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STATEMENT OF EMERGENCY

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

The Department of Natural Resources, Division of Water Resources, is the delegated authority for implementing the Environmental Protection Agency's construction grants program. Based on changes to the Clean Water Act, the Environmental Protection Agency is no longer granting Step I and Step II construction grants. Instead, the State government is allowed to provide "advance assistance" for potential EPA grantees to conduct planning and preparation of design and construction of drawings.

Accordingly, the Department of Natural Resources, Division of Water Resources, needs to promulgate regulations implementing setting forth its procedural and interpretive regulations for the advance assistance program.

Failure to operate such a program would interfere with the health and welfare of the citizens of this State and also would lead to the State forfeiting construction grant monies authorized to it. Therefore, an emergency exists under Chapter 29A, Article 3, Section 15, to promulgate such rules as are necessary to operate the advance assistance program.

Signed: 

David W. Robinson, Chief
Division of Water Resources

Date: 26 Nov 1984

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West Virginia Administrative Regulations
West Virginia Department of Natural Resources
Division of Water Resources
Series 17, Chapter 20-5A
PART I - CONSTRUCTION GRANTS
Subpart I - Procedural & Interpretative Regulations

For

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WEST VIRGINIA DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER RESOURCES
Series XVII Chapter 20-5A
PART I - CONSTRUCTION GRANTS

Emergency

Subpart I-Procedural and Interpretative Regulations
for
STATE ADVANCE ASSISTANCE PROGRAM

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Sec. 1. GENERAL

Sec. 1.01 Purpose, Description, and Scope

- A. These regulations establish procedural and interpretative rules for the State's Advance Assistance Program for Construction Grants. The Chief is granted authority to administer such a program in West Virginia Code §20-5A-4.
- B. The purpose of State assistance available under this program is to assist qualifying small communities which cannot proceed on their own due to financial constraints in meeting the enforceable requirements of the Clean Water Act, particularly, applicable National Pollutant Discharge Elimination System (NPDES) permit requirements.
- C. Pursuant to the federal Clean Water Act as amended in 1981 by the Municipal Wastewater Treatment Grant Amendments of 1981, P.L. 97-117 the United States Environmental Protection Agency's Construction Grants Program for municipal wastewater treatment facilities was modified by terminating the federal grant program for the facility

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planning (Step I) and design (Step II) phases of the program. The federal program, however, does provide for state administration and implementation of an advance of allowance program to potential federal grant applicants for generally the same work as previously covered by Step I & II.

- D. The federal program will continue to provide Step III grants for construction of the treatment works. The Step III federal grant will contain an allowance for facility planning and design which may be advanced to the municipality by the State through this advance of allowance program. When an advance is made the amount of the advance will be deducted from the allowance contained in the Step III federal grant.
- E. This program, mandated by Congress, requires the State to:
1. Set aside a reserve of up to 10% of the States annual Construction Grants Program appropriation. 40 CFR 35.2020(e)
 2. Assist eligible municipalities (including other governmental entities such as Public Service Districts, see §2.(BB) & (EE) by providing advances of allowance for Step I and Step II work. 40 CFR 35.2025.

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3. Award advances of allowance calculated as a percentage of eligible building cost estimates of Step III and Step IV (II/III) projects. 40 CFR. 35.2025
- F. After application by the State, the Regional Administrator will award a grant to the State in the amount of the reserve established under 40 CFR §2020(e) so that the State can provide advance allowances to eligible potential grant applicants for facilities planning or project design assistance. 40 CFR 35.2025
- G. According to 40 CFR 35.2025(b)(4) the allowance is based on Appendix A and represents an amount of the federal grant which the United States Environmental Protection Agency considers adequate to perform the necessary facilities planning and design work associated with a project. Such allowance is based on the project's estimated building cost.
- H. The Advance of Allowance Assistance Program consists of the following elements:
1. Establishing a municipalities fundability from the State Priority rating system and list;
 2. Applications for Facilities Planning Assistance and Design Assistance (DWR-CG-1) from eligible municipalities.



STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25306

January 3, 1985

JOHN D. ROCKEFELLER IV
Governor

WILLIS H. HERTIG, JR.
Director

RONALD R. POTESTA
Deputy Director

The Honorable A. James Manchin
Secretary of State
Capitol Complex
Charleston, West Virginia 25305

Dear Mr. Manchin:

Re: Department of Natural
Resources Administrative
Regulations Series XVII

Enclosed please find two copies of page 4 of the above
referenced regulations.

This page contains the effective date and filing date
provisions which were inadvertently left incomplete when
the emergency regulations were filed on November 26. Based
on our conversation with Mr. Jackson, emergency regulations
are effective upon filing, and we have therefore filed a
corrected version of this regulation per his request.

Thank you very much. If you have any questions, please
contact me at 348-2754.

Sincerely,

Ron Shipley
Special Assistant to the Director

RS/gb

Enclosure

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3. Awarding of assistance and the execution of an Advance Assistance Agreement (DWR-CG-2) which includes the terms and conditions of assistance;
4. Performance of the work by the municipality, and the filing of a Request for Payment (DWR-CG-3), at appropriate intervals established in the Advance Assistance Agreement and these regulations;
5. Remedies available to the State in the event of non-performance or inadequate performance as provided in the Advance Assistance Agreement.
6. Deduction from the allowance from the Step III or Step II/III federal grant when the project proceeds to construction under the program.

Sec. 1.02 - Authority

These regulations are promulgated under authority of West Virginia Code, Chapter 20, Article 5A, Section 3.

Sec. 1.03 - Filing Date

These regulations were filed in Office of the Secretary of State on November 26, 1984.

Sec. 1.04 - Effective Date

These regulations become effective on the day of filing.

Sec. 2 DEFINITIONS

Unless the context in which used clearly requires a different

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Sec. 2 DEFINITIONS

Unless the context in which used clearly requires a different

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meaning, as used in these regulations the following words and terms mean:

- A. "Act" - The Clean Water Act (33 U.S.C. 1251 et seq; as amended).
- B. "Advance of allowance" - That portion of the allowance which is given prior to the Step 2/3 or Step 3 grant to communities with cash flow problems to enable them to proceed with the development of facilities plans to project designs.
- C. "Allowance" - is an amount of money based on building costs and calculated from the Tables in Appendix A. An allowance represents the sum of money an applicant may receive as assistance in conducting either Step I or Step II work or both. Although not a reimbursement for costs incurred but rather an "allowance", these funds will help reduce the burden of expenses incurred by the municipality during planning or design.
- D. "Alternative technology" - Proven wastewater treatment processes and techniques which provide for the reclaiming and reuse of water, productive recycling of wastewater constituents, eliminating the discharge of pollutants, or recovering of energy. Specifically, examples of alternative technology include: land application of effluent and sludge; aquifer recharge; aquaculture; direct reuse (non-potable); horticulture; revegetation of disturbed land; containment ponds; sludge composting and

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drying prior to land application; self sustaining incineration; methane recovery; co-disposal of sludge and solid waste and individual and on-site systems.

- E. "Alternative to conventional treatment works for a small community" - treatment works in a small community using innovative or alternative technology.
- F. "Architectural or engineering services" - Consultation, investigation, reporting and design services offered within the scope of the practice of architecture or professional engineering as defined by the laws of the State of West Virginia.
- G. "Best Practicable Waste Treatment Technology (BPWTT)" - The cost-effective technology that can treat wastewater, combined sewer overflows, non-excessive infiltration and inflow and residuals in publicly owned or individual wastewater treatment works, to meet the applicable provisions of:
1. 40 CFR Part 133 "Secondary Treatment of Wastewater";
 2. 40 CFR 122.62(d) "Water quality standards and State requirements"
 3. 41 Federal Register 6190 - "Alternative Waste Management Techniques for Best Practicable Waste Treatment" (treatment and discharge, land application techniques and utilization practices, and reuse).

