



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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OFFICE OF  
WATER

Subject: FY1995/96 Sections 106/604(b) Eligibility, Negotiation,  
Award and Oversight Guidance

From: Michael B. Cook, Director *Michael B. Cook*  
Office of Wastewater Enforcement and Compliance

Robert H. Wayland III, Director *Robert H. Wayland III*  
Office of Wetlands, Oceans and Watersheds

To: Water Management Division Directors  
Regions I - X

This guidance provides consolidated funding guidance for sections 106 and 604(b) of the CWA. The Office of Water considers these two statutory sources of funding to be complementary-ideally they should be negotiated, awarded, managed and overseen as a common set of program activities funded by two statutory appropriations. State and local activities funded by sections 106 and 604(b) should increasingly be concentrated on supporting and enhancing watershed protection activities.

General eligibilities

Section 106 funds are provided for the purpose of providing States with funds for management of programs for the "prevention, reduction and elimination" of pollution. Section 604(b) funds are available for States and sub-State agencies to conduct water quality planning as described under section 205(j) of the Act. Section 106 and 604(b) funds are eligible for States to conduct ambient monitoring, develop, revise and review water quality standards, develop lists of impaired waters as required under section 303(d), develop continuing planning processes as required under section 303(e)(2), prepare water quality inventories as required under section 305(b) and support water quality program planning and development.

In addition to these joint eligibilities, permit issuance, revision and enforcement activities are eligible for funding under section 106.

Since section 106 and 604(b) funds are appropriated under different statutory sections, however, minimum program requirements, e.g. matching, do differ. EPA encourages States to carefully weigh these requirements and select the optimum mix of these funds that satisfies



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basic statutory requirements and provides States and local governments with funding flexibility to most effectively support individual State programs.

#### FY 95-96 FUNDING EMPHASIS

In FY 1995 and FY 1996 section 106 and 604 (b) funds should increasingly focus on State and Regional Comprehensive Planning Organizations/Independent Organizations (RPCPO/IO) adoption of watershed protection approaches. This includes water quality assessments and monitoring consistent with section 106 monitoring guidance, identification of watersheds or basins, initiation and completion of watershed and basin plans and initiation of activities necessary to implement the NPDES Watershed Protection Strategy. Section 106 and 604(b) funds may also be used to provide continuing support to ongoing State and RPCPO/IO activities.

EPA recognizes that individual State programs will also reflect individual State program approaches and priorities. This guidance encourages State and local governments and EPA to negotiate work programs which reflect these individual program approaches and priorities consistent with CWA requirement. In addition, this guidance encourages all levels of government to actively seek stakeholder involvement and opinion as work programs are developed. This stakeholder involvement is particularly important for the RPCPO/IO activities funded under section 604(b).

#### SPECIFIC ELIGIBILITIES

Section 106 of the Clean Water Act (CWA) authorizes assistance to States and interstate agencies to administer programs for the prevention, reduction, and elimination of water pollution. States must establish and maintain adequate monitoring programs and provisions for updating section 305(b) reports as prerequisites for Section 106 grant awards. Finally, States may not receive funds if any Federally assumed enforcement is in effect. (See 40 CFR 35.260 Limitations.)

States and interstate agencies are required to sustain a maintenance of effort (MOE) equal to expenditures during the fiscal year ending June 30, 1971 or FY 1977 if they have received and are expending funds for construction grants management under Section 205(g). (See 40 CFR 35.305 Maintenance of Effort.)<sup>1</sup>

Section 604(b) provides funds to support State water quality planning activities under section 205(j)(2) of the CWA. These activities

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<sup>1</sup> Until Section 205(g) funds obligated to a State by EPA in all fiscal years, including fiscal years after 1990 have been spent by the State or returned to EPA, the States is required to maintain at least its FY 1977 water pollution control program spending level.

