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**Dated:** July 8, 2008.

**Alan J. Steinberg,**

*Regional Administrator, Region 2.*

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**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–8694–4]

### Clean Water Act Section 303(d): Availability of List Decisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Availability.

**SUMMARY:** This notice announces the availability of EPA’s final action identifying water quality limited segments and associated pollutants in Texas to be listed pursuant to Clean Water Act (CWA) Section 303(d), and request for public comment. Section 303(d) requires that states submit and EPA approve or disapprove lists of waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards and for which total maximum daily loads (TMDLs) must be prepared.

On July 9, 2008, EPA partially approved, and partially disapproved, Texas’ 2008 303(d) submission. Specifically, EPA approved Texas’ listing of 836 water body-pollutant combinations, and associated priority rankings. EPA disapproved Texas’ decision not to list one (1) water body-pollutant combination. EPA identified this additional water body pollutant-combination along with priority ranking for inclusion on the 2008 Section 303(d) List.

EPA is providing the public the opportunity to review its final decision to add one water body pollutant-combination to Texas’ 2008 Section 303(d) List, as required by EPA’s Public Participation regulations (40 CFR Part 25). EPA will consider public comments and if necessary amend its final action on the additional water body pollutant-combination identified for inclusion on Texas’ Final 2008 Section 303(d) List.

**DATES:** Comments must be submitted in writing to EPA on or before August 18, 2008.

**ADDRESSES:** Comments on the decisions should be sent to Diane Smith, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733, telephone (214) 665–2145,

facsimile (214) 665–7373, or e-mail: [smith.diane@epa.gov](mailto:smith.diane@epa.gov). Oral comments will not be considered. Copies of the documents which explain the rationale for EPA’s decision and a list of the water quality limited segment for which EPA disapproved Texas’ decision not to list can be obtained at EPA Region 6’s Web site at <http://www.epa.gov/region6/water/npdes/tmdl/index.htm>, or by writing or calling Ms. Smith at the above address. Underlying documents from the administrative record for these decisions are available for public inspection at the above address. Please contact Ms. Smith to schedule an inspection.

#### FOR FURTHER INFORMATION CONTACT:

Diane Smith at (214) 665–2145.

**SUPPLEMENTARY INFORMATION:** Section 303(d) of the CWA requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish TMDLs according to a priority ranking.

EPA’s Water Quality Planning and Management regulations include requirements related to the implementation of Section 303(d) of the CWA (40 CFR 130.7). The regulations require states to identify water quality limited waters still requiring TMDLs every two years. The list of waters still needing TMDLs must also include priority rankings and must identify the waters targeted for TMDL development during the next two years (40 CFR 130.7).

Consistent with EPA’s regulations, Texas submitted to EPA its listing decisions under Section 303(d) on April 1, 2008. On July 9, 2008, EPA approved Texas’ listing of 836 water body-pollutant combinations and associated priority rankings. EPA disapproved Texas’ decision not to list one (1) water body-pollutant combination. EPA identified this additional water body pollutant-combination along with priority ranking for inclusion on the 2008 Section 303(d) List. EPA solicits public comment on its identification of one (1) additional water body-pollutant combination for inclusion on Texas’ 2008 Section 303(d) List.

**Dated:** July 10, 2008.

**Miguel I. Flores,**

*Director, Water Quality Protection Division, Region 6.*

[FR Doc. E8–16387 Filed 7–16–08; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–8693–8]

### Amendment to the Guidelines for the Award of Monitoring Initiative Funds under Section 106 Grants to States, Interstate Agencies, and Tribes

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** This notice amends the “Guidelines for the Award of Monitoring Initiative Funds under Section 106 Grants to States, Interstate Agencies, and Tribes” published in the **Federal Register** (71 FR 157190, March 29, 2006). The guidelines describe the formula necessary for EPA to allot Clean Water Act (CWA) section 106 water pollution control program grant funds that have been targeted in EPA’s appropriation process to support enhanced monitoring efforts by states, interstate agencies, and tribes. These guidelines describe the specific activities that states, interstate agencies, and tribes must carry out under the monitoring initiative in order to receive the funds. These activities will improve state and tribal capacity to monitor and report on water quality, and include two components: Implementation of comprehensive monitoring strategies including building capacity for state-scale statistically-valid surveys of water condition, and collaboration on statistically-valid surveys of the nation’s waters. This amendment retains the allotment formula set out in the March 29, 2006, guidelines, and adds a performance-based standard for incorporating use of statistically-valid surveys into state water monitoring programs. The amended guidelines are in this **Federal Register** notice in their entirety and replace the guidelines published March 29, 2006.

**DATES:** The guidelines are effective on July 17, 2008.

**FOR FURTHER INFORMATION CONTACT:** Joan Warren, Office of Water, Office of Wetlands, Oceans, and Watersheds, 4503T, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* (202) 566–1215; *e-mail address:* [warren.joan@epa.gov](mailto:warren.joan@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

*Regulated Entities:* States, interstate agencies, and tribes that are eligible to receive grants under section 106 of the CWA.

