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

JAN 29 1999

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Award of Grants for Special Projects Authorized by this Agency's FY 1999 Appropriations Act

FROM: Michael B. Cook, Director
Office of Wastewater Management (4201)

TO: Water Management Division Directors
Regions I - X

PURPOSE

The Environmental Protection Agency (EPA) section of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1999 (P. L. 105-276) as amended by the Omnibus Consolidated Appropriations Act of 1999 (P. L. 105-277) provides $321,750,000 in the State and Tribal Assistance Grants (STAG) account for funding 106 water, wastewater and groundwater infrastructure projects, $50,000,000 for the Mexican Border program, and $30,000,000 for the Alaska Rural and Native Villages program.

The purpose of this memorandum is to provide information and guidance on how the Agency will award and administer grants for the identified special projects, the Mexican Border program and the Alaska Rural and Native Villages program.

BACKGROUND

The specific requirements governing the award of these projects are contained in the following documents: the two Appropriations Acts, the Conference Report (H.R. Rep. No. 105-769), the House Report (H.R. Rep. No. 105-610), and the Senate Report (S. Rep. No. 105-216). The specific requirements contained in these documents have been incorporated into this guidance memorandum.

The 106 projects are shown in Attachment 1. The authority for awarding these grants and grants for the Mexican Border program and the Alaska Rural and Natives program is the

Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1999 (hereafter referred to as the FY 1999 Appropriations Act.)

As with previous Appropriations Act projects, these grants (with the exception of the three National Decentralized Wastewater Demonstration projects noted at the end of Attachment 1) will be awarded and administered at the Regional Office level. The delegation of authority document that was signed by the Administrator on June 21, 1996 (see Attachment 2) transferred the authority for awarding Appropriations Act projects from the Administrator to the Regional Offices for FY 1996 and ***subsequent years.*** Accordingly, the Regions have the necessary guidance and authority, effective the date of this memorandum, to award grants for the special projects identified in Attachment 1.

COST SHARE REQUIREMENT

Statements in both the House and Senate Committee Reports urge the agency to make cost sharing arrangements with grantees as they have in the past (i.e., "EPA is to work with the grant recipients on appropriate cost-share arrangements consistent with past practice," S. Rep. No. 105-216, at p. 82.) Accordingly, for projects authorized in the FY 1999 Appropriations Act, the Agency will apply "cost-share arrangements consistent with past practice" which, in effect, are the cost sharing requirements that were developed to implement the provisions of the FY 1995, FY 1997 and FY 1998 Appropriations Acts. The FY 1996 Appropriations Act did not specify any cost sharing requirements.

Our policy concerning the cost sharing arrangements for grants awarded for the Mexican Border Area, Texas Colonias, and Alaska Rural and Native Villages is contained in the section of this memorandum entitled Project Specific Guidance.

Our policy for the 106 projects identified in the Conference Report is that grant applicants will be expected to pay for 45 percent of project costs with matching funds unless a different matching requirement is specified for a particular project or grant in the Appropriations Acts or accompanying reports. However, we recognize that special circumstances may exist and will consider an exception in cases where a unique or compelling rationale suggests lowering the match requirement.

Exceptions to the 45 percent match requirement must be approved by EPA Headquarters. All requests for an exception should be prepared by the EPA Regional Offices using information provided by the grant applicant. The requests, including sufficient supporting documentation, should be submitted to the Director, Office of Wastewater Management, (Mail Code 4201) USEPA, 401 M Street SW, Washington, D.C. 20460.

One reason for granting an exception to the match requirement would be issues involving financial capability. In March 1997, EPA published "Combined Sewer Overflows -- Guidance for Financial Capability Assessment and Schedule Development." This financial guidance

document includes a process for measuring the financial impact of current and proposed wastewater treatment facilities on the users of these facilities and establishes a procedure for assessing financial capability. The process for assessing financial capability contained in that document is based on EPA's extensive experience in the construction grants, State Revolving Fund (SRF), enforcement and water quality standards programs. Any request for an exception based on financial capability will be compared with the indicators contained in the referenced EPA financial guidance document.

The Clean Water Act §603(h) and the implementing regulation at 40 CFR 35.3125(b)(1) preclude the use of loans from a Clean Water State Revolving Fund (CWSRF) as any part of the local share of an EPA grant funded treatment works project. However, CWSRF loans may be used to fund other related portions of the project. Additionally, in appropriate circumstances, an EPA grant and a CWSRF loan could be used to fund the same contract. For example, a $15,000,000 contract could be funded by a $5,500,000 EPA grant, $4,500,000 in matching funds and a CWSRF loan of $5,000,000. In any case, the grantees' record keeping system must have the necessary degree of sophistication so that grant records (especially those related to financial management, procurement and payments) can be distinguished from non-grant related records.

Some of the special Appropriations Act projects involve drinking water projects which may be eligible for assistance under a Drinking Water State Revolving Fund (DWSRF) authorized in section 1452 of the Safe Drinking Water Act of 1996 (P. L. 104-182). As a general rule, funds received under one Federal grant may not be used for the matching share required by another Federal grant, unless the statute specifically authorizes it. (See Office of Management and Budget Circular A-102, "Uniform Requirements for Assistance to State and Local Governments," Attachment F, Section 2.c.) Accordingly, loans from a DWSRF cannot be used to satisfy the cost sharing requirements for the special projects. However, as in the case with CWSRF loans, a DWSRF loan can be used to fund other related portions of the project.