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- H. "Building" - The erection, acquisition, alteration, remodeling, improvement or extension of treatment works.
- I. "Collector sewer" - The common lateral sewers primarily installed to receive wastewaters directly from facilities which convey wastewater for individual systems, or from private property, and which include service "Y" connections designed for connection with those facilities including:
1. Crossover sewers which are used to connect more than one property on one side of a major street, road, or highway to a lateral sewer on the other side when more cost-effective than parallel sewers; and
 2. Pumping units and pressurized lines serving individual structures or groups of structures when such units are cost-effective and are owned and maintained by the grantee.
 3. This definition excludes other facilities which convey wastewater from individual structures, from private property to the public lateral sewer, or its equivalent and also excludes facilities associated with alternatives to conventional treatment works in small communities.
- J. "Combined sewer" - A sewer that is designed as both a sanitary sewer and a storm sewer.

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- K. "Compatible industrial wastewater" - Wastewater that is provided by an industrial user, has a pollutant strength and other characteristics similar to those of domestic wastewater, and can be efficiently and effectively transported and treated with domestic wastewater. This definition includes wastewater from sanitary conveniences at an industrial user's facility.
- L. "Complete waste treatment system" - A complete waste treatment system consists of all the treatment works necessary to meet the requirements in Title III of the Act, involving:
1. the transport of wastewater from individual homes or buildings to a plant or facility where treatment of the wastewater is accomplished;
 2. the treatment of wastewater to remove pollutants; and
 3. the ultimate disposal, including recycling or reuse, of the treated wastewater and residues which result from the treatment process.
- M. "Construction" - Any one or more of the following:
Preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, field testing of innovative or alternative wastewater treatment processes and techniques (excluding operation and

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- maintenance) meeting guidelines promulgated under section 304 (d) (3) of the Act, or other necessary actions; erection, building, acquisition, alterations, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items.
- N. "Conventional technology" - Wastewater treatment processes and techniques involving the treatment of wastewater at a centralized treatment plant by means of biological or physical/chemical unit processes followed by direct point sources discharges to surface waters.
- O. "Domestic wastewater" - Wastewater of the type commonly introduced into a treatment works by residential users.
- P. "Enforceable requirements of the Act" - Those conditions or limitations of section 402 and 404 permits which, if violated, could result in the issuance of a compliance order or initiation of a civil or criminal action under section 309 of the Act or State Water Pollution Control Act, WV Code Sections 20-5A-1 et. seq. If a permit has not been issued, the term shall include any requirement which, in the Chief's judgement, would be included in the permit when issued. Where a permit does not apply, the term shall include any requirements which the Chief determines are necessary for the best practicable waste treatment technology (BPWTT) to meet applicable water quality standards.

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- Q. "Excessive infiltration/inflow" - The quantities of infiltration/inflow greater than the flows identified in §5.02(B)4 and which can be economically eliminated from a sewer system as determined in a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions to the total cost for transportation and treatment of the infiltration/inflow.
- R. "Field testing" - Practical and generally small-scale testing of innovative or alternative technologies for verifying performance and/or refining design parameters not sufficiently tested to resolve technical uncertainties which prevent the funding of a promising improvement in innovative or alternative treatment technology.
- S. "Individual systems" - Privately owned alternative or innovative wastewater treatment works (including dual waterless/gray water systems) serving one or more principal residences or small commercial establishments. Normally, these are onsite systems with localized treatment and disposal of wastewater, but may be systems utilizing small diameter gravity, pressure or vacuum sewers conveying treated or partially treated wastewater. These systems can also include small diameter gravity sewers carrying raw wastewater from cluster systems.

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T. "Industrial user" - Any nongovernmental, nonresidential user of a publicly owned treatment works which is identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget as amended under one of the following divisions:

Division A. Agriculture, Forestry, and Fishing

Division B. Mining

Division D. Manufacturing

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

Division I. Services

U. "Infiltration" - Water other than wastewater that enters a sewer system (including sewer service connections) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

V. "Inflow" - Water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters or drainage. Inflow does not include, and is distinguished from, infiltration.

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- W. "Initiation of operation" - The date specified by the grantee on which use of the project begins for the purposes that it was planned, designed and built.
- X. "Innovative technology"- Developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represents a significant advancement over the state of the art in terms of significant reduction in life cycle cost of ~~the project when compared to an appropriate conventional technology~~ or significant environmental benefits through the reclaiming and reuse of water, otherwise eliminating the discharge of pollutants, utilizing recycling techniques such as land treatment, more efficient use of energy and resources, improved or new methods of waste treatment management for combined municipal and industrial systems, or the confined disposal of pollutants so that they will not migrate to cause water or other environmental pollution.
- Y. "Interceptor sewers"- A sewer which is designed for one or more of the following purposes:
1. To intercept wastewater from a collector sewer and convey such wastes directly to a treatment facility or another interceptor.

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2. To replace an existing wastewater treatment facility and transport the wastes to an adjoining collector sewer or interceptor sewer for conveyance to a treatment plant.
 3. To transport wastewater from one or more municipal collector sewers to another municipality or to a regional plant for treatment.
 4. To intercept an existing major discharge of raw or inadequately treated wastewater for transport directly to another interceptor or to a treatment plant.
- Z. "Intermunicipal agreement" - An agreement between municipalities setting the terms and conditions under which one municipality renders services to one or more other municipalities.
- AA. "Interstate agency"- An agency of two or more States established under an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of water pollution.
- BB. "Municipality"- A city, town, county, public service district, sanitary district or other public body (including an intermunicipal agency of two or more of the foregoing entities) created under State law or designated agency under section 208 of the Act.

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- CC. "Sanitary sewer" - A conduit intended to carry liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with minor quantities of ground, storm and surface water that are not intentionally admitted.
- DD. "Short life cycle components" - Components of a treatment works that has expected life cycle of 7-10 years.
- EE. "Small community"
1. For purposes of general assistance, a small community is defined to be a municipality of 25,000 population or less.
 2. For purposes of small community alternative funds, a small community is defined to be a municipality of 3,500 or smaller or a less densely populated portion of a larger community.
- FF. "Step I" - The preparation of the facility plan and other related requirements.
- GG. "Step II" - The design of the project and other related requirements.
- HH. "Step III" - The construction of the project and other related requirements.
- II. "State project priority list" - The States annual project priority list is an ordered listing of projects for which the State expects Federal financial assistance.

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- JJ. "State agency" - Department of Natural Resources, Division of Water Resources.
- KK. "Subagreement" - A contract between the recipient municipality and its architect/engineer (A/E) resulting from an agreement between the State of West Virginia and the municipality by virtue of which the advance assistance was provided.
- LL. "Treatment works" - Any devices and systems for the storage, treatment, recycling, and reclamation of municipal sewage, domestic sewage, or liquid industrial wastes used to implement section 201 of the Act, or necessary to recycle or reuse water at the most economical cost over the design life of the works.
- MM. "Treatment works phase or segment" - A treatment works phase or segment may be any ~~east-effective-portion-of-a complete-waste-treatment-system-described-in-a-facilities plan-under-§5.02(B), which can be identified as a contract or discrete subitem or subcontract.~~ Completion of building of a treatment works phase or segment may, but need not in and of itself, result in an operable treatment works substantial portion of a facility and its interceptors described in a facilities plan under §5.02(B), which can be identified as a subagreement or discrete subitem. Multiple subagreements under a project shall not be considered to be segments or phases. Completion of building of a treatment

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works phase or segment may, but need not in and of itself, result in an operable treatment works.