## II. Background

Numerous reports have identified the need for improved water quality monitoring and analysis at local, state, or national scales. In 2000, the General Accounting Office reported that EPA and states cannot make statistically-valid assessments of water quality and lack the data to support key management decisions. In 2001, the National Research Council recommended that EPA and states promote a uniform, consistent approach to ambient monitoring and data collection to support core water quality programs. In 2002, the H. John Heinz III Center for Science, Economics, and the Environment found that water quality data are inadequate for reporting on fresh water, coastal and ocean water quality indicators at a nationwide scale. The U.S. Commission on Ocean Policy issued similar conclusions in 2004. The National Academy of Public Administration (NAPA) stated that improved water quality monitoring is necessary to help states make more effective use of limited resources. EPA's Draft Report on the Environment 2003 found that there is not sufficient information to provide a national answer with confidence and scientific credibility to the question, 'What is the condition of U.S. waters and watersheds?'

EPA has been working with federal, state, and other partners to develop and promote the use of a variety of monitoring tools to most efficiently answer water quality management questions at multiple geographic scales. Statistically-based surveys, predictive models, remote sensing and targeted monitoring are examples of these tools. In combination, these tools can be used by states and tribes to describe the magnitude of water resource concerns, help focus on key stressors that are both widespread and high risk, and prioritize site-specific monitoring activities to identify and address problem areas. Incorporating these tools into monitoring strategies and into monitoring program designs should help states and tribes meet multiple state and national monitoring objectives cost-effectively.

States have traditionally monitored only a small percentage of all the nation's waters: Approximately 20% of streams and rivers, 40% of lakes, and 35% of estuarine waters. They have used a site-specific, targeted monitoring approach to generally focus limited monitoring resources on heavily used or problem waters. The waters monitored may not reflect conditions in state waters as a whole. In addition, states

often monitor a different set of waters from cycle to cycle. These targeted assessments, while providing important site-specific information, do not fully meet the intent of the CWA section 305(b) requirement. Under section 305(b) states must report on the extent of their waters meeting the fishable and swimmable goals of the CWA. Statistically-valid surveys offer a cost-effective and efficient way to fulfill CWA requirements, complement traditional monitoring designs, and support a broader range of management decisions. There is widespread acceptance of the use of statistical surveys in reports on the nation's housing, labor, health, agricultural, and other sectors.

To address the need for credible reports on water quality status and trends nationwide, the President's Fiscal Year 2005 through FY 2009 budgets specifically requested

"Not less than \$18.5 million shall be provided through Clean Water Act Section 106 grants for State and interstate agencies' implementation of EPA-approved statistically representative, probabilistic water quality monitoring activities."

The FY 2006 Conference Report, which accompanied EPA's FY 2006 appropriation, designated an additional, separate portion of the total section 106 funds to be targeted for this monitoring initiative.

On January 3, 2006, EPA published a revision to its CWA section 106 grant regulations (40 CFR 35.162(d)) that provides the Agency with the flexibility to allot separately funds such as these which have been targeted for specific water pollution control elements (71 FR 17, January 3, 2006). In this situation, such allotment can occur only after EPA establishes an allotment formula after consultation with states and interstate agencies. On March 29, 2006, EPA published the guidelines for applying the increased funding to enhance monitoring activities, including maintaining and improving statistically-valid water quality monitoring programs to provide information for decision makers and the public. These amended guidelines include this allotment formula, as well as further details regarding the use of and accountability for these funds.

## III. Guidelines for the Award of Monitoring Initiative Funds Under Section 106 Grants to States, Interstate Agencies, and Tribes

These guidelines describe the formula necessary for EPA to allot section 106 water pollution control program grant funds that have been targeted to support enhanced monitoring efforts by states,

interstate agencies, and tribes. These guidelines also describe the specific activities that states, interstate agencies, and tribes must implement to receive the monitoring initiative funds. These activities will improve state and tribal capacity to monitor and report on water quality through the two components of the monitoring initiative:

Implementation of comprehensive monitoring strategies including building capacity for state-scale statistically-valid surveys of water condition, and collaboration on statistically-valid surveys of the nation's waters.

The first component will strengthen state and tribal programs consistent with priorities contained in their comprehensive monitoring strategies. The second component may serve state and tribal programs and produce a statistically-valid survey of water condition at nationwide and regional scales. States may opt to build upon these national/regional surveys to obtain a state-scale statistical survey. Data gathered through the national/regional-scale surveys can be used to support water quality criteria development and to identify the extent to which emerging pollutants may be of concern. Survey data may potentially be used for developing state-scale predictive tools, documenting the performance of monitoring methods, and assessing the comparability of data.

