement as defined in § 35.905–17) of all waste treatment service provided by the applicant and the applicant must agree that such system(s) will be maintained. See Appendix B to this subpart.

§ 35.925–12 Industrial cost recovery.

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

(b) Projects awarded grant assistance prior to March 2, 1973 are subject to the requirements of § 35.835–5 in lieu of paragraph (a) of this section.

§ 35.925–13 Sewage Collection System.

That, if the project is for, or includes, sewage collection system work, such work (a) is for replacement or major rehabilitation of an existing sewer system pursuant to § 35.927–3(a) and is necessary to the total integrity and performance of the waste treatment works servicing such community, or (b) is for a new sewer system in a community in existence on October 18, 1972, with sufficient existing or planned capacity to adequately treat such collected sewage. Replacement or major rehabilitation of an existing sewer system may be approved only if cost effective and must result in a sewer system design capacity equivalent only to that of the existing system plus a reasonable amount for future growth. A community, for purposes of this section, would include any area with substantial human habitation on October 18, 1972. No award may be made for a new sewer system in a community in existence on October 18, 1972 unless it is further determined by the Regional Administrator that the bulk (generally two-thirds) of the flow design capacity through the sewer system will be for waste waters originating from the community (habitation) in existence on October 18, 1972.

§ 35.925–14 Compliance with Environmental Laws.

That the treatment works will comply with all pertinent requirements of the Clean Air Act and other applicable Federal, State and local environmental laws and regulations.

§ 35.925–15 Treatment of industrial wastes.

That the allowable project costs do not include costs allocable to the treatment

for control or removal of pollutants in wastes introduced into the treatment works by industrial users unless the applicant is required to remove such pollutants introduced from non-industrial sources; and that the project is included in a waste treatment system, a principal purpose of which project and system is the treatment of domestic wastes of the entire community, area, region or district concerned. A "waste treatment system", for purposes of this section, means one or more treatment works which provide integrated but not necessarily interconnected waste disposal for the community, area, region or district. See the pretreatment standards set forth in Part 128 of this Chapter.

§ 35.925–16 Federal activities.

That the allowable project costs do not include costs allocable to the treatment of wastes from major activities of the Federal Government, which another Federal Agency has agreed to pay. Such Federal agencies may extend, over a period of years, their contributions to support capital costs incurred by municipal treatment facilities which provide service to them

§ 35.925–17 Retained amounts for reconstruction and expansion.

That the allowable project costs have been reduced by an amount equal to the unexpended balance of the amounts retained by the applicant for future reconstruction and expansion pursuant to § 35.928–2, together with interest earned thereon.

§ 35.925–18 Limitation upon project costs incurred prior to award.

That project construction has not been initiated prior to the approved date of initiation of construction (as defined in § 35.905–4), except as otherwise provided in this section. Generally, payment is not authorized for costs incurred prior to the approved date of initiation of construction, which shall be established in the grant agreement, in accordance with paragraphs (a), (b), and (c) of this section.

(a) Steps 1 or 2:

(1) No prior approval or prior grant award is required for Step 1 or Step 2 work initiated prior to November 1, 1974; payment for all such allowable costs incurred after the approved date of initiation of construction is authorized in conjunction with the first award of grant assistance.

(2) In the case of Step 1 or Step 2 project work initiated after October 31, 1974, no payment is authorized for:

(i) Step 1 costs incurred prior to the date of approval of a plan to study (see §§ 35.917 and 35.930–3(a)(1)); and

(ii) Step 2 costs incurred prior to the date of approval of a facilities plan (see §§ 35.917 and 35.930–3(b)(1)); payment for all Step 1 or Step 2 costs incurred after such dates of approval are authorized in conjunction with the first award of grant assistance.

(3) Where Step 1 or Step 2 project work is initiated after June 30, 1975, no grant assistance for the Step 1 or Step 2 project work may be awarded unless such award precedes initiation of the project work: *Provided*, That in lieu of award of a Step 1 grant after June 30, 1975, the State agency may request the Regional Administrator to reserve funds for Step 1 grant assistance (based upon approval of the plan of study) and to defer award of grant assistance for Step 1 work, which award, however, must in any event be made within the allotment period for the reserved funds.

(b) Step 3: Except as otherwise provided in this subparagraph, no grant assistance for a Step 3 project may be awarded unless such award precedes initiation of the Step 3 construction. Advance acquisition of major equipment items requiring long lead times, or advance construction of minor portions of treatment works, in emergencies or instances where delay could result in significant cost increases, may be approved by the Regional Administrator, but only (1) if the applicant submits a written and adequately substantiated request for approval, and (2) if written approval by the Regional Administrator is obtained prior to initiation of the advance acquisition or advance construction.

(c) The approval of a plan of study, a facilities plan, or of advance acquisition of equipment or advance construction will not constitute a commitment for approval of grant assistance for a subsequent treatment works project, but will allow payment for the previously approved costs as allowable project costs upon subsequent award of grant assistance, if requested prior to grant award (see § 35.945(a)). In instances where such approval is obtained, the applicant proceeds at its own risk, since payment for such costs cannot be made unless and until grant assistance for the project is awarded.

§ 35.925–19 Section 208: Agencies and plans.

That, pursuant to section 208(d) of the Act, after a waste treatment management agency has been designated for an area, and a final plan for such area has been approved, the applicant is the designated agency and the treatment works project is in conformity with such plan.

§ 35.927 Sewer system evaluation and rehabilitation.

(a) All applicants for grant assistance awarded after July 1, 1973, must demonstrate to the satisfaction of the Regional Administrator that each sewer system discharging into the treatment works project for which grant application is made is not or will not be subject to excessive infiltration/inflow. The determination whether excessive infiltration/inflow exists, may take into account, in addition to flow and related data, other significant factors such as cost-effectiveness (including the cost of substantial treatment works construction delay, see Appendix A to this subpart), public health emergencies, the effects of plant bypassing or overloading, or relevant economic or environmental factors.

(b) The determination whether or not excessive infiltration/inflow exists will generally be accomplished through a sewer system evaluation consisting of (1) certification by the State agency, as appropriate; and, when necessary (2) an infiltration/inflow analysis; and, if appropriate, (3) a sewer system evaluation survey followed by rehabilitation of the sewer system to eliminate an excessive infiltration/inflow defined in the sewer system evaluation. Information submitted to the Regional Administrator for such determination should be the minimum necessary to enable a judgment to be made.

(c) Guidelines on sewer system evaluation published by the Administrator provide further advisory information.

§ 35.927–1 Infiltration/Inflow analysis.

(a) The infiltration/inflow analysis shall demonstrate the non-existence or possible existence of excessive infiltration/inflow in each sewer system tributary to the treatment works. The analysis should identify the presence, flow rate, and type of infiltration/inflow conditions, which exist in the sewer systems. Information to be obtained and evaluated in the analysis should include, to the extent appropriate, the following:

(1) Estimated flow data at the treatment facility, all significant overflows and bypasses, and, if necessary, flows at key points within the sewer system.

(2) Relationship of existing population and industrial contribution to flows in the sewer system.

(3) Geographical and geological conditions which may affect the present and future flow rates or correction costs for the infiltration/inflow.

(4) A discussion of age, length, type, materials of construction and known physical condition of the sewer system.

(b) For determination of the possible existence of excessive infiltration/inflow, the analysis shall include an estimate of the cost of eliminating the infiltration/inflow conditions. These costs shall be compared with estimated total costs for transportation and treatment of the infiltration/inflow. Cost-Effectiveness Analysis Guidelines (Appendix A to this subpart), which contain advisory information, should be consulted with respect to this determination.

(c) If the infiltration/inflow analysis demonstrates the existence or possible existence of excessive infiltration/inflow a detailed plan for a sewer system evaluation survey shall be included in the analysis. The plan shall outline the tasks to be performed in the survey and their estimated costs.

§ 35.927–2 Sewer system evaluation survey.

(a) The sewer system evaluation survey shall consist of a systematic examination of the sewer systems to determine the specific location, estimated flow rate, method of rehabilitation and cost of rehabilitation versus cost of transportation and treatment for each defined source of infiltration/inflow.

(b) The results of the sewer system evaluation survey shall be summarized in a report. In addition, the report shall include:

(1) A justification for each sewer section cleaned and internally inspected.

(2) A proposed rehabilitation program for the sewer systems to eliminate all defined excessive infiltration/inflow.

§ 35.927–3 Rehabilitation.

(a) The scope of each treatment works project defined within the Facilities Plan as being required for implementation of the Plan, and for which Federal assistance will be requested, shall define (1) any necessary new treatment works construction, and (2) any rehabilitation work determined by the sewer system evaluation to be necessary for the elimination of excessive infiltration/inflow. However; rehabilitation which should be a part of the applicant's normal operation and maintenance responsibilities shall not be included within the scope of a Step 3 treatment works project.

(b) Grant assistance for a Step 3 project segment consisting of rehabilitation work may be awarded concurrently with Step 2 work for the design of the new treatment works construction.

§ 35.927–4 Sewer use ordinance.

Each applicant for grant assistance for a Step 2, Step 3, or combination Steps 2 and 3 project shall demonstrate to the satisfaction of the Regional Administrator that a sewer use ordinance or other legally binding requirement will be enacted and enforced in each jurisdiction served by the treatment works project before the completion of construction. The ordinance shall prohibit any new connections from inflow sources into the sanitary sewer portions of the sewer system and shall ensure that new sewers and connections to the sewer system are properly designed and constructed.

§ 35.927–5 Project procedures.

(a) *State certification.* The State agency may (but need not) certify that excessive infiltration/inflow does or does not exist. The Regional Administrator will determine that excessive infiltration/inflow does not exist on the basis of State certification, if he finds that the State had adequately established the basis for its certification through submission of only the minimum information necessary to enable a judgment to be made. Such information could include a preliminary review by the applicant or State, for example, of such parameters as per capita design flow, ratio of flow to design flow, flow records or flow estimates, bypasses or overflows, or summary analysis of hydrological, geographical, and geological conditions, but this review would not usually be equivalent to a complete infiltration/inflow analysis. State certification must be on a project-by-project basis. If the Regional Administrator determines on the basis of State certification that the treatment works is or may be subject to excessive infiltration/inflow, no Step 2 or Step 3 grant assistance may be awarded except as provided in paragraph (c) of this section.

(b) *Pre-award sewer system evaluation.* Generally, except as otherwise provided in paragraph (c) of this section, an adequate sewer system evaluation, consisting of a sewer system analysis and, if required, an evaluation survey, is an essential element of Step 1 facilities planning and is a prerequisite to the award of Step 2 or 3 grant assistance. If the Regional Administrator determines through State Certification or an infiltration/inflow analysis that excessive infiltration/inflow does not exist, Step 2 or 3 grant assistance may be awarded. If on the basis of State certification or the infiltration/inflow analysis, the Regional Administrator determines that possible excessive infiltration/inflow exists, an adequate sewer system evaluation survey and, if required, a rehabilitation program must be furnished, except as set forth in paragraph (c) of this section before grant assistance for Step 2 or 3 can be awarded. A Step 1 grant may be awarded for the completion of this segment of Step 1 work, and, upon completion of Step 1, grant assistance for a Step 2 or 3 project (for which priority has been determined pursuant to § 35.915) may be awarded.

(c) *Exception.* In the event it is determined by the Regional Administrator that the treatment works would be regarded (in the absence of an acceptable program of correction) as being subject to excessive or possible excessive infiltration/inflow, grant assistance may be awarded provided that the applicant establishes to the satisfaction of the Regional Administrator that the treatment works project for which grant application is made will not be significantly changed by any subsequent rehabilitation program or will be a component part of any rehabilitated system: *Provided*, That the applicant agrees to complete the sewer system evaluation and any resulting rehabilitation on an implementation schedule the State accepts (subject to approval by the Regional Administrator), which schedule shall be inserted as a special condition in the grant agreement. Compliance with this schedule shall be accomplished pursuant to § 35.935–16 and § 30.304 of this chapter.

(d) Municipalities may submit the infiltration/inflow analysis and when appropriate the sewer system evaluation survey, through the State agency, to the Regional Administrator for his review at any time prior to application for a treatment works grant. Based on such a review, the Regional Administrator shall provide the municipality with a written response indicating either his concurrence or nonconcurrence. The Regional Administrator must concur with the sewer system evaluation survey plan before the work is performed for the survey to be an allowable cost.

§ 35.928 Industrial cost recovery.

The system for industrial cost recovery shall be approved by the Regional Administrator and shall be implemented and maintained by the grantee in accordance with § 35.935–13 and the following requirements.

§ 35.928–1 Recovered amounts.

(a) Each year during the industrial cost recovery period, each industrial user of the treatment works shall pay its share of the total amount of the grant and any grant amendment awarded pursuant to this subpart, divided by the recovery period.

(b) The industrial cost recovery period shall be equal to 30 years or the useful life of the treatment works, whichever is less.

(c) Payments shall be made by industrial users no less often than annually. The first payment by an industrial user shall be made not later than 1 year after such user begins use of the treatment works.

(d) An industrial user's share shall be based on all factors which significantly influence the cost of the treatment works. Factors such as strength, volume, and delivery flow rate characteristics shall be considered and included to insure a proportional distribution of the grant assistance allocable to industrial use to all industrial users of the treatment works. As a minimum, an industry's share shall be proportional to its flow, in relation to treatment works flow capacity.

(e) If there is a substantial change in the strength, volume, or delivery flow rate characteristics introduced into the treatment works by an industrial user, such user's share shall be adjusted accordingly.

(f) If there is an expansion or upgrading of the treatment works, each existing industrial user's share shall be adjusted accordingly.

(g) An industrial user's share shall include only that portion of the grant assistance allocable to its use or to capacity firmly committed for its use.

(h) All unallocated treatment works capacity must conform with the requirements of section 204(a)(5) of the Act. Cost-effectiveness guidelines are published as Appendix A to this subpart to furnish additional advisory information concerning the implementation of section 212(2)(C) of the Act.

(i) An industrial user's share shall not include an interest component.

§ 35.928–2 Retained amounts.

(a) The grantee shall retain 50 percent of the amounts recovered from industrial users. The remainder, together with any interest earned thereon, shall be returned to the U.S. Treasury on an annual basis.

(b) A minimum of 80 percent of the retained amounts, together with interest earned thereon, shall be used solely for the eligible costs (in accordance with § 35.940) of the expansion or reconstruction of treatment works associated with the project and necessary to meet the requirements of the Act. The grantee shall obtain the written approval of the Regional Administrator prior to commit-

ment of the retained amounts for any expansion and reconstruction. The remainder of the retained amounts may be used as the grantee sees fit.

(c) Pending use, the grantee shall invest the retained amounts for reconstruction and expansion in: (1) Obligations of the U.S. Government; or (2) obligations guaranteed as to principal and interest by the U.S. Government or any agency thereof; or (3) shall deposit such amounts in accounts fully collateralized by obligations of the U.S. Government or by obligations fully guaranteed as to principal and interest by the U.S. Government or any agency thereof.

§ 35.930 Award of grant assistance.

Approval by the Regional Administrator of an application or amendments thereto through execution of a grant agreement (including a grant amendment), in accordance with § 30.305 of this subchapter, shall constitute a contractual obligation of the United States for the payment of the Federal share of the allowable project costs, as determined by the Regional Administrator. Information concerning the approved project furnished in accordance with § 35.920–3 shall be deemed to be incorporated in the grant agreement.

§ 35.930–1 Types of projects.

(a) The Regional Administrator may award grant assistance for the following types of projects pursuant to § 35.925:

(1) *Step 1.* A facilities plan and/or related elements required to apply for Step 2 grant assistance (see § 35.920–3(b)): *Provided,* That he determines that the applicant has submitted the items required pursuant to § 35.920–3(a);

(2) *Step 2.* Preparation of construction drawings and specifications: *Provided,* That he determines that the applicant has submitted the items required pursuant to § 35.920–3(b);

(3) *Step 3.* Building and erection of a treatment works: *Provided,* That he determines that the applicant has submitted the items required pursuant to § 35.920–3(c); or

(4) *Steps 2 and 3.* A combination of design (Step 2) and construction (Step 3) for a treatment works in the case of grants awarded after March 1, 1973:

(i) Where the Regional Administrator determines that compelling water quality enforcement considerations or public health emergencies warrant award of such grant assistance to assure expeditious construction of such treatment works, or

(ii) Where the Regional Administrator determines that award of such grant assistance will minimize administrative requirements in the case of projects not requiring a substantial amount of Federal assistance: *Provided,* That the award authority provided by this subparagraph (4) is subject to the following conditions: that (A) the Regional Administrator determines that the applicant has submitted the items pursuant to § 35.920–3(b); (B) the United States will be contractually obligated to pay only the Federal share of the approved Step 2 work and will not be contractually obligated to pay the Federal share of Step 3 project costs unless and until the plans and specifications developed during Step 2 are approved; and (C) funds fiscally obligated for Step 3 will be deobligated unless two sets of construction drawings and specifications suitable for bidding purposes are submitted to the Regional Administrator and approved prior to initiation of construction for the building and erection of the treatment works.

(5) *Step 2/3:* Design/construction of treatment works (Steps 2 and 3): *Provided,* That he determines that the applicant has submitted the items required pursuant to § 35.920–3(d): *And further provided,* That such grant assistance must be awarded pursuant to EPA guidelines for the award of design/construct projects, and that the requirements of such guidelines are met.

(b) The Regional Administrator may award Federal assistance by a grant or grant amendment from any allotment or reallotment available to a State pursuant to § 35.910 for payment of 100 percent of any cost of construction of a treatment works (for not more than one facility in any State) required to train and upgrade waste treatment works operation and maintenance personnel, from one or more States, pursuant to section 109(b) of the Act: *Provided,* That the Federal cost of any such training facility shall not exceed $250,000.

§ 35.930–2 Grant amount.

The amount of grant assistance shall be set forth in the grant agreement. The grant amount may not exceed the amount of funds available from the State allotments and reallotments pursuant to § 35.910. Grant payments will be limited to the Federal share of allowable project costs incurred within the grant amount or any increases in such amount effected through grant amendments in accordance with § 35.955, pursuant to the negotiated payment schedule included in the grant agreement.

§ 35.930–3 Grant term.