The Federal funds from other programs may be used as all or part of the match for the special projects only if the statute authorizing those programs specifically allows the funds to be used as a match for other Federal grants. Additionally, the other Federal programs must allow their appropriated funds to be used for the planning, design and/or construction of water, wastewater or groundwater infrastructure projects.

OPERATING GUIDANCE

Funds appropriated under the STAG account can, if the situation warrants, be used for grants and cooperative agreements to nonprofit organizations. However, grants cannot be awarded to those nonprofit organizations classified by the Internal Revenue Service as §501(c)(4) organizations that engage in lobbying activities (see P. L. 104-65 -- Lobbying Disclosure Act of 1995). The rationale for any award to a nonprofit organization should be clearly explained, suitably documented, and included in the project file.

The regulations at 40 CFR Part 31 apply to grants and cooperative agreements awarded to State and local (including tribal) governments. The regulations at 40 CFR Part 30 apply to grants and cooperative agreements with nonprofit organizations. In appropriate circumstances, such as grants for demonstration projects, the research and demonstration grant regulations at 40 CFR Part 40 can be used to supplement either 40 CFR Part 30 or Part 31.

A listing of the Federal Laws and Executive Orders that are applicable to all EPA grants, including the 106 projects authorized by the FY 1999 Appropriations Act, is contained in Attachment 3. A more detailed description of the Federal laws, Executive Orders, OMB Circulars and their implementing regulations is contained in Module No. 2 of the EPA Assistance Project Officers Training Course that is available through the Regional Grants Management Offices.

The Catalog of Federal Domestic Assistance (CFDA) number for the special projects is 66.606 "Special Purpose" and the Grants Information and Control System (GICS) code for the special projects is XP. Applicants should use Standard Form 424 to apply for the grants.

The Davis-Bacon Act does not apply to grants awarded under the authority of the FY 1999 Appropriations Act because the Act contained no language making it apply. However, if FY 1999 funds are used to supplement funding of a construction contract that included Title II requirements (e.g., contracts awarded under the construction grants or coastal cities programs) the entire contract is subject to Davis-Bacon Act requirements, including the portion funded with FY 1999 funds.

The National Environmental Policy Act (NEPA) applies to the projects authorized by the FY 1999 Appropriations Act.

The Agency issued two memorandums in January 1995, concerning NEPA compliance and the applicability of 40 CFR Part 29 (Intergovernmental Review) to the special projects authorized by this Agency's FY 1995 Appropriations Act. The requirements set forth in those memorandums are also applicable to the special projects authorized by the FY 1999 Appropriations Act. (Attachments 4 and 5 are copies of those memorandums.)

Generally, funds appropriated for the special projects identified in the Conference Report should not be used to pay down loans received from a State Revolving Fund or other indebtedness unless the legislative history for a particular project shows that it was the intent of Congress to use the funds for that purpose. Additionally, as discussed further in the following section, a deviation from 40 CFR 31.23(a) "pre-award costs" would be required. Any request to use special Appropriations Act grant funds to pay down a loan must be approved, in writing, by EPA Headquarters. The request, with sufficient supporting documentation, should be submitted to the Director, Office of Wastewater Management, (Mail Code 4201) USEPA, 401 M Street, SW, Washington, D.C. 20460.

The project scope of work may, but need not, include planning and design activities and/or the cost of land. Land need not be an "integral part of the treatment process" as in construction grant projects. However, all elements included within the scope of work must conform to the requirements of 40 CFR Parts 30 or 31. This means: if planning and design is included, procurement of those services and the contracts must comply with the applicable sections of Parts 30 or 31; if land is included, there will be a Federal interest in the land regardless of when it was purchased and the purchase must be (must have been) in accordance with the applicable sections of Parts 30 or 31 and other applicable regulations.

On June 10, 1997, the Agency issued a strategy for administratively completing and closing out the remaining construction grant projects. Administrative completion takes place when a final audit is requested, or, if a final audit is not required, when the following has been achieved: all the grant conditions have been satisfied, a final inspection has been performed, the final payment has been reviewed and processed, and project performance standards have been achieved. Closeout takes place when a closeout letter is sent to the grant recipient. The June 10, 1997, strategy document established the goal of administratively completing construction grant ***and special Appropriations Act*** projects within five years of grant award, and closing out construction grant ***and special Appropriations Act*** projects within seven years of grant award. Accordingly, all future grant awards, except in those rare circumstances where the complexities or size of the project dictates otherwise, should include schedules that are in conformance with the National goals.

You have a fiduciary responsibility to review the grant application to determine that:

- the scope of work of the grant is clearly defined,
- the scope of work is in conformance with the project description contained in Attachment 1,
- there is a clearly stated environmental or public health objective,
- there is a reasonable chance that the project will achieve its objective(s) and
- the costs are reasonable, necessary and allocable to the project.

You may impose reasonable requirements through grant conditions if you feel it necessary. Grant awards should be made expeditiously, but I expect you to review the applications carefully and award the grant only after you are satisfied that it is prudent to do so.

PRE-AWARD COSTS

The general grant regulation at 40 CFR 31.23(a) provides that "where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted." This regulatory provision prevents the inclusion of costs incurred prior to the award of the grant. Accordingly, for those grants governed by the provisions of 40 CFR Part 31, no pre-award costs can be included in the grant unless a deviation from regulations has been approved by the Grants Administration Division in

accordance with 40 CFR 31.6(c). The regulation at 40 CFR 30.25(f) describes the requirements concerning pre-award costs for grants and cooperative agreements to nonprofit organizations.