EPA consulted with states and interstate organizations in the development of these guidelines beginning in March 2004. EPA reached an understanding with the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) on the distribution of the monitoring initiative increment in the FY 2005 section 106 grant funds. EPA continued discussions with ASIWPCA about the monitoring increment grant funds, including use of the FY 2006 increment for statistically-valid surveys of the nation's waters. EPA also consulted with state environmental commissioners through the Environmental Council of the States. Beginning in November 2007, EPA consulted with states and interstate organizations in the development of this amendment through conference calls with a workgroup composed of members of ASIWPCA.

### A. Formula for Allocation of Monitoring Initiative Funds

To be eligible to receive monitoring initiative funds, states, interstate agencies, and tribes must apply for the funds by preparing a workplan that details planned actions for carrying out both components of the monitoring initiative: Implementation of

comprehensive monitoring strategies and collaboration on statistically-valid surveys of the nation's waters. A state may request in-kind assistance from EPA under the grant to complete the survey for the sites located within its jurisdiction. If a state does not apply for funds or meet the workplan criteria in these guidelines to implement its strategy and/or complete the survey, including requesting in-kind assistance, EPA may withhold the funds allotted for this purpose and award the funds to any eligible recipient in the region, including another agency of the same state or an Indian tribe/tribal consortium for the same environmental program (40 CFR 35.117).

#### For Fiscal Year 2006 and beyond: Allocation of Monitoring Initiative Funds

\$18.23 million\* will be distributed in the following manner:

1. \$9.77 million of these funds will be allocated as follows for implementing monitoring strategies and building monitoring program capacity—

\$169,900 for each state,  
\$84,950 for each territory and the District of Columbia,  
\$240,410 to be distributed among interstate agencies, and  
\$528,506 to be distributed among the tribes, in accordance with the section 106 grant formula for tribes.

2. \$8.45 million will be allocated for surveying water quality condition nationwide. Grant recipients will use this portion of the monitoring initiative funds for statistically-valid surveys of water body condition repeated over time to determine status and trends in water condition. The distribution of these funds will be tailored based on the water body type being surveyed, i.e., coastal waters, streams, lakes, rivers, and wetlands, and the number of sample sites needed. EPA will work with states, interstate agencies, and tribes to define the target population (size and type of water body) for each survey. After this consultation, EPA will develop a list of randomly selected sites to be sampled for the survey. For each survey, approximately 1,000 sites in the contiguous 48 states will be sampled. A state or tribe in the contiguous 48 states will receive funding for each sampling site falling within its jurisdiction. A separate fund of \$450,000 will be used to support survey work in Alaska, Hawaii, Puerto Rico and the trust territories. If a grant recipient is able to

sample the sites needed for its participation in a nationwide survey for less than the funds allotted for each site, the remaining funds must be used for implementation of its monitoring strategy and/or to build capacity for state-scale statistically-valid surveys.

#### Performance-Based Standard for Implementation of Statistical Surveys

3. To accelerate the use of state-scale statistical surveys as called for in the President's budget requests, EPA is incorporating a performance-based standard in the allotment of the section 106 Monitoring Initiative funds. This performance-based standard will start in FY 2008 with adjustments to allocations, if necessary, beginning in FY 2009. Monitoring Initiative funds may continue to be used for building state monitoring program capacity according to the guidelines, set out in March 2006 and discussed above in Section III.A.1, as long as at least five states each year adopt state-scale statistically-valid surveys as part of their state monitoring programs. During FY 2007, 30 states were implementing, as part of their monitoring network, statistical surveys at the state-scale for at least one water resource. This number serves as the baseline for the performance-based standard. The goal is to have five additional states adopt the use of state-scale statistically-valid surveys each year (i.e., 35 States in 2008, 40 in 2009, 45 in 2010, and 50 in 2011). For every state below the target of five additional states each year, beginning with the allotment of FY 2009 Monitoring Initiative funds, 20% of the Monitoring Initiative funds used for building monitoring capacity (100% equals \$169,900 \* per state) will be reallocated among those states implementing state-scale statistical surveys. For example, if only three additional states adopt the use of statistical surveys by the end of FY 2008 (for a total of 33 states, two states short of the goal of five additional states), 40% of the capacity building funds (i.e., \$67,960 per state \*) of the 17 states not implementing statistical surveys will be evenly reallocated in FY 2009 to the 33 states that are implementing such surveys (i.e., \$35,009 per state \*).

#### Process and Criteria for Determining Implementation of Statistical Surveys as a Component of a State's Monitoring Program

At the end of each fiscal year beginning in FY 2008, a state must submit a certification to EPA that the

state is implementing a state-scale statistically-valid survey meeting the criteria set out below. EPA, through Headquarters' and Regional Monitoring Coordinators' consultation, will make a determination on the status of state implementation of state-scale statistical surveys based on the state's certification and adherence to the following criteria:

a. State is implementing a statistical survey design that provides condition estimates for a population of waters (e.g., streams, rivers, lakes, coastal waters, or wetlands) of the state based on an unbiased, representative sample of a subset of those waters.