The grant agreement shall establish the period within which the project must be completed, in accordance with § 30.305–1 of this chapter, subject to excusable delay.

§ 35.930–4 Project scope.

The grant agreement must define the scope of the project for which Federal assistance is awarded under the grant. The project scope must include a step or an identified segment thereof. With respect to any grant assistance for a treatment works project which is initially funded from funds allocated for any fiscal year beginning after June 30, 1974, provision must be made for the application of best practicable waste treatment technology over the life of the treatment works. However, a grant may be made for a segment of Step 3 treatment works construction, when that segment in and of itself does not provide for achievement of applicable effluent discharge limitations (secondary treatment, best practicable waste treatment technology, or water quality effluent limitations), provided that: (a) The segment is to be a component of an operable treatment works which will provide for achievement of the applicable effluent discharge limitations, and (b) a commitment for completion of the complete treatment works is submitted to the Regional Administrator and is incorporated as a special condition in the grant agreement.

§ 35.930–5 Federal share.

The grant shall be 75 percent of the estimated total cost of construction of the project approved by the Regional Administrator in the grant agreement, except as otherwise provided in §§35.925–15, 35.925–16, 35–925–17, and 35.930–1(b).

§ 35.930–6 Limitation on Federal share.

The grantee must exert its best efforts to perform the project work as specified in the grant agreement within the approved cost ceiling. If at any time the grantee has reason to believe that the costs which it expects to incur in the performance of the project will exceed or be substantially less than the then approved estimated total project cost, the grantee must notify the Regional Administrator and the State agency promptly in writing to that effect, giving the revised estimate of such total cost for the performance of the project then or as soon thereafter as practicable, pursuant to 40 CFR 30.900. Delay in submission of such notice and excess cost information may prejudice approval of an increase in the grant amount. The United States shall not be obligated to pay for costs incurred in excess of the approved grant amount or any amendment thereof until the State has approved an increase in the grant amount from available allotments and the Regional Administrator has approved such increase through issuance of a written grant amendment pursuant to §§ 35.915 and 35.955. Grant payments will be made pursuant to § 35.945.

§ 35.935 Grant conditions.

In addition to the EPA General Grant Conditions (Subpart C of Part 30 and Appendix A to this subchapter), each treatment works grant shall be subject to the following conditions:

§ 35.935–1 Non-Federal construction costs.

The grantee agrees to pay, pursuant to section 204(a)(4) of the Act, the non-Federal costs of treatment works construction associated with the project and commits itself to complete the construction of the operable treatment works (see § 35.905–15) and complete waste treatment system (see § 35.905–3) of which the project is a part.

§ 35.935–2 Procurement; nonrestrictive specifications.

(a) *General.* The grantee must comply with § 35.938 of this subpart in the

construction of any Step 2 or Step 2+3 project. Performance of Step 2 and Step 3 project work may not be accomplished by force account except for (1) Step 1 or Step 2 infiltration/inflow work for which prior written approval has been obtained in accordance with §§ 35.927 to 35.927–5 and (2) segments of Step 3 work, the cost of which is estimated to be under $25,000. The Regional Administrator will cause appropriate review of grantee procurement methods to be made from time to time.

(b) *Nonrestrictive specifications.* No specification for bids or statement of work in connection with such works shall be written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing or to provide for necessary interchangeability of parts and equipment, or at least two brand names or trade names of comparable quality or utility are listed and are followed by the words "or equal." The single base bid method of solicitation for equipment and parts for determination of a low, responsive bidder may not be utilized. With regard to materials, if a single material is specified, the grantee must be prepared to substantiate the basis for the selection of the material.

§ 35.935–3 Bonding and insurance.

On contracts for the building and erection of treatment works (Step 3) exceeding $100,000, each bidder must furnish a bid guarantee equivalent to 5 percent of the bid price. In addition the contractor awarded either a design/construct contract or a construction contract for Step 3 must furnish performance and payment bonds, each of which shall be in an amount not less than 100 percent of the contract price. Construction contracts less than $100,000 shall be subject to State and local requirements relating to bid guarantees, performance and payment bonds. Contractors should obtain such construction insurance (e.g., fire and extended coverage, workmen's compensation, public liability and property damage, and "all risk" builders risk) as is customary and appropriate.

§ 35.935–4 State and local laws.

The construction of the project, including the letting of contracts in connection therewith, shall conform to the applicable requirements of State, territorial, and local laws and ordinances to the extent that such requirements do not conflict with Federal laws and this subchapter.

§ 35.935–5 Davis-Bacon and related statutes.

In the case of any project involving Step 3, the grantee must consult with the Regional Administrator prior to issuance of invitation for bids concerning compliance with Davis-Bacon and related statutes required pursuant to § 30.403 (a), (b), and (c) of this chapter.

§ 35.935–6 Equal employment opportunity.

Generally, contracts involving Step 3, of $10,000 and above, are subject to equal employment opportunity requirements under Executive Order 11246, including rules, regulations and orders issued thereunder (see Part 8 of this chapter). The grantee must consult with the Regional Administrator concerning equal employment opportunity requirements prior to issuance of invitation for bids where the cost of construction work is estimated to be more than $1,000,000, or where required by the grant agreement.

§ 35.935–7 Access.

Any contract for Step 1, Step 2 or Step 3 work must provide that representatives of the Environmental Protection Agency and the State will have access to the work whenever it is in preparation or progress and that the contractor will provide proper facilities for such access and inspection. Such contract must also provide that the Regional Administrator, the Comptroller General of the United States, or any authorized representative shall have access to any books, documents, papers, and records of the contractor which are pertinent to the project for the purpose of making audit, examination, excerpts, and transcriptions thereof.

§ 35.935–8 Supervision.

In the case of any project involving Step 3, the grantee will provide and maintain competent and adequate engineering supervision and inspection of the project to insure that the construction conforms with the approved plans and specifications.

§ 35.935–9 Project completion.

The grantee agrees to expeditiously initiate and complete the project or cause it to be constructed and completed in accordance with the grant agreement and application approved by the Regional Administrator. The Regional Administrator must terminate the grant if initiation of construction for a Step 3 project has not occurred within one year after award of grant assistance for such project: *Provided*, That the Regional Administrator may defer such termination for not more than six additional months if he determines that there is good cause for the delay in initiation of project construction.

§ 35.935–10 Copies of contract documents.

In addition to the notification of project changes pursuant to § 30.900–1 of this chapter, a copy of any prime contract or modification thereof and of revisions to plans and specifications must be promptly submitted to the Regional Administrator.

§ 35.935–11 Project changes.

In addition to the notification of project changes required pursuant to § 30.900–1 of this chapter, prior approval by the Regional Administrator and the State agency is required for project changes which may (a) substantially alter the design and scope of the project, (b) alter the type of treatment to be provided, (c) substantially alter the location, size, capacity, or quality of any major item of equipment; or (d) increase the amount of Federal funds needed to complete the project: *Provided*, That prior EPA approval is not required for changes to correct minor errors, minor changes, or emergency changes. No approval of a project change pursuant to § 35.900 of this chapter shall commit or obligate the United States to any increase in the amount of the grant of payments thereunder unless a grant increase is approved pursuant to § 35.955. The preceding sentence shall not preclude submission or consideration of a request for a grant amendment pursuant to § 30.901 of this chapter.

(a) The grantee must make adequate provisions satisfactory to the Regional Administrator for assuring economic, effective, and efficient operation and maintenance of such works in accordance with a plan of operation approved by the State water pollution control agency or, as appropriate, the interstate agency after construction thereof.

(b) As a minimum, such plan shall include provision for: (1) An operation and maintenance manual for each facility, (2) an emergency operating and response program, (3) properly trained management, operation and maintenance personnel, (4) adequate budget for operation and maintenance, (5) operational reports, and (6) provisions for laboratory testing adequate to determine influent and effluent characteristics and removal efficiencies.

(c) The Regional Administrator shall not pay (1) more than 50 percent of the Federal share of any Step 3 project unless the grantee has furnished a draft of the operation and maintenance manual for review, or adequate evidence of timely development of such a draft, or (2) more than 90 percent of the Federal share unless the grantee has furnished a satisfactory final operation and maintenance manual.

§ 35.935–13 User charges and industrial cost recovery.

(a) The grantee must obtain the approval of the Regional Administrator of the system of industrial cost recovery (see § 35.928) and of the system of user charges. The Regional Administrator shall not pay more than 50 percent of the Federal share of any Step 3 project unless the grantee has submitted adequate evidence of timely development of its system(s) of user charges and industrial cost recovery nor more than 80 percent of such Federal share unless the Regional Administrator has approved such system(s).

(b) The Regional Administrator may approve a user charge system in accordance with the following criteria:

(1) The user charge system must result in the distribution of the cost of operation and maintenance of treatment works within the grantee's precise area to each user (or user class) in proportion to such user's contribution to the total wastewater loading of the treatment works. Factors such as strength, volume, and delivery flow rate characteristics shall be considered and included as the basis for the user's contribution to ensure a proportional distribution of operation and maintenance costs to each user (or user class).

(2) For the first year of operation, operation and maintenance costs shall be based upon past experience for existing treatment works or some other rational method that can be demonstrated to be applicable.

(3) The grantee shall review user charges annually and revise them periodically to reflect actual treatment works operation and maintenance costs.

(4) The user charge system must generate sufficient revenue to offset the cost of all treatment works operation and maintenance provided by the grantee.

(5) The user charge system must be incorporated in one or more municipal legislative enactments or other appropriate authority. If the project is a regional treatment works accepting wastewaters from treatment works owned by others, then the subscribers receiving waste treatment services from the grantee shall have adopted user charge systems. Such user charge systems shall also be incorporated in the appropriate municipal legislative enactments or other appropriate authority.

(c) Upon approval of a grantee's system(s) of user charges and industrial cost recovery, implementation and maintenance of such approved system(s) and implementation schedules therefor, shall become a condition of the grant and the grantee shall be subject to the provisions with respect to non-compliance with grant conditions of § 30.404 of this chapter.

(d) The grantee must maintain such records as are necessary to document such compliance.

(e) Guidelines containing illustrative examples of acceptable user charge and industrial cost recovery systems may be consulted for advisory information. The user charge guidelines are contained in Appendix B to this subpart. Cost Recovery Guidelines are published separately and may be obtained from the EPA Regional Office.

§ 35.935–14 Final inspection.

The grantee must notify the Regional Administrator through the State Agency of the completion of Step 3 project construction. The Regional Administrator shall cause final inspection to be made within 60 days of the receipt of the notice. Upon completion of the final inspection and upon determination by the Regional Administrator that the treatment works have been satisfactorily constructed in accordance with the grant agreement, the grantee may make a request for final payment pursuant to § 35.945(e).

§ 35.935–15 Utilization of small and minority businesses.

It is the policy of the Environmental Protection Agency that grantees must utilize to the maximum practical extent small and minority businesses in procurement under grants involving Steps 1, 2, or 3. In the case of grants of $10,000,000 or more grantees must institute an affirmative program for the utilization of small and minority businesses prior to award of the grant.

§ 35.935–16 Sewer use ordinance and evaluation/rehabilitation program.

The grantee must obtain the approval of the Regional Administrator of its sewer use ordinance, pursuant to § 35.927–4 of this subpart. The Regional Administrator shall not pay more than 80 percent of the Federal share of any Step 3 project unless he has approved the grantee's sewer use ordinance, and the grantee is complying with the sewer system evaluation and rehabilitation schedule incorporated in the grant agreement pursuant to § 35.927–5.

§ 35.935–17 Training facility.

If assistance has been provided for the construction of a treatment works required to train and upgrade waste treatment works operation and maintenance personnel, pursuant to § 35.930–1(b) and 35.920–3(e), the grantee must provide assurance that the treatment works will be operated as such a training facility for a period of at least ten years, upon completion of construction.

§ 35.937 Contracts for personal and professional services. [Reserved]

§ 35.938 Construction contracts of grantees.

§ 35.938–1 Applicability.

This section applies to contracts awarded by grantees for any Step 3 project or Step 2+3 project, except personal and professional service contracts.

§ 35.938–2 Performance by contract.

It is the policy of the Environmental Protection Agency to encourage free and open competition with regard to project work performed by contract. The project work shall be performed under one or more contracts awarded by the grantee to private firms, except for force account work authorized by § 35.935–2. The following sections define EPA policy for the implementation of the procurement standards set forth in Office of Management and Budget Circular No. A–102, Attachment O (printed at 38 FR 21345, August 7, 1973). Grantee procurement systems should as a minimum provide for the following:

§ 35.938–3 Type of contract.

Each contract shall be either a fixed-price (lump sum) contract or fixed-rate (unit price) contract, or a combination of the two, unless the Regional Administrator gives advance written approval for the grantee to use some other method of contracting. The cost-plus-a-percentage of cost method of contracting shall not be used.

§ 35.938–4 Formal advertising.

Each contract shall be awarded by means of formal advertising, unless negotiation is permitted in accordance with § 35.938–5. Formal advertising shall be in accordance with the following:

(a) *Adequate public notice.* The grantee will cause adequate notice to be given of the solicitation by publication in newspapers or journals of general circulation, beyond the grantee's locality (Statewide, generally) inviting bids on the project work, and stating the method by which bidding documents may be obtained and/or examined. Where the estimated prospective cost of Step 3 construction is ten million dollars or more, such notice must generally be published in trade journals of Nationwide distribution. The grantee should in addition solicit bids directly from bidders, if it maintains a bidders list.

(b) *Adequate time for preparing bids.* Adequate time, generally not less than 30 days must be allowed between the date when public notice pursuant to paragraph (a) of this section is first published and the date by which bids must be submitted. Bidding documents (including specifications and drawings) shall be available to prospective bidders from the date when such notice is first published.

(c) *Adequate bidding documents.* A reasonable number of bidding documents (invitations for bid) shall be prepared by grantee and shall be furnished upon request on a first-come, first-served basis. A complete set of bidding documents shall be maintained by grantee and shall be available for inspection and copying by any party. Such bidding documents shall include:

(1) A complete statement of the work to be performed, including necessary drawings and specifications, and the required completion schedule. (Drawings and specifications may be made available for inspection instead of being furnished.);

(2) The terms and conditions of the contract to be awarded;

(3) A clear explanation of the method of bidding and the method of evaluation of bid prices, and the basis and method for award of the contract;

(4) Responsibility requirements or criteria which will be employed in evaluating bidders; *Provided,* That an experience requirement or performance bond may not be utilized unless adequately justified under the particular circumstances by the grantee;

(5) The following statement:

Any contract or contracts awarded under this Invitation for Bids are expected to be funded in part by a grant from the United States Environmental Protection Agency. Neither the United States nor any of its de-

partments, agencies or employees is or will be a party to this Invitation for Bids or any resulting contract.;

and

(6) A copy of § 35.938 and § 35.939.

(d) *Sealed bids.* The grantee shall provide for bidding by sealed bid and for the safeguarding of bids received until public opening.

(e) *Amendments to bidding documents.* If grantee desires to amend any part of the bidding documents (including drawings and specifications) during the period when bids are being prepared, the amendments shall be communicated in writing to all firms who have obtained bidding documents in time to be considered prior to the bid opening time; when appropriate, the period for submission of bids shall be extended.

(f) *Bid modifications.* A firm which has submitted a bid shall be allowed to modify or withdraw its bid prior to the time of bid opening.

(g) *Public opening of bids.* Grantee shall provide for a public opening of bids at the place, date and time announced in the bidding documents.

(h) *Award to the low responsive, responsible bidder.* (1) After bids are opened, they shall be evaluated by grantee in accordance with the methods and criteria set forth in the bidding documents.

(2) Unless all bids are rejected, award shall be made to the low, responsive, responsible bidder.

(3) If award is intended to be made to a firm which did not submit the lowest bid, a written statement shall be prepared prior to any award and retained by the grantee explaining why each lower bidder was deemed not responsive or nonresponsive.

(4) State or local laws, ordinances, regulations or procedures which are designed or operate to give local or in-State bidders preference over other bidders shall not be employed in evaluating bids.

§ 35.938–5 Negotiation.

Negotiation of contracts (i.e., award of contracts by any method other than formal advertising) is authorized if it is impracticable and infeasible to use formal advertising. Negotiated contracts must be competitively awarded to the maximum practicable extent. Generally, procurements may be negotiated by the grantee if:

(a) Public exigency will not permit the delay incident to advertising (e.g., an emergency procurement);

(b) The material or service to be procured is available from only one person or firm (and, if the procurement is expected to aggregate more than $5,000, the Regional Administrator has given prior approval);

(c) The aggregate amount involved does not exceed $2,500, (except as provided in paragraph (b) of this section);

(d) The procurement is for personal or professional services, or for any service to be rendered by a university or other educational institution;

(e) No responsive, responsible bids at acceptable price levels have been received after formal advertising, and the Regional Administrator has given advance written approval;

(f) The procurement is for material or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental or research work, for highly perishable materials, resale, or for technical or specialized supplies requiring substantial initial investment for manufacture. Any negotiated procurement under this paragraph (f) of this section, other than for perishable materials must be approved in advance by the Regional Administrator; or

(g) Negotiation of contracts is otherwise atuhorized by Federal law, rules, or regulations or approved prior to the procurement by the Regional Administrator.

§ 35.939 Compliance with procurement requirements.

(a) *Grantee responsibility.* The grantee is primarily responsible for selecting the low, responsive, and responsible bidder in accordance with applicable requirements of State, territorial, or local laws or ordinances, as well as the specific requirements of Federal law or this subchapter directly affecting the procurement (for example, the nonrestrictive specification requirement of § 35.935–2(b) or the equal employment opportunity requirement of § 35.935–6) and for the initial resolution of complaints based upon alleged violations. If complaint is made to the Regional Administrator concerning an alleged violation of Federal law or this subchapter in the procurement of construction services or materials for a project involving Step 3, the complaint will be referred to the grantee for resolution. The grantee must promptly determine each such complaint upon its merits permitting the complaining party as well as any other interested party who may be adversely affected, to state in writing or at a conference the basis for their views concerning the proposed procurement. The grantee must promptly furnish to the complaining party and to other affected parties, by certified mail, a written summary of its determination, substantiated by an engineering and legal opinion, providing a justification for its determination. See paragraph (c) of the section for applicable time limitations.