In the past, the Agency has approved deviations from 40 CFR 31.23(a) for pre-award costs for a few special Appropriations Act projects. Consistent with the intent of the requirements for pre-award costs set forth in OMB Circular A-87, the Agency has generally approved such costs only when they meet one or more of the following criteria:

1. The pre-award costs were incurred after passage of the Appropriations Acts but before grant award; and/or,

2. The pre-award costs are for facilities planning or design work associated with the construction portion of the project for which the grant was awarded; and/or,

3. The project description contained in the Conference Report necessitates a scope of work that includes pre-award costs.

The determining factor in the applicability of the third criterion is the relationship of the specificity of the project description contained in the Conference Report to the amount of future work (i.e., work performed after grant award) that could be included in the scope of work of a grant. If there is sufficient future work to develop a scope of work for a grant that is in conformance with the project description contained in the Conference Report, a deviation within the context of the third criterion would not be warranted. However, if there is not sufficient future work, a deviation from 40 CFR 31.23(a) would, in most cases, be appropriate.

An example of a deviation that meets the third criterion is one approved for the City and County of San Francisco, California. The Agency's FY 1995 Appropriations Act provided $40,000,000 to San Francisco for "the Richmond transport control wastewater facility." The total cost of the "Richmond transport control wastewater facility" was $86,849,286. About 65% of the cost for constructing the facility was incurred prior to grant award. Accordingly, in order to award the grant under the terms and conditions of the Appropriations Act, with required at least a 45% local match and ***explicitly identified*** the scope of the project as "the Richmond transport control wastewater facility," and since the construction cost for this facility was established at $86,849,286, a deviation from 40 CFR 31.23(a) was approved that allowed the inclusion of construction costs incurred since September 1, 1993, which was the date of initiation of construction for the facility. For administrative convenience purposes, the grantee requested that the grant be awarded with a 53.94% local match. This allowed EPA and the grantee to share the costs for the entire facility which greatly simplified the payment review process.

Any request for a deviation from 40 CFR 31.23(a) should include an analysis/discussion that directly addresses the criteria listed above.

PROJECT SPECIFIC GUIDANCE

The FY 1999 Appropriations Act contains a number of express requirements for grants awarded for the Mexican Border Area, Texas Colonias and Alaska Rural and Native Villages. The following discussion describes the Agency's interpretation and planned implementation of those requirements.

Mexican Border Area:

The FY 1999 Appropriations Act provides $50,000,000 for:

> architectural, engineering, planning, design, construction and related activities in connection with the construction of high priority water and wastewater facilities in the area of the United States-Mexico Border, after consultation with the appropriate border commission.

The scope of work for grants awarded for the Mexican Border Area must conform with the language contained in the Appropriations Act and the grant file should include documentation that describes the results of the discussions and consultations with the appropriate border commissions.

The Conference Report states that $1,000,000 of the amount appropriated for the Mexican Border Area is "for the U.S./Mexico Foundation for Science." Accordingly, $1,000,000 of the FY 1999 Mexican Border Area grant funds may be used for this purpose. Additionally, Section 422 of the Special Provisions to the Appropriations Act states that: "Notwithstanding any other law, funds made available by this or any other Act or previous Acts for the United States/Mexico Foundation for Science may be used for the endowment of such Foundation." The Special Provision is self-explanatory and does not require any further interpretation.

EPA cost participation on projects funded from the Mexican Border Area appropriation item will be decided on a project-by-project basis. The EPA cost share will depend on a number of factors such as, the relative benefits to the binational community served by the project; other funding participants and their capabilities; and the levels of planning and design to be accomplished.

On May 12, 1997, the Agency issued a memorandum (Attachment 6) concerning "Program Requirements for Mexican Border Area Projects Funded under the Authority of this Agency's FY 1995, 1996 and 1997 Appropriations Acts." The requirements set forth in the May 12, 1997, memorandum are also applicable to the Mexican Border Area projects funded under the authority of the FY 1999 Appropriations Act.

Texas Colonias:

The FY 1999 Appropriations Act did not include any additional funds for Texas colonias but did contain language concerning the funds appropriated in 1997. The language states that unobligated FY 1997 funds for Texas colonias shall be matched by 20 percent in State funds from State resources and may be used for water as well as wastewater projects. The Conference Report language is self-explanatory and does not require any further interpretation.

Alaska Rural and Native Villages:

The FY 1999 Appropriations Act provides $30,000,000 "for grants to the State of Alaska to address drinking water and wastewater infrastructure needs of rural and Alaska Native Villages." This includes the activities specified in the Safe Drinking Water Act of 1996, (P. L. 104-182, Section 303), specifically: "training, technical assistance, and educational programs relating to the operation and management of sanitation services in rural and Native villages."

In accordance with instructions contained in S. Rep. No. 105-216, at p. 81, the State of Alaska must provide $15,000,000 in matching funds.

Fairbanks, AK:

The project description in the Conference Report describes the Fairbanks project as "water system improvements." In the context of the Fairbanks project description, the Agency considers the phrase "water system improvements" to mean either "drinking water, wastewater, storm water or combined sewer overflow system improvements."

National Community Decentralized Wastewater Demonstration Project

The Conference Report identified three communities/areas/sites that are to receive the funds appropriated for this line item. The Conference Report also stated that "previous expenditures [are] to be counted toward a local cost share of these projects of only 25 percent." The Conference Report language is self-explanatory and does not require any further interpretation.

PROJECT MANAGEMENT RESOURCES

You should invite State agencies to participate as much as possible in the pre-application, application review, and grant administration process.