NN. "Useful life" - The period during which a treatment works operates. (Not "design life" which is the period during which a treatment works is planned and designed to be operated.)

OO. "User charge" - A charge levied on users of a treatment works for the user's proportionate share of the cost of operation and maintenance (including replacement) of such works under sections 204(b)(1)(A) and 201(h)(2) of the Act.

PP. "Value engineering" - A specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high cost in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.

Sec. 3 - STATE PRIORITY SYSTEM AND PROJECT PRIORITY LIST

Sec. 3.01 - State Priority System

The State Priority System is based on EPA regulations (40 CFR 35.2015) and is established yearly. It is designed to facilitate advances to municipalities in order to achieve subsequent compliance with federal requirements pertaining to Construction Grants project eligibility.

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- A. The priority system includes the following general elements:
1. administration;
 2. management;
 3. public participation;
 4. ranking methodology;
 5. rating methodology;
- B. The Administration and Management elements include:
1. financial review - which evaluates financial affordability;
 2. Alternative systems bypass - which allows the maximum utilization of innovative, alternative, and small community alternative set asides;
 3. general bypass - which can remove projects which fail to proceed in accordance with approved schedules.
- C. Public Participation Elements include:
1. annual public hearing to receive comments from the general public concerning funding eligibility of municipalities;
 2. the State agency responsiveness summary
- D. The priority rating and ranking methodology includes an evaluation of the following criteria:
1. the impairment of classified water uses resulting from existing municipal pollutant discharges;

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2. the extent of surface or ground water use, restoration or public health improvement resulting from the reduction in pollution;
3. the need to complete a waste treatment system for which a grant for a phase or segment was previously awarded;

Sec. 3.02 - State Priority List

The list is produced according to the state priority system pursuant to Federal requirements, and represents an ordered listing of the projects eligible for State financial assistance. The priority list contains two portions: the fundable portion, consisting of those projects anticipated to be funded from current allotment; and the planning portion consisting of projects anticipated to be funded from future authorized allotments. The list also includes an estimate of the total project cost (step specific) and the eligible advance funding allowable.

Sec. 4 - GENERAL ADVANCE ASSISTANCE APPLICATION AND AWARD PROCEDURES.

Sec. 4.01 General

Pursuant to the Act the State may provide advances of allowance only to small communities which would otherwise be unable to complete an application for an EPA Step III or Step II/III grant. The advance may not exceed the federal

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share of the estimate of allowance provided by the EPA Construction Grants Program in accordance with Appendix A. Applicants for Step I and Step II advance assistance shall submit applications to the State on the approved State Advance Assistance Application Form.

Sec. 4.02 Basic application

In addition to application requirement contained in §§5.01 and 7.01 all applications shall:

- A. Demonstrate the legal, institutional, managerial, and financial capability to ensure adequate building and operation, maintenance and replacement of the treatment works throughout the applicant's jurisdiction;
- B. Provide evidence of ability to finance local cost;
- C. Provide certification that the applicant has not violated any Federal, State or local law pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest or other unlawful or corrupt practice relating to or in connection with facilities planning or design work on a wastewater treatment works project.

Sec. 4.03 Limitations on award

Before awarding advance assistance for any project the Chief shall determine that the applicant and the

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applicant's project have met all of the applicable procedural requirements of Sec. 3 and Sec. 4.01 through 9.03.

Sec. 4.04 Cost Incurred Prior to Award

Work may proceed prior to award of an advance assistance in exceptional cases. In order for work performed on a project prior to advance award to be eligible for assistance the recipient must have complied with the following requirements:

- A. Recipient must have a preapplication meeting with the Construction Grants Branch Head to detail scope of proposed project.
- B. Recipient must make written request to proceed with work prior to incurring cost.
- C. Scope of project cannot conflict with applicable federal or grant regulations.
- D. Project is expected to proceed to construction within 2-3 years of advance award.
- E. Work cannot proceed until the recipient has received written state agency confirmation of prior approval.

Sec. 4.05 Water quality management plans

The application shall be consistent with the approved element(s) of any applicable water quality management (WQM) plan approved under section 208 or section 303(e) of the

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Act; and the applicant shall be the wastewater management agency designated in any WQM plan certified by the Governor and approved by the EPA Regional Administrator.

Sec. 4.06 Effect of approval or certification of documents

Review or approval of facilities plans, design drawings and specifications or other documents by or for the State is for program administrative purposes only and does not relieve the recipient of its responsibility to properly plan, design, build and effectively operate, and maintain the treatment works described in the assistance agreement as required under law, regulations, permits, and good management practices. The State is not responsible for increased building costs resulting from defects in the plans, design drawings and specifications or other subagreement documents.

Sec. 5 - FACILITIES PLANNING

Sec. 5.01 Contents of Facilities Planning Application for Advance Assistance

An application for a facility plan advance assistance shall be submitted on the State application form.

- A. The application must include the following;
1. The scope of the proposed planning area;
 2. A copy of documentation providing evidence of municipal status;

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3. The nature and scope of the proposed Step 1 project and public participation program, including a schedule for the completion of specific tasks; and
 4. an itemized description of the estimated cost of the project.
- B. Proposed subagreements;
- C. Required comments or approvals of relevant State and local agencies including clearinghouse requirements.

Sec. 5.02 Contents of Facilities Plan

- A. Facilities planning consists of those necessary plans and studies which relate to treatment works needed to comply with enforceable requirements of the Act. Facilities planning will investigate the need for proposed facilities. Through a systematic evaluation of alternatives that are feasible in light of the unique demographic, topographic, hydrologic and institutional characteristics of the area, the facilities plan will demonstrate that, except for innovative and alternative technology under Sec. 6 the selected alternative is cost-effective, (i.e., is the most economical means of meeting the applicable Federal and State requirements and water quality standards or public health requirements over the design life of the facility while recognizing environmental and other non-monetary considerations). For sewerred communities with a population

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of 10,000 or less, consideration must be given to at least one of the following: facultative ponds, trickling filters, oxidation ditches or overland flow land treatment. For unsewered communities of 10,000 or less, consideration must be given to onsite systems. The facilities plan will also demonstrate that the selected alternative is implementable from legal, institutional, financial and management standpoints.

B. Facilities plan Elements. A completed facilities plan must include the following elements:

1. A description of both the proposed treatment works, and the complete waste treatment system of which it is a part.
2. A description of the Best Practicable Wastewater Treatment Technology (BPWTT). (See Sec. 2,G)
3. A cost-effectiveness analysis of the feasible conventional, innovative and alternative wastewater treatment works, processes and techniques capable of meeting the applicable ~~Federal and State~~ effluent, water quality and public health requirements over the design life of the facility while recognizing environmental and other non-monetary considerations. The planning period for the cost-effectiveness analysis shall be 20 years. The monetary costs to be considered must include the present worth or

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equivalent annual value of all capital costs and operation and maintenance ~~and-replacement~~ costs. ~~The current-interest~~ The discount rate established by ~~the-Federal-Water-Resources-Council-shall-be-used-as the-discount-rate~~ EPA for the construction grants program shall be used in the cost-effectiveness analysis. The population forecasting in the analysis shall be consistent with ~~current-State-projections-and with-these-used-in-the-most-recently-completed-Needs Survey-~~ the current Needs Survey. ~~In-addition-the costs-effectiveness-analysis-must-include:~~