States were authorized to received 205(g) funds from deobligated Title II funds through FY 1994. The Agency recommends that the Clean Water Act reauthorization provide for continued use of 205(g) for the period of FY 1995-1998. It is the official Agency goal to close out the construction grants program by 1997.

include identifying the most cost effective and locally acceptable facility and nonpoint measures to meet and maintain water quality standards, developing an implementation plan to obtain State and local financial and regulatory commitments to implement point and nonpoint source controls, determining the nature and extent of causes of water quality problems in various areas of the State and interstate regions and determining and prioritizing which wastewater treatment works should be constructed to realize the greatest water quality improvements when considering point and nonpoint sources. EPA interprets sections 604(b) and 205(j)(2) to provide States with a source of funds to develop the processes and procedures required under the continuing planning process requirements outlined in section 303(e). Development of State watershed protection approaches is consistent with the purposes of section 303(e).

States are required to "develop jointly" with Regional Comprehensive Planning Organizations (RPCPO) or Interstate Organizations (IO) work programs for the use of 604(b) grants. Based on these joint work programs, States are required to provide at least 40% of section 604(b) funds to RPCPOs/IOs, unless the Governor, in consultation with RPCPOs/IOs and with the approval of the Regional Administrator, determines that providing that amount will not result in significant participation of such organizations in water quality planning and not significantly assist in development and implementation of water quality management planning.

#### WORK PROGRAM FOR SECTION 106 AND 604(b) GRANTS

The Water Quality Planning and Management Regulations specify work program requirements for sections 106 and 604(b) funds (40 CFR 135). EPA recommends that work programs be developed simultaneously in similar formats. The work program is part of the grant application and serves as the basis for the management and evaluation of performance under the grant. Work programs must contain: the work years; amount and source of funding and outputs committed to under each program element; schedule for accomplishment; and an identification of the agency responsible for each of the elements and outputs. See 40 CFR 35.105 for details.

Regions have the flexibility to negotiate specific program elements for use in developing sections 106 and 604(b) program element budgets and work programs with States. However the Regions must assure that all grantees comply with current statutory and EPA regulatory requirements by providing in their sections 106 and 604(b) grant applications a program element budget. Attachment 1 contains a recommended list of program elements for use in developing sections 106 and 604(b) work programs.

Work programs developed for 604(b) funds must include funds passed through to RPCPOs/IOs. States should solicit and select proposals from RPCPOs/IOs and include a brief description and cost of the projects in the work program. RPCPO/IO work program descriptions should include sufficient detail and outputs to justify costs of tasks proposed.

MILESTONES FOR SECTIONS 106 AND 604(b) GRANT AWARD PROCESS

EPA recommends the following schedule for section 106 and 604(b):

- 3/1 EPA will issue State funding targets based upon the President's budget request by March 1. States solicit RPCPO/IO proposals.
- 4/1 Regions/States are encouraged to conduct senior level meetings to discuss mutual priorities, long-term objectives, and work program development prior to April 1. It is recommended that 106 and 604(b) work programs support long-range strategic plans which are mutually agreed to by the Regions and States.
- 4/1 By April 1 Regions will issue final work program and funding guidance reflective of senior level discussions. If EPA Headquarters Agency Operating Guidance is not final by April 1, Regions will utilize the Headquarters draft guidance in preparing State guidance.
- 6/1 All States will submit draft work programs and grant applications to EPA by the June 1.
- 7/15 Regions will respond to draft State work programs within 30-45 days of receipt. Regional Water Management Division staff will conduct work program negotiations, but unresolved issues will be elevated early to allow for issue resolution in time to complete the grant work program negotiation and be ready for funding by September 30.
- 8/1 States submit final grant applications and work programs to Region at least 60 days prior to beginning of the budget period. (See 40 CFR 35.140).
- 9/15 By September 15, the Regions will notify the States on the status of their grant applications and work programs which will serve as the official notification of the need to finalize the documents.
- 9/30 Grant applications and work programs will be finalized and forwarded to Grants Administration by the Program Office by September 30, pending award upon the availability of funds.

MANAGEMENT OVERSIGHT

In accordance with 40 CFR 35.150, Regions will oversee performance under assistance agreements. The Region will (1) evaluate each recipients' performance and progress toward completing the outputs in the approved work program according to the schedule, (2) provide the findings of the evaluation to each recipient, and (3) will include the findings in the grant file. If the evaluation reveals deficiencies in a work program, the Region will develop an action plan as needed for addressing performance problems. The Region will impose sanctions only when corrective actions have failed to solve significant performance deficiencies.