Legislative language in the FY 1997 Appropriations Act authorized the use of Title II deobligations for State administration of special Appropriations Act ***wastewater*** projects, coastal/needy cities projects and construction grant projects. The guidance document on the implementation of this provision was issued by the Director, Municipal Support Division, on December 3, 1996 (see Attachment 7.)

States may also use funds awarded under §106 of the Clean Water Act for activities associated with these special projects provided §106 program officials agree.

ACTIONS

If you have not already done so, you and your staff should initiate discussions with the appropriate grant applicants to develop a detailed scope of work and to explain the grant application and review process. Additionally, the grant applicant should be provided with a copy of this guidance memorandum prior to grant award to ensure that the applicant is on notice of the applicable requirements before the grant is awarded.

You should immediately contact Headquarters if you cannot identify the appropriate instrumentality that should apply for the grant so that Headquarters can request the necessary clarification from the appropriations' committee staff.

If you have any questions concerning the contents of this memorandum, you can contact me or have your staff contact Larry McGee, Municipal Assistance Branch, Municipal Support Division, at (202) 260-5825.

Attachments

cc: Municipal Construction Program Managers
Region I-X

SPECIAL WATER AND WASTEWATER INFRASTRUCTURE PROJECTS (STAG ACCOUNT) INCLUDED IN EPA'S FY 1999 APPROPRIATIONS ACTS

licant or Area	Grant Amount	Project Description
MA	$50,000,000	wastewater needs
MA	2,610,000	continued wastewater needs
A	1,740,000	wastewater facilities and improvements
er, MA and CT	1,305,000	combined sewer overflow project
H	2,000,000	water infrastructure improvements
of, VT	3,500,000	to upgrade its wastewater system
NJ	8,700,000	water system improvements
ewerage Commission, NJ	3,750,000	combined sewer overflow requirements
NY	8,700,000	continued clean water improvements
age of, NY	7,000,000	water system improvements
y of, MD	5,000,000	to separate and relocate the city's combined sewer and stormwater system
, MD	1,000,000	wastewater treatment improvements in support of biological nutrient removal
al Sewage Authority, PA	1,740,000	wastewater, sewer overflow, and water system needs
ip, Lackawanna County, PA	1,305,000	wastewater, sewer overflow, and water system needs
hip Municipal Authority, PA	1,088,000	water system and wastewater infrastructure requirements
ria County Airport, PA	1,740,000	water system and wastewater infrastructure requirements
berland Valley Township, PA	261,000	wastewater and water system improvement needs
gh Municipal Authority, PA	174,000	wastewater and water system improvement needs
egional Sewer Authority, PA	696,000	wastewater and water system improvement needs
gh Joint Municipal Authority, PA	348,000	wastewater and water system improvement needs
Borough, PA	2,175,000	wastewater and water system improvement needs
se Authority, PA	522,000	wastewater and water system improvement needs

plicant or Area	Grant Amount	Project Description
nicipal Water Authority, PA	696,000	wastewater and water system improvement needs
Borough, PA	2,175,000	wastewater and water system improvement needs
iver	4,350,000	sewage treatment facilities to reduce nitrogen flowing into the Susquehanna River and ultimately into the Chesapeake Ba
Township/City of York, PA	1,000,000	wastewater infrastructure improvements
PA	435,000	wastewater infrastructure improvements
nklin Township, PA	1,000,000	wastewater improvement project
nty, PA	2,500,000	to eliminate separate sewer flows
, PA	1,000,000	sewer system infrastructure improvements
	5,655,000	to implement combined sewer overflow improvements
	5,655,000	to implement combined sewer overflow improvements
, AL	3,000,000	drinking water system improvements
ities Board, AL	1,000,000	to connect the town of Goodwater with Alexander City
ida, St. John's River, Northwest and South Florida WMDs	8,700,000	alternative water source development
ounty, FL	1,305,000	sanitary sewer overflow demonstration project
L	2,610,000	wastewater improvements
eek, GA	2,450,000	basin stormwater retention and reuse project
y of, KY	1,900,000	water supply and wastewater needs
lountain Water District, KY	2,200,000	water supply and wastewater needs
City of, KY	1,500,000	water supply and wastewater needs
ty of, KY	500,000	water supply and wastewater needs
KY	1,700,000	water supply and wastewater needs
y of, KY	900,000	water supply and wastewater needs
ty, KY	2,000,000	to renovate the Alton Water District's sewer system
ater District, Hart County, KY	350,000	water system improvements
, MS	2,675,000	wastewater and sewer infrastructure needs
f, MS	2,675,000	wastewater and sewer infrastructure needs
, MS	8,000,000	remaining construction of pipeline and water treatment improvements