- a. An evaluation of alternative flow reduction methods. (if the grant applicant demonstrates that the existing average daily base flow (ADBF) from the area is less than 70 gallons per capita per day (gpcd), or if the Chief determines the area has an effective existing flow reduction program, additional flow reduction evaluation is not required.)
- b. A description of the relationship between the capacity of alternatives examined and the needs to be served, including capacity for future growth expected after the treatment works become

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operational; (This includes letter of intent from significant industrial users and all industries intending to increase their flows or relocate in the area documenting capacity needs and characteristics for existing or projects flows)

- c. An evaluation of improved effluent quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to construction of new facilities;
 - d. An evaluation of the alternative methods for the reuse or ultimate disposal of treated wastewater and sludge material resulting from the treatment process.
 - e. A consideration of systems with revenue generating applications;
 - f. An evaluation of opportunities to reduce use of, or recover energy;
 - g. Cost information on total capital costs, and annual operation, maintenance and replacement costs, as well as estimated annual or monthly costs to residential and industrial users.
4. ~~A demonstration of the non-existence or possible existence of excessive infiltration/inflow in the~~

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~~sewer-system:~~

~~If flow rates exceed 120 gallons per capita per day during high ground water period of 2.5 times the average design flow during a rain storm the applicant may select either to:~~

~~a. --- Request the Chief to determine that he may proceed without further flow analysis, in which case the Federal share of the Step 3 project cost will be limited to that portion of the project have a capacity of up to 120 gallons per capita per day, or~~

~~b. --- Perform a study of the sewer system to determine the quantity of excessive infiltration/inflow and to propose a sewer rehabilitation program to eliminate the portion of infiltration and inflow that is excessive, in which case Step 3 work, such as the cost for sewer replacement based on the elimination of infiltration and inflow, is eligible for grant assistance and the eligible~~

4. If the flow rate at the existing treatment facility is more than 120 gallons per capita per day during periods of high groundwater, the applicant shall either:

a. Perform a study of the sewer system to determine the quantity of excessive infiltration and to

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propose a sewer rehabilitation program to
eliminate the excessive infiltration; or

b. If the flow rate is not significantly more than
120 gallons per capita per day, request the Chief
to determine that he may proceed without further
study, in which case the allowable project cost
will be limited to the cost of a project with a
capacity of 120 gallons per capita per day under
40 CFR 35, Subpart I Appendix A.G.2.a.

5. An analysis of the potential open space and recreation opportunities associated with the project.
6. An adequate evaluation of the environmental impacts of alternatives under Part 6 of Chapter 40 CFR.
7. An evaluation of the water supply implications of the project.
8. For the selected alternative, a concise description at an appropriate level of detail, of at least the following:
 - a. Relevant design parameters;
 - b. Estimated capital construction and operation and maintenance costs, (identifying the Federal, State and local shares), and a description of the manner in which local costs will be financed;
 - c. Estimated cost of future expansion and long term

needs for reconstruction of facilities following their design life;

- d. Cost impacts on wastewater system users; and
- e. Institutional and management arrangements necessary for successful implementation.

C. Submission and review of facilities plan. Each facilities plan must be submitted to the State agency for review.

Sec. 6 SPECIAL FACILITIES PLANNING ELEMENTS

Sec. 6.01 Innovative and alternative technologies

Funding for innovative and alternative technologies.

Projects or portions of projects using unit processes or techniques which the Administrator determines to be innovative or alternative technology are eligible to receive increased assistance determined by applying the applicable grant percentage to the allowance for the Step 2 design phase.

Sec. 6.02 Privately owned individual system(s)

- A. An eligible applicant may apply for advance assistance for privately owned treatment works serving one or more principal residences or small commercial establishments.
- B. In addition to those applicable limitations set forth in Section 5 and through Section 6.05 the applicant shall:
 - 1. Demonstrate that the total cost and environmental impact of building the individual system will be less

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- than the cost of a conventional system;
2. Certify that the principal residence or small commercial establishment was constructed before December 27, 1977, and inhabited or in use on or before that date;
 3. Apply on behalf of a number of individual units to be served in the facilities planning area;
 4. Certify that public ownership of such works is not feasible and list the reasons; and
 5. Certify that such treatment works will be properly operated and maintained and will comply with all other requirements of section 204 of the Act.

Sec. 6.03 Advance Waste Treatment

As required by USEPA legislation, all projects proposing advanced treatment shall be awarded grant assistance only after the project has been reviewed under EPA's advanced waste treatment review policy. The Division recommends that potential grant applicants obtain this review prior to initiation of design.

Sec. 7 - DESIGN

Sec. 7.01 Contents of Applications for Design Advance Assistance

- A. An Application for Design Advance Assistance shall include;
 1. Completed application form (DWR - CG - 1)
 2. An approvable facilities plan;

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3. Adequate information regarding availability of proposed site(s), if relevant;
4. Proposed subagreements;
5. ~~A value engineering proposal for projects with a projected construction costs of greater than \$10,000,000 or projected construction costs which appear to be financially burdensome with regard to the applicants financial capability, needs, and an operation and maintenance program for the complete waste treatment system.~~
5. Proposed or executed intermunicipal agreements necessary for the construction and operation of the proposed treatment works, for any projects serving two or more municipalities;
6. A financial analysis of Step III project cost estimates and an affordability analysis;
7. Satisfactory scheduling of developing documents required by Sec. 7.07, 7.08, 7.09.
8. Plan of Design, defining a task schedule;
9. Plan of Operation in accordance with Sec. 7.03.
10. Other applicable Federal & State statutory and regulatory requirements.

Sec. 7.02 Plans & Specifications

The final product of a Design advance of allowance will be an approved set of Design plans and specifications which

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are suitable for bidding purposes.

Sec. 7.03 Plan of Operation

The applicant shall submit a draft plan of operation that addresses development of: an operation and maintenance manual; an emergency operating program; personnel training; and adequate budget identifying the basis for determining the annual operation and maintenance costs; the costs of personnel; material; energy and administration; operational reports; laboratory testing needs; and an operation and maintenance program for the complete waste treatment system.

Sec. 7.04 Intermunicipal Service Agreements

If the project will service two or more municipalities, the applicant shall submit the executed intermunicipal agreements, contracts or other legally binding instruments necessary for the financing, building and operation of the proposed treatment works. At a minimum they must include the basis upon which costs are allocated, the formula by which costs are allocated and the manner in which the cost allocation system will be administered.

Sec. 7.05 Collection System

For a municipality requesting design assistance involving collection, such work:

A. Shall be for the replacement or major rehabilitation

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of an existing collection system which was not built with Federal funds awarded on or after October 18, 1972, and shall be necessary to the integrity and performance of the complete waste treatment system serving the municipality; or

- B. Shall be for a new cost-effective collection system in a municipality in existence on October 18, 1972, which has sufficient existing or planned capacity to adequately treat such collected wastewater and where the bulk (generally two-thirds) of the expected flow (flow from existing plus future residential users) will be from the resident population existent on October 18, 1972. The expected flow will be subject to the limitations for interceptors contained in §35.2123. If assistance is awarded, the grantee shall provide assurances that the existing population will connect to the collection system within a reasonable time after project completion.

Sec. 7.06 Infiltration/Inflow

As part of an approvable facilities plan the applicant shall demonstrate to the Chief's satisfaction that each sewer system discharging into the proposed treatment works project is not or will not be subject to excessive infiltration/inflow. For combined sewers, inflow is not considered excessive in any event.