i. The state assesses water quality conditions using core indicators for at least one designated use consistent with the *Elements of a State Water Monitoring and Assessment Program* guidance. Over time, state surveys incorporate a full suite of appropriate biological, chemical and physical indicators as described in the guidance. Initial statistically-valid, probability surveys (through 2012), however, may be based on a subset of indicators tailored to specific water quality issues (e.g., biological integrity, recreation, fish consumption, etc.).

ii. The implementation of a state-scale statistically-valid survey may span several years. A state may use a rotating basin approach and survey different watersheds over time, or spread the sites required across the state over multiple years—as long as these surveys can be aggregated for a state-scale survey. For example, a state may choose to sample 10 sites each year over a five-year period.

iii. States may use methods and protocols employed in the national surveys, or state methods.

iv. State surveys aim to achieve 90% confidence +/- 10%. This typically requires about 50 sites.

v. Surveys assess at least one water type (streams, lakes, rivers, coastal waters, or wetlands).

vi. A state's monitoring strategy indicates a commitment to continuing statewide statistical surveys as a component of its comprehensive monitoring program.

b. State continues to participate in the national/regional scale surveys, unless the state-scale survey is fully consistent with national survey design and methods.

c. State reports the results of the state-scale survey by 2012, preferably as a component of the state's Integrated Report/305b/303d (narrative form) and/or in the probability survey module of the Assessment Database. (EPA will modify this module to accommodate state assessment categories, e.g., good/

\* EPA will use this numerical formula to determine the monitoring allotments for FY 2009 and beyond based on the amount of EPA's final annual budget targeted for these purposes.

\* These amounts assume the same level of funding as specified in Section IIIA1.

fair/poor, biocondition gradient levels, etc.).

[Note: EPA acknowledges that because of the unique nature of its land and waters, the State of Alaska may take longer to meet the above criteria.]

### B. Supplemental Workplans for Monitoring Initiative Activities

These guidelines describe the types of commitments grant recipients must include in a separate workplan covering the monitoring initiative portion of their section 106 grant. Because these funds have to be tracked and reported separately, EPA will negotiate specific annual activities to be included in these workplans that must address how recipients will (1) implement the state, interstate agency, or tribal monitoring strategy, including implementing or building capacity for state-scale statistically-valid surveys of water condition, and (2) collaborate on statistically-valid surveys of the nation's waters.

#### 1. Implementing Monitoring Strategies

##### *Why Strategies Are Important*

An important objective for state, interstate agency, and tribal monitoring strategies is to maximize the efficiency of monitoring and assessment resources to increase the amount of waters monitored or assessed; provide the information needed to allow decision makers and the public to set priorities; develop and apply controls; and determine the effectiveness of our investments in water quality protection and restoration. EPA agrees with the NAPA finding that investing in efficient monitoring and assessment programs will result in social cost savings by ensuring that the resources invested in environmental protection activities are addressing the greatest needs and are achieving performance objectives. In addition, the successful use of market-based approaches, such as trading for water quality protection and restoration, depends on the availability of adequate monitoring data and information.

##### *State Water Monitoring and Assessment Strategies*

In March 2003, EPA issued the *Elements of State Water Monitoring and Assessment Program* guidance to provide a framework for strengthening state monitoring programs by the end of FY 2014. This guidance describes 10 elements of a water monitoring and assessment program. The elements provide a basic framework that may be tailored to the specific needs of states or other organizations. A brief description of each element is provided below.

- **Monitoring Program Strategy**

The comprehensive monitoring program strategy is a long-term plan that describes how the state implements a monitoring program that serves water quality decision needs for all its waters, including streams, rivers, lakes, the Great Lakes, reservoirs, estuaries, coastal waters, wetlands, and ground water. The strategy should describe how the state addresses each of the other nine elements of the guidance. It should reflect the input of the full range of monitoring partners within the state.

- **Monitoring Objectives**

Monitoring objectives drive the state's implementation of monitoring activities. The state's objectives should reflect the needs of the Clean Water Act and the Safe Drinking Water Act and other water management activities. These objectives include, but are not limited to, assessing the extent of state waters that support the goals of the CWA.

- **Monitoring Design**

The monitoring design explains how monitoring sites are selected to meet monitoring objectives, including providing water quality data of documented quality for many purposes such as setting water quality standards, assessing overall water conditions, listing impaired waters, developing total maximum daily loads (TMDLs), and writing National Pollutant Discharge Elimination System (NPDES) permits. To meet decision needs most efficiently, states may integrate several monitoring designs (e.g., fixed station, intensive and screening-level monitoring, rotating basin, judgmental and probability design). Over half of the states are implementing statistically-valid surveys as a component of their monitoring network. As states implement their state monitoring strategies, EPA expects them to build capacity for state-scale statistically-valid surveys of water condition. EPA encourages states to leverage the national/regional scale surveys to support these state-scale statistically-valid surveys. Monitoring designs may also incorporate predictive tools such as landscape and water quality modeling, remote sensing and deployed data sondes.