Applicant or Area	Grant Amount	Project Description
ty, NC	283,000	reservoir restoration project
of Cherokee Indians, NC	5,600,000	the Big Cove Community wastewater collection project
of, NC	1,550,000	wastewater treatment improvements
Regional Water Agency, SC	3,000,000	water supply needs
Volfe Branch Utility District, TN	653,000	drinking water infrastructure needs
tter Chapel, and the Island Ford Sunbright Utility District, TN	1,088,000	drinking water infrastructure needs
Water Reclamation District in Chicago, IL	5,655,000	the tunnel and reservoir project (TARP)
MI	8,700,000	continuation of the National Wet Weather Demonstration proj
, MI	2,175,000	combined sewer overflow project
City of, MI	1,800,000	wastewater infrastructure improvements
MN	4,900,000	regional wastewater treatment facility
Watershed Area, OH	13,050,000	continued planning and implementation of a storm water abatement system
Metropolitan Sewerage District, WI	3,000,000	interceptor system
awk Sanitary District, WI	1,000,000	wastewater treatment system improvements
LA	6,525,000	wastewater needs
sh, LA	2,350,000	wastewater infrastructure needs
LA	2,000,000	wastewater infrastructure needs
A	3,045,000	wastewater infrastructure needs
	2,610,000	wastewater infrastructure improvements
s, village of, NM	1,200,000	to improve its wastewater treatment system
TX	2,500,000	water supply needs
ty of, IA	2,500,000	sewer system improvements
ropolitan Sewerage District, MO	4,000,000	Meramac River enhancement and wetlands protection project
MO	4,000,000	the Blue River wastewater treatment plant improvements
MO	1,000,000	to support efforts for phosphorus removal at the Southwest Wastewater Treatment Plant

icant or Area	Grant Amount	Project Description
and Telluride, town of, CO	1,600,000	a shared sewer system upgrade
	5,000,000	sewer and stormwater infrastructure needs
of, ND	4,900,000	water treatment plant relocation project
SD	500,000	the upgrade of its wastewater treatment plant
	1,740,000	water reuse system improvements
Conservancy District, UT	2,200,000	to meet sewer infrastructure needs associated with the 2002 Winter Olympic games
	1,000,000	water and sewer system
	653,000	the interceptor collection project
	1,000,000	water infrastructure project
	2,500,000	completion of the export pipeline replacement project
nia	1,305,000	ongoing work at the Geysers Recharge Project
Vater District, CA	4,500,000	water, wastewater, and system infrastructure development and improvements
	3,000,000	Lower Owens River Project
CA	3,000,000	water, wastewater, and system infrastructure development and improvements
	2,000,000	the San Timoteo Creek environmental restoration project
	1,305,000	the water runoff and sewer treatment program of the San Diego Coastal Low Flow Storm Diversion Project
f,	2,133,000	wastewater infrastructure improvements
CA	500,000	a groundwater replenishment system
Water Agency, CA	1,000,000	the Russian River Restoration project
	870,000	the combined sewer overflow project
	1,305,000	wastewater, sewer and water infrastructure needs
ater District, NV	250,000	wastewater, sewer and water infrastructure needs
V	2,250,000	to construct a water treatment facility including nitrogen removal
a Borough, AK	1,200,000	water and sewer improvements
of, AK	1,700,000	water system improvements involving the town of Girdwood, AK

pplicant or Area	Grant Amount	Project Description
y of, AK	1,000,000	water system improvements
	4,750,000	improvements to the drinking water system
of, ID	250,000	water infrastructure improvements, including filtration needs
Point, OR	870,000	the MERTS wastewater treatment facility
	1,500,000	segment of a National Decentralized Wastewater Demonstration Project
/Green Hill Pond, RI	3,000,000	segment of a National Decentralized Wastewater Demonstration Project
chutes County, OR	5,500,000	segment of a National Decentralized Wastewater Demonstration Project

ts will be and awarded and administrated from Headquarters by the Office of Wastewater Management.

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

OFFICE OF ADMINISTRATION AND RESOURCE MANAGEMENT

MEMORANDUM

SUBJECT: Proposed Delegation of Authority to Approve Grants and Cooperative Agreements for Water Infrastructure Projects for Fiscal Year 1996 and Subsequent Years to the State and Tribal Assistance Grants Account and any Successor Accounts – DECISION MEMORANDUM

FROM: Robert Thorlakson, Director
Office of Water/Office of Research and Development Human Resources Staff

David R. Alexander, Director
Organization and Management Consulting Services

TO: The Administrator

THRU: AX

ISSUE

The Office of Water (OW) proposes delegating to Regional Administrators (RAs) the authority to approve grants and cooperative agreements for water infrastructure projects and grants to States for providing assistance to "severely economically disadvantaged rural communities" from funds appropriated in Fiscal Year 1996 and subsequent years to the State and Tribal Assistance Grants Account and any successor accounts.

BACKGROUND

The Fiscal Year 1995 Appropriations Act for VA, HUD, and Independent Agencies (P.L. 103-327) authorized the award of grants for 50 water infrastructure projects identified in the Conference Report (H.R. Report No. 715, 103d Cong., 2d Sess. at 39-43 (1994)). The authority to award these grants was delegated to Regional Administrators by Delegation No. 1-92, 1200 TN 373, dated 10/31/94). All funds available for the 50 projects under this appropriation have been awarded.

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The EPA section of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (P.L. 104-134) authorizes $306.5 million in grant funding for 22 water infrastructure projects including some for which funds had been provided by P.L. 103-327 and for which additional grants had been awarded from funds provided by Continuing Resolutions (CRs), enacted prior to the enactment of P.L. 103-134. Close coordination with State and local agencies requires award and administration of these grants and cooperative agreements at the regional level.

ANALYSIS AND REVIEW

A new delegation is needed to allow Regional Administrators to award the remaining funds authorized by P.L. 104-134 for Congressionally-designated water infrastructure projects and grants to States for providing assistance to "severely economically disadvantaged rural communities" because these grants will be subject to different terms and conditions --for example those concerning local cost-share arrangements-- than those awarded with funds provided by P.L. 103-327 and the FY 1996 CRs. Further, the FY 1996 Appropriations Act (P.L. 104-134) is the only statutory authority to award grants to many of the projects, so delegations already issued for other statutes (such as the Clean Water Act) are insufficient to allow Regional Administrators to award the grants. The new delegation of authority has been written so it will cover grants for similar water infrastructure projects authorized by future appropriations to the State and Tribal Assistance Grants Account or successor accounts.