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- a. Inflow. If the rainfall induced peak inflow rate results or will result in chronic operational problems during storm events, the applicant shall perform a study of the sewer system to determine the quantity of excessive inflow and to propose a rehabilitation program to eliminate the excessive inflow. All cases in which facilities are planned for the specific storage and/or treatment of inflow shall be subject to a cost-effectiveness analysis.
- b. Infiltration. If the flow rate at the existing treatment facility is 120 gallons per capita per day or less during periods of high groundwater, the applicant shall build the project including sufficient capacity to transport and treat any existing infiltration. However, if the applicant believes any specific portion of its sewer system is subject to excessive infiltration, the applicant may confirm its belief in a cost-effectiveness analysis and propose a sewer rehabilitation program to eliminate that specific excessive infiltration.

Sec. 7.07 Approval of user charge system and proposed sewer use ordinance

Unless the project is solely for acquisition of eligible land, the applicant for design assistance must include for development, its user charge system

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(§7.09) and proposed (or existing) sewer use ordinance (§7.08). If the applicant has a sewer use ordinance or user charge system in effect, the applicant shall demonstrate to the Chief's satisfaction that they are adequate and being enforced.

Sec. 7.08 Sewer use ordinance

The sewer use ordinance (see also §7.07 and §8.04) or other legally binding document to be developed shall prohibit any new connections from inflow sources into the treatment works and require that new sewers and connections to the treatment works are properly designed and constructed. The ordinance shall also require that all wastewater introduced into the treatment works does not contain toxics or other pollutants in amount or concentration that endanger public safety and physical integrity of the treatment works and shall also comply with the Water Resources Board regulation for pretreatment, (Chapter 2, Series III, Sec. 14) or cause violation of effluent or water quality limitations; or preclude the selection of the most cost-effective alternative for wastewater treatment and sludge disposal.

Sec. 7.09 User charge system

The user charge system to be developed (see §7.07 and

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§8.04) must be designed to produce adequate revenues required for the operation, maintenance, and replacement (of the short life cycle components) of the system. It shall provide that each user which discharges pollutants to the system that cause an increase in the cost of managing the effluent or sludge from the treatment works shall pay for such increased cost.

- A. A grantee's user charge system based on actual use (or estimated use) of wastewater treatment services shall provide that each customer (or customer class) pays its proportionate share of operation and maintenance (including replacement) costs of treatment works within the recipient service area, based on the customer's proportionate contribution to the total wastewater loading from all customers (or customer classes).
- B. Each customer charge system must provide that each customer be notified, at least annually, in conjunction with a regular bill or other means acceptable to the Chief, of the rate and that portion of the customer charges which are attributable to wastewater contribution.
- C. Each customer charge system must include an adequate financial management system that will accurately account for revenues generated by the system and

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expenditures for operation and maintenance (including replacement) of the treatment system, based on an adequate budget identifying the basis for determining the annual operation and maintenance costs and the costs of personnel, material, energy and administration.

- D. The user charge system shall provide that the costs of operation and maintenance for all flow not directly attributable to users (i.e., infiltration/inflow) be distributed among all users based upon either of the following:
1. In the same manner that it distributes the costs for their actual use, or
 2. Under a system which uses one or any combination of the following factors on a reasonable basis;
 - a. Flow volume of the users;
 - b. Land area of the users;
 - c. Number of hookups or discharges of the users;
- E. One or more municipal legislative enactment rules or regulations of a District must incorporate the user charge system as approved by the West Virginia Public Service Commission. If the project is a treatment system accepting wastewaters from other municipalities, the subscribers receiving waste treatment services from the grantee shall adopt user

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charge systems in accordance with Section 204 (b) (1) (A) of the Act and this section. These user charge systems shall also be incorporated in appropriate municipal legislative enactments or other appropriate authority of all municipalities contributing wastes to the treatment works.

- F. The user charge system shall take precedence over any terms or conditions of agreements or contract which are inconsistent with the requirements of Section 204 (b) (1) (A) of the Act and this section.

Sec. 8 - ADVANCE AWARD CONDITIONS.

Sec. 8.01 General

Advance Assistance awards are subject to all conditions imposed by these regulations, federal regulations applicable state and federal laws, and all special conditions included with assistance awards.

Sec. 8.02 Project Changes

There are no eligible project changes.

Sec. 8.03 Operation and Maintenance

The recipient must make provision satisfactory to the Chief for assuring economical and effective operation and maintenance (including replacement) of the treatment works in accordance with a plan of operation (see Sec. 7.03)

approved by the State.

Sec. 8.04 Adoption of sewer use ordinance and user charge system

The recipient shall receive approval from West Virginia Public Service Commission and adopt its sewer use ordinance and implement its user charge system developed under §7.08 and §7.09 before the treatment works is placed in operation. Further, the grantee shall implement the user charge system and sewer use ordinance for the useful life of the treatment works.

Sec. 8.05 Project initiation and completion

- A. After receipt of advance assistance it is expected that the recipient shall complete the project in accordance with the assistance agreement. Nothing in this section affects the State's right to take remedial action against a recipient that fails to carry out these obligations.
- B. The recipient is expected to provide the architectural and engineering services and other services necessary to fulfill the obligation in paragraph A of this section.
- C. Nothing in this section shall be construed to prohibit a recipient from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing project work.

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Sec. 9 - PROCEDURES FOR ASSISTANCE PAYMENTS

Sec. 9.01 Determination of allowable costs

The advance shall not exceed the federal share of the estimate of the allowance for such costs which a grantee would receive under section 40 CFR 35.2025(a).

Sec. 9.02 Advance Payments

- A. The Chief shall pay the State share of the advance under §9.01 in accordance with the payment schedule within the advance assistance agreement (DWR-CG-2).
- B. In addition to adjustments settlement under the 40 CFR 30.802, the Chief may review or audit, any payment request and may make revisions as appropriate.
- C. By the acceptance of final payment of the allowance, the recipient releases and discharges the State, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the project work or under the advance, subject only to exceptions previously specified in writing between the Chief and the recipient.

Sec. 9.03 Repayment of advance in certain cases

In the event a Step 2 + 3 or Step 3 grant is not awarded to a recipient of an advance, the State may seek repayment of the advance on such terms and conditions as it may determine. When a State recovers such advances they shall

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be added to its most recent grant for advances of allowance.

Sec. 10 RECORD KEEPING BY RECIPIENT

Sec. 10.01 Records

The recipient of advance funds must keep records utilizing standard accounting principles and procedures. The records may be subject to examination by the state.

Sec. 11. SUBAGREEMENT ENFORCEMENT

Sec. 11.01 Subagreement enforcement

- A. At the recipient's request the Chief may provide technical and legal assistance in the administration and enforcement of any subagreement related to treatment works for which a state advance was made and intervene in any civil action involving the enforcement of such subagreements, including subagreement disputes which are the subject of either arbitration or court action.
- B. The Chief's technical or legal involvement in any subagreement dispute will not make the State a party to any subagreement entered into by the recipient.
- C. The State may seek remedies, provided in the Assistance Agreement for failure of the municipality to perform or adequately perform its obligations including repayment of the allowance advance.

APPENDIX A

Advances for Facilities Planning and Design

1. This Appendix provides the method required by federal regulations by which the State will determine the estimated advances for both facilities planning and design. The Step 2 + 3 and Step 3 grant agreement will include an estimate of the Federal share of the allowance. The final allowance will be contained in a formal grant amendment executed after the initial award of all the prime subagreements for building the project.
2. The advance is determined by applying the applicable grant percentage to the allowance.
3. The advance is not intended to reimburse the recipient for costs actually incurred for facilities planning or design. Rather, the advance is intended to assist in defraying those costs. Under this procedure, questions of equity (i.e. reimbursement on a dollar-for-dollar basis) will not be appropriate.
4. The estimated advance will be determined in accordance with this Appendix and Tables 1 and 2. Tables 1 and 2 are based on EPA regulations derived from an analysis of the historical data for the cost of facilities planning and design in the construction grants program.
5. The advance is calculated as a percentage of the allowable

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building cost. Table 1 provides the calculated amount of both a Facility Plan and Design advance. Table 2 is used to calculate the amount of the Design advance.