- **Core and Supplemental Water Quality Indicators**

A core set of monitoring indicators (e.g., water quality parameters) includes physical/habitat, chemical/toxicological, and biological/ecological endpoints selected to assess attainment with applicable water quality standards throughout the state. The core indicators should be supplemented, as

appropriate, to meet the full range of monitoring objectives. Supplemental indicators should be monitored when there is a reasonable expectation that a specific pollutant may be present in a watershed, or to support a special study such as screening for potential pollutants of concern.

- **Quality Assurance**

A state must have a quality assurance program to ensure the scientific validity of monitoring data and of sampling and laboratory activities. Data of documented quality are critical to support decision making and resource allocation.

- **Data Management**

Timely access to data of documented quality is another key element of a state monitoring program. All states are expected to use an electronic data system to manage water quality, fish tissue, toxicity, sediment chemistry, habitat, and biological data. The state data management strategy should address timely data entry, follow appropriate metadata and state/federal geo-locational standards, and allow public access. Consistent with CWA section 106(e), EPA will require states to use the new Water Quality Exchange to transfer data to EPA's STORET data warehouse from the state's data management system.

- **Data Analysis/Assessment**

A state's assessment methodology describes how water quality data are evaluated to determine whether waters are attaining water quality standards. The assessment methodology addresses how states collect data from various monitoring sources (including federal, state and local governments, volunteer monitors, academia, permitted dischargers under the National Pollutant Discharge Elimination System (NPDES), drinking water utilities, etc.), what types and quality of data are needed to support different levels of decisions, and how data are reviewed, analyzed and compared to water quality standards.

- **Reporting**

A monitoring program must ensure timely submission of water quality reports and lists, such as those required under sections 106, 303(d), 305(b), 314 and 319 of the CWA and section 406 of the Beaches Act. EPA encourages states to streamline reporting activities by consolidating reports and using electronic data management and reporting systems. EPA's 2002 *Integrated Water Quality Monitoring and Assessment Report Guidance* called

for integration and consistency in the development and submission of section 305(b) water quality reports and section 303(d) impaired waters lists. To accomplish this integration, EPA expects that all states will use EPA's Assessment Database (ADB) or a compatible electronic format to record their water quality assessment decisions.

- Programmatic Evaluation

The state, in consultation with EPA, should conduct periodic reviews of its monitoring program to determine how well it serves water quality decision needs for all waters of the state. This involves evaluating each aspect of the monitoring program to determine how well each of the elements listed here are being implemented to serve water resource management activities and to identify needed changes and additions for future monitoring cycles.

- General Support and Infrastructure Planning

The state monitoring strategy should identify current and future resource needs to fully implement its monitoring program. This planning activity should describe funding, staff, training, laboratory and information management resources and needs.

#### *Tribal Monitoring Strategies*

In October 2006, EPA issued *Final Guidance on Awards of Grants to Indian Tribes under Section 106 of the Clean Water Act* that requires tribes to develop monitoring strategies appropriate to their capabilities and needs, and provide reports on water quality to EPA. The tribal guidance outlines reporting requirements and data expectations for all tribal programs receiving section 106 funds. These requirements will help tribes to collect critical data and information for effective management of their water quality programs. The requirements will also help EPA measure environmental results of the section 106 Tribal Program and comply with the Government Performance and Results Act (GPRA) and other federal requirements. In the reports that tribes are required to submit as set forth in their CWA section 106 work plan, tribes will be required to include the following: a description of identified needs, goals, and objectives of their monitoring programs; a description of sampling methodology and parameters sampled; and a narrative account detailing the types of water sampled, sampling procedures, data summaries, and the tribe's interpretation of both the data and the assessment methodology used. Tribes are also required to the

maximum extent possible to include water quality data for up to nine parameters: dissolved oxygen, pH, water temperature, total phosphorus, total nitrogen, turbidity, *E. coli* or enterococci, macroinvertebrates, and basic habitat information.

#### *Using Section 106 Monitoring Initiative Funds To Implement Monitoring Strategies*

EPA expects states, territories, interstate organizations and tribes to use the first component of the monitoring initiative to assist in implementation of their monitoring strategies in keeping with schedules set out in the strategies, including implementing or building capacity for state-scale statistically-valid surveys of water condition. The monitoring activities for which these funds are used must be accounted for and reported on through separate section 106 workplans, and must be used to help states and tribes build program capacity to enhance water monitoring activities. Funds must not be used for ongoing or routine monitoring activities. They could be used to develop or augment a state's monitoring network design. For example, activities could include implementing a state-scale statistically-valid survey, expanding coverage, adding waterbody types, increasing intensive monitoring (e.g., watersheds); developing or refining core and supplemental indicators, including biological assessment programs; enhancing data analysis and management; increasing lab capability; and/or hiring new staff or purchasing equipment. EPA Regional monitoring and section 106 staff will work with each section 106 grant recipient to ensure that the workplan reflects these monitoring activities and that the state or tribe is making progress in implementing the priorities and milestones set out in its monitoring strategy.