The delegation proposal was distributed under the Directives Clearance Record review process to 15 offices. Three offices and three regions submitted comments. The Office of Grants and Debarment (OGD) and Region 8 submitted comments relating to the appropriate level for redelegation authority. The OGD also proposed adding an additional reference and deleting another reference. The Office of General Counsel had editorial comments and reviewed language changes proposed by other reviewers. Region 2 comments suggested that this delegation provide authority to award grants to States for providing assistance to "severely economically disadvantaged rural communities." No issue resolution was requested by any office or region and editorial comments submitted were incorporated into the final delegation.

RECOMMENDATION

This delegation is needed immediately to respond to the numerous requests from grantee agencies who have already developed applications. We recommend that you approve the proposed delegation by signing below.

Approved: _____

Date: JUN 21 1996

Attachment

Delegation of Authority— Grants and Cooperative Agreements for Water Infrastructure Projects from Funds Appropriated for FY 1996 and Subsequent Years to the State and Tribal Assistance Grants Account and Any Successor Accounts

GENERAL, ADMINI STRATIVE, AND MISCELLANEOUS

1-102. GRANTS AND COOPERATIVE AGREEMENTS FOR WATER INFRASTRUCTURE PROJECTS FROM FUNDS APPROPRIATED FOR FISCAL YEAR 1996* AND SUBSEQUENT YEARS TO THE STATE AND TRIBAL ASSISTANCE GRANTS ACCOUNT AND ANY SUCCESSOR ACCOUNTS

1. AUTHORITY. To approve grants and cooperative agreements for water infrastructure projects and grants to States for providing assistance to "severely economically disadvantaged rural communities" from funds appropriated for Fiscal Year 1996* and subsequent years to the State and Tribal Assistance Grants Account and any successor accounts and to perform other activities necessary for the effective administration of those grants and cooperative agreements..

2. TO WHOM DELEGATED. Regional Administrators.

3. REDELEGATION AUTHORITY. This authority may be redelegated to the Division Director or equivalent level and may not be redelegated further.

4. LIMITATIONS.

a. This delegation applies only to those grants and cooperative agreements for which there is no authority other than the statute making appropriations to the State and Tribal Assistance Grants Account and any successor accounts in Fiscal Year 1996* and subsequent years.

b. Awards are subject to guidance issued by Office of Wastewater Management and Office of Comptroller.

5. ADDITIONAL REFERENCES.

a. Authority to execute (sign) these financial assistance agreements is delegated to the Regional Administrators under Delegation 1-14, "Assistance Agreements";

b. 40 CFR Part 31,

c. 40 CFR Part 40 for Demonstration grants,

d. 40 CFR Part 35, Subpart K, and

e. EPA Assistance Administration Manual.

* The Omnibus Consolidated Rescissions and Appropriations Act of 1996 (P.L. 104-134)

CROSS-CUTTING FEDERAL AUTHORITIES

Environmental Authorities

- Archeological and Historic Preservation Act of 1974, Pub. L. 86-523, as amended
- Clean Air Act, Pub. L. 84-159, as amended
- Coastal Barrier Resources Act, Pub. L. 97-348
- Coastal Zone Management Act, Pub. L. 92-583, as amended
- Endangered Species Act, Pub. L. 93-205, as amended
- Floodplain Management, Executive Order 11988, as amended by Executive Order 12148
- Protection of Wetlands, Executive Order 11990
- Farmland Protection Policy Act, Pub. L. 97-98
- Fish and Wildlife Coordination Act, Pub. L. 85-624, as amended
- National Historic Preservation Act of 1966, PL 89-665, as amended
- Safe Drinking Water Act, Pub. L . 93-523, as amended
- Wild and Scenic Rivers Act, Pub. L. 90-542, as amended

Economic and Miscellaneous Authorities

- Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754, as amended, Executive Order 12372
- Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans.
- Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended

- Debarment and Suspension, Executive Order 12549
- New Restrictions on Lobbying, Section 319 of Pub. L. 101-121

Social Policy Authorities

- Age Discrimination Act of 1975, Pub. L. 94-135
- Title VI of the Civil Rights Act of 1964, Pub. L. 88-352
- Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive Orders 11914 and 11250)
- The Drug-Free Workplace Act of 1988, Pub. L. 100-690
- Equal Employment Opportunity, Executive Order 11246
- Women's and Minority Business Enterprise, Executive Orders 11625, 12138 and 12432
- Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590

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

JAN 20 1995

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: NEPA Guidance for Special Wastewater Treatment Projects in the FY95 Appropriation Bill

FROM: Richard E. Sanderson
Director
Office of Federal Activities (2252)

TO: NEPA Coordinators

The purpose of this memorandum is to provide guidance on the requirements for compliance with the National Environmental Policy Act (NEPA) for special projects authorized for EPA grant funding by the FY95 Appropriations Act (Act). The Act appropriated "no-year" money to fund special wastewater treatment projects identified by Congress. Each region has projects on this list. The list is included in the attached copy of the guidance memorandum prepared by the Office of Water Management (OWM).

The OWM memorandum indicates that NEPA applies to all of these projects except the three to be funded as Clean Water Act (CWA) section 104(b)(3) demonstration projects. These three are exempted from NEPA under the CWA section 511(c). The Office of General Counsel (OGC) has prepared an "Analysis of NEPA applicability to special grants authorized by FY 1995 Appropriations Act." This analysis is also attached.