Reports on the status of activities and outputs are required, at a minimum, semi-annually. Based, however, upon activities and outputs expected, past performance and other relevant considerations, Regions may require more frequent reporting.

State and local grantees are encouraged to manage grants in a manner that will minimize the need for carryover and to work cooperatively with Regional Offices to coordinate when State and Federal fiscal years differ.

Appendices (9)  
Attachments (4)

- 1) Program Element Matrix and Revised Program Element List for Section 106, 319, and 604(b) Grants
- 2) September 27, 1989 Guidance for Grants to Indian Tribes for Section 106 and 314 of the Clean Water Act
- 3) Deputy Administrator's State Grants Guidance: Integration of Pollution Prevention dated November 12, 1992
- 4) Administrator Browner's Pollution Prevention Policy Statement of June 15, 1993

cc: Regional Water Quality Branch Chiefs, R-I-X  
Regional Water Quality Coordinators, R-I-X  
Regional Indian Program Indian Coordinators, Regions I-II,  
Regions IV-X  
Robert Barles, Chief, Ground Water Resources Protection  
Branch, OGWDW  
Donald Brady, Acting Chief, Watershed Branch, OWOW  
Dov Weitman, Chief, Nonpoint Source Branch, OWOW  
Ephriam King, Chief, NPDES Program Branch, OWEC  
Carol Galloway, Chief, Compliance Information and Evaluation  
Branch, OWEC  
Bruce Feldman, Chief, Grants Policy and Procedures Branch  
Maureen Ross, Grants Policy and Procedures Branch, GAD  
Steve Pressman, Assistant General Counsel, Grants Law  
Branch, Grants and Intergovernmental Division, OGC  
Anthony (Tony) Guadagno, Acting Assistant General Counsel  
Cross-Cutting Intergovernmental Issues Branch, OGC  
Laurie Ford, OGC  
Vivian Daub, OW

Appendix 1. BASE PROGRAM REQUIREMENTS

States are required to submit to EPA on a regular basis the following submittals as mandated by 40 CFR 130.10:

1. The section 305(b) report every two years, and annual section 205(j) certification or update of the 305(b) water quality report.
2. The annual State work programs under section 106.
3. Revisions or additions to water quality standards (CWA 303(c)).

Appendix 2. ACTIVITIES ELIGIBLE FOR FUNDING UNDER SECTIONS 106 AND 604(b)

The Clean Water Act requires that each State revise as necessary and submit to EPA the following:

1. Continuing Planning Process (CPP) (CWA 303(e)).

40 CFR 130.5 (a) states "Each State shall establish and maintain a continuing planning process (CPP) as described under CWA 303(e)(3)(A)-(H). Each State is responsible for managing its water quality program to implement the processes specified in the CPP. EPA is responsible for periodically reviewing the adequacy of the State's CPP."

The objective of the State CPP is to establish a management program and arrive at the implementation decisions contained in State Water Quality Management (WQM) plans and other plans prepared pursuant to the CWA. The purpose of the CPP is to document how the State will make its WQM decisions.

States may determine the format of its CPP as long as the minimum requirements of the CWA and 40 CFR 130.5 are met. The following processes must be described in each State's CPP, and the State may include other processes at its discretion:

- process for developing effluent limitations and schedules of compliance at least as string as those required by the CWA and any requirement contained in applicable water quality standards;
- process for incorporating elements of any applicable areawide waste treatment plans and basin plans;
- process for prioritizing the waterbodies on the 303(d) list and for developing TMDLs and individual water quality based effluent limitations for pollutants (in accordance with CWA 305(d));
- process for updating and maintaining WQM plans including schedules for revision;
- process for assuring adequate authority for inter-governmental cooperation in the implementation of the State WQM program;
- process for establishing and assuring adequate implementation of new or revised water quality standards, including schedules of compliance;
- process for assuring adequate controls over disposition of all residual waste from any water treatment processing;

- process for developing an inventory and ranking in order of priority of needs for construction of waste treatment works;<sup>2</sup>
- and a process for determining the priority of permit issuance.

2. Section 303(d) List. Section 303(d) of the Clean Water Act (CWA) requires States to identify waters not expected to meet water quality standards with technology-based point source controls alone, i.e., those controls required by CWA 301(b), 306, or 307 or nonpoint source controls required by EPA or state agencies. It also requires States to prioritize impaired waters for development of TMDLs.