EPA and the states through their monitoring strategies have identified the following activities, among others, as priorities for enhancing monitoring programs:

- Leveraging resources through partnerships to improve data management to facilitate data sharing and reduce redundancy of sample collection;
- Developing predictive tools to extend use of monitoring data;
- Using statistically-valid monitoring designs and assessment methodologies to represent the condition of all state or tribal waters with statistically-valid (probability-based) surveys and account for variability in water quality and uncertainty in sampling methods; and

- Improving the rigor of biological condition assessment to take advantage of its ability to integrate the effects of multiple stressors, provide a more accurate assessment of ecological effects, and improve diagnostic ability to identify causes of degradation.

#### 2. Collaborating on Statistically-Valid Surveys of the Nation's Waters

Supplemental workplans must also address activities that state and tribes will implement as part of their participation in the statistically-valid surveys of the nation's waters. A key element of improving the credibility of reports on the condition of the nation's waters as called for under CWA section 305(b) is the use of a statistically-valid survey design. The *Elements of a State Water Monitoring and Assessment Program* recommends that monitoring strategies include the use of probability-based networks that support statistically-valid inferences about the extent of waters that support the goals of the CWA and achieve state water quality standards. EPA's 1997 *Guidelines for Preparation of the Comprehensive State Water Quality Assessments (305(b) Reports) and Electronic Updates*, written with state participation, also recommends the use of probabilistic monitoring or statistically-valid surveys as a cost-effective and reliable means for assessing water quality status and trends.

#### *Why Surveys Are Important*

Statistically-valid surveys are an efficient way to determine the extent to which waters support healthy aquatic communities. Detailed information collected about the health of aquatic communities in a random sample of a specific water body type (streams, coastal waters, lakes, rivers, and wetlands) can be used to make inferences, with documented confidence, about the condition of the larger universe of similar waters—most of which are currently unassessed (only 19% of streams and rivers, 37% of lakes, and less than 2% of wetlands were assessed for the 2002 reporting cycle). This design can be implemented at a national, regional, state, or local level to provide a benchmark about how much of the resource needs protection or restoration.

The short term objective for water quality surveys is to achieve comprehensive assessments of water quality. Over the long term, statistical surveys are a cost-effective means of determining trends over time and evaluating the effectiveness of water quality protection and restoration

efforts. Statistically-valid surveys provide data that serve other water quality management needs ranging from additional information about each monitoring site to contributing to the development of water quality standards. They can be used with other datasets to develop predictive tools that help prioritize site-specific monitoring and identify problem areas.

#### *Basic Activities for Implementing Statistically-Valid Surveys*

The CWA section 106 monitoring initiative guidelines require states and tribes to collaborate on statistically-valid surveys to assess water condition in coastal waters, streams, lakes, rivers and wetlands. Many states are already implementing or participating in statistically-valid designs for monitoring the condition of coastal waters, rivers and streams, and lakes. EPA intends that these national/regional-scale surveys complement existing state efforts using survey designs and methods that generate comparable assessment results. The collaborative assessments will build upon and continue the success of national, regional, state, tribal, and local partnerships such as the National Coastal Assessment, the Wadeable Streams Assessment and Assessment of Western Rivers and Streams, the National Lake Fish Tissue Study, the Mid-Atlantic Integrated Assessment, and the Southern California Coastal Water Research Project.

The guidelines generally address the roles and responsibilities of EPA, states, and tribes in generating cost-effective comparable assessments of water resources. As EPA, states, and tribes collaborate on the survey for each water resource type, EPA will issue clarifying guidance for the specific activities involved in planning and implementing the survey. The clarifying guidance will contain information on number and location of sampling sites, indicators, quality assurance/quality control (QA/QC) protocols, field data collection and lab methods, timelines for carrying out survey activities, and the funding levels needed for sampling and analyses at each sampling site. The basic activities involved in statistical surveys are described below.

#### • Monitoring Objectives

The basic objective of these surveys is to generate statistically-valid estimates of the extent of water resources that support healthy aquatic communities and human activities, and to assess the relative importance of key stressors on water quality. The surveys will produce estimates of the condition of various

water body types, i.e., coastal waters, streams, lakes, rivers, and wetlands, at both regional and national scales. States are encouraged to leverage these surveys to help support their own state-scale surveys. EPA will host meetings to bring together states and other experts to shape the planning and implementation of each survey, including detailed definitions of the survey objectives, design and indicators, field implementation, and analysis and reporting.

#### • Statistically-Valid Design

The design, developed in collaboration with states, tribes and other partners, will reflect the input provided through national meetings and other discussions about the definition of the water resources under investigation and the various sub-classes of the resource that need to be characterized by the survey. EPA will generate a statistically-valid representative network design that identifies the primary and alternate random monitoring sites within each eco-region. In addition EPA will provide interested states with a randomized network design for state-scale or finer characterizations.