6. The estimated allowance is to be based on an estimate of the allowable building cost. The building cost and final allowance is to be based on the allowable cost of the initial award of all subagreements for building the project.
7. The initial allowable building cost is the initial allowable cost of erecting, altering, remodeling, improving, or extending a treatment works whether accomplished through subagreement or force account. Specifically, the initial allowable building cost is the allowable cost of the following:
 - a. The initial award amount of all prime subagreements for building the project.
 - b. The initial amounts approved for force account work performed in lieu of awarding a subagreement for building the project.
 - c. The purchase price of eligible real property.
8. The final allowance will be determined one time only, based on allowable building cost, and will not be adjusted for subsequent cost increases or decreases.
9. For a Step 3 project, the Federal share of the final allowance will be included in the first payment following

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the grantee's award of all prime subagreements for building the project upon which the allowance is based.

~~10.--If the grantee awards a subagreement for building the project more than one year after substantial completion of the design drawings and specifications, the allowance will be based on the total allowable building cost adjusted to reflect the building cost one year after substantial completion of design drawings and specifications.--This adjustment will be made by applying the construction cost index in the Engineering News-Record to the allowable cost of the initial award of the subagreements for building the project.~~

10. The allowance does not include architectural or engineering services provided during the building of the project, e.g., reviewing bids, checking shop drawings, reviewing change orders, making periodic visits to job site, etc.

Architectural or engineering services during the building of the project will be paid on a cost reimbursement basis subject to EPA regulations and including 40 CFR Part 33.

~~11.--The advance for segmented waste treatment systems will be based on the total allowable building cost of the complete waste treatment system.--The allowance for an individual segment will be based on the cumulative allowable building cost to date minus any previous allowances.~~

~~12.--The advance for a phased funded waste treatment system will~~

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~~be based on the total allowable building cost of the waste treatment system. -- The advance for all of the phases will be based on the allowable cost of the initial award of the subagreement for building the phased. -- The allowance for all of the phases will be included in the grant for the first phase for building the complete waste treatment system.~~

11. The advance for segmented waste treatment systems will be based on the total allowable building cost of each segment.
12. The advance for a phased funded waste treatment system will be based on the total allowable building cost of each segment.
13. The estimated advance is calculated as a percentage of the allowable building costs as shown in Table 1 and 2. The Federal (non-local) share of the allowance is 75% (55% after September 30, 1984) of the amount calculated from the Tables.
 - a. For a Facilities Plan advance award, 100% of the estimated Step 1 advance will be paid upon approval of the facilities plan.
 - b. For a Design advance award:
 - (1) 30% of the advance will be paid at the time of award upon completion of a properly executed payment request.

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- (2) 20% of the advance will be paid upon request at the 50% completion of plans and specifications and
 - (3) The balance of the advance (based upon actual costs) will be paid at contract award time.
- c. For a Design award containing a Facilities Plan advance the payment schedule will be as follows:
- 30% at the date of award;
 - 35% at the 50% milestone; and final 35% at the award of Step III construction contracts.
14. The State will determine the amount of the advance provided by Federal requirements. The State shall determine when the advance is to be given.
15. EPA will reduce the Federal share of the allowance by the amount of any advances the grantee has received.

TABLE 1.

Allowance for Facilities Planning and Design
 (Reprinted from 40 CFR Part 35,
 Subpart I, App. B, 47
 Fed. Reg. 20 471-2

Emergency

Building cost	Allowance as a percentage of building cost
\$100,000 or less-----	14.4945
120,000-----	14.1146
150,000-----	13.6631
175,000-----	13.3597
200,000-----	13.1023
250,000-----	12.6832
300,000-----	12.3507
350,000-----	12.0764
400,000-----	11.8438
500,000-----	11.4649
600,000-----	11.1644
700,000-----	10.9165
800,000-----	10.7062
900,000-----	10.5240
1,000,000-----	10.3637
1,200,000-----	10.0920
1,500,000-----	9.7692
1,750,000-----	9.5523
2,000,000-----	9.3682
2,500,000-----	9.0686
3,000,000-----	8.8309
3,500,000-----	8.6348
4,000,000-----	8.4684
5,000,000-----	8.1975
6,000,000-----	7.9827
7,000,000-----	7.8054
8,000,000-----	7.6550
9,000,000-----	7.5248
10,000,000-----	7.4101
12,000,000-----	7.2159
15,000,000-----	6,9851
17,500,000-----	6.8300
20,000,000-----	6.6984
25,000,000-----	6.4841
30,000,000-----	6.3142
35,000,000-----	6.1739
40,000,000-----	6.0550
50,000,000-----	5.8613
60,000,000-----	5.7077
70,000,000-----	5.5809
80,000,000-----	5.4734
90,000,000-----	5.3803
100,000,000-----	5.2983
120,000,000-----	5.1594
150,000,000-----	4.9944
175,000,000-----	4.8835
200,000,000-----	4.7894

TABLE 2.

Allowance for Design only
 (Reprinted from 40 CFR, Part 35,
 Subpart I, App. B, 47
 Fed. Reg. 20471-2

Building cost	Allowance as a percentage of building cost
\$100,000 or less-----	8.5683
120,000-----	8.3808
150,000-----	8.1570
175,000-----	8.0059
200,000-----	7.8772
250,000-----	7.6668
300,000-----	7.4991
350,000-----	7.3602
400,000-----	7.2419
500,000-----	7.0485
600,000-----	6.8943
700,000-----	6.7666
800,000-----	6.6578
900,000-----	6.5634
1,000,000-----	6.4300
1,200,000-----	6.3383
1,500,000-----	6.1690
1,750,000-----	6.0547
2,000,000-----	5.9574
2,500,000-----	5.7983
3,000,000-----	5.6714
3,500,000-----	5.5664
4,000,000-----	5.4769
5,000,000-----	5.3306
6,000,000-----	5.2140
7,000,000-----	5.1174
8,000,000-----	5.0352
9,000,000-----	4.9637
10,000,000-----	4.9007
12,000,000-----	4.7935
15,000,000-----	4.6655
17,500,000-----	4.5790
20,000,000-----	4.5054
25,000,000-----	4.3851
30,000,000-----	4.2892
35,000,000-----	4.2097
40,000,000-----	4.1421
50,000,000-----	4.0314
60,000,000-----	3.9432
70,000,000-----	3.8702
80,000,000-----	3.8080
90,000,000-----	3.7540
100,000,000-----	3.7063
120,000,000-----	3.6252
150,000,000-----	3.5284
175,000,000-----	3.4630
200,000,000-----	3.4074