(b) *Regional Administrator responsibility.* A party adversely affected by an adverse determination of a grantee made pursuant to paragraph (a) of this section, concerning an alleged violation of a specific requirement of Federal law or this subchapter directly affecting the procurement of construction services or material for a project involving Step 3 may request the Regional Administrator to review an adverse determination, subject to the time limitation set forth in paragraph (c) of this section. A copy of the written adverse determination and supporting justification shall be transmitted with the request for review, together with a statement of the specific reasons why the proposed grantee procurement action would violate Federal requirements. The Regional Administrator will afford both the grantee and the complaining party, as well as any other interested party who may be adversely affected, an opportunity to present the basis for their views in writing or at a conference, and he shall promptly state in writing the basis for his determination of the protest. If the grantee proposes to award the contract or to approve award of a specified sub-item under the contract to a bidder other than the low bidder, the grantee will bear the burden of proving that its determination concerning responsiveness of the low bid is in accordance with Federal law and this subchapter; or, if the basis for the grantee's determination is a finding that the low bidder is not responsible, the grantee must establish and substantiate the basis for its determination and must establish that such determination has been made in good faith. The written determination by the Regional Administrator shall be promptly furnished to the grantee and to the complainant.

(c) *Time limitations.* Complaints should be made pursuant to paragraph (a) of this section as early as possible during the procurement process, preferably prior to issuance of an invitation for bids to avoid disruption of the procurement process: *Provided*, That a complaint authorized by paragraph (a) of this section must be mailed by certified mail (return receipt requested) or delivered no later than five working days after the bid opening. A request for review by the Regional Administrator pursuant to paragraph (b) of this section must be received by the Regional Administrator within one week after the complaining party received the grantee's adverse determination.

(d) *Deferral of Procurement Action.* Where the grantee has received a written compliant pursuant to paragraph (a) of this section, it must defer issuance of its solicitation or award or notice to proceed under the contract (as appropriate) for ten days after mailing or delivery of any written adverse determination. Where the Regional Administrator has received a written protest pursuant to paragraph (b) of this section, he must notify the grantee promptly and the grantee must defer issuance of its solicitation or award of the construction contract, as appropriate, until ten days after it receives the determination by the Regional Administrator. If a determination is made by either the grantee or the Regional Administrator which is favorable to the complainant, the terms of the solicitation must be revised or the contract must be awarded (as appropriate) in accordance with such determination.

(e) *Enforcement.* Noncompliance with the provisions of this subchapter affecting procurement will result in (1) total

or partial termination of the grant pursuant to § 35.950, (2) ineligibility for grant assistance which could otherwise be awarded under this subchapter or (3) disallowance of project costs (see § 35.940–2(j)) incurred in violation of the provisions of this subchapter or applicable Federal laws, as determined by the Regional Administrator. The grantee may appeal adverse determinations by the Regional Administrator in accordance with the Disputes Article (Article 7 of Appendix A to Subchapter B of this title).

§ 35.940 Determination of allowable costs.

The grantee will be paid, upon request, in accordance with § 35.945, for the Federal share of all necessary costs within the scope of the approved project and determined to be allowable in accordance with § 30.701 of this chapter, this subpart, and the grant agreement.

§ 35.940–1 Allowable project costs.

Allocable project costs of the grantee which are reasonable and necessary are allowable. Necessary costs may include, but are not limited to:

(a) Costs of salaries, benefits, and expendable material incurred by the grantee for the project, except as provided in § 940–2(g).

(b) Costs under construction contracts.

(c) Professional and consultant services.

(d) Facility planning directly related to the treatment works.

(e) Sewer system evaluation (§ 35.927).

(f) Project feasibility and engineering reports.

(g) Costs required pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. 4621 et seq., 4651 et seq.), and regulations issued thereunder (Part 4 of this chapter).

(h) Costs of complying with the National Environmental Policy Act, including costs of public notices and hearings.

(i) Preparation of construction drawings, specifications, estimates, and construction contract documents.

(j) Landscaping.

(k) Supervision of construction work.

(l) Removal and relocation or replacement of utilities, for which the grantee is legally obligated to pay.

(m) Materials acquired, consumed, or expended specifically for the project.

(n) A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations.

(o) Development and preparation of an operation and maintenance manual.

(p) Project identification signs (§ 30.604–4 of this chapter).

§ 35.940–2 Unallowable costs.

Costs which are not necessary for the construction of a treatment works project are unallowable. Such costs include, but are not limited to:

(a) Basin or areawide planning not directly related to the project;

(b) Bonus payments not legally required for completion of construction in advance of a contractual completion date;

(c) Personal injury compensation or damages arising out of the project, whether determined by adjudication, arbitration, negotiation, or otherwise;

(d) Fines and penalties resulting from violations of, or failure to comply with, Federal, State, or local laws;

(e) Costs outside the scope of the approved project;

(f) Interest on bonds or any other form of indebtedness required to finance the project costs;

(g) Ordinary operating expenses of local government, such as salaries and expenses of a mayor, city council members, or city attorney, except as provided in § 35.940–4.

(h) Site acquisition (for example, sewer rights-of-way, sewage treatment plant sites, sanitary landfills and sludge disposal areas) except as otherwise provided in § 35.940–3(a).

(i) Costs for which payment has been or will be received under another Federal assistance program.

(j) Costs of equipment or material procured in violation of § 35.938–4(h).

§ 35.940–3 Costs allowable, if approved.

Certain direct costs are sometimes necessary for the contruction of a treatment works and are allowable if reasonable and approved by the Regional Administrator in the grant agreement or a grant amendment. Such costs include, but are not limited to:

(a) Land acquired after October 17, 1972, that will be an integral part of the treatment process or that will be used for ultimate disposal of residues resulting from such treatment (for example, land for spray irrigation of sewage effluent).

(b) Acquisition of an operable portion of a treatment works.

(c) Rate determination studies required pursuant to § 35.925–11.

§ 35.940–4 Indirect costs.

Indirect costs of the grantee shall be allowable in accordance with an indirect cost agreement negotiated and incorporated in the grant agreement. An indirect cost agreement must identify those cost elements allowable pursuant to § 35.940–1. Where the benefits derived from a grantee's indirect services cannot be readily determined, a lump sum for overhead may be negotiated based upon a determination that such amount will be approximately the same as the actual indirect costs that may be incurred.

§ 35.940–5 Disputes concerning allowable costs.

The grantee should seek to resolve any questions relating to cost allowability or allocation at its earliest opportunity (if possible, prior to execution of the grant agreement). Final determinations concerning the allowability of costs shall be conclusive unless appealed within 30 days in accordance with the "Disputes" article (Article 7) of the EPA General Grant Conditions (Appendix A, Subchapter B of this title).

§ 35.945 Grant payments.

The grantee shall be paid the Federal share of allowable costs incurred within the scope of an approved project, subject to the limitations of §§ 35.925–18, 35.930–5, and 35.930–6; *Provided*, That such payments must be in accordance with the payment schedule and the grant amount set forth in the grant agreement and any amendments thereto. The payment schedule will provide that payment for Step 1 and Step 2 project work will be made only on the basis of completion of the step or, if specified in the payment schedule in the grant agreement, upon completion of specific tasks within the step. All allowable costs incurred prior to initiation of construction of the project must be claimed in the application for grant assistance for that project prior to the award of such assistance or no subsequent payment will be made for such costs.

(a) *Initial request for payment.* Upon award of grant assistance, the grantee may request payment for the unpaid Federal share of actual or estimated allowable project costs incurred prior to grant award subject to the limitations of § 35.925–18, and payment for such costs shall be made in accordance with the negotiated payment schedule included in the grant agreement.

(b) *Interim requests for payment.* The grantee may submit requests for payments for allowable costs incurred in accordance with the negotiated payment schedule included in the grant agreement. Upon receipt of a request for payment, subject to the limitations set forth in § 30.602–1 of this subchapter and §§ 35.935–12, 35.935–13, and 35.935–16, the Regional Administrator shall cause to be disbursed from available appropriated funds such amounts as are necessary so that the total amount of Federal payments to the grantee for the project is equal to the Federal share of the actual or estimated allowable project costs incurred to date, as certified by the grantee in its most recent request for payment. Generally, payments will be made within 20 days after receipt of a request for payment.

(c) *Adjustment.* At any time or times prior to final payment under the grant, the Regional Administrator may cause any request(s) for payment to be reviewed or audited. Each payment theretofore made shall be subject to reduction for amounts included in the related request for payment which are found, on the basis of such review or audit, not to constitute allowable costs. Any payment may be reduced for overpayments or increased for underpayments on preceding requests for payment.

(d) *Refunds, rebates, credits, etc.* The Federal share of any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the grantee with respect to the project, to the extent that they are properly allocable to costs for which the grantee

has been paid under a grant, must be credited to the current State allotment or paid to the United States. Reasonable expenses incurred by the grantee for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable under the grant when approved by the Regional Administrator.

(e) *Final payment.* Upon completion of final inspection pursuant to § 35.935–14 and approval of the request for payment designated by the grantee as the "final payment request" and upon compliance by the grantee with all applicable requirements of this subchapter and the grant agreement, the Regional Administrator shall cause to be disbursed to the grantees any balance of allowable project cost which has not been paid to the grantee. The final payment request must be submitted by the grantee promptly after final inspection. Prior to final payment under the grant, the grantee must execute and deliver an assignment to the United States, in form and substance satisfactory to the Regional Counsel, of the Federal share of refunds, rebates, credits or other amounts (including any interest thereon) properly allocable to costs for which the grantee has been paid by the Government under the grant, and a release discharging the United States, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the project work or under the grant, subject only to such exceptions which may be specified in the release.

§ 35.950 Suspension or termination of grants.

Grants may be suspended, in accordance with § 30.902 of this subchapter and Article 4 of the General Grant Conditions (Appendix A to this subchapter), or terminated, in accordance with § 30.-903 of this subchapter and Article 5 of the General Grant Conditions (Appendix A of this subchapter). The State agency shall be concurrently notified in writing of any such suspension or termination action.

§ 35.955 Grant amendments to increase grant amounts.

Grant agreements may be amended in accordance with § 30.901 of this chapter with respect to project changes which have been approved in accordance with § 30.900 and § 35.935–11 of this subchapter: *Provided*, That no grant agreement may be amended to increase the amount of a grant unless the State agency has approved the grant increase from available State allotments and reallotments in accordance with § 35.915.

§ 35.960 Disputes.

Final determinations by the Regional Administrator concerning ineligibility of projects for which priority has been determined in accordance with § 35.915 and final determinations by the Regional Administrator concerning disputes arising under a grant pursuant to this subpart 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 General Grant Conditions (Article 7 of Appendix A to this subchapter).

APPENDIX A

COST EFFECTIVENESS ANALYSIS GUIDELINES

a. *Purpose.*—These guidelines provide advisory information concerning basic methodology for determining the most cost-effective waste treatment management system or the most cost-effective component part of any waste treatment management system.

b. *Authority.*—The guidelines contained herein are provided pursuant to section 212 (2)(C) of the Federal Water Pollution Control Act Amendments of 1972 (the Act).

c. *Applicability.*—These guidelines apply to the development of plans for and the selection of component parts of a waste treatment management system for which a Federal grant is awarded under 40 CFR, Part 35.

d. *Definitions.*—Definitions of terms used in these guidelines are as follows:

(1) *Waste treatment management system.*—A system used to restore the integrity of the Nation's waters. Waste treatment management system is used synonymously with complete waste treatment system as defined in 40 CFR, Part 35.905–3.

(2) *Cost-effectiveness analysis.*—An analysis performed to determine which waste treatment management system or component part thereof will result in the minimum total resources costs over time to meet the Federal, State or local requirements.

(3) *Planning period.*—The period over which a waste treatment management system is evaluated for cost-effectiveness. The planning period commences with the initial operation of the system.

(4) *Service life.*—The period of time during which a component of a waste treatment management system will be capable of performing a function.

(5) *Useful life.*—The period of time during which a component of a waste treatment management system will be required to perform a function which is necessary to the system's operation.

e. *Identification, selection and screening of alternatives.*—(1) *Identification of alternatives.*—All feasible alternative waste management systems shall be initially identified. These alternatives should include systems discharging to receiving waters, systems using land or subsurface disposal techniques, and systems employing the reuse of wastewater. In identifying alternatives, the possibility of staged development of the system shall be considered.

(2) *Screening of alternatives.*—The identified alternatives shall be systematically screened to define those capable of meeting the applicable Federal, State, and local criteria.

(3) *Selection of alternatives.*—The screened alternatives shall be initially analyzed to determine which systems have cost-effective potential and which should be fully evaluated according to the cost-effectiveness analysis procedures established in these guidelines.

(4) *Extent of effort.*—The extent of effort and the level of sophistication used in the cost-effectiveness analysis should reflect the size and importance of the project.

f. *Cost-effective analysis procedures.*—(1) *Method of Analysis.*—The resources costs shall be evaluated through the use of opportunity costs. For those resources that can be expressed in monetary terms, the interest (discount) rate established in section (f)(5) will be used. Monetary costs shall be calculated in terms of present worth values or equivalent annual values over the planning period as defined in section (f)(2). Nonmonetary factors (e.g., social and environmental) shall be accounted for descriptively in the analysis in order to determine their significance and impact.

The most cost-effective alternative shall be the waste treatment management system determined from the analysis to have the lowest present worth and/or equivalent annual value without overriding adverse nonmonetary costs and to realize at least identical minimum benefits in terms of applicable Federal, State, and local standards for effluent quality, water quality, water reuse and/or land and subsurface disposal.

(2) *Planning period.*—The planning period for the cost-effectiveness analysis shall be 20 years.

(3) *Elements of costs.*—The costs to be considered shall include the total values of the resources attributable to the waste treatment management system or to one of its component parts. To determine these values, all monies necessary for capital construction costs and operation and maintenance costs shall be identified.

Capital construction costs used in a cost-effectiveness analysis shall include all contractors' costs of construction including overhead and profit; costs of land, relocation, and right-of-way and easement acquisition; design engineering, field exploration, and engineering services during construction; administrative and legal services including costs of bond sales; startup costs such as operator training; and interest during construction. Contingency allowances consistent with the level of complexity and detail of the cost estimates shall be included.

Annual costs for operation and maintenance (including routine replacement of equipment and equipment parts) shall be included in the cost-effectiveness analysis. These costs shall be adequate to ensure effective and dependable operation during the planning period for the system. Annual costs shall be divided between fixed annual costs and costs which would be dependent on the annual quantity of wastewater collected and treated.

(4) *Prices.*—The various components of cost shall be calculated on the basis of market prices prevailing at the time of the cost-effectiveness analysis. Inflation of wages and prices shall not be considered in the analysis. The implied assumption is that all prices involved will tend to change over time by approximately the same percentage. Thus, the results of the cost effectiveness analysis will not be affected by changes in the general level of prices.

Exceptions to the foregoing can be made if there is justification for expecting significant changes in the relative prices of certain items during the planning period. If such cases are identified, the expected change in these prices should be made to reflect their future relative deviation from the general price level.

(5) *Interest (discount) rate.*—A rate of 7 percent per year will be used for the cost-effectiveness analysis until the promulgation of the Water Resources Council's "Proposed Principles and Standards for Planning Water and Related Land Resources." After promulgation of the above regulation, the rate established for water resource projects shall be used for the cost-effectiveness analysis.

(6) *Interest during construction.*—In cases where capital expenditures can be expected to be fairly uniform during the construction

period, interest during construction may be calculated as $I \times \frac{1}{2} P \times C$ where:

I=the interest (discount) rate in Section 1(5).
P=the construction period in years.
C=the total capital expenditures.

In cases when expenditures will not be uniform, or when the construction period will be greater than three years, interest during construction shall be calculated on a year-by-year basis.

(7) *Service life.*—The service life of treatment works for a cost-effectiveness analysis shall be as follows:

Land	Permanent
Structures (includes plant buildings, concrete process tankage, basins, etc.; sewage collection and conveyance pipelines; lift station structures; tunnels; outfalls)	30–50 years
Process equipment (includes major process equipment such as clarifier mechanisms, vacuum filters, etc.; steel process tankage and chemical storage facilities; electrical generating facilities on standby service only).	15–30 years
Auxiliary equipment (includes instruments and control facilities; sewage pumps and electric motors; mechanical equipment such as compressors, aeration systems, centrifuges, chlorinators, etc.; electrical generating facilities on regular service).	10–15 years

Other service life periods will be acceptable when sufficient justification can be provided.

Where a system or a component is for interim service and the anticipated useful life is less than the service life, the useful life shall be substituted for the service life of the facility in the analysis.

(8) *Salvage value.*—Land for treatment works, including land used as part of the treatment process or for ultimate disposal of residues, shall be assumed to have a salvage value at the end of the planning period equal to its prevailing market value at the time of the analysis. Right-of-way easements shall be considered to have a salvage value not greater than the prevailing market value at the time of the analysis.

Structures will be assumed to have a salvage value if there is a use for such structures at the end of the planning period. In this case, salvage value shall be estimated using straightline depreciation during the service life of the treatment works.

For phased additions of process equipment and auxiliary equipment, salvage value at the end of the planning period may be estimated under the same conditions and on the same basis as described above for structures.

When the anticipated useful life of a facility is less than 20 years (for analysis of interim facilities), salvage value can be claimed for equipment where it can be clearly demonstrated that a specific market or reuse opportunity will exist.

Appendix B

Federal Guidelines

User Charges for Operation and Maintenance of Publicly Owned Treatment Works

(a) *Purpose.*—To set forth advisory information concerning user charges pursuant to Section 204 of the Federal Water Pollution Control Act Amendments of 1972, PL 92–500, hereinafter referred to as the Act. Applicable requirements are set forth in Subpart E (40 CFR Part 35).

(b) *Authority.*—The Authority for establishment of the user charge guidelines is contained in section 204(b)(2) of the Act.

(c) *Background.*—Section 204(b)(1) of the Act provides that after March 1, 1973, Federal grant applicants shall be awarded grants only after the Regional Administrator has determined that the applicant has adopted or will adopt a system of charges to assure that each recipient of waste treatment services will pay its proportionate share of the costs of operation and maintenance, including replacement. The intent of the Act with respect to user charges is to distribute the cost of operation and maintenance of publicly owned treatment works to the pollutant source and to promote self-sufficiency of treatment works with respect to operation and maintenance costs.