#### • Indicators

The indicators used to describe the condition of water resources and extent of waters will vary depending upon the water body type surveyed. EPA will work with states and other experts to identify the core indicators that will be used to evaluate the ecological condition of water resources, the extent of water resources that support human activities, and the key stressors affecting waters. The indicator measurements will be taken using consistent or comparable procedures at all sites to ensure the results can be compared across the country. States and tribes are encouraged to include additional indicators (as described in the *Elements of a State Water Monitoring and Assessment Program*) to address specific questions and to generate more robust assessments.

#### • Quality Assurance

EPA policy and regulations require documentation and implementation of standard operating procedures (SOPs) and QA/QC protocols for environmental monitoring. After meetings and discussions with states and other experts on the objectives, design and indicators for each survey, EPA will develop a Quality Assurance Project Plan (QAPP) and appropriate SOPs. The QAPP describes the study objectives, the survey design, the data quality

objectives it supports, the core indicators or parameters and their related measurement quality objectives, and field and lab protocols including quality control activities, data management, data analysis and reporting. EPA will provide training for field crews and will ensure implementation of the quality control measures defined in the QAPP. States and other partners participating in the survey will either certify that they will implement the EPA QAPP and SOPs or, if the state elects to implement comparable methods, the state will provide its QAPP and SOPs to EPA for review and approval prior to initiating field work.

#### • Field Data Collection

Field data collection includes site reconnaissance, field data collection, and quality control activities such as repeat sampling. The CWA section 106 grant survey fund will provide resources to states and tribes for the implementation of field data collection activities as well as lab analysis described below. States and other organizations accepting responsibility for site reconnaissance and field data collection will certify that they are adhering to the approved EPA and/or state QAPP and SOPs described above. EPA will provide training in field sampling protocols and oversee implementation of the QA/QC activities.

EPA's intent is that the survey fund can offset the costs of state-scale water quality surveys in addition to contributing to national and regional assessments of the condition of the nation's waters. State and tribal water quality programs may direct these resources a number of ways to accomplish the site reconnaissance and field sampling: Implementing site reconnaissance and field sampling directly; providing the funds to other organizations within the state through interagency agreement; issuing grants and/or contracts; and/or requesting EPA provide in-kind services consisting of EPA contractor support to perform the field data collection activities on behalf of the state.

#### • Laboratory Analysis

Any laboratory processing the chemical or biological samples collected for the surveys must demonstrate that they can meet the quality standards presented in the QAPP. This includes initial demonstrations of technical capability and performance evaluations. Field samples should be promptly shipped to the approved analytical or processing laboratories as these facilities are generally better geared to properly

hold the samples while they await analyses. At the laboratory, samples will be processed in accordance with the laboratory SOPs, including QA/QC activities. Each participating laboratory must certify that they are adhering to the approved EPA and/or state QAPP and laboratory SOPs. Each laboratory is expected to review their final data for completeness, accuracy, and precision to assure that the basic quality criteria are met prior to submitting their final data report. EPA will oversee implementation of the QA/QC activities.

The CWA section 106 grant survey fund will provide resources to states and tribes for the implementation of laboratory analysis of field samples. State and tribal water quality programs may direct these resources a number of ways to accomplish the laboratory analysis of field samples: Analyzing samples directly; providing the funds to other organizations within the state through interagency agreement; issuing grants and/or contracts; and/or requesting EPA provide in-kind services consisting of EPA contractor support to perform the lab analysis activities on behalf of the state.

- Data Management

EPA will provide support for data management to facilitate rapid access to data and transfer of data into EPA's Water Quality Exchange or STORET-compatible system.

- Data Analysis and Interpretation

EPA will work with states and tribes to develop general protocol(s) to analyze and interpret the survey results. The data analysis protocols will build on existing efforts of states, tribes, EPA, U.S. Geological Survey, and other organizations to develop statistically-valid and environmentally relevant thresholds for interpreting the physical, chemical and biological integrity of water resources, including the Tiered Aquatic Life Use Workgroup's framework for reporting data within a biological condition gradient that is independent of individual state water quality standards. EPA will host national and/or regional meetings to facilitate evaluation and selection of appropriate protocols for data analysis and interpretation.

- Reporting

EPA will work with states and tribes to develop regional and national scale reports that present the results of the surveys and provide information to track the condition of the nation's waters and help guide the setting of national, regional and state priorities for water quality protection and restoration.

The reports will describe the extent that the water body type surveyed supports healthy aquatic communities and human activities such as fishing and swimming. The reports will also describe key water quality and habitat characteristics associated with healthy and degraded resources. As states continue to implement state-scale surveys, the report will include these results as well as describe additional insights gained from analyzing additional data that states and tribes add to the analysis. EPA will host national and/or regional meetings to provide input to the reports.

*Using Section 106 Monitoring Initiative Funds for State Activities To Support Surveys of the Nation's Waters*

The distribution of these funds will ensure states and tribes receive the basic level of funding required to implement the surveys at the minimal scale of regional and national reporting. EPA's intent is that this seed money can be leveraged by states to support implementation of state-scale surveys as states are able to incorporate this tool into their monitoring programs.