OFA Guidance to Regional NEPA Coordinators

An independent EPA NEPA analysis for the non-demonstration projects is required. In addition, other cross-cutting federal statutes, such as the Endangered Species Act and the National Historic Preservation Act, also apply to these projects. The Council on Environmental Quality's (CEQ) NEPA regulations do not allow EPA to adopt a state analysis. However, the NEPA regulations do require agencies to "cooperate with State and local agencies to the fullest extent possible to reduce

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duplicati[illegible]een NEPA and State and local requirements [illegible] (40 CFR 1[illegible]). There are several ways the region [illegible] the existing i[illegible]tion and assessments for these pro[illegible] summarized below and as discussed in greater detail in [illegible] attached OGC analysis. In all cases, EPA must independently [illegible] evaluate the state documentation and review process and is [illegible] responsible for the accuracy of the NEPA documentation and the [illegible] adequacy of the process (40 CFR 1506.5).

- Where states have performed environmental reviews under NEPA-like statutes or pursuant to State Revolving Fund regulations, EPA can incorporate, but not simply adopt, the state analysis into the Agency's NEPA analysis.

- Where state reviews have found no significant impacts and EPA approves of that finding and the state process, EPA may issue an environmental assessment (EA) summarizing and referencing the state analysis and an accompanying Finding of No Significant Impact (FONSI).

- Where state reviews have found significant impacts or EPA independently determines that there are significant impacts, EPA must issue a notice of intent and proceed with an environmental impact statement (EIS) and record of decision (ROD) in accordance with the Agency's regulations at 40 CFR Part 6.

- Where construction of projects is complete or nearly completed, a NEPA analysis will not have to be done.

- Where construction has started and the project is not nearly completed, a NEPA analysis is required and a notification of intent to pursue an independent analysis must be sent to the grantee.

- Where projects to be funded have been ongoing for several years, additional assessment may not be required if prior federal NEPA documentation has addressed the portions of the project to be funded by the FY95 grant. The region will need to assure that since the previous assessment: 1) there are no substantial changes in the proposed action relevant to environmental concerns, or 2) there are no significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

If the NEPA analysis was carried out under an earlier construction grant action and is no longer adequate or the project has not previously been assessed by EPA, it will be necessary to issue either an EA/FONSI or an EIS/ROD. The regulations applicable to these special project grants are the CEQ regulations (40 CFR Parts 1500-1508) and EPA's NEPA regulations (40 CFR Part 6, Subparts A-D). EPA's regulations at 40 CFR Part 6, Subpart E, while they do not apply to these special project grants, may provide additional guidance.

We anticipate that additional issues or sub-issues may arise which are not fully treated in this general guidance memorandum. These should be brought to our attention as soon as possible. In addition, we have scheduled a teleconference on Tuesday, January 24, 1995 from 11:00 a.m. to 12:00 noon eastern standard time to discuss this guidance and additional issues or concerns with the process. The call in number is (202) 260-4257. We look forward to your participation. Please inform John Gerba (202/260-5910) if you or your staff will not be on the call.

Attachments

cc: Jim Havard, OGC
Ed Gross, OWM

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

JAN 13 1995

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Applicability of 40 CFR Part 29 to the Special Projects Authorized by the FY 1995 Appropriations Act

FROM: Michael J. Quigley, Director
Municipal Support Division

TO: Municipal Construction Program Managers
Region I - X

We have been informed by the Office of General Counsel that 40 CFR Part 29 (Intergovernmental Review of EPA Programs and Activities) is applicable to the special projects authorized by the FY 1995 Appropriations Act.

The regulatory provision that will have the greatest impact is 40 CFR 29.8(c) which states that:

> Applicants for programs and activities subject to section 204 of the Demonstration Cities and Metropolitan Development Act shall allow areawide agencies a 60 day opportunity for review and comment.

The above requirement can be satisfied in these three ways:

(1) is to allow the areawide agencies the full 60 day period for review and comment.

(2) is to request an expedited review by the responsible areawide agencies.

(3) is to obtain a waiver declining the opportunity to review from the single point of contact (SPOC) clearinghouse. If a waiver is obtained, the SPOC must have the authority to act on behalf of the areawide agencies or obtain the concurrence of the responsible areawide agencies.

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The Regions should inform the potential grant applicants that their applications must include documentation that satisfies the requirements of 40 CFR Part 29.

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

MAY 12 1997

OFFICE OF WATER

MEMORANDUM

SUBJECT: Program Requirements for Mexican Border Area Projects Funded under the Authority of this Agency's FY 1995, 1996 and 1997 Appropriations Acts

FROM: Michael B. Cook, Director
for Office of Wastewater Management

TO: William B. Hathaway, Director
Water Quality Protection Division
Region VI

Alexis Strauss, Acting Director
Water Management Division
Region IX

PURPOSE

The purpose of this memorandum is to establish consistent requirements for Mexican Border Area projects funded under the authority of this Agency's FY 1995, FY 1996, and FY 1997 Appropriations Acts.

BACKGROUND

Over the past three fiscal years the Office of Wastewater Management has issued the following memorandums concerning program requirements for Mexican Border Area projects:

10/20/94 - initial guidance memorandum on how the Agency will award and administer grants authorized by this Agency's FY 1995 Appropriations Act. (Did not include a separate section for Mexican Border Area projects.)