(d) *Definitions.*—(1) *Replacement.*—Expenditures for obtaining and installing equipment, accessories, or appurtenances which are necessary to maintain the capacity and performance during the service life of the treatment works for which such works were designed and constructed. The term "operation and maintenance" includes replacement.

(2) *User charge.*—A charge levied on users of treatment works for the cost of operation and maintenance of such works.

(e) *Classes of users.*—At least two basic types of user charge systems are common. The first is to charge each user a share of the treatment works operation and maintenance costs based on his estimate of measured proportional contribution to the total treatment works loading. The second system establishes classes for users having similar flows and waste water characteristics; i.e., levels of biochemical oxygen demand, suspended solids, etc. Each class is then assigned its share of the waste treatment works operation and maintenance costs based on the proportional contribution of the class to the total treatment works loading. Either system is in compliance with these guidelines.

(f) *Criteria against which to determine the adequacy of user charges.*—The user charge system shall be approved by the Regional Administrator and shall be maintained by the grantee in accordance with the following requirements:

(1) The user charge system must result in the distribution of the cost of operation and maintenance of treatment works within the grantee's jurisdiction to each user (or user class) in proportion to such user's contribution to the total wastewater loading of the treatment works. Factors such as strength, volume, and delivery flow rate characteristics shall be considered and included as the basis for the user's contribution to ensure a proportional distribution of operation and maintenance costs to each user (or user class).

(2) For the first year of operation, operation and maintenance costs shall be based upon past experience for existing treatment works or some other rational method that can be demonstrated to be applicable.

(3) The grantee shall review user charges annually and revise them periodically to reflect actual treatment works operation and maintenance costs.

(4) The user charge system must generate sufficient revenue to offset the cost of all treatment works operation and maintenance provided by the grantee.

(5) The user charge system must be incorporated in one or more municipal legislative enactments or other appropriate authority. If the project is a regional treatment works accepting wastewaters from treatment works owned by others, then the subscribers receiving waste treatment services from the grantee shall have adopted user charge systems in accordance with this guideline. Such user charge systems shall also be incorporated in the appropriate municipal legislative enactments or other appropriate authority.

(g) *Model user charge systems.*—The user charge system adopted by the applicant must result in the distribution of treatment works operation and maintenance costs to each user (or user class) in approximate proportion to his contribution to the total wastewater loading of the treatment works. The following user charge models can be used for this purpose; however, the applicant is not limited to their use. The symbols used in the models are as defined below:

C_T=Total operation and maintenance (O. & M.) costs per unit of time.
C_u=A user's charge for O. & M. per unit of time.
C_s=A surcharge for wastewaters of excessive strength.
V_c=O&M cost for transportation and treatment of a unit of wastewater volume.
V_u=Volume contribution from a user per unit of time.
V_T=Total volume contribution from all users per unit of time.
B_c=O&M cost for treatment of a unit of biochemical oxygen demand (BOD).
B_u=Total BOD contribution from a user per unit of time.
B_T=Total BOD contribution from all users per unit of time.
B=Concentration of BOD from a user above a base level.
S_c=O&M cost for treatment of a unit of suspended solids.
S_u=Total suspended solids contribution from a user per unit of time.
S=Concentration of SS from a user above a base level.
P_c=O&M cost for treatment of a unit of any pollutant.
P_u=Total contribution of any pollutant from a user per unit of time.
P_T=Total contribution of any pollutant from all users per unit of time.
P=Concentration of any pollutant from a user above a base level.

(1) *Model No. 1.*—If the treatment works is primarily flow dependent or if the BOD, suspended solids, and other pollutant concentrations discharged by all users are approximately equal, then user charges can be developed on a volume basis in accordance with the model below:

$$C_u = \frac{C_T}{V_T}(V_u)$$

(2) *Model No. 2.*—When BOD, suspended solids, or other pollutant concentrations from a user exceed the range of concentration of these pollutants in normal domestic sewage, a surcharge added to a base charge, calculated by means of Model No. 1, can be levied. The surcharge can be computed by the model below:

$$C_s = [B_c(B) + S_c(S) + P_c(P)]V_u$$

(3) *Model No. 3.*—This model is commonly called the "quantity/quality formula":

$$C_u = V_cV_u + B_cB_u + S_cS_u + P_cP_u$$

(h) *Other considerations.*—(1) Quantity discounts to large volume users will not be acceptable. Savings resulting from economies of scale should be apportioned to all users or user classes.

(2) User charges may be established based on a percentage of the charge for water usage only in cases where the water charge is based on a constant cost per unit of consumption.

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APPENDIX C
STANDARD INDUSTRIAL CLASSIFICATION

SHORT SIC TITLES[1]

A. AGRICULTURE, FORESTRY, AND FISHING

Code	Short Title
01	AGRICULTURAL PRODUCTION—CROPS
011	Cash Grains
0111	Wheat
0112	Rice
0115	Corn
0116	Soybeans
0119	Cash grains, nec
013	Field Crops, Except Cash Grains
0131	Cotton
0132	Tobacco
0133	Sugar crops
0134	Irish potatoes
0139	Field crops, except cash grains, nec
016	Vegetables and Melons
0161	Vegetables and melons
017	Fruits and Tree Nuts
0171	Berry crops
0172	Grapes
0173	Tree nuts
0174	Citrus fruits
0175	Deciduous tree fruits
0179	Fruits and tree nuts, nec
018	Horticultural Specialties
0181	Ornamental nursery products
0182	Food crops grown under cover
0189	Horticultural specialties, nec
019	General Farms, Primarily Crop
0191	General farms, primarily crop
02	AGRICULTURAL PRODUCTION—LIVESTOCK
021	Livestock, exc. Dairy, Poultry, etc.
0211	Beef cattle feedlots
0212	Beef cattle, except feedlots
0213	Hogs
0214	Sheep and goats
0219	General livestock, nec
024	Dairy Farms
0241	Dairy farms
025	Poultry and Eggs
0251	Broiler, fryer, and roaster chickens
0252	Chicken eggs
0253	Turkeys and turkey eggs
0254	Poultry hatcheries
0259	Poultry and eggs, nec
027	Animal Specialties
0271	Fur-bearing animals and rabbits
0272	Horses and other equines
0279	Animal specialties, nec
029	General Farms, Primarily Livestock
0291	General farms, primarily livestock
07	AGRICULTURAL SERVICES
071	Soil Preparation Services
0711	Soil preparation services
072	Crop Services
0721	Crop planting and protection
0722	Crop harvesting
0723	Crop preparation services for market
0724	Cotton ginning
0729	General crop services
074	Veterinary Services
0741	Veterinary services, farm livestock
0742	Veterinary services, specialties
075	Animal Services, Except Veterinary
0751	Livestock services, exc. specialties
0752	Animal specialty services
076	Farm Labor and Management Services
0761	Farm labor contractors
0762	Farm management services
078	Landscape and Horticultural Services
0781	Landscape counseling and planning
0782	Lawn and garden services
0783	Ornamental shrub and tree services
08	FORESTRY
081	Timber Tracts
0811	Timber tracts
082	Forest Nurseries and Seed Gathering
0821	Forest nurseries and seed gathering
084	Gathering of Misc. Forest Products
0843	Extraction of pine gum
0849	Gathering of forest products, nec
085	Forestry Services
0851	Forestry services
09	FISHING, HUNTING, AND TRAPPING
091	Commercial Fishing
0912	Finfish
0913	Shellfish
0919	Miscellaneous marine products
092	Fish Hatcheries and Preserves
0921	Fish hatcheries and preserves
097	Hunting, Trapping, Game Propagation
0971	Hunting, trapping, game propagation

B. MINING

10	METAL MINING
101	Iron Ores
1011	Iron ores
102	Copper Ores
1021	Copper ores
103	Lead and Zinc Ores
1031	Lead and zinc ores
104	Gold and Silver Ores
1041	Gold ores
1044	Silver ores
105	Bauxite and Other Aluminum Ores
1051	Bauxite and other aluminum ores
106	Ferroalloy Ores, Except Vanadium
1061	Ferroalloy ores, except vanadium
108	Metal Mining Services
1081	Metal mining services
109	Miscellaneous Metal Ores
1092	Mercury ores

[1] Standard Industrial Classification Manual: 1972, Executive Office of the President, Office of Management and Budget, Washington, D.C.

Code	Short Title
1094	Uranium-radium-vanadium ores
1099	Metal ores, nec
11	ANTHRACITE MINING
111	Anthracite Mining
1111	Anthracite
1112	Anthracite mining services
12	BITUMINOUS COAL AND LIGNITE MINING
121	Bituminous Coal and Lignite Mining
1211	Bituminous coal and lignite
1213	Bituminous & lignite mining services
13	OIL AND GAS EXTRACTION
131	Crude Petroleum and Natural Gas
1311	Crude petroleum and natural gas
132	Natural Gas Liquids
1321	Natural gas liquids
138	Oil and Gas Field Services
1381	Drilling oil and gas wells
1382	Oil and gas exploration services
1389	Oil and gas field services, nec
14	NONMETALLIC MINERALS, EXCEPT FUELS
141	Dimension Stone
1411	Dimension stone
142	Crushed and Broken Stone
1422	Crushed and broken limestone
1423	Crushed and broken granite
1429	Crushed and broken stone, nec
144	Sand and Gravel
1442	Construction sand and gravel
1446	Industrial sand
145	Clay and Related Minerals
1452	Bentonite
1453	Fire clay
1454	Fuller's earth
1455	Kaolin and ball clay
1459	Clay and related minerals, nec
147	Chemical and Fertilizer Minerals
1472	Barite
1473	Fluorspar
1474	Potash, soda, and borate minerals
1475	Phosphate rock
1476	Rock salt
1477	Sulfur
1479	Chemical and fertilizer mining, nec
148	Nonmetallic Minerals Services
1481	Nonmetallic minerals services
149	Miscellaneous Nonmetallic Minerals
1492	Gypsum
1496	Talc, soapstone, and pyrophyllite
1499	Nonmetallic minerals, nec

D. MANUFACTURING

Code	Short Title
20	FOOD AND KINDRED PRODUCTS
201	Meat Products
2011	Meat packing plants
2013	Sausages and other prepared meats
2016	Poultry dressing plants
2017	Poultry and egg processing
202	Dairy Products
2021	Creamery butter
2022	Cheese, natural and processed
2023	Condensed and evaporated milk
2024	Ice cream and frozen desserts
2026	Fluid milk
203	Preserved Fruits and Vegetables
2032	Canned specialties
2033	Canned fruits and vegetables
2034	Dehydrated fruits, vegetables, soups
2035	Pickles, sauces, and salad dressings
2037	Frozen fruits and vegetables
2038	Frozen specialties
204	Grain Mill Products
2041	Flour and other grain mill products
2043	Cereal breakfast foods
2044	Rice milling
2045	Blended and prepared flour
2046	Wet corn milling
2047	Dog, cat, and other pet food
2048	Prepared feeds, nec
205	Bakery Products
2051	Bread, cake, and related products
2052	Cookies and crackers
206	Sugar and Confectionery Products
2061	Raw cane sugar
2062	Cane sugar refining
2063	Beet sugar
2065	Confectionery products
2066	Chocolate and cocoa products
2067	Chewing gum
207	Fats and Oils
2074	Cottonseed oil mills
2075	Soybean oil mills
2076	Vegetable oil mills, nec
2077	Animal and marine fats and oils
2079	Shortening and cooking oils
208	Beverages
2082	Malt beverages
2083	Malt
2084	Wines, brandy, and brandy spirits
2085	Distilled liquor, except brandy
2086	Bottled and canned soft drinks
2087	Flavoring extracts and sirups, nec
209	Misc. Foods and Kindred Products
2091	Canned and cured seafoods

Code	Short Title
2092	Fresh or frozen packaged fish
2095	Roasted coffee
2097	Manufactured ice
2098	Macaroni and spaghetti
2099	Food preparations, nec
21	TOBACCO MANUFACTURES
211	Cigarettes
2111	Cigarettes
212	Cigars
2121	Cigars
213	Chewing and Smoking Tobacco
2131	Chewing and smoking tobacco
214	Tobacco Stemming and Redrying
2141	Tobacco stemming and redrying
22	TEXTILE MILL PRODUCTS
221	Weaving Mills, Cotton
2211	Weaving mills, cotton
222	Weaving Mills, Synthetics
2221	Weaving mills, synthetics
223	Weaving and Finishing Mills, Wool
2231	Weaving and finishing mills, wool
224	Narrow Fabric Mills
2241	Narrow fabric mills
225	Knitting mills
2251	Women's hosiery, except socks
2252	Hosiery, nec
2253	Knit outerwear mills
2254	Knit underwear mills
2257	Circular knit fabric mills
2258	Warp knit fabric mills
2259	Knitting mills, nec
226	Textile Finishing, Except Wool
2261	Finishing plants, cotton
2262	Finishing plants, synthetics
2269	Finishing plants, nec
227	Floor Covering Mills
2271	Woven carpets and rugs
2272	Tufted carpets and rugs
2279	Carpets and rugs, nec
228	Yarn and Thread Mills
2281	Yarn mills, except wool
2282	Throwing and winding mills
2283	Wool yarn mills
2284	Thread mills
229	Miscellaneous Textile Goods
2291	Felt goods, exc. woven felts & hats
2292	Lace goods
2293	Paddings and upholstery filling
2294	Processed textile waste
2295	Coated fabrics, not rubberized
2296	Tire cord and fabric
2297	Nonwoven fabrics
2298	Cordage and twine
2299	Textile goods, nec
23	APPAREL AND OTHER TEXTILE PRODUCTS
231	Men's and Boys' Suits and Coats
2311	Men's and boys' suits and coats
232	Men's and Boys' Furnishings
2321	Men's and boys' shirts and nightwear
2322	Men's and boys' underwear
2323	Men's and boys' neckwear
2327	Men's and boys' separate trousers
2328	Men's and boys' work clothing
2329	Men's and boys' clothing, nec
233	Women's and Misses' Outerwear
2331	Women's & misses' blouses & waists
2335	Women's and misses' dresses
2337	Women's and misses' suits and coats
2339	Women's and misses' outerwear, nec
234	Women's and Children's Undergarments
2341	Women's and children's underwear
2342	Brassieres and allied garments
235	Hats, Caps, and Millinery
2351	Millinery
2352	Hats and caps, except millinery
236	Children's Outerwear
2361	Children's dresses and blouses
2363	Children's coats and suits
2369	Children's outerwear, nec
237	Fur Goods
2371	Fur goods
238	Miscellaneous Apparel and Accessories
2381	Fabric dress and work gloves
2384	Robes and dressing gowns
2385	Waterproof outergarments
2386	Leather and sheep lined clothing
2387	Apparel belts
2389	Apparel and accessories, nec
239	Misc. Fabricated Textile Products
2391	Curtains and draperies
2392	House furnishings, nec
2393	Textile bags
2394	Canvas and related products
2395	Pleating and stitching
2396	Automotive and apparel trimmings
2397	Schiffli machine embroideries
2399	Fabricated textile products, nec
24	LUMBER AND WOOD PRODUCTS
241	Logging Camps & Logging Contractors
2411	Logging camps & logging contractors
242	Sawmills and Planing Mills
2421	Sawmills and planing mills, general
2426	Hardwood dimension and flooring
2429	Special product sawmills, nec
243	Millwork, Plywood & Structural Members
2431	Millwork
2434	Wood kitchen cabinets
2435	Hardwood veneer and plywood
2436	Softwood veneer and plywood
2439	Structural wood members, nec
244	Wood Containers
2441	Nailed wood boxes and shook
2448	Wood pallets and skids
2449	Wood containers, nec

Code	Short Title
245	**Wood Buildings and Mobile Homes**
2451	Mobile homes
2452	Prefabricated wood buildings
249	**Miscellaneous Wood Products**
2491	Wood preserving
2492	Particleboard
2499	Wood products, nec
25	FURNITURE AND FIXTURES
251	**Household Furniture**
2511	Wood household furniture
2512	Upholstered household furniture
2514	Metal household furniture
2515	Mattresses and bedsprings
2517	Wood TV and radio cabinets
2519	Household furniture, nec
252	**Office Furniture**
2521	Wood office furniture
2522	Metal office furniture
253	**Public Building & Related Furniture**
2531	Public building & related furniture
254	**Partitions and Fixtures**
2541	Wood partitions and fixtures
2542	Metal partitions and fixtures
259	**Miscellaneous Furniture and Fixtures**
2591	Drapery hardware & blinds & shades
2599	Furniture and fixtures, nec
26	PAPER AND ALLIED PRODUCTS
261	**Pulp Mills**
2611	Pulp mills
262	**Paper Mills, Except Building Paper**
2621	Paper mills, except building paper
263	**Paperboard Mills**
2631	Paperboard mills
264	**Misc. Converted Paper Products**
2641	Paper coating and glazing
2642	Envelopes
2643	Bags, except textile bags
2645	Die-cut paper and board
2646	Pressed and molded pulp goods
2647	Sanitary paper products
2648	Stationery products
2649	Converted paper products, nec
265	**Paperboard Containers and Boxes**
2651	Folding paperboard boxes
2652	Set-up paperboard boxes
2653	Corrugated and solid fiber boxes
2654	Sanitary food containers
2655	Fiber cans, drums & similar products
266	**Building Paper and Board Mills**
2661	Building paper and board mills
27	PRINTING AND PUBLISHING
271	**Newspapers**
2711	Newspapers
272	**Periodicals**
2721	Periodicals
273	**Books**
2731	Book publishing
2732	Book printing
274	**Miscellaneous Publishing**
2741	Miscellaneous publishing
275	**Commercial Printing**
2751	Commercial printing, letterpress
2752	Commercial printing, lithographic
2753	Engraving and plate printing
2754	Commercial printing, gravure
276	**Manifold Business Forms**
2761	Manifold business forms
277	**Greeting Card Publishing**
2771	Greeting card publishing
278	**Blankbooks and Bookbinding**
2782	Blankbooks and looseleaf binders
2789	Bookbinding and related work
279	**Printing Trade Services**
2791	Typesetting
2793	Photoengraving
2794	Electrotyping and stereotyping
2795	Lithographic platemaking services
28	CHEMICALS AND ALLIED PRODUCTS
281	**Industrial Inorganic Chemicals**
2812	Alkalies and chlorine
2813	Industrial gases
2816	Inorganic pigments
2819	Industrial inorganic chemicals, nec
282	**Plastics Materials and Synthetics**
2821	Plastics materials and resins
2822	Synthetic rubber
2823	Cellulosic man-made fibers
2824	Organic fibers, noncellulosic
283	**Drugs**
2831	Biological products
2833	Medicinals and botanicals
2834	Pharmaceutical preparations
284	**Soap, Cleaners, and Toilet Goods**
2841	Soap and other detergents
2842	Polishes and sanitation goods
2843	Surface active agents
2844	Toilet preparations
285	**Paints and Allied Products**
2851	Paints and allied products
286	**Industrial Organic Chemicals**
2861	Gum and wood chemicals
2865	Cyclic crudes and intermediates
2869	Industrial organic chemicals, nec
287	**Agricultural Chemicals**
2873	Nitrogenous fertilizers
2874	Phosphatic fertilizers
2875	Fertilizers, mixing only
2879	Agricultural chemicals, nec
289	**Miscellaneous Chemical Products**
2891	Adhesives and sealants
2892	Explosives
2893	Printing ink
2895	Carbon black
2899	Chemical preparations, nec