3. Certified and Approved WQM Plan Updates. "WQM plans are plans initially produced and updated in accordance with CWA 303(e) and 208. State water quality planning should focus annually on priority issues and geographic areas and on the development of water quality controls leading to implementation measures. Water quality planning directed at the removal of conditions placed on previously certified and approved WQM plans should focus on removal of conditions which will lead to control decisions." (40 CFR 130.6(a)).

WQM plans should be aimed at two principal mandates of the CWA:

- o the determination of effluent limitations needed to meet appropriate water quality standards (WQS) including the requirement to at least maintain the existing quality of water bodies as of November 1972 (CWA 303), and other pollutant control measures identified through Total Maximum Daily Loads (TMDLs).
- o the development of state and areawide management programs to implement abatement measures for all pollution sources (CWA 208).

40 CFR 130.6(e) mandates "State or areawide agency WQM plans be updated as needed to reflect changing water quality conditions, results of implementation actions, new requirements or to remove conditions in prior conditional or partial plan approvals. Regional Administrators may require that state WQM plans be updated as needed. State Continuing Planning Processes (CPPs) shall specify the process and schedule used to revise WQM plans. The state shall ensure that

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<sup>2</sup> State Revolving Fund (SRF) regulations at 40 CFR 35.3150 contain the provision for the Intended Use Plan (IUP) identifying the intended uses of the funds in the SRF. The IUP must contain a list of publicly owned treatment works projects on the State project priority list developed pursuant to Section 216 of the Act, and the nonpoint source and national estuary protection activities under Sections 319 and 320 of the Act that the State expects to fund from its SRF.



state and areawide WQM plans together include all necessary plan elements and that such plans are consistent with one another. The governor or the Governor's designee shall certify by letter to the Regional Administrator for EPA approval that WQM plan updates are consistent with all other parts of the plan. The certification may be contained in the annual state work program."

### Appendix 3. WATER QUALITY STANDARDS

States adopt water quality standards but have the flexibility to prioritize water bodies, adjust uses, criteria and standards on a river basin, watershed or statewide basis. Therefore, State water quality standards support watershed or basin approaches and do not require new or different implementation strategies.

Section 303(c)(1) of the Clean Water Act requires that water quality standards be reviewed once every three years. FY 1994-1996 is a transitional period during which EPA should complete the scientific foundation for reducing ecological risk through development of sediment, wildlife and biological criteria. States should solidify the chemical-specific approach by clarifying policies and applying appropriate tools to translate the standards into Total Maximum Daily Loads (TMDLs) and permit limits.

By September 30, 1996, States/Tribes should:

- o Modify State/tribal water quality standards provisions to require the protection of threatened and endangered species. Provisions for which coordination may be required include changes in or revisions to: use designations, criteria to protect the designated uses of a waterbody or segment thereof, the anti-degradation policy and implementation procedures and general policies under 40 CFR 131.13, including but not limited to mixing zones, flows and variances.
- o Include acceptable antidegradation policy implementation procedures.
- o Refine or adopt new policies affecting application of the criteria, particularly metals, adopted or promulgated under Section 303(c)(2)(B) of the CWA. Adoption of new policies or refinements in existing policies or standards may include, but are not limited to, State-adopted water effect ratio procedures for those 43 States which adopted sufficient criteria to meet the requirements of Section 303(c)(2)(B) without Federal promulgation, antidegradation and mixing zone policies, wetland standards, etc.
- o Include appropriate nutrient criteria for fresh water utilizing existing models, site-specific data and State adopted dissolved oxygen criteria or other appropriate methods.
- o Identify contaminated sediment sites from the 1994 Contaminated Sediment Inventory and supplements to target revisions in State/tribal water quality standards during the next triennium and to target implementation of control programs.

#### Appendix 4. AMBIENT WATER MONITORING STRATEGY

The objective of the Agency's monitoring strategy is to develop and implement surface and ground water monitoring strategies that provide for design, collection, storage, retrieval and assessment and presentation of water and ecological data necessary to achieve the goals and objectives of the Clean Water Act and other environmental initiatives.