11. APPLICANT'S PRESENT POPULATION: _____	12.a. Planning Area (for Facilities Plan Application.) _____ b. Pop. Served (for Design Application.) _____	13. A/E AGREEMENT IS ENCLOSED: Check Here _____
14. PLAN OF STUDY/DESIGN (POS/POD) AND SCHEDULE ARE ENCLOSED: Check Here _____	15. RESOLUTION AUTHORIZING APPLICATION FOR ADVANCE IS ENCLOSED Check Here _____	16. STATE CLEARING HOUSE COMMENTS ENCLOSED Check Here _____ <i>3</i> <i>Ron</i>
17. ESTIMATED A/E FEE FOR PROJECT IDENTIFIED IN ITEM 5 ABOVE \$ _____		
18. PROPOSED FUNDING METHOD FOR PROJECT IDENTIFIED IN ITEMS 5 & 17		
19. WOULD APPLICANT HAVE A CASH FLOW PROBLEM WITHOUT THE ADVANCE? YES _____ NO _____ DOCUMENT:		
20. IF THIS APPLICATION IS FOR A DESIGN ADVANCE (STEP 2) ,DESCRIBE THE PROPOSED CONSTRUCTION FINANCING PLAN:		
21. THE APPLICANT CERTIFIES THAT	To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.	
22. CERTIFYING REPRESENTATIVE	a. TYPED NAME AND TITLE	b. SIGNATURE
		c. DATE SIGNED Year Month Day

ASSURANCES

The applicant hereby agrees and certifies that he will comply with the regulations, policies, guidelines and requirements, including office of Management and Budget Circular A-102, and Federal Management Circular 74-4 as they relate to the application, acceptance and use of Federal funds for this federally-assisted project. Also the applicant agrees and certifies with respect to the grant that:

1. It possesses legal authority to apply for the grant, and to finance and construct the proposed facilities; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
2. It will comply with the provisions of: Executive Order 11988, relating to evaluation of potential effects of any actions in a floodplain, Executive Order 12088, relating to the prevention, control and abatement of water pollution, and Executive Order 11990, relating to minimizing harm to wetlands.
3. It will have sufficient funds available to meet the non-Federal share of the cost for construction projects. Sufficient funds will be available when construction is completed to assure effective operation and maintenance of the facility for the purposes constructed.
4. It will obtain approval by the appropriate State agency of the final working drawings and specifications before the project is advertised or placed on the market for bidding.
5. It will give the appropriate State and Federal agencies through any authorized representative access to and the right to examine all records, books, papers, or documents related to the grant.
6. It will require the facility to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped." Number A117.1-196:, as modified (41 CFR 101-17.703). The applicant will be responsible for conducting inspections to insure compliance with these specifications by the contractor.
7. It will cause work on the project to be commenced within a reasonable time after receipt of notification from the approving State agency that funds have been approved and that the project will be prosecuted to completion with reasonable diligence.

ASSURANCES, cont.

8. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.
9. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
10. It will comply with the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally assisted programs.
11. It will comply with all requirements imposed by the appropriate State and Federal agencies concerning special requirements of law, program requirements, and other administrative requirements approved in accordance with OMB Circular No. A-102.
12. It will comply with the provisions of the Hatch Act which limit the political activity of employees.
13. It will comply with the minimum wage and maximum hours provision of the Federal Fair Labor Standards Act, as they apply to employees of institutions of higher education, hospitals, other non-profit organizations, and to employees of State and local governments who are not employed in integral operations in areas of traditional governmental functions.
14. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

ASSURANCES, cont.

15. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470). Executive Order 11593, and the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 8000.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.
16. It will comply with the provisions of Executive Order 12372 and future regulations of OMB relating thereto which pertain to Intergovernmental Review and will comply with OMB Circular A95 in the interim.
17. It will comply with the National Environmental Policy Act of 1969 (42 USC 4321 et seq.) as amended and other related environmental laws and executive orders that require an assessment of the environmental impact of the project. See 40 CFR Part 6 for specific requirements.
18. It will comply with section 508 of the Federal Water Pollution Control Act (33 USC 1368) as amended and Executive Order 11738 which prohibit EPA from awarding assistance if the applicant intends to use any facility on EPA's List of Violating Facilities to complete work on the applicant's agreement. It will include a clause in all subagreements that requires the recipients of those subagreements to comply with the requirements of 40 CFR Part 15. Section 13 of the 1972 Amendments to the Act prohibits sex discrimination under any program or activity receiving assistance under the Act. See 40 CFR Part 12 for specific requirements.
19. It will comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) as amended, which prohibits discrimination on the basis of handicap in Federally assisted programs.
20. It will comply with the provisions of the Age Discrimination Act of 1975 (45 USC 6101 et seq.) which prohibits discrimination on the basis of age in Federally assisted programs.
21. It will comply with Section 1424(e) of the Safe Drinking Water Act (42 USC 300-h-3(e) which prohibits EPA from awarding assistance if the EPA determines that the applicant's project may contaminate a sole source aquifer so as to result in a significant hazard to public health. See 40 CFR Part 149.
22. It will comply on construction projects with the Copeland (Anti-Kickback) Act and the regulations of the Department of Labor under 29 CFR Part 3, which prohibit the recipient's contractors and subcontractors from inducing any person involved in the project to give up any part of the compensation to which he/she is entitled under an employment contract.

ASSURANCES, cont.

23. It will not use convict labor unless the convicts are on work release, parole or probation, (see 18 USC436).
24. It will not utilize debarred or suspended contractors in accordance with the most current list of contractors available at the time of the Submission of this application.

STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER RESOURCES
CONSTRUCTION GRANTS BRANCH

INSTRUCTIONS FOR COMPLETION OF APPLICATION FOR ADVANCE
ASSISTANCE (Form DNR-CG-1)

A. GENERAL INSTRUCTIONS

1. A pre-application meeting should have been held with the Division of Water Resources, Construction Grants Branch, prior to the application for an advance.
2. The applicant must have a population under 25,000 or the estimated population benefitting must be under 25,000.
3. The applicant must certify that a cash flow problem will exist without the advance.
4. A plan of study or plan of design and a schedule of tasks must accompany the application.
5. A copy of the proposed A/E agreement must be enclosed.
6. A resolution from the applicant's governing body must be enclosed authorizing the certifying representative to apply for the advance and sign all other legal documents pertaining to the project.
7. The application for advance assistance for the preparation of a facilities plan may be approved for qualifying projects prior to the start of the facilities plan but the advance will not be given until completion and approval of the facilities plan. The amount of the advance will be based on the A/E's estimate in the facilities plan of the eligible building costs of the Step 3 or Step 2/3 project.
8. A separate application will be required for advance assistance for the design of the project following approval of the facilities plan. The amount of the advance, if approved, will be based on the A/E's estimate in the facilities plan of the eligible building cost of the Step 3 or Step 2/3 project.
9. The advance for facilities planning will be in one lump sum, however the design advance will be given in increments. The first 30% of the design advance will be given upon approval of the design advance. A payment representing 50% of the advance will be given at the 50% completion point as shown by the task schedule. The balance of the advance based upon actual cost will be paid

INSTRUCTION cont.

at the time of the first Step 3 grant payment following the contract award with adjustments made to reflect the actual eligible building cost. For a design award containing a Facilities Plan advance the payment schedule will be as follows: 30% at date of award; 35% at the 50% milestone; and the balance adjusted for actual eligible costs at the award of the Step 3 construction contract.

10. In the event that a Step 3 or a Step 2/3 grant is not awarded to a recipient of an advance the state may seek repayment of the advance in accordance with USEPA regulations (40 CFR 35.2025 (b) (5)).

B. SPECIFIC INSTRUCTIONS

1. Self Explanatory.
2. Assigned by State Clearinghouse agency upon review of application. All requests must contain this identifier. Please contact Governors Office of Economic and Community Development.
3. Self Explanatory.
- 3f. Name, title, phone number of person who can provide further information about this application.
4. Leave blank, for DWR use.
5. Select one only. Separate applications are required for each type of project.
6. This date is the starting date for the project for which assistance is requested.
7. This date is to indicate when all work will be finished and submitted to DWR in accordance with the Plan of Study (POS) for facilities plans or the Plan of Design (POD) for the design and specifications.
8. Indicate the Congressional district in which the applicant is located. If project is in different district, please indicate.
9. List governmental units where significant and meaningful impact could be observed. List inhabited places such as unincorporated areas, towns, cities, counties, PSD's, etc.