Code	Short Title
29	PETROLEUM AND COAL PRODUCTS
291	Petroleum Refining
2911	Petroleum refining
295	Paving and Roofing Materials
2951	Paving mixtures and blocks
2952	Asphalt felts and coatings
299	Misc. Petroleum and Coal Products
2992	Lubricating oils and greases
2999	Petroleum and coal products, nec
30	RUBBER AND MISC. PLASTICS PRODUCTS
301	Tires and Inner Tubes
3011	Tires and inner tubes
302	Rubber and Plastics Footwear
3021	Rubber and plastics footwear
303	Reclaimed Rubber
3031	Reclaimed rubber
304	Rubber and Plastics Hose and Belting
3041	Rubber and plastics hose and belting
306	Fabricated Rubber Products, nec
3069	Fabricated rubber products, nec
307	Miscellaneous Plastics Products
3079	Miscellaneous plastics products
31	LEATHER AND LEATHER PRODUCTS
311	Leather Tanning and Finishing
3111	Leather tanning and finishing
313	Boot and Shoe Cut Stock and Findings
3131	Boot and shoe cut stock and findings
314	Footwear, Except Rubber
3142	House slippers
3143	Men's footwear, except athletic
3144	Women's footwear, except athletic
3149	Footwear, except rubber, nec
315	Leather Gloves and Mittens
3151	Leather gloves and mittens
316	Luggage
3161	Luggage
317	Handbags and Personal Leather Goods
3171	Women's handbags and purses
3172	Personal leather goods, nec
319	Leather Goods, nec
3199	Leather goods, nec
32	STONE, CLAY, AND GLASS PRODUCTS
321	Flat Glass
3211	Flat glass
322	Glass and Glassware, Pressed or Blown
3221	Glass containers
3229	Pressed and blown glass, nec
323	Products of Purchased Glass
3231	Products of purchased glass
324	Cement, Hydraulic
3241	Cement, hydraulic
325	Structural Clay Products
3251	Brick and structural clay tile
3253	Ceramic wall and floor tile
3255	Clay refractories
3259	Structural clay products, nec
326	Pottery and Related Products
3261	Vitreous plumbing fixtures
3262	Vitreous china food utensils
3263	Fine earthenware food utensils
3264	Porcelain electrical supplies
3269	Pottery products, nec
327	Concrete, Gypsum, and Plaster Products
3271	Concrete block and brick
3272	Concrete products, nec
3273	Ready-mixed concrete
3274	Lime
3275	Gypsum products
328	Cut Stone and Stone Products
3281	Cut stone and stone products
329	Misc. Nonmetallic Mineral Products
3291	Abrasive products
3292	Asbestos products
3293	Gaskets, packing and sealing devices
3295	Minerals, ground or treated
3296	Mineral wool
3297	Nonclay refractories
3299	Nonmetallic mineral products, nec
33	PRIMARY METAL INDUSTRIES
331	Blast Furnace and Basic Steel Products
3312	Blast furnaces and steel mills
3313	Electrometallurgical products
3315	Steel wire and related products
3316	Cold finishing of steel shapes
3317	Steel pipe and tubes
332	Iron and Steel Foundries
3321	Gray iron foundries
3322	Malleable iron foundries
3324	Steel investment foundries
3325	Steel foundries, nec
333	Primary Nonferrous Metals
3331	Primary copper
3332	Primary lead
3333	Primary zinc
3334	Primary aluminum
3339	Primary nonferrous metals, nec
334	Secondary Nonferrous Metals
3341	Secondary nonferrous metals
335	Nonferrous Rolling and Drawing
3351	Copper rolling and drawing
3353	Aluminum sheet, plate, and foil
3354	Aluminum extruded products
3355	Aluminum rolling and drawing, nec
3356	Nonferrous rolling and drawing, nec
3357	Nonferrous wire drawing & insulating
336	Nonferrous Foundries
3361	Aluminum foundries
3362	Brass, bronze, and copper foundries

Code	Short Title
3369	Nonferrous foundries, nec
339	**Miscellaneous Primary Metal Products**
3398	Metal heat treating
3399	Primary metal products, nec
34	**FABRICATED METAL PRODUCTS**
341	**Metal Cans and Shipping Containers**
3411	Metal cans
3412	Metal barrels, drums, and pails
342	**Cutlery, Hand Tools, and Hardware**
3421	Cutlery
3423	Hand and edge tools, nec
3425	Hand saws and saw blades
3429	Hardware, nec
343	**Plumbing and Heating, Except Electric**
3431	Metal sanitary ware
3432	Plumbing fittings and brass goods
3433	Heating equipment, except electric
344	**Fabricated Structural Metal Products**
3441	Fabricated structural metal
3442	Metal doors, sash, and trim
3443	Fabricated plate work (boiler shops)
3444	Sheet metal work
3446	Architectural metal work
3448	Prefabricated metal buildings
3449	Miscellaneous metal work
345	**Screw Machine Products, Bolts, etc.**
3451	Screw machine products
3452	Bolts, nuts, rivets, and washers
346	**Metal Forgings and Stampings**
3462	Iron and steel forgings
3463	Nonferrous forgings
3465	Automotive stampings
3466	Crowns and closures
3469	Metal stampings, nec
347	**Metal Services, nec**
3471	Plating and polishing
3479	Metal coating and allied services
348	**Ordnance and Accessories, nec**
3482	Small arms ammunition
3483	Ammunition, exc. for small arms, nec
3484	Small arms
3489	Ordnance and accessories, nec
349	**Misc. Fabricated Metal Products**
3493	Steel springs, except wire
3494	Valves and pipe fittings
3495	Wire springs
3496	Misc. fabricated wire products
3497	Metal foil and leaf
3498	Fabricated pipe and fittings
3499	Fabricated metal products, nec
35	**MACHINERY, EXCEPT ELECTRICAL**
351	**Engines and Turbines**
3511	Turbines and turbine generator sets
3519	Internal combustion engines, nec
352	**Farm and Garden Machinery**
3523	Farm machinery and equipment
3524	Lawn and garden equipment
353	**Construction and Related Machinery**
3531	Construction machinery
3532	Mining machinery
3533	Oil field machinery
3534	Elevators and moving stairways
3535	Conveyors and conveying equipment
3536	Hoists, cranes, and monorails
3537	Industrial trucks and tractors
354	**Metalworking Machinery**
3541	Machine tools, metal cutting types
3542	Machine tools, metal forming types
3544	Special dies, tools, jigs & fixtures
3545	Machine tool accessories
3546	Power driven hand tools
3547	Rolling mill machinery
3549	Metalworking machinery, nec
355	**Special Industry Machinery**
3551	Food products machinery
3552	Textile machinery
3553	Woodworking machinery
3554	Paper industries machinery
3555	Printing trades machinery
3559	Special industry machinery, nec
356	**General Industrial Machinery**
3561	Pumps and pumping equipment
3562	Ball and roller bearings
3563	Air and gas compressors
3564	Blowers and fans
3565	Industrial patterns
3566	Speed changers, drives, and gears
3567	Industrial furnaces and ovens
3568	Power transmission equipment, nec
3569	General industrial machinery, nec
357	**Office and Computing Machines**
3572	Typewriters
3573	Electronic computing equipment
3574	Calculating and accounting machines
3576	Scales and balances, exc. laboratory
3579	Office machines, nec
358	**Refrigeration and Service Machinery**
3581	Automatic merchandising machines
3582	Commercial laundry equipment
3585	Refrigeration and heating equipment
3586	Measuring and dispensing pumps
3589	Service industry machinery, nec
359	**Misc. Machinery, Except Electrical**
3592	Carburetors, pistons, rings, valves
3599	Machinery, except electrical, nec
36	**ELECTRIC AND ELECTRONIC EQUIPMENT**
361	**Electric Distributing Equipment**
3612	Transformers
3613	Switchgear and switchboard apparatus
362	**Electrical Industrial Apparatus**
3621	Motors and generators
3622	Industrial controls
3623	Welding apparatus, electric
3624	Carbon and graphite products

Code	Short Title
3629	Electrical industrial apparatus, nec
363	**Household Appliances**
3631	Household cooking equipment
3632	Household refrigerators and freezers
3633	Household laundry equipment
3634	Electric housewares and fans
3635	Household vacuum cleaners
3636	Sewing machines
3639	Household appliances, nec
364	**Electric Lighting and Wiring Equipment**
3641	Electric lamps
3643	Current-carrying wiring devices
3644	Noncurrent-carrying wiring devices
3645	Residential lighting fixtures
3646	Commercial lighting fixtures
3647	Vehicular lighting equipment
3648	Lighting equipment, nec
365	**Radio and TV Receiving Equipment**
3651	Radio and TV receiving sets
3652	Phonograph records
366	**Communication Equipment**
3661	Telephone and telegraph apparatus
3662	Radio and TV communication equipment
367	**Electronic Components and Accessories**
3671	Electron tubes, receiving type
3672	Cathode ray television picture tubes
3673	Electron tubes, transmitting
3674	Semiconductors and related devices
3675	Electronic capacitors
3676	Electronic resistors
3677	Electronic coils and transformers
3678	Electronic connectors
3679	Electronic components, nec
369	**Misc. Electrical Equipment & Supplies**
3691	Storage batteries
3692	Primary batteries, dry and wet
3693	X-ray apparatus and tubes
3694	Engine electrical equipment
3699	Electrical equipment & supplies, nec
37	**TRANSPORTATION EQUIPMENT**
371	**Motor Vehicles and Equipment**
3711	Motor vehicles and car bodies
3713	Truck and bus bodies
3714	Motor vehicle parts and accessories
3715	Truck trailers
372	**Aircraft and Parts**
3721	Aircraft
3724	Aircraft engines and engine parts
3728	Aircraft equipment, nec
373	**Ship and Boat Building and Repairing**
3731	Ship building and repairing
3732	Boat building and repairing
374	**Railroad Equipment**
3743	Railroad equipment
375	**Motorcycles, Bicycles, and Parts**
3751	Motorcycles, bicycles, and parts
376	**Guided Missiles, Space Vehicles, Parts**
3761	Guided missiles and space vehicles
3764	Space propulsion units and parts
3769	Space vehicle equipment, nec
379	**Miscellaneous Transportation Equipment**
3792	Travel trailers and campers
3795	Tanks and tank components
3799	Transportation equipment, nec.
38	**INSTRUMENTS AND RELATED PRODUCTS**
381	**Engineering & Scientific Instruments**
3811	Engineering & scientific instruments
382	**Measuring and Controlling Devices**
3822	Environmental controls
3823	Process control instruments
3824	Fluid meters and counting devices
3825	Instruments to measure electricity
3829	Measuring & controlling devices, nec
383	**Optical Instruments and Lenses**
3832	Optical instruments and lenses
384	**Medical Instruments and Supplies**
3841	Surgical and medical instruments
3842	Surgical appliances and supplies
3843	Dental equipment and supplies
385	**Ophthalmic Goods**
3851	Ophthalmic goods
386	**Photographic Equipment and Supplies**
3861	Photographic equipment and supplies
387	**Watches, Clocks, and Watchcases**
3873	Watches, clocks, and watchcases
39	**MISCELLANEOUS MANUFACTURING INDUSTRIES**
391	**Jewelry, Silverware, and Plated Ware**
3911	Jewelry, precious metal
3914	Silverware and plated ware
3915	Jewelers' materials & lapidary work
393	**Musical Instruments**
3931	Musical instruments
394	**Toys and Sporting Goods**
3942	Dolls
3944	Games, toys, and children's vehicles
3949	Sporting and athletic goods, nec
395	**Pens, Pencils, Office and Art Supplies**
3951	Pens and mechanical pencils
3952	Lead pencils and art goods
3953	Marking devices
3955	Carbon paper and inked ribbons
396	**Costume Jewelry and Notions**
3961	Costume jewelry
3962	Artificial flowers
3963	Buttons
3964	Needles, pins, and fasteners
399	**Miscellaneous Manufactures**
3991	Brooms and brushes
3993	Signs and advertising displays
3995	Burial caskets
3996	Hard surface floor coverings
3999	Manufacturing industries, nec

E. TRANSPORTATION AND PUBLIC UTILITIES

Code	Short Title
40	RAILROAD TRANSPORTATION
401	Railroads
4011	Railroads, line-haul operating
4013	Switching and terminal services
404	Railway Express Service
4041	Railway express service
41	LOCAL AND INTERURBAN PASSENGER TRANSIT
411	Local and Suburban Transportation
4111	Local and suburban transit
4119	Local passenger transportation, nec
412	Taxicabs
4121	Taxicabs
413	Intercity Highway Transportation
4131	Intercity highway transportation
414	Transportation Charter Service
4141	Local passenger charter service
4142	Charter service, except local
415	School Buses
4151	School buses
417	Bus Terminal and Service Facilities
4171	Bus terminal facilities
4172	Bus service facilities
42	TRUCKING AND WAREHOUSING
421	Trucking, Local and Long Distance
4212	Local trucking, without storage
4213	Trucking, except local
4214	Local trucking and storage
422	Public Warehousing
4221	Farm product warehousing and storage
4222	Refrigerated warehousing
4224	Household goods warehousing
4225	General warehousing and storage
4226	Special warehousing and storage, nec
423	Trucking Terminal Facilities
4231	Trucking terminal facilities
43	U.S. POSTAL SERVICE
431	U.S. Postal Service
4311	U.S. Postal Service
44	WATER TRANSPORTATION
441	Deep Sea Foreign Transportation
4411	Deep sea foreign transportation
442	Deep Sea Domestic Transportation
4421	Noncontiguous area transportation
4422	Coastwise transportation
4423	Intercoastal transportation
443	Great Lakes Transportation
4431	Great Lakes transportation
444	Transportation on Rivers and Canals
4441	Transportation on rivers and canals
445	Local Water Transportation
4452	Ferries
4453	Lighterage
4454	Towing and tugboat service
4459	Local water transportation, nec
446	Water Transportation Services
4463	Marine cargo handling
4464	Canal operation
4469	Water transportation services, nec
45	TRANSPORTATION BY AIR
451	Certificated Air Transportation
4511	Certificated air transportation
452	Noncertificated Air Transportation
4521	Noncertificated air transportation
458	Air Transportation Services
4582	Airports and flying fields
4583	Airport terminal services
46	PIPE LINES, EXCEPT NATURAL GAS
461	Pipe Lines, Except Natural Gas
4612	Crude petroleum pipe lines
4613	Refined petroleum pipe lines
4619	Pipe lines, nec
47	TRANSPORTATION SERVICES
471	Freight Forwarding
4712	Freight forwarding
472	Arrangement of Transportation
4722	Passenger transportation arrangement
4723	Freight transportation arrangement
474	Rental of Railroad Cars
4742	Railroad car rental with service
4743	Railroad car rental without service
478	Miscellaneous Transportation Services
4782	Inspection and weighing services
4783	Packing and crating
4784	Fixed facilities for vehicles, nec
4789	Transportation services, nec
48	COMMUNICATION
481	Telephone Communication
4811	Telephone communication
482	Telegraph Communication
4821	Telegraph communication
483	Radio and Television Broadcasting
4832	Radio broadcasting
4833	Television broadcasting
489	Communication Services, nec
4899	Communication services, nec
49	ELECTRIC, GAS, AND SANITARY SERVICES
491	Electric Services
4911	Electric services
492	Gas Production and Distribution
4922	Natural gas transmission
4923	Gas transmission and distribution
4924	Natural gas distribution

Code	Short Title
4925	Gas production and/or distribution
493	Combination Utility Services
4931	Electric and other services combined
4932	Gas and other services combined
4939	Combination utility services, nec
494	Water Supply
4941	Water supply
495	Sanitary Services
4952	Sewerage systems
4953	Refuse systems
4959	Sanitary services, nec
496	Steam Supply
4961	Steam supply
497	Irrigation Systems
4971	Irrigation systems