An overall monitoring strategy includes monitoring for the purposes of determining status and trends, identifying causes and sources of problems and ranking them in priority, designing and implementing water management programs, determining program effectiveness and compliance and responding to emergencies. Among other management goals monitoring supports development and attainment of water quality standards, 303(d) listings and TMDL development, NPDES permit limitations, nonpoint source controls, and geographic initiatives such as watershed protection.

State work programs should include a current ambient monitoring program strategy developed in consultation with affected program managers and EPA Regional monitoring staff. The strategy should include information on purpose, coordination, design, implementation, interpretation, evaluation and communication. States should also summarize all program-specific monitoring activities such as nonpoint source, lakes, estuaries, wetlands, ground water, wet weather surveys (CSO/stormwater), CWA 305 and 403(c) and describe how the ambient and program-specific monitoring programs relate to provide the total body of information necessary to support water quality management programs.

Additional application and reporting requirements are identified in the FY 1995 Monitoring Guidance. It is anticipated that the guidance will be implemented in phases to integrate activities with the National Monitoring Strategy developed in collaboration with the Intergovernmental Task Force on Monitoring (ITFM).

## Appendix 5. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

The Office of Water's point source program activities traditionally have focused on chemical specific technology-based and water quality-based NPDES permit limits or requirements. More recently, NPDES permits have included whole effluent toxicity monitoring requirements and limits. In addition to these baseline activities there are a number of new initiatives underway including: stormwater permitting; sewage sludge permitting; combined sewer overflow (CSO) permitting; implementation of CWA Section 304(1); and implementation of sediment criteria and biocriteria. Pretreatment of waste by industrial users which discharge to publicly owned treatment works (POTWs) is regulated by EPA, the State, or a POTW with an approved pretreatment program.

Efforts also include compliance monitoring by the facility and by the regulating authority. Compliance monitoring includes inspections or audits, sampling of effluent, and reporting and reviewing of reports. Where violations occur, enforcement actions and/or technical assistance is provided to the facility.

The challenge for the NPDES program is managing new and existing efforts within the context of both scarce resources and environmental impacts and priorities that vary from State-to-State and Region-to-Region. The watershed protection approach provides a management framework within which baseline program requirements and newer initiatives can be integrated to cost-effectively address the environmental impacts within a State's watersheds.

### NPDES Watershed Protection Strategy

#### Vision

To support the goal of restoring and maintaining the chemical, physical, and biological integrity of the Nation's waters, establish a decision-making process relating to point and nonpoint controls for the protection of surface water, groundwater, and habitat within a basin or watershed that reflects a common information and analysis strategy and a common understanding of the roles, priorities, and responsibilities for all stakeholders within the basin or watershed.

#### Guiding Principles

- o Watershed protection approaches may vary in terms of specific components, timing, resources, and objectives, but all should share a common emphasis and insistence on integrated actions, accountability, clear long-term goals, specific action items, and measurable interim milestones.
- o Related activities within a watershed must be coordinated to achieve the greatest environmental benefit and most effective level of stakeholder involvement.

- o Staff and financial resources are scarce and must be allocated to address environmental priorities as effectively and efficiently as possible.
- o Accurate, complete, and accessible information is invaluable for good decision making and can be collected on an incremental basis; however not all decisions can or should wait for perfect, comprehensive data.

#### NPDES Program Watershed Objectives

- o Develop State-wide basin management frameworks that:
  - Identify basins within each State
  - Sequence basins within each State
  - Implement a methodology for issuing NPDES permits on a watershed basis (i.e., decisions about point source controls are based on an overall assessment of environmental priorities and concerns within a basin)
- o Implement the NPDES Watershed Protection Strategy consistent with statutory requirements.
- o Review and revise NPDES program oversight, administration, and regulations as necessary to eliminate or reduce impediments to implementing a watershed protection approach.
- o Allow the level of effort dedicated to developing and reviewing NPDES permits to vary depending on the priority of the source and its potential impacts on the watershed.
- o Identify interrelated programmatic actions (e.g., permits, enforcement, nonpoint source, water quality, monitoring) that facilitate implementation of a watershed protection approach.