3/21/95 - a waiver to the match requirement that allowed the Region to vary the cost sharing arrangements, on a project by project basis, for facility planning and design projects funded under the authority of the FY 1995 Appropriations Act.

7/19/96 - guidance memorandum on how the Agency will award and administer grants authorized by this Agency's FY 1996 Appropriations Act (included a separate section for Mexican Border Area projects.)

9/13/96 - additional specific guidance on Mexican Border Area projects funded under the Authority of the FY 1996 Appropriations Act.

1/6/97 - guidance memorandum on how the Agency will award and administer grants authorized by this Agency's FY 1997 Appropriations Act (included a separate section for Mexican Border Area projects.)

The inclusion of guidance in five separate memoranda, with each memorandum covering a single fiscal year, has caused unnecessary complexity within the Mexican Border Area Program. The intent of this memorandum is to correct that problem.

GUIDANCE

Effective immediately, the attached 9/13/96 and 1/6/97 memoranda are the applicable guidance documents for new awards in the Mexican Border Area Program funded under the authority of any of the following Appropriations Acts: FY 1995, FY 1996 or FY 1997. However, the appropriate Appropriations Act must be cited as the statutory authority for awarding the grant.

I would also like to confirm the fact that the 1/6/97 memorandum allows the award of grants in the Mexican Border Area Program without any match requirement, if the circumstances warrant.

If you have any questions concerning this memorandum, you can contact me or have your staff contact Steve Allbee, Chief, Municipal Assistance Branch, Municipal Support Division, at (202) 260-5856.

Attachments

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

DEC 3 1996

OFFICE OF WATER

MEMORANDUM

SUBJECT: Use of Title II Deobligations to Administer Construction Grant and Special Appropriation Projects

FROM: Michael J. Quigley, Director
Municipal Support Division

TO: Water Management Division Directors
Regions I - X

I am pleased to advise you of the availability of deobligated Title II funds for State administration of construction grant and Special Appropriation projects. The Environmental Protection Agency's (EPA) FY 1997 Appropriations Act (P. L. 104-204) permits EPA to make grants to the States for the administration of completion and closeout of a State's Title II construction grants program and for Special Appropriation wastewater grant projects* funded by appropriations since FY 1991, as well as those funded by appropriations after the date of this memorandum.

The FY 1997 Appropriations Act adopted the following Conference Report item:

> "Amendment No. 71: Inserts language as proposed by the Senate which permits the Administrator of EPA to make grants to States, from funds available for obligation in the State under title II of the Federal Water Pollution Control Act, as amended, for administering the completion and closeout of a State's construction grants program. The conferees agree that this provision is needed in many States due to the appropriation of over $1,800,000,000 since 1991 for wastewater grant projects and in view of the expiration of the section 205(g) reserve for such management activities."

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*Any devices and systems for the storage, treatment, recycling, and reclamation of municipal sewage, domestic sewage, or liquid industrial wastes or any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal wastewater or industrial wastewater, including waste in combined, storm water and sanitary sewer systems.

The language to which Amendment No. 71 refers is as follows:

> "Provided further, That notwithstanding any other provision of law, beginning in fiscal year 1997 the Administrator may make grants to States, from funds available for obligation in the State under title II of the Federal Water Pollution Control Act, as amended, for administering the completion and closeout of the State's construction grants program, based on a budget annually negotiated with the State."

The following guidelines will apply to the award of Title II deobligations for the above stated purposes:

1. Beginning in fiscal year 1997 assistance may be awarded to States from any funds available for obligation in the State under Title II of the Federal Water Pollution Control Act. The first priority for the use of these funds is completion/closeout of the construction grants program.

2. Assistance will be awarded using the mechanisms and procedures employed for the award of State Management Assistance Grants under section 205(g).

3. Existing State delegation agreements may be used for State administration of construction grant projects. For Special Appropriation wastewater grant projects, you may amend the State delegation agreement or enter into a separate Memorandum of Agreement with the State.

4. Deobligated funds awarded under the provisions of the FY 1997 Appropriations Act may not be used for purposes other than those stipulated above, nor may these funds be used to free-up existing 205(g) reserves for use in non-construction grant activities that were eligible under section 205(g). However, 205(g) reserves on hand prior to October 1, 1996 may be used to administer Special Appropriation wastewater grant projects, provided sufficient 205(g) funds are retained for completion/closeout of the construction grants program.

5. While the legislation does not limit the dollar amount which may be awarded in any Fiscal Year, the award amount should reflect an annual budget negotiated with the State. Assistance may be awarded to cover only the reasonable costs of administering functions which are necessary to manage construction grant projects and Special Appropriation wastewater projects. Eligible costs incurred prior to grant award may be included in the initial award, if the funding period established in the grant includes the period for which the costs were incurred. Multi-year assistance may be awarded to take advantage

of available Title II deobligations, provided the out-year budget estimates support the award of additional funds and the State is not using these funds to finance personnel and other costs beyond those clearly justified by the remaining workload.

6. Title II deobligations continue to be covered by the August 18, 1995 class deviation which "extends the reallotment date of deobligated Title II funds reissued on or after October 1, 1990, and before October 1, 1997, until September 30, 1998. Title II deobligations reissued on or after October 1, 1997, will remain available for obligation until September 30 of the following fiscal year in accordance with 40 CFR 35.2010(d)."

Please call me if you have questions. Questions may also be referred to Arnold Speiser at 202-260-7377 or via E-Mail.

cc: Municipal Construction Program Managers, Regions I-X
Grants Administration Division