I. SERVICES

Code	Short Title
70	HOTELS AND OTHER LODGING PLACES
701	Hotels, Motels, and Tourist Courts
7011	Hotels, motels, and tourist courts
702	Rooming and Boarding Houses
7021	Rooming and boarding houses
703	Camps and Trailering Parks
7032	Sporting and recreational camps
7033	Trailering parks for transients
704	Membership-Basis Organization Hotels
7041	Membership-basis organization hotels
72	PERSONAL SERVICES
721	Laundry, Cleaning, & Garment Services
7211	Power laundries, family & commercial
7212	Garment pressing & cleaners' agents
7213	Linen supply
7214	Diaper service
7215	Coin-operated laundries and cleaning
7216	Dry cleaning plants, except rug
7217	Carpet and upholstery cleaning
7218	Industrial launderers
7219	Laundry and garment services, nec
722	Photographic Studios, Portrait
7221	Photographic studios, portrait
723	Beauty Shops
7231	Beauty shops
724	Barber Shops
7241	Barber shops
725	Shoe Repair and Hat Cleaning Shops
7251	Shoe repair and hat cleaning shops
726	Funeral Service and Crematories
7261	Funeral service and crematories
729	Miscellaneous Personal Services
7299	Miscellaneous personal services
73	BUSINESS SERVICES
731	Advertising
7311	Advertising agencies
7312	Outdoor advertising services
7313	Radio, TV, publisher representatives
7319	Advertising, nec
732	Credit Reporting and Collection
7321	Credit reporting and collection
733	Mailing, Reproduction, Stenographic
7331	Direct mail advertising services
7332	Blueprinting and photocopying
7333	Commercial photography and art
7339	Stenographic and reproduction, nec
734	Services to Buildings
7341	Window cleaning
7342	Disinfecting and exterminating
7349	Building maintenance services, nec
735	News Syndicates
7351	News syndicates
736	Personnel Supply Services
7361	Employment agencies
7362	Temporary help supply services
7369	Personnel supply services, nec
737	Computer and Data Processing Services
7372	Computer programming and software
7374	Data processing services
7379	Computer related services, nec
739	Miscellaneous Business Services
7391	Research & development laboratories
7392	Management and public relations
7393	Detective and protective services
7394	Equipment rental and leasing
7395	Photofinishing laboratories
7396	Trading stamp services
7397	Commercial testing laboratories
7399	Business services, nec
75	AUTO REPAIR, SERVICES, AND GARAGES
751	Automotive Rentals, Without Drivers
7512	Passenger car rental and leasing
7513	Truck rental and leasing
7519	Utility trailer rental
752	Automobile Parking
7523	Parking lots
7525	Parking structures
753	Automotive Repair Shops
7531	Top and body repair shops
7534	Tire retreading and repair shops
7535	Paint shops
7538	General automotive repair shops
7539	Automotive repair shops, nec
754	Automotive Services, Except Repair
7542	Car washes
7549	Automotive services, nec
76	MISCELLANEOUS REPAIR SERVICES
762	Electrical Repair Shops
7622	Radio and television repair
7623	Refrigeration service and repair
7629	Electrical repair shops, nec
763	Watch, Clock, and Jewelry Repair
7631	Watch, clock, and jewelry repair

APPENDIX (Continued)

Code	Short Title
764	**Reupholstery and Furniture Repair**
7641	Reupholstery and furniture repair
769	**Miscellaneous Repair Shops**
7692	Welding repair
7694	Armature rewinding shops
7699	Repair services, nec
78	MOTION PICTURES
781	**Motion Picture Production & Services**
7813	Motion picture production, except TV
7814	Motion picture production for TV
7819	Services allied to motion pictures
782	**Motion Picture Distribution and Services**
7823	Motion picture film exchanges
7824	Film or tape distribution for TV
7829	Motion picture distribution services
783	**Motion Picture Theaters**
7832	Motion picture theaters, ex drive-in
7833	Drive-in motion picture theaters
79	AMUSEMENT & RECREATION SERVICES
791	**Dance Halls, Studios, and Schools**
7911	Dance halls, studios, and schools
792	**Producers, Orchestras, Entertainers**
7922	Theatrical producers and services
7929	Entertainers & entertainment groups
793	**Bowling and Billiard Establishments**
7932	Billiard and pool establishments
7933	Bowling alleys
794	**Commercial Sports**
7941	Sports clubs and promoters
7948	Racing, including track operation
799	**Misc. Amusement, Recreational Services**
7992	Public golf courses
7993	Coin-operated amusement devices
7996	Amusement parks
7997	Membership sports & recreation clubs
7999	Amusement and recreation, nec
80	HEALTH SERVICES
801	**Offices of Physicians**
8011	Offices of physicians
802	**Offices of Dentists**
8021	Offices of dentists
803	**Offices of Osteopathic Physicians**
8031	Offices of osteopathic physicians
804	**Offices of Other Health Practitioners**
8041	Offices of chiropractors
8042	Offices of optometrists
8049	Offices of health practitioners, nec
805	**Nursing and Personal Care Facilities**
8051	Skilled nursing care facilities
8059	Nursing and personal care, nec
806	**Hospitals**
8062	General medical & surgical hospitals
8063	Psychiatric hospitals
8069	Specialty hospitals, exc. psychiatric
807	**Medical and Dental Laboratories**
8071	Medical laboratories
8072	Dental laboratories
808	**Outpatient Care Facilities**
8081	Outpatient care facilities
809	**Health and Allied Services, nec**
8091	Health and allied services, nec
81	LEGAL SERVICES
811	**Legal Services**
8111	Legal services
82	EDUCATIONAL SERVICES
821	**Elementary and Secondary Schools**
8211	Elementary and secondary schools
822	**Colleges and Universities**
8221	Colleges and universities, nec
8222	Junior colleges
823	**Libraries and Information Centers**
8231	Libraries and information centers
824	**Correspondence and Vocational Schools**
8241	Correspondence schools
8243	Data processing schools
8244	Business and secretarial schools
8249	Vocational schools, nec
829	**Schools & Educational Services, nec**
8299	Schools & educational services, nec
83	SOCIAL SERVICES
832	**Individual and Family Services**
8321	Individual and family services
833	**Job Training and Related Services**
8331	Job training and related services
835	**Child Day Care Services**
8351	Child day care services
836	**Residential Care**
8361	Residential care
839	**Social Services, nec**
8399	Social services, nec
84	MUSEUMS, BOTANICAL, ZOOLOGICAL GARDENS
841	**Museums and Art Galleries**
8411	Museums and art galleries
842	**Botanical and Zoological Gardens**
8421	Botanical and zoological gardens
86	MEMBERSHIP ORGANIZATIONS
861	**Business Associations**
8611	Business associations
862	**Professional Organizations**
8621	Professional organizations
863	**Labor Organizations**
8631	Labor organizations
864	**Civic and Social Associations**
8641	Civic and social associations
865	**Political Organizations**
8651	Political organizations
866	**Religious Organizations**
8661	Religious organizations
869	**Membership Organizations, nec**
8699	Membership organizations, nec

APPENDIX C (Continued)

Code	Short Title
88	PRIVATE HOUSEHOLDS †
881	Private Households
8811	Private households
89	MISCELLANEOUS SERVICES
891	Engineering & Architectural Services
8911	Engineering & architectural services
892	Noncommercial Research Organizations
8922	Noncommercial research organizations
893	Accounting, Auditing & Bookkeeping
8931	Accounting, auditing & bookkeeping
899	Services, nec
8999	Services, nec

† It is the opinion of the Office of General Counsel of EPA that Private Households are not service industries and are not industrial users subject to ICR.

APPENDIX D

MATHEMATICAL DERIVATION OF ICR FORMULAE

The following symbols will be used in formulae development:

ICR = ICR annual payment for an industrial user.

P_i = Industrial user's proportionate use of the system.

U = Useful life of projects (= recovery period).

G = Sum of individual federal grants for all projects falling under the ICR system.

G_a = $f(G)$ = Sum of individual federal grants, each of which are adjusted appropriately for handling stormwater.

G_v = Sum of volume portions of adjusted federal grants.

G_s = Sum of SS portions of adjusted federal grants.

G_c = Sum of COD portions of adjusted federal grants.

G_t = Total eligible grant pool.

V_d = System total design volume.

V_t = System total actual volume.

V_i = Industrial user's actual volume.

V_e = Industrial user's equivalent volume loading, taking into account volume, SS and COD.

SS_i = Industrial user's SS.

SS_d = System design SS.

COD_i = Industrial user's COD,

COD_d = System design COD.

In words, the ICR annual payment for an industrial user is determined by multiplying the industrial user's proportionate use of the system by the total eligible grant pool and dividing by the recovery period.

In symbols,

(1) $$ICR = p_i \times \frac{G_t}{U}$$

By definitions, we know that:

$$G_t = G_a \times \frac{V_t}{V_d}$$

and U is the useful life of the project.

Now, let's look at describing the industrial user's proportionate use of the system, using the following:

$$\text{Industrial user's volume proportion} = \frac{V_i}{V_t}$$

$$\text{Industrial user's SS proportion} = \frac{V_i\ SS_i\ 8.34}{V_t\ SS_d\ 8.34} = \frac{V_i}{V_t}\frac{SS_i}{SS_d}$$

$$\text{Industrial user's COD proportion} = \frac{V_i\ COD_i\ 8.34}{V_t\ COD_d\ 8.34} = \frac{V_i}{V_t}\frac{COD_i}{COD_d}$$

(2) $$P_i = \frac{V_i}{V_t}\frac{G_v}{G_a} + \frac{V_i}{V_t}\frac{SS_i}{SS_d}\frac{G_s}{G_a} + \frac{V_i\ COD_i}{V_t\ COD_d}\frac{G_c}{G_a}$$

We know that $G_a = G_v + G_s + G_c$

$$\frac{G_a}{G_a} = \frac{G_v}{G_a} + \frac{G_s}{G_a} + \frac{G_c}{G_a}$$

$$1 = \frac{G_v}{G_a} + \frac{G_s}{G_a} + \frac{G_c}{G_a}$$

$$\text{or} \quad \frac{G_v}{G_a} = 1 - \frac{G_s}{G_a} - \frac{G_c}{G_a}$$

Substituting into (2),

$$p_i = \frac{V_i}{V_t}\left(1 - \frac{G_s}{G_a} - \frac{G_c}{G_a}\right) + \frac{V_i}{V_t}\frac{SS_i}{SS_d}\frac{G_s}{G_a} + \frac{V_i}{V_t}\frac{COD_i}{COD_d}\frac{G_c}{G_a}$$

$$p_i = \frac{V_i}{V_t} - \frac{V_i}{V_t}\frac{G_s}{G_a} - \frac{V_i}{V_t}\frac{G_c}{G_a} + \frac{V_i}{V_t}\frac{SS_i}{SS_d}\frac{G_s}{G_a} + \frac{V_i}{V_t}\frac{COD_i}{COD_d}\frac{G_c}{G_a}$$

$$p_i = \frac{V_i}{V_t} + \frac{V_i}{V_t}\frac{G_s}{G_a}\left(\frac{SS_i}{SS_d} - 1\right) + \frac{V_i}{V_t}\frac{G_c}{G_a}\left(\frac{COD_i}{COD_d} - 1\right)$$

(3) $$p_i = \frac{1}{V_t}\left\{V_i + V_i\left[\left(\frac{SS_i - SS_d}{SS_d}\right)\frac{G_s}{G_a} + \left(\frac{COD_i - COD_d}{COD_d}\right)\frac{G_c}{G_a}\right]\right\}$$

We can also describe p_i in terms of equivalent volume:

(4) $$p_i = \frac{V_e}{V_t}$$

Combining (3) and (4) we can see that:

(5) $$V_e = V_i + V_i\left[\left(\frac{SS_i - SS_d}{SS_d}\right)\frac{G_s}{G_a} + \left(\frac{COD_i - COD_d}{COD_d}\right)\frac{G_c}{G_a}\right]$$

Substituting for p in (1):

(6) $$ICR = \frac{V_e}{V_t} \times \frac{G_t}{U}$$

Equations (5) and (6) are the formulae for determining the ICR annual payments for industrial users. The above derivation exercise is intended to show that the formulae result in the exact expression of charges in proportion to the industrial user's volume, SS, and COD loading on the system.

METROPOLITAN
WASTE
CONTROL
COMMISSION
Twin Cities Area

December 21, 1977

Mr. Michael B. Miller
Special Assistant
Attorney General
State Administration Building
Room G19K
50 Sherburne Avenue
St. Paul, MN 55155

Re: MWCC2-ICR Rules - Effective Date

Dear Mr. Miller:

This is to notify you that Section K of the above referenced ICR Rules should be deleted from those Rules as originally proposed. Such action is in accordance with your memorandum dated December 19, 1977.

It is the Commission's intention to implement the ICR Rules after such have been filed by your office with the Secretary of State and after the legal waiting period, subsequent to publication in the State Rrgister.

Very truly yours,

RICHARD J. DOUGHERTY
Chief Administrator

RJD:MLR:sl

CC: Maurice L. Robins
Donald R. Madore

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David L. Graven
Legal Counsel
Metropolitan Waste Control Commission

January 3, 1978

-MWCC 2 Metropolitan Waste Control Commission
Industrial Cost Recovery System Rules

Attorney General

Maurice L. Robins
Metropolitan Waste Control Commission

December 19, 1977

Michael B. Miller
Special Assistant
Attorney General

296-4692

ICR Rules

The above-captioned rules are returned herewith for the following:

1. Deletion of MWCC 2 K (effective date), as the rule cannot become effective by January 1, 1978.

2. A Statement of Compliance with Rulemaking Procedures.

3. An Order Adopting Rules.

MBM/sr

Enclosures

METROPOLITAN
WASTE
CONTROL
COMMISSION
Twin Cities Area

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, David L. Graven, Legal Counsel for the Metropolitan Waste Control Commission, do hereby declare that I have examined the proposed Industrial Cost Recovery System Rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed.

David L. Graven, Legal Counsel

Dated: 12/14/77

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METROPOLITAN
WASTE
CONTROL
COMMISSION
Twin Cities Area

November 23, 1977

Mr. Warren Spannaus
Attorney General
State of Minnesota
102 State Capitol
St. Paul, MN 55155

Re: In the Matter of the Adopted Rules of the Metropolitan Waste Control Commission for an Industrial Cost Recovery System in Compliance with Public Law 92-500

Dear Mr. Attorney General:

The Metropolitan Waste Control Commission did, at its meeting of November 15, 1977, officially adopt the Industrial Cost Recovery System Rules as originally proposed and presented to Mr. Steve Mihalchick, Hearing Examiner, at the Public Hearing on October 25, 1977.

Enclosed for your review and approval as to form and legality in the above-entitled matter are copies of the following:

1. Rules as Adopted - original and five (5) copies of MWCC-2 Rules. These are the same as originally proposed at the Public Hearing.

2. The Order for Public Hearing - original and two (2) copies.

3. The Notice of Hearing - original and two (2) copies.

4. The Certificate of Delivery of the Secretary of State Mailing List - original and two (2) copies.

5. The Affidavit of Receipt of the Secretary of State Mailing List - original and two (2) copies.

6. The Affidavit of Mailing - original and two (2) copies.

7. The Statement of Need and Evidence - original and two (2) copies.

8. The Industrial Cost Recovery System Report - three (3) copies.

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9. Metropolitan Waste Control Commission Resolution No. 77-298 adopting Industrial Cost Recovery System Rules - original and two (2) copies.

10. Report of the Chief Hearing Examiner - original and two (2) copies.

Your early review of this matter would be greatly appreciated so that the Industrial Cost Recovery System can be implemented by the Commission on January 1, 1978 or as soon thereafter as is legally possible.

Very truly yours,

RICHARD J. DOUGHERTY
Chief Administrator

RJD:MLR:sl

Enclosures

CC: Joseph D. Strauss, Chairman, MWCC
Maurice L. Robins, Consultant
Donald R. Madore, Deputy Director of Quality Control, MWCC

METROPOLITAN WASTE CONTROL COMMISSION

Industrial Cost Recovery System Rules

MWCC 2 Rules for Industrial Cost Recovery System

A. Scope. To establish a procedure for industrial cost recovery in compliance with the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500); a procedure for collecting from industrial users of the Metropolitan Disposal System the industrial users' share of certain federal grant contributions for the construction of facilities inclusive of and appurtenant to the Metropolitan Disposal System; a procedure for paying to the United States Government a portion of the monies so collected; and providing an effective implementation date.

B. Definitions. As used in these rules, the following words shall have the meanings defined herein:

1. "BOD" (biochemical oxygen demand) means a measure of the oxygen equivalent of that portion of organic matter that is susceptible to oxidation by biochemical means under standard laboratory procedures.

2. "COD" (chemical oxygen demand) means a measure of the oxygen equivalent of that portion of organic matter that is susceptible to oxidation by a strong chemical oxidant under standard laboratory procedures.

3. "Commission" or "MWCC" means the Metropolitan Waste Control Commission established by Minnesota Statutes, Section 473C.03 as amended.

4. "Industrial Cost Recovery" (ICR) means recovery by the Commission from the industrial users of the Metropolitan Disposal System of the federal grant amounts allocable to the treatment of wastes from such industrial users of the Metropolitan Disposal System.

5. "Industrial Cost Recovery Period" means a period equal to 30 years or the useful life of the treatment works, whichever is less, during which the

grant amount allocable to the treatment of wastes from industrial users is recovered from the industrial users of such treatment works.

6. "Industrial User" means any nongovernmental user of publicly owned treatment works identified in the Standard Industrial Classification (SIC) Manual, 1972, United States Office of Management and Budget, as amended and supplemented, including but not limited to the following divisions:

a. Division A. Agriculture, Forestry, and Fishing.

b. Division B. Mining.

c. Division D. Manufacturing.

d. Division E. Transportation, Communications, Electric, Gas, and Sanitary Services.

e. Division I. Services.

7. "Metropolitan Disposal System" (MDS) means any and all of the interceptors and treatment works owned or operated by the Commission.

8. "SS" (suspended solids) means solids that either float on the surface of, or are in suspension in, water, wastewater, or other liquids and which are removable by standard laboratory procedures.

C. Determination of Industrial Cost Recovery (ICR) period.

1. For each project funded under PL 92-500, the ICR period shall begin upon completion of construction and the date of beneficial use; the initial ICR period for the Commission's ICR System shall commence on January 1, 1978.

2. ICR shall continue for a period of 30 years or the useful life of the treatment works, whichever is less, with respect to each project. Payments for each project shall be made in 30 consecutive years or in the useful life consecutive years commencing with the year of the first payment.

3. The responsibility of new industrial users for ICR shall begin upon the date use is initiated.

4. ICR shall terminate with respect to a particular industrial user when the user ceases to use the Metropolitan Disposal System.

D. Industrial Cost Recovery (ICR) formula.

1. The ICR responsibility of each industrial user or user class shall be based on the federal grant award percentages as computed for the related waste characteristics, the MDS loadings, and the loadings received from an industrial user, all of which affect the cost of construction.

2. Waste characteristics are strength (BOD or COD and suspended solids) and volume of flow.

3. The formulae for determining the annual ICR payment are as follows:

$$V_e = V_i + V_i \left[\left(\frac{COD_i - COD_d}{COD_d} \right) \frac{G_{cod}}{G_a} + \left(\frac{SS_i - SS_d}{SS_d} \right) \frac{G_{ss}}{G_a} \right]$$

and,

$$\frac{V_e}{V_t} \times \frac{G_t}{U} = \text{ICR Annual Payment}$$

where:

V_e = Equivalent volume loading capacity of industrial user's discharge on disposal system in million gallons per day (MGD).