#### NPDES Watershed Protection Strategy Components

The NPDES watershed protection strategy consists of the following components:

1. State-wide Coordination
2. NPDES Permits
3. Monitoring and Environmental Assessments
4. Programmatic Measures and Indicators
5. Public Participation
6. Enforcement
7. Additional Issues

Each of these components are addressed in detail in the Draft NPDES Watershed Strategy document issued January 13, 1994, to the Regions. More detailed guidance on NPDES watershed protection as it relates to Section 106 grants and State work programs is under development by Headquarters and should be provided to the Regions within the second quarter of FY 1994.

## Appendix 6. WATER ENFORCEMENT AND COMPLIANCE STRATEGY

### Vision

To further the watershed protection approach by ensuring compliance with established permit conditions designed to monitor the health of watersheds (e.g., ambient monitoring), and to address any instances of violation which threaten or cause the degradation of any priority watershed.

### Guiding Principles

- o Set compliance monitoring priorities consistent with and in support of watershed protection priorities.
- o Monitor compliance within watersheds to assess enforcement effectiveness and to assess compliance promotion efforts.
- o Provide incentives for compliance, especially with non-traditional NPDES permit conditions implemented as a result of the watershed protection approach (e.g., ambient monitoring); and
- o Use enforcement resources to correct violations at facilities which are causing the greatest degradation to the watershed.

### Enforcement Watershed Objectives

- o Identify the universe of priority facilities (including minors) in each watershed identified by the State or Region;
  - Use 308 enforcement authority (e.g., inspections, information letters) to identify all facilities of concern in each watershed.
- o Evaluate compliance based on reports received from facilities within each priority watershed;
  - Focus on the completeness of the ambient quality information submitted by the permittee, as required by the permit.
- o Use the existing inspection framework to address watershed issues;
  - Focus inspection resources on those facilities identified as having the greatest potential threat to the watershed.
- o Evaluate the need to modify existing data management systems to accommodate new types of information which may be reported under the watershed program.

- o Use existing timely and appropriate criteria for addressing situations of significant non-compliance (SNC), but focus non-SNC enforcement resources in priority watershed.

Regions working with States have been requested to develop Regional Enforcement Strategies for FY 1995 consistent with the Office of Wastewater Enforcement and Compliance's 5-Year Strategy. The Regional strategic plans will be incorporated into the Agency's commitment process as appropriate. Regions are encouraged to tailor enforcement activities based on watershed planning and risk-based priorities. The Regional Enforcement Strategies will describe program goals and the types of activities to be undertaken to achieve those goals. The strategies will provide a basis, along with other established enforcement measures, for assessing Regional performance. Regional performance will be evaluated by review of the "core enforcement measures" (referrals, administrative actions, inspections, compliance rates, and response to all significant noncompliance (SNC).

Regional Enforcement Strategies should consider the following:

- Regional priorities including watersheds, geographic and other initiatives, etc.
- "New" program areas including pretreatment, sludge, CSOs, storm water, etc.
- Regional customized goals
- Tailored inspection strategy with commitments.

Regions are encouraged to tailor enforcement resources to the most critical Regional priorities and are encouraged to use a mix of enforcement tools. The Agency will continue to place high priority on judicial referrals; but recognizes the utility of administrative actions and encourages the use of administrative penalty authorities consistent with Agency policy. In addition, the Agency must continue to ensure that timely and appropriate enforcement action is taken in all cases of (SNC). It is also imperative that the integrity of the national enforcement database in the Permit Compliance System (PCS) be maintained, and the target for data entry into PCS will continue to be 95 percent.

Regions should work with States in developing an inspection plan to determine how the Region as a whole will address the universe of regulatory responsibilities. Specifically, Regions should address how to best use their inspection resources considering all of their responsibilities for NPDES majors and minors, approved pretreatment programs, industrial users, Class I sludge facilities, storm water permittees, POTWs subject to combined sewer overflow requirements, facilities that are multi-media, and other special initiatives such as feedlots. Plans should include the number of inspections in each category that will be undertaken by the Region and each State and should provide a brief description of the overall strategy being pursued by the Region. Consistent with past policy, the plan should reflect some Regional oversight of State inspection programs.