The initial strategy for distribution of the survey funds is to tailor distribution, based on the water resource type being surveyed, i.e., coastal waters, streams, lakes, rivers, and wetlands, and the number of sample sites identified within each jurisdiction. In the contiguous 48 states, a state or tribe will receive funding for each sampling site falling within its jurisdiction. A separate fund of \$450,000 will be used to support survey work in Alaska, Hawaii, Puerto Rico and the trust territories over time.

To ensure the success of the surveys, states and tribes must commit annually, in separate state and tribal section 106 workplans, to undertake activities that will be needed as part of the surveys. Grant commitments will address both the timing and scope of these activities, which are described in the previous section and summarized below:

- Travel to participate in national and/or regional meetings for planning, scoping, data analysis and interpretation and reporting;
- Site reconnaissance to verify that sites meet the definition for inclusion in the survey;
- Sample collection and lab analysis in accordance with EPA approved QAPP and SOPs;
- Participation in QA/QC activities; and
- Provision of final sample results in electronic format.

State and tribal water quality programs may use the CWA section 106 survey funds to accomplish these

activities in a number of ways including implementing the survey directly, providing the funds to other organizations within the state through interagency agreement, issuing grants and/or contracts, and/or requesting EPA provide in-kind services consisting of EPA contractor support to perform the survey implementation activities on behalf of the state.

*Schedule for Statistically-Valid Surveys*

See <http://www.epa.gov/owow/monitoring/repguid.html> to view the schedule for statistically-valid surveys.

*Conclusion*

Because numerous and long-standing critiques have identified the need for improved water quality monitoring and analysis at local, state, or national scales, the Administration requested and Congress appropriated an increase to CWA section 106 grant funds specifically targeted for water quality monitoring improvements. States have traditionally monitored only a small percentage of all the nation's waters, and focused their limited monitoring resources on heavily used or problem waters. This targeted monitoring, while providing important site-specific information, does not provide scientifically defensible state or national reports on the extent of waters meeting the fishable and swimmable goals of the CWA. Statistically-valid surveys offer a cost-effective and efficient way to fulfill these requirements, complement traditional monitoring designs, and support a broader range of management decisions. There is widespread acceptance of the use of statistical surveys in reports on the nation's housing, labor, health, agricultural, and other sectors.

To accelerate the use of state-scale statistical surveys as called for in the President's budget requests, EPA is amending the March 29, 2006, *Guidelines for the Award of Monitoring Initiative Funds under Section 106 Grants to States, Interstate Agencies, and Tribes* to incorporate a performance-based standard in the allotment of the section 106 Monitoring Initiative funds. Monitoring Initiative funds will continue to be used for building state monitoring program capacity according to the guidelines as long as states make progress in adopting state-scale statistically-valid surveys as part of their state monitoring programs.

EPA's long-term goal for water quality monitoring is to enhance state and tribal capacity to implement an integrated monitoring framework which uses multiple tools to cost-effectively address the full range of water quality

management decision needs, for all water resource types and uses at appropriate scales. EPA and the states will work together to meet this goal through assessing all waters using sound science, strengthening state monitoring and assessment programs, and employing innovations that implement cost-effective monitoring.

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#### IV. Additional Supplementary Information

The complete text of today's guidelines, located above, is also available at the following EPA Web sites: <http://www.epa.gov/owm/cwfinance/pollutioncontrol.htm> and <http://www.epa.gov/owow/monitoring>.

#### V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to OMB review. Because this grant action is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. section 601 et seq.) or sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small governments. Although this action does not generally create new binding legal requirements, where it does, such requirements do not substantially and directly affect tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). This action will not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. section 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of

1995 (44 U.S.C. section 3501 et seq.). The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Since this final grant action contains legally binding requirements, it is subject to the Congressional Review Act, and EPA will submit this action in its report to Congress under the Act.

Dated: July 8, 2008.

**Benjamin H. Grumbles,**

*Assistant Administrator, Office of Water.*

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## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2006-0130; FRL-8690-3]

### Protection of Stratospheric Ozone: Notice of Data Availability; Information Concerning the Destruction of Ozone-Depleting Substances in the United States

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of data availability and request for comment.

**SUMMARY:** The Environmental Protection Agency (EPA) is making available to the public information concerning the destruction of controlled ozone-depleting substances (ODSs) in the United States. As a Party to the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol) and consistent with the requirements of the Clean Air Act (CAA) as amended in 1990, the United States regulates the destruction of ODSs in a manner that prevents (or minimizes) emissions of the substances into the atmosphere, where they deplete the stratospheric ozone layer. Regulations governing the destruction of ODSs in the United States are contained in 40 CFR part 82, subpart A, and include seven permitted destruction technologies, required destruction efficiency, and associated recordkeeping and reporting requirements. In addition to the stratospheric ozone protection regulations under the CAA, a number of other regulations also govern the destruction of ODSs in the United States including, but not limited to, regulations promulgated under the Resource Conservation and Recovery Act (RCRA).

Today, EPA is making available the draft report *Destruction of Ozone-Depleting Substances in the United States*, prepared by ICF International.