V_i = Volume of industrial user's discharge in million gallons per day (MGD)

COD_i = Chemical Oxygen Demand Concentration, in mg/l, of industrial user's discharge ($COD_i \geq COD_d$).

COD_d = Chemical Oxygen Demand Concentration, in mg/l, of MDS design loadings.

SS_i = Suspended Solids Concentration, in mg/l, of industrial user's discharge ($SS_i \geq SS_d$).

SS_d = Suspended Solids Concentration, in mg/l, of MDS design loadings.

G_a = Grant awards, in dollars, adjusted for stormwater collection and treatment.

G_{cod} = COD related share of adjusted Federal grant awards, in dollars.

G_{ss} = SS related share of adjusted Federal grant awards, in dollars.

V_t = Current year hydraulic loading of MDS, in million gallons per day (MGD).

G_t = ICR eligible grant pool, in dollars. (Federal grant awards in dollars, adjusted for stormwater treatment and unused MDS capacity).

U = Industrial cost recovery period, in years, as useful life of facility.

a. When an industrial user's supporting analytical data demonstrates to the satisfaction of the Commission that a gross inequity would result if and when COD values are used in the ICR formula, the Commission will allow the use of BOD values in place of COD.

b. The projects for which ICR is required are those projects for which Environmental Protection Agency grants are awarded after March 1, 1973. As new construction financed by federal grants is completed, the ICR payment

figure shall be adjusted to take into consideration the federal contribution to the eligible grant pool for the succeeding year.

E. User Classification.

1. The Commission shall use an industrial user classification in accordance with the Standard Industrial Classification (SIC) Manual, 1972, of the United States Office of Management and Budget, as amended and supplemented, inclusive of those industrial user Divisions listed under B6.

2. ICR is the responsibility of each industrial user.

3. Industrial users subject to the ICR system shall receive an offsetting credit for a waste strength and flow based on their number of employees.

F. Monitoring, Reporting and Agreements.

1. Routine metering, sampling, analyzing and reporting of waste discharges shall be conducted by each industrial user in accordance with appropriate scheduling by the Commission.

2. The industrial user shall:

a. operate and maintain recording and totalizing equipment for flow metering, except where the entire water supply is adequately metered and adjustments to water supply figures are demonstrated to the satisfaction of the Commission to be accurate;

b. obtain representative samples of waste discharges on normal (not minimum) operating days;

c. have representative samples analyzed according to the latest edition of "Standard Methods for the Examination of Water and Wastewater"; and

d. submit to the Commission a written copy of all volume and analytical results obtained from <u>any</u> sampling made during the reporting period.

3. The industrial user and the Commission may agree in writing to

reasonable waste characteristics, in lieu of the sampling and analyzing requirements of this section, to be used to calculate ICR charges under the ICR formula.

4. In the event that an industrial user does not comply with the Commission's reporting requirements, the Commission shall determine appropriate ICR charges to that user based upon available information on waste characteristics.

G. Billing and Accounting.

1. ICR charges shall be billed to and payments received from industrial users at least annually. ICR charges shall be processed and billed in accordance with Minnesota Statutes, Section 473.504, Subdivision 5, as implemented by the MWCC and the local governmental unit in which the industrial user is located.

2. ICR billings will vary from year to year as the usage of the Metropolitan Disposal System increases or decreases and as new projects are added to the ICR grant pool.

3. The accounting period for the ICR system shall be the same as the Commission's fiscal year, January 1 through December 31, or as may be amended.

4. The Commission shall maintain a complete set of records pertaining to ICR as required by applicable federal rules and regulations.

H. ICR Funds.

1. All ICR funds collected, other than the Commission's discretionary share of ten percent as specified by federal regulations, shall be deposited in interest-bearing accounts fully collateralized by:

a. obligations of the United States Government, or

b. obligations guaranteed as to principal and interest by the United States Government or any agency thereof.

2. Once each year, and within four months after the close of the fiscal year, the Commission shall return to the United States Treasury the required percentage of the ICR funds, plus interest earned thereon.

3. The Commission's discretionary share of ten percent of the ICR funds may be used inclusive of but not limited to the following priority listing:

a. ICR system administration, billing, and quality control monitoring.

b. Research and development projects relative to the treatment of wastewater loads and characteristics from the industrial users of the Metropolitan Disposal System.

c. Operation and maintenance of the Metropolitan Disposal System.

4. The remaining portion of the ICR funds and the accrued interest thereon shall be held by the Commission for use in payment of expansion and reconstruction projects pursuant to the Code of Federal Regulations at 40 CFR 35.928-2(b).

I. Appeal Procedure.

1. An industrial user, or anyone else affected by ICR as established by these Rules, may seek review of the ICR program by appealing in writing to the MWCC Chief Administrator. If with respect to an ICR billing the letter seeking review must be received within thirty days of the billing date.

2. A decision of the Chief Administrator may be appealed for hearing to the Commission by giving written notice of appeal within ten days after the Chief Administrator's decision has been received in writing. Notice of such hearing shall be mailed to the appealing industrial user.

3. The decision of the Commission on such appeal shall be the final determination of the MWCC.

J. Severability. If any provision of these Rules or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of these Rules and to this end the provisions of these Rules are declared to be severable.

K. Effective Date. The ICR system shall take effect on January 1, 1978.

METROPOLITAN
WASTE
CONTROL
COMMISSION
Twin Cities Area

STATE OF MINNESOTA
COUNTY OF RAMSEY

In the matter of the Proposed Adoption of Industrial Cost Recovery System Rules of the Metropolitan Waste Control Commission

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Mr. Steve Mihalchick, Office of Hearing Examiners, State of Minnesota, on the twenty-fifth day of October, 1977, at 9:00 A.M. in the Metropolitan Council Chambers, 300 Metro Square Building, St. Paul, Minnesota after proper notice by M.S. 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose. In addition, Notice of Hearing was also served on local government units connected to the Metropolitan Disposal System and to industrial users of the Metropolitan Disposal System.

After affording interested persons an opportunity to present written and oral data, statements and agreements, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above captioned rules.

NOW, THEREFORE, IT IS ORDERED that these rules identified as the Metropolitan Waste Control Commission's Industrial Cost Recovery System Rules are adopted this fifteenth day of November, 1977 in accordance with Commission Resolution No. 77-298, pursuant to authority vested in me by M.S. 473.141, Subd. 11.

Metropolitan Waste Control Commission

Richard J. Dougherty, Chief Administrator

November 15, 1977

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METROPOLITAN WASTE CONTROL COMMISSION

RECEIVED
SEP 29 1977
OFFICE OF HEARING EXAMINERS

ORDER FOR PUBLIC HEARING

INDUSTRIAL COST RECOVERY SYSTEM RULES

IT IS HEREBY ORDERED that, in accordance with official action of the Metropolitan Waste Control Commission at a regular meeting on August 16, 1977, a public hearing on the above-captioned rules be held in the Metropolitan Council Chambers, 300 Metro Square Building, on October 25, 1977, commencing at 9:00 A.M. and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

Joseph D. Strauss, Chairman

Richard J. Dougherty, Chief Administrator

Date August 22, 1977

Comm's Exhibit No. E
File No.
Date

METROPOLITAN WASTE CONTROL COMMISSION

RECEIVED
SEP 29 1977
OFFICE OF HEARING EXAMINERS

ORDER FOR PUBLIC HEARING

INDUSTRIAL COST RECOVERY SYSTEM RULES

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Joseph D. Strauss, Chairman

Richard J. Dougherty, Chief Administrator

Date August 22, 1977

Comm's Exhibit No. E
File No.
Date

METROPOLITAN WASTE CONTROL COMMISSION

RECEIVED
SEP 26 1977
OFFICE OF HEARING EXAMINERS

NOTICE OF HEARING

INDUSTRIAL COST RECOVERY SYSTEM RULES

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in the Metropolitan Council Chambers, 300 Metro Square Building, St. Paul, Minnesota, on Tuesday, October 25, 1977, commencing at 9:00 A.M. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate concerning the adoption of the proposed rules. Statements may be made orally and written material may be submitted, whether or not an appearance is made at the hearings, by mail to Steve Mihalchick, Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone (612) 296-8112, either before the hearing or within five (5) working days, or for a period not to exceed twenty (20) calendar days if ordered by the Hearing Examiner, after the close of the hearing.

The proposed rules establish an Industrial Cost Recovery (ICR) System to be implemented by the Commission. In order to be eligible for federal construction grants, the Commission must meet all federal grant requirements of Public Law 92-500; adoption of an ICR System is one of these requirements. ICR will result in a new charge to industrial users of the Metropolitan Disposal System, with that charge intended to pay back that portion of federal construction grants received by the Commission attributable to providing treatment capacity for the wastes from industrial users. Copies of the proposed rules are now available and one free copy may be obtained

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by writing to the Metropolitan Waste Control Commission, 350 Metro Square Building, St. Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing.

Statutory authority to adopt the proposed rules is contained in Minnesota Statutes §473.504, Subdivision 4 and Subdivision 5.

Notice is hereby given that twenty-five (25) days prior to the hearing, a "statement of need" explaining why the Commission feels the proposed rules are necessary and a "statement of evidence" outlining the testimony to be introduced will be available for public inspection and review at the Office of Hearing Examiners.

In addition, please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he commences lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 a year or five (5) hours per month for lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone: (612) 296-5615.

D Strauss

Joseph D. Strauss, Chairman

Richard J. Dougherty, Chief Administrator

Date: August 22, 1977

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Steve M. Mihalchick, being first duly sworn, hereby deposes and says:

That at the City of St. Paul, county and state aforementioned, on the 8th day of November, 1977, he did serve the Report of the Hearing Examiner, MWCC-78-001-SM

upon the Metropolitan Waste Control Commission by personally handing to Maurice L. Robins, a consultant with the Commission, said Report of Hearing Examiner.

Steve M. Mihalchick

Subscribed and sworn to before me this 8th day of November, 1977.

Eileen A. Gawronik

EILEEN A. GAWRONIK
Notary Public, Ramsey Co., Minn.
MY COMMISSION EXPIRES
December 14, 1980

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE METROPOLITAN WASTE CONTROL COMMISSION

In the Matter of the Proposed Industrial Cost Recovery System Rules of the Metropolitan Waste Control Commission.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing in St. Paul on October 25, 1977 before Steve M. Mihalchick, Hearing Examiner assigned by the Chief Hearing Examiner.

Pursuant to an election by the Metropolitan Waste Control Commission under Minn. Laws 1977, Ch. 443, § 11, to use the services of the Office of Hearing Examiners, this is a rules hearing under Minn. Stat. Ch. 15 to determine whether the proposed rules should be adopted.

The following persons appeared representing the Metropolitan Waste Control Commission (hereinafter "Commission"):

David L. Graven, General Counsel;

Wayne Courtney, Member;

Carol Flynn, Member and Chairperson of the Budget, Finance and Personnel Committee;

Richard J. Dougherty, Chief Administrator;

Ronald E. Bunton, Grants Coordinator;

Maurice L. Robins, Consultant;

Donald R. Madore, Deputy Director of Quality Control.

Twenty-five other persons attending the hearing signed the hearing register. The hearing continued until all interested persons had had an opportunity to participate.

Pursuant to Minn. Stat. § 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

The Commission shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than five days subsequent to the receipt of this Report. This submission shall clearly indicate any changes made to the rules as originally proposed, preferably in the format that will be submitted to the State Register for publication.

The Chief Hearing Examiner shall complete his review and submit his report to the Commission on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 within ten calendar days. Thereafter, the Commission shall be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

PROCEDURAL REQUIREMENTS

1. On August 31, 1977, the Commission filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules;
(b) A proposed Order for Hearing; and
(c) A proposed Notice of Hearing;

2. On September 19, 1977, a Notice of Hearing and a copy of the proposed rules were published at 2 State Register 518.

3. On September 20, 1977, the Commission mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On September 26, 1977, the Commission filed the following documents:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The Affidavit of Receipt of the Secretary of State's list;
(d) The Affidavit of Mailing;
(e) The Secretary of State's Certificate and list;
(f) The Statement of Need and Evidence;
(g) The Industrial Cost Recovery System Report;
(h) The names of Commission personnel who will represent the agency;
(i) A Letter of Approval dated September 16, 1977 from the Environmental Protection Agency.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. The record remained open through November 1, 1977 for the receipt of written comments and statements.

STATUTORY AUTHORITY, NEED AND REASONABLENESS.

6. The Examiner adopts the attached Statement of Need and Evidence for Industrial Cost Recovery System Rules as his Findings demonstrating the Commission's authority to adopt the proposed rules and the need for and reasonableness of the proposed rules. The Statement was filed more than 25 days prior to the hearing, copies were available to all interested persons at the hearing, and it was read in its entirety at the hearing. It succinctly sets forth the evidence supporting the authority, need and reasonableness, and the Examiner would merely be repeating what was said if he were to make specific findings here. There was only one public statement made at the hearing, and no written comments were received following the hearing. The statement at the hearing (Pub. Ex. 1) was that of the Minnesota Association of Commerce and Industry (MACI). MACI's comments demonstrate the general agreement as to the need for and reasonableness of the proposed rules:

> "It should be noted that the MWCC is not presently required to adopt this rule in full accordance with Chapter 15 of the Minnesota Statutes or under the rules of the Office of Hearing Examiners. However, because of the broad economic impact of the rule, and at the urging of MACI, they agreed to do so. We want to express our appreciation to the Commission staff and to the Commission members for this decision.
>
> "Because of the cooperative spirit and the exchange of technical expertise between the Agency staff and the Industrial Advisory Group, and because of meeting all the requirements of Chapter 15 and the Hearing Examiner's Rules, we believe proposed MWCC 2 is in shape to be adopted without substantial amendments.
>
> "In conclusion, let me say that industry is not gleeful over the fact that its use of the metropolitan waste treatment system is going to cost considerably more than it has in the past. However, we are pleased and satisfied that the MWCC is complying with the applicable provisions of Public Law 92-500 in a fair and equitable manner."

CONCLUSIONS

Due, timely and adequate notice of the hearing was properly served and published by the Commission. All other substantive and procedural requirements have been fulfilled.

2. The Commission has demonstrated its statutory authority to adopt the proposed rules.

3. The Commission has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts.

RECOMMENDATION

The Hearing Examiner recommends that the proposed rules be adopted.

Dated this 8th day of November, 1977.

STEVE M. MIHALCHICK
Hearing Examiner

The attached Statement is a part of this Report.

METROPOLITAN WASTE CONTROL COMMISSION

INDUSTRIAL COST RECOVERY SYSTEM RULES

RECEIVED
SEP 20 1977
OFFICE OF HEARING EXAMINERS

CERTIFICATE OF DELIVERY
SECRETARY OF STATE LIST

I hereby certify that the attached 494 Labels - 2 sheets constitute the complete list of persons, associations, and other interested groups who as of 10:00 o'clock A .m., this 15th day of September, 1977, have requested pursuant to M.S. 1974-15.0412, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

SECRETARY OF STATE

Joan Anderson Growe

By Cheri L. Mattson

Comm's Exhibit No. 6
File No.
Date

METROPOLITAN WASTE CONTROL COMMISSION

INDUSTRIAL COST RECOVERY SYSTEM RULES

RECEIVED
SEP 26 1977
OFFICE OF HEARING EXAMINERS

AFFIDAVIT OF RECEIPT OF
THE SECRETARY OF STATE'S LIST

Donald R. Madore, being duly sworn on oath deposes and says:

1) That he is an employee of the Metropolitan Waste Control Commission.

2) That on the 15th day of September, 1977, he went to the Secretary of State's Office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to Minn. Stat. 15.0412.

3) That on the 15th day of September, 1977, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not. Donald R Madore

Subscribed and sworn to me before this
15th day of September, 1977.

Notary Public Kenneth E Robins

Ramsey County, Minnesota

My Commission expires 6-7-81.

KENNETH E. ROBINS
Notary Public, Ramsey County, Minn.
My Commission Expires June 7, 1981

Comm's Exhibit No. H
File No.
Date

METROPOLITAN WASTE CONTROL COMMISSION

AFFIDAVIT OF MAILING

INDUSTRIAL COST RECOVERY SYSTEM RULES

RECEIVED
SEP 26 1977
OFFICE OF HEARING
EXAMINERS

Donald R. Madore, being first duly sworn, deposes and says:

That on the 20th day of September, 1977, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State (Attachment A). In addition, Notice of Hearing has also been mailed to local government units connected to the Metropolitan Disposal System (Attachment B) and to industrial users of the Metropolitan Disposal System (Attachment C).

Donald R Madore

Subscribed and sworn to before me this

23rd day of September, 1977.

Notary Public,
Kenneth E Robins
Ramsey County, Minnesota

My Commission expires 6-7-81.

KENNETH E. ROBINS
Notary Public, Ramsey County, Minn.
My Commission Expires June 7, 1981

Casa's Exhibit No. I
File No.
Date

METROPOLITAN WASTE CONTROL COMMISSION

STATEMENT OF NEED AND EVIDENCE FOR INDUSTRIAL COST RECOVERY SYSTEM RULES

PREFACE: References used in this "Statement Of Need And Evidence" are contained in the following:

1.) - State of Minnesota Statutes, 1974 Chapter 473C.

2.) - MWCC Industrial Cost Recovery System Report:

a) Appendix A - Extracts From Public Law 92-500

b) Appendix B - Federal Register, February 11, 1974, Environmental Protection Agency, Water Pollution Control, Construction Grants for Waste Treatment Works, Title 40, Subchapter B - Part 35, Code of Federal Regulations (CFR).

c) Appendix C - Standard Industrial Classification (SIC) Titles, 1972.

3.) - Federal Guidelines - Industrial Cost Recovery Systems, Municipal Wastewater Treatment Works, Construction Grants Program, U. S. Environmental Protection Agency, February 1976, Publication No. MCD-45.