In developing inspection plans Regions are asked to consider the following as guidance for determining which facilities should be considered a priority for inspection:

1. Any facility for which there is an active enforcement case or a potential case where an inspection is needed to provide evidentiary support or verify current compliance status.
2. Any facility which is located in a priority watershed and is suspected of causing environmental harm or endangering public health. This might include a minor NPDES permittee, an industrial facility regulated under storm water requirements, feedlots, industrial users, or any other regulated facility.
3. Any facility, not located in priority watershed, but suspected of causing environmental harm or endangerment to public health.
4. Any NPDES major which was in SNC during the previous 12 months (inspection year) or is currently in SNC, to the extent inspection resources allow.
5. Municipal permittees which have approved pretreatment programs and are Class I sludge facilities. The inspection might be either a NPDES, pretreatment, or sludge inspection or might be a visit which screens for all three programs.
6. Any facility which is suspected of having a compliance problem. For example, sanitary sewers suspected of having overflow problems might be included.

The purpose for this approach is to allow Regions and States the most effective possible use of limited inspection resources. It is anticipated that a national inspection strategy will be formalized for FY 1995.

In the absence of a Region-specific Inspection Strategy, the assumption will be that all major NPDES facilities should be inspected each year.



Appendix 7. INTEGRATING POLLUTION PREVENTION INTO GRANTS

In FY 1995 and 1996 grant work programs should continue to emphasize a pollution prevention approach in conducting grant-assisted activities as outlined in the Agency's pollution prevention guidance memorandum dated November 12, 1992. EPA Administrator Carol Browner's June 15, 1993, Pollution Prevention Policy Statement: New Directions for Environmental Protection (copy attached) reinforces the guidance memorandum which encourages and supports State pollution prevention initiatives in grant-assisted activities and promotes the pollution prevention ethic as a way of conducting environmental management responsibilities under State grant programs. To the degree possible, grant-assisted activities should be conducted according to the environmental management hierarchy which places highest priority on source reduction/pollution prevention, followed in order by recycling, treatment, and disposal.

Opportunities for integrating pollution prevention into Section 106, includes for example, permitting, inspection, enforcement settlement, multi-media coordination, technical assistance, public information, reporting and training activities. Each grantee should provide a summary report of activities associated with pollution prevention. The report should also identify any barriers or impediments to including pollution prevention in the Section 106 grant work program.

The Administrator will soon be issuing a memorandum on reporting pollution prevention activities and if you wish additional information you may contact Tom McCully, Acting Coordinator, Pollution Prevention Policy Staff, Office of the Administrator (202-260-8617).

Appendix 8. ENDANGERED SPECIES ACT AND NATIONAL HISTORIC PRESERVATION ACT ISSUES

Section 106 and 604(b) grant applicants in Standard Form 424B must currently certify the following regarding the Endangered Species Act (ESA), 16 U.S.C. Section 1531-1544, and the National Historic Preservation Act (NHPA), 16 U.S.C. Section 470-1 to 470w-6:

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

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

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

Appendix. 9 REVISED POLICY REGARDING TREATMENT AS A STATE (TAS) FOR INDIAN TRIBES

The Treating Indian Tribes as States Simplification Rule (TAS Simplification Rule) which was established through a memorandum dated November 10, 1992, has completed Office of Management and Budget (OMB) review and is expected to be published in the Federal Register by the end of February or early March. This rule will apply to all existing Clean Water and State Drinking Water regulations that have been previously published in the Federal Register as either interim final or final regulations. This regulation is intended to lessen the burden on Tribes as they go through the TAS process for various programs.

Until this rule is finalized, current regulations at 40 CFR Parts 35 and 130 remain in effect. When the TAS Simplification Rule is finalized, these regulations will be amended in the Code of Federal Regulations. The existing Headquarters "Guidance for Grants to Indian Tribes under Sections 106 and 314 of the Clean Water Act" issued on September 27, 1989 also remains in effect. The guidance will be revised when the TAS Simplification Rule is finalized.