METROPOLITAN WASTE CONTROL COMMISSION

STATEMENT OF NEED AND EVIDENCE FOR
INDUSTRIAL COST RECOVERY SYSTEM RULES

1. - INDUSTRIAL COST RECOVERY (ICR) SYSTEM

NEED: Adoption of an ICR System is a major requirement of the United States Environmental Protection Agency as a prerequisite to the Commission being eligible to apply for and receive federal grant funds for the construction of facilities inclusive and appurtenant to the Metropolitan Disposal System (MDS). Further, an ICR System is a legal mechanism to prevent economic and competitive advantages for those industries utilizing federal funded wastewater treatment works as compared to industries which, because of location, cannot avail themselves of the use of similarly funded treatment facilities. In the latter instance, the disadvantaged industries are faced with pretreatment guidelines, standards and the requirements of a NPDES permit - all of which could require a company to finance and construct adequate waste treatment facilities and to incur operation and maintenance costs without benefit of a federal grant.

EVIDENCE:

a) United States Congress intent of ICR is contained in a report of the Committee on Public Works, U. S. House of Representatives, 92nd Congress, 2nd Session, House Report No. 92-911, March 11, 1972, pp. 91-92, as follows:

"In connection with industrial users of publicly owned systems, the Committee desired to establish within the user charge system an arrangement whereby industrial users would pay charges sufficient to bear their fair portion of all costs including the share of Federal contributions for capital construction attributable to that part of the cost of constructed facilities attributable to use by industrial sources. It is the Committee's view that it is inappropriate in a large Federal grant program providing a high percentage of construction funds to subsidize industrial users from funds provided by the taxpayers at large. Accordingly, the bill imposes an obligation on the part of publicly owned systems to incorporate into their user charge schedule a component to recover, without interest, that proportion of the total Federal grant to the community for construction purposes attributable to industrial users. The Committee recognizes that there will be some administrative difficulties involved in establishing classes of industrial users and has left to the local system the obligation to set up an effective and equitable system, subject to the approval of the Administrator, inasmuch as the establishment of such a system is a precondition to Federal grants."

b) Public Law 92-500, Federal Water Pollution Control Act Amendments of 1972, enacted October 18, 1972, under "Title II - Grants for Construction of Treatment Works" requires in Section 204(b)(1)(B) that the grantee applicant "has made provision for the payment to

such applicant by the industrial users of the treatment works of that portion of the cost of construction of such treatment works ..... allocable to the treatment of such industrial wastes to the extent attributable to the Federal share of the cost of construction." (the Federal grant) (MWCC-ICR System Report, Appendix A)

2. - METROPOLITAN WASTE CONTROL COMMISSION AUTHORITY TO ADOPT ICR RULES

NEED: The Metropolitan Sewer Board, predecessor to the Metropolitan Waste Control Commission (MWCC), was charged by legislative purpose and policy in accordance with Minnesota Statutes, Section 473C.01, "that in the metropolitan area there are serious problems of water pollution and disposal of sewage which cannot be effectively or economically dealt with by existing local government units under existing laws. The legislature therefore declares that for the protection of the public health, safety, and welfare of the area, ..., and for the efficient and economic collection, treatment and disposal of sewage it is necessary to ..... establish a waste control commission, which ....., can take over, acquire, construct, operate, and maintain all interceptors and treatment works necessary for the collection, treatment and disposal of sewage in the metropolitan area."

In order to be able to carry out its responsibilities in conformance with such legislative mandate it was necessary for the MWCC

to formulate a continuing and progressive program of planning, financing, construction and operation of a regional-scale MDS for the mutual benefit of all of its users. The financing of such an extensive regional program could not have been accomplished through monetary charges levied against the domestic users of the system in order to subsidize the industrial users. Consequently the Commission found it necessary to apply for federal assistance through the grant program. In this regard it was and still remains necessary for the Commission to adopt rules and regulations governing the use of the MDS.

EVIDENCE:

a) Minnesota Statutes, Section 473C.15, Subd. 5, states "The council or commission with the consent of the council may apply for and accept grants ..... from the United States, the state, ..., including any grant available under the federal water pollution act amendments of 1972, whether for construction, research or pilot project implementation ..... The commission with the consent of the council shall have all powers necessary to comply with the federal water pollution control act amendments of 1972 and any grant offered to it thereunder including, but not limited to, the power to enter into such contracts with, or to impose such charges upon, persons using the metropolitan disposal system as it shall determine to be necessary for the recovery of treatment works and interceptor costs paid with federal grant funds ....."

b) Minnesota Statutes, Section 473C.15, Subd. 4, states "The Commission shall have the power to adopt rules and regulations relating to the operation of any interceptors or treatment works operated by it, and may provide penalties for the violation thereof not exceeding the maximum which may be specified for a misdemeanor ....."

3. - INDUSTRIAL COST RECOVERY PERIOD

NEED: Along with the determination of what constitutes the ICR eligible grant pool, in dollars, to be recovered from the industrial users of the MDS, it is necessary to establish a period of time over which such funds are to be recovered. Such recovery period should begin upon completion of construction and date of beneficial use of the projects funded under PL 92-500. Discontinuance of use of the MDS by an industrial user will terminate the ICR payments of that user. ICR obligations of a discontinued industrial user should not be recovered through additional assessment of the other users.

EVIDENCE:

a) The ICR period is "That period during which the grant amount allocable to the treatment of wastes from industrial users is recovered from the industrial users of such works." [40 CFR §35.905-7].

b) "Each year during the industrial cost recovery period, each industrial user of the treatment works shall pay its share of the total amount of the grant and any grant amendment awarded pursuant to this subpart, divided by the recovery period." [40 CFR §35.928-1(a)]

c) "The industrial cost recovery period shall be equal to 30 years, or the useful life of the treatment works, whichever is less." [40 CFR §35.928-1(b)]

d) "If an industrial user discontinues use of the treatment works (including termination of any agreement for reserve capacity),

its payment for industrial cost recovery will cease. There is no requirement for other industries presently using the treatment works to assume the portion of the ICR payment which is unrecovered due to the departure of an industrial user. Total ICR recovered from an industry which discontinues use during the ICR period shall be the Federal cost of the capacity used multiplied by the ratio of its period of use to the ICR period." (Federal Guidelines, Section 12, page 14.)

4. - INDUSTRIAL COST RECOVERY (ICR) FORMULA

NEED: To obtain the actual percentage of the industrial user's contribution to the treatment facilities, a formula must be derived which takes into consideration the factors that the industrial user is not required to pay for. From the applicable ICR regulations and guidelines the following were noted:

A. Industrial users do not have to be charged for unused capacity of the system.

B. Industrial users do not have to be charged with stormwater handling or treatment.

C. As a minimum, the monies to be recovered are to be based on flow.

The ICR formulae for determining the annual industrial user's interest-free payment, as stated in the ICR System Rules, have been derived after taking into account the required corrections for unused MDS capacity, stormwater handling and treatment, and design loadings of organics and solids.

Federal grant awards after March 1, 1973 will be made to eligible grantees in conformance with the Federal construction grant program requirements of PL 92-500.

EVIDENCE:

a) "An industrial user's share shall be based on all factors which significantly influence the cost of the treatment works. Factors such as strength, volume, and delivery flow rate characteristics shall be considered and included to insure a proportional distribution of the grant assistance allocable to industrial use to all industrial users of the treatment works. As a minimum, an industry's share shall be proportional to its flow, in relation to treatment works flow capacity." [40CFR §35.928-1(d)]

b) "If there is a substantial change in the strength, volume, or delivery flow rate characteristics introduced into the treatment works by an industrial user, such user's share shall be adjusted accordingly." [40CFR §35.928-1(e)]

c) "If there is an expansion or upgrading of the treatment works, each existing industrial user's share shall be adjusted accordingly." [40CFR §35.928-1(f)]

d) "An industrial user's share shall include only that portion of the grant assistance allocable to its use or to capacity firmly committed for its use." [40 CFR §35.928-1(g)]

e) "An industrial user's share shall not include an interest component." [40CFR §35.928-1(i)]

f) "Notwithstanding any other provision of this title, the Administrator shall not approve any grant for any treatment works under section 201(g)(1) after March 1, 1973, unless he shall first have determined that the applicant ..... (B)".

(Extracts From Public Law 92-500, Appendix A and Evidence 1b of this Statement)

5. - INDUSTRIAL USER CLASSIFICATION

NEED: Knowing basically why the ICR System is necessary, the next logical step is to determine from whom should a portion of the Federal grant money be recovered. In other words, what and who is an industrial user?

EVIDENCE:

a) An industrial user is defined in 40 CFR §35.905-8 as any nongovernmental user of publicly owned treatment works identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented, ... (MWCC-ICR System Report, Appendix C) A user ..... may be excluded if it is determined that it will introduce only non-process segregated domestic wastes or wastes from sanitary conveniences.

b) In the event ....., the grantee should also deduct the estimated sanitary wastewater from the total discharge of industrial users which discharge a combination of process wastewater and wastewaters from sanitary conveniences, prior to computing the industrial cost recovery payments of such industrial users. (Federal Guidelines, Section 9A, page 13.)

6. - MONITORING, REPORTING AND AGREEMENTS

NEED: In developing the ICR System, the wastewater characteristics of each industrial user must be determined in order for the Commission to be able to calculate each user's equitable and proportionate cost share of the ICR System's eligible grant pool. Normally this is done by means of a regular monitoring program conducted by the industrial user or through an approved testing laboratory during periods of normal discharge.

The industrial user could discharge a waste which, pretty much on the average, contains wastewater characteristics which do not vary significantly during the production year or which do not deviate to a great extent from data supplied by or obtained from similar industries. In cases such as these it is cost-effective for the industrial user to enter into a special agreement with the Commission as to reasonable waste characteristic values, in lieu of sampling and analyzing, for calculation of the industrial user's ICR charges.

EVIDENCE: "In developing the ICR System, the wastewater characteristics of each industrial user shall be determined. However, where monitoring is not feasible, wastewater characteristics may be estimated using historical records, data from similar industrial users, etc. After the ICR system is put into operation, major industrial users must be monitoried on a regular basis, not less often than annually. Monitoring for minor industries may be done on a random basis ..... Monitoring must be conducted during periods of normal discharge." (Federal Guidelines, Section 11, page 14.)

7. - BILLING AND ACCOUNTING

NEED: The Commission must assure the EPA that billings are made to and payments received from the industrial users of the MDS at least annually. The initial payment must be made by the date which coincides with the anniversary date of beneficial use of the project or of the completion of an improvement such as an expansion or upgrading. Each individual industrial user's ICR billing may vary from year to year if usage of the MDS increases or decreases and as new projects are added to the ICR grant pool.

The Commission is required to maintain, for the duration of the ICR period, such records as are necessary to document compliance with Federal grant requirements.

EVIDENCE:

"Payments shall be made by industrial users no less often than annually. The first payment by an industrial user shall be made not later than 1 year after such user begins use of the treatment works." [40 CFR §35.928-1(c)]

"If there is an expansion or upgrading of the treatment works, each existing industrial user's share shall be adjusted accordingly." [40 CFR §35.928-1(f)]

"If an industrial user's maximum flow (hourly, daily, monthly, seasonally, etc.) contributes to the cost of construction of a treatment works, it should be the basis for that user's ICR payment.

No credit shall be given to the industrial user for the time period when the user is not operating and not discharging wastewater."
(Federal Guidelines, Section 6A, page 4)

"Upon approval of a grantee's system(s) of user charges and industrial cost recovery, implementation and maintenance of such approved system(s) and implementation schedules therefor, shall become a condition of the grant ....." [40 CFR §35.935-13(c)]

"The grantee must maintain such records as are necessary to document such compliance." [40 CFR §35.935-13(d)]

8. - ICR FUNDS

NEED: The Commission must temporarily invest 90% of the amounts recovered from the industrial users prior to either repayment to EPA or expenditure for other authorized purposes. The regulations specifically state that the only permissible investments are:

a. - obligations of the U. S. Government, or

b. - obligations guaranteed as to principal and interest by the U. S. Government or any agency of the U. S. Government.

Such accounts are to be interest-bearing and fully collateralized by the above obligations.

Once each year, and within four months after the close of its fiscal year, the Commission must return to the U. S. Treasury 50% of the original ICR monies collected, together with 50% of the accumulated interest.

EVIDENCE: 40 CFR §35.928-2 concerning "Retained Amounts" stipulates that:

"(a) The grantee shall retain 50 percent of the amounts recovered from industrial users. The remainder, together with any interest earned thereon, shall be returned to the U. S. Treasury on an annual basis.

(b) A minimum of 80 percent of the retained amounts, together with interest earned thereon, shall be used solely for the eligible costs (in accordance with §35.940) of the expansion or reconstruction of treatment works associated with the project and necessary to meet the requirements of the Act. The grantee shall obtain the written approval of the Regional Administrator prior to commitment of the retained amounts for any expansion and reconstruction. The remainder of the retained amounts may be used as the grantee sees fit.

(c) Pending use, the grantee shall invest the retained amounts for reconstruction and expansion in: (1) Obligations of the U. S. Government; or (2) obligations guaranteed as to principal and interest by the U. S. Government or any agency thereof; or (3) shall deposit such amounts in accounts fully collateralized by obligations of the U. S. Government or by obligations fully guaranteed as to principal and interest by the U. S. Government or any agency thereof."

"C. Annual Payment to EPA"

"At no less than annual intervals, no later than four (4) months

after the end of the grantee's annual accounting period, the grantee shall submit to the Regional Administrator's Financial Management Office a check for the annual ICR payment to the Federal Government, made payable to the Environmental Protection Agency. This payment must include any interest earned on the Federal portion of the recovered funds during the preceeding annual accounting period." (Federal Guidelines, Section 16C, page 16)

9. - APPEAL PROCEDURE

NEED: It is obligatory that a fair and equitable ICR System be administered for the mutual benefit of both the industrial user and the Commission. As a means toward that end an Appeal Procedure has been included as a section of the ICR Rules for the filing of appeals by industrial users aggrieved by the Commission's administration of the ICR System.

EVIDENCE: "5. Appeal Procedure"

"The grantee's ICR system must provide for an administrative appeal procedure by which individual industrial users will have an opportunity to be heard regarding the reasonableness of the allocations and ICR assessments imposed upon them....." (Federal Guidelines, Section 5, page 3)

10. - EFFECTIVE DATE

NEED: The initial annual total ICR payment by an industrial user must be made by the date which coincides with the anniversary date of the beneficial use of the project or of the completion of an improvement such as an expansion or upgrading. Such beginning date or ICR implementation date has been determined by the Commission to be January 1, 1978 with ICR payments due and payable during the first quarter of 1979.

EVIDENCE: "Payments shall be made by industrial users no less often than annually. The first payment by an industrial user shall be made not later than 1 year after such user begins use of the treatment works." [40 CFR §35.928-1(c)]

Business Item "I"

METROPOLITAN WASTE CONTROL COMMISSION
350 Metro Square Building, Saint Paul, Minnesota 55101
222-8423

RESOLUTION NO. 77-298

RESOLUTION APPROVING INDUSTRIAL COST RECOVERY SYSTEM RULES FOR THE METROPOLITAN DISPOSAL SYSTEM AND APPROVING AN IMPLEMENTATION DATE THEREFORE

WHEREAS The Metropolitan Waste Control Commission did, on October 25, 1977, hold a public hearing on the Commission's proposed Industrial Cost Recovery System Rules with Mr. Steve Mihalchik from the Office of Hearing Examiners, the designated Hearing Examiner; and

WHEREAS Such Public Hearing was held in accordance with the Administrative Procedure Act, Minnesota Statutes, Chapter 15, in the Metropolitan Council Chambers after due notice of such hearing was properly mailed and/or distributed to pertinent concerned parties registered with the Secretary of State; to local government units; and to industrial users of the metropolitan disposal system; and

WHEREAS The Metropolitan Waste Control Commission did introduce into the hearing record a complete "Statement of Need and Evidence" in support of the Industrial Cost Recovery System and Rules pertaining thereto; and

WHEREAS No oral or written statements in opposition to adoption by the Commission of the Industrial Cost Recovery System Rules were introduced into the record on the day of the hearing or thereafter;

NOW, THEREFORE, BE IT RESOLVED:

1. That the Metropolitan Waste Control Commission approve and adopt the Industrial Cost Recovery System Rules, as submitted to the Hearing Examiner,and

2. That the Commission authorize the Chief Administrator to transmit the Industrial Cost Recovery System Rules as heard by the Hearing Examiner, all in accordance with the Administrative Procedure Act, Minnesota Statutes, Chapter 15, to the State Attorney General for review as to form and legality and thereafter to implement the Rules beginning January 1, 1978, and

3. That the Chief Administrator be directed to annually submit to the Commission a financial and status report concerning the Industrial Cost Recovery System and to annually remit to the Environmental Protection Agency the required portion of Industrial Cost Recovery Funds, subject to the Commission's approval.

4. That the Chief Administrator be directed to transmit to the Metropolitan Council a copy of the Industrial Cost Recovery System Rules and request consent of the Council pursuant to Minnesota Statutes, Section 473.504, Subdivision 5, to implement such system in compliance with the federal grant requirements of PL 92-500, the Federal Water Pollution Control Act Amendments of 1972.

Adopted this 15th day of November, 1977

METROPOLITAN WASTE CONTROL COMMISSION

By _____
Joseph D. Strauss, Chairman

By _____
Richard J. Dougherty, Chief Administrator

MLR:pd

MWCC-78-001-SM



STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE METROPOLITAN WASTE CONTROL COMMISSION

IN THE MATTER OF THE PROPOSED)
INDUSTRIAL COST RECOVERY SYSTEM) REPORT OF THE
RULES OF THE METROPOLITAN WASTE) CHIEF HEARING EXAMINER
CONTROL COMMISSION.)

WHEREAS, a hearing was held on October 25, 1977, before Steve M. Mihalchick, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the Metropolitan Waste Control Commission on November 8, 1977; and

WHEREAS, the Metropolitan Waste Control Commission has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Metropolitan Waste Control Commission has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Metropolitan Waste Control Commission has met all requirements of Minn. Stat. § 15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Metropolitan Waste Control Commission has the responsibility of submitting the complete hearing record and the rules as adopted by the Commission to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, Subd. 4.

Dated this 16th day
of November, 1977.

DUANE R. HARVES
Chief Hearing Examiner