03/01/94

APPENDIX A

**RECOMMENDED LIST OF PROGRAM ELEMENTS FOR 106 and 604(b) AND 319 GRANTS**

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

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

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

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

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

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

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

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

- a. Enforcement activities
- b. Processing NPDES permits and general permits
- c. Re-issuance of existing NPDES permits
- d. Processing NPDES permit modifications
- e. Review and process 402 application
- f. Review pollution prevention plans
- g. Review group applications

7. **SLUDGE MANAGEMENT** - All costs of establishing and operating a State/Tribal program to ensure that sludge from waste water treatment facilities meets sludge use and disposal requirements belong to this program element.
  - a. Compliance monitoring and enforcement activities
  - b. Processing NPDES or other approved State sludge management permits and general permits
  - c. Re-issuance of existing NPDES or other approved State sludge management permits
  - d. Processing NPDES or other approved State sludge management permit modifications
  
8. **PRETREATMENT** - All costs of State pretreatment programs and oversight of technical assistance of local pretreatment programs belong under this program element.
  - a. Enforcement activities
  - b. Processing NPDES permits
  - c. Re-issuance of existing NPDES Permits
  - d. Review and process 402 application
  - e. Legal support
  - f. Development and updating of State pretreatment program
  - g. Review local CWA POTW pretreatment program
  - h. Establish State authority/program to include PT in POTW permits
  - i. Develop pretreatment programs for municipalities
  
9. **GROUNDWATER** - All costs of establishing and operating a Comprehensive State Groundwater Protection Program (CSGWPP) consistent with EPA's National CSGWPP guidance, including the Well Head Protection Program (WHPP) belong in this program element.
  - a. **Groundwater Protection Goal**
  - b. **Priority-Setting**
  - c. **Roles, Authorities, Coordinating Mechanisms**
  - d. **Strategic Implementation Activities**
  - e. **Integrated Information Collection and Management**
  - f. **Public Education and Participation**

NOTE: The Supplemental FY 95-96 Section 106 Ground Water Grants Guidance will identify specific activities to be emphasized.

10. **NPS IMPLEMENTATION** - All costs of carrying out State/Tribal programs to implement regulatory and non-point source controls belong in this program element.

- a. Establish NPS legal/administrative capabilities
- b. Regulatory NPS control programs management
- c. Implementation of Coastal Zone Management (CZM) NPS Program
- d. Education and information activities
- e. Federal consistency review
- f. Best Management Practices (BMP) audits
- g. Watershed restoration activities
- h. Groundwater assessment activities
- i. Post-BMP implementation monitoring/national monitoring projects
- j. Other
  - limited TMDL/GIS activities
  - cost-share demonstration projects

11. **AMBIENT MONITORING** - All costs of developing and implementing monitoring strategies and programs for assessing water quality conditions and trends in the State or Tribal waters, including event related, habitat, and biological monitoring belong under this program element. Summarize all monitoring activities under other program elements such as nonpoint source, lakes, estuaries, wetlands, groundwater and wet weather surveys (CSO/stormwater).

- a. Development and Continued Planning of Monitoring Strategies and Plans (Objectives)
- b. Monitoring Design (including stations/parameters)
  - Fixed station network
  - Intensive surveys
  - Targeted areas under watershed, multi-program and individual programs
- c. Development of written protocols (field/lab/assessment)
- d. Laboratory analytical support
- e. Quality assurance/quality control (field/lab/data)
- g. Data storage, management and sharing
- h. Assessment
- i. Reporting (including 305(b))
- j. Monitoring and data management training
- k. Volunteer monitoring



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

03/01/94

## APPENDIX A MATRIX

ELIGIBLE USE OF SECTION 106, 319, AND 604(b) GRANT FUNDS BY PROGRAM ELEMENT

PROGRAM ELEMENTS AND ELIGIBLE FUNDING SOURCE	SEC. 106	SEC. 604(b)	SEC. 319
OUTREACH/TECH. ASST.	X	X	
WQ PLANNING	X	X	
COMPLIANCE/ENFORCEMENT	X		
PERMITS	X		
CSO	X		
STORMWATER	X		
SLUDGE MANAGEMENT	X		
PRETREATMENT	X		
GROUNDWATER	X		
NPS IMPLEMENTATION	X		X
AMBIENT MONITORING	X	X	
WQ STANDARDS	X	X	
ADMINISTRATION	X	X	
OTHER	X		

NOTE: Please see Appendix A for specific activities eligible for funding under the broader Program Element category.