INSTRUCTIONS cont.

10. Brief title and appropriate description including purpose, scope, need and justification for the project. If additional space is required, attach sheet to back of application.
11. Use latest census data or best estimate available.
- 12a. If application refers to facilities plan give estimated population of the proposed planning area.
- 12b. If application refers to design, give estimated population to be served from the approved facilities plan.
13. A copy of the proposed (unsigned) A/E Agreement must accompany the application.
14. Include Plan of Study for Facilities Planning or Plan of Design for Design work and timetable for achieving milestones.
15. The resolution required in Item 6 of the general instructions must accompany the application.
16. Must be enclosed with the application.
17. Total cost of the facilities plan and/or the project design, as shown in proposed A/E agreement.
18. Explain how the facilities plan or design costs are to be paid.
19. Explain cash flow problem and how advance would help.
20. Self Explanatory.
21. Self Explanatory.
22. Name and title of authorized representative of legal applicant.

STATE of WEST VIRGINIA

MUNICIPAL WASTE TREATMENT
PLANNING AND DESIGN
ADVANCE ASSISTANCE AGREEMENT

1. TYPE OF PROJECT

Facilities Plan _____

check

Design Plans & Spec. _____

check

PART A—BASIC INFORMATION

2. PROJECT PRIORITY NUMBER _____ PRIORITY RANKING _____

3. PROJECT STARTING DATE _____ COMPLETION DATE: _____

4. APPLICATION

APPROVAL DATE: _____

a. Clearing House No. _____

b. Project No. C 540 _____

5.a. Mailing Date of assistance Agreement: _____

b. Approximate Acceptance Date: _____

6. NAME AND ADDRESS OF RECIPIENT ORGANIZATION:

7. AUTHORIZED CERTIFYING OFFICIAL

Name: _____

Street/P.O. Box No.: _____

City: _____

County: _____

Zip Code: _____

Telephone No.: _____

8. NAME, ADDRESS & TELEPHONE NUMBER
OF PRIMARY CONTACT PERSON IF
DIFFERENT FROM ITEM 7 ABOVE:

9. NAME, ADDRESS, AND TELEPHONE NUMBER OF
CONSULTANT A/E AND NAME OF PRIMARY
CONTACT PERSON:

10. DWR PROJECT ENGINEER

Name: _____

Telephone Number: _____

11. DWR ASSISTANCE OFFICER

Name: _____

Telephone Number: _____

PART B— ADVANCE ASSISTANCE CONDITIONS

12. ASSISTANCE PAYMENT PROCEDURES (CHECK APPROPRIATE BOX)

- a. Facilities Plan advance assistance will be paid, upon submission of form DWR-CG-3, after Facilities Plan approval based on A/E's eligible estimated building cost as given in the Facilities Plan.
- b. Advance assistance for Design Plans and Specifications not to exceed the Federal share of the estimated allowance will be paid, upon submission of form DWR-CG-3, in increment as follows:
1. Thirty percent (30%) upon acceptance of this offer.
 2. Fifty percent (50%) of the advance (the next incremental 20%) at the 50% completion point as shown by the task schedule in the Plan of Design (POD).
 3. The Federal share of the Step 2 Allowance will be adjusted at the time of the first Step 3 grants payment following the contract award, to reflect the actual eligible building cost.

12. ASSISTANCE PAYMENT PROCEDURES (CONTINUED)
(CHECK APPROPRIATE BOX)

- c. Advance assistance for Design Plans and Specifications, including unpaid advance for approved Facilities Plan, not to exceed the Federal share of the estimated allowance will be paid, upon submission of form DWR-CG-3, in increment as follows:
1. Thirty percent (30%) upon acceptance of this offer.
 2. Sixty-Five (65%) of the advance (the next incremental 20%) at the 50% completion point as shown by the task schedule in the Plan of Design (POD).
 3. The Federal share of the combined allowance will be adjusted at the time of the first Step 3 grant payment following the contract award, to reflect the actual eligible building cost.

13. ESTIMATED DOLLAR AMOUNTS

- a. Estimated eligible building cost \$ _____
- b. Estimated advance for Facilities Plan \$ _____
- c. Estimated advance for Design \$ _____
1. First payment (30% increment) \$ _____
 2. Second payment (20% increment) \$ _____
(50% of advance)
 3. Final payment (adjusted) \$ _____
- d. Estimated advance for Design and unpaid advance for Facilities Plan \$ _____
1. First payment (30% increment) \$ _____
 2. Second payment (35% increment) \$ _____
 3. Final payment (adjusted) \$ _____

14. GENERAL CONDITIONS

The recipient covenants and agrees that it will expeditiously initiate and timely complete the project work for which assistance has been awarded under this agreement, in accordance with all applicable provisions of 40 CFR Chapter I, Subpart I, and applicable State regulations adopted for Advance Assistance. The recipient warrants, represents, and agrees that it, and its contractors, subcontractors, employees and representatives, will comply with: (1) all applicable provisions of 40 CFR Chapter I, Subchapter I, INCLUDING BUT NOT LIMITED TO the applicable provisions of 40 CFR Part 30, and applicable State regulations, and (2) any special conditions set forth in this assistance agreement or any assistance amendment pursuant to Federal and State regulations. Assurances certified to in the Application for this advance are included as General Conditions to this Agreement.

15. CONDITIONS OF AWARD (If additional space is required, attach extra sheet.)

PART C

NOTE: The Agreement must be completed in duplicate and the original returned to the Construction Grants Branch, Division of Water Resources, Department of Natural Resources within 3 calendar weeks after receipt or within any extension of time as may be granted by DWR. Receipt of a written refusal or failure to return the properly executed document within the prescribed time may result in the withdrawal of the offer by the Agency.

OFFER AND ACCEPTANCE

The State of West Virginia acting by and through the Chief of the Division of Water Resources hereby offers advance assistance to _____
(Recipient Organization)
in the amount based upon allowance determined in accordance with 40 CFR 35, Part I, Appendix B and applicable State Regulations as described in Part B above for partial Financial support of the project described in the application

(Title and Date of Application)
included herein by reference.

ISSUING OFFICE:

STATE of WEST VIRGINIA
DEPARTMENT of NATURAL RESOURCES
DIVISION of WATER RESOURCES
CONSTRUCTION GRANTS BRANCH
617 BROAD STREET
CHARLESTON, W. Va. 25305

RECIPIENT ORGANIZATION AND ADDRESS:

THE STATE of WEST VIRGINIA by the DIVISION of WATER RESOURCES

SIGNATURE OF AWARD OFFICIAL

TYPED NAME AND TITLE

DATE

This Agreement is subject to applicable State and U.S. Environmental Protection Agency statutory provisions and assistance regulations. In accepting this award and any payments made pursuant thereto, (1) the undersigned represents that he is duly authorized to act on behalf of the recipient organization, and (2), the recipient agrees that the assistance is subject to the applicable provisions of 40 CFR Chapter I, Subchapter I and of the provisions of this agreement (Parts A thru C). If a Step 2/3 or Step 3 construction grant is not awarded, the State of West Virginia retains the right to seek repayment of the Advance under such terms and conditions as it may determine.

BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION

SIGNATURE

TYPED NAME AND TITLE

DATE

STATE of WEST VIRGINIA
 OUTLAY REPORT AND
 REQUEST for PAYMENT
 of ADVANCE ASSISTANCE

1. Type of Project

- a. Facilities Plan _____
 (check)
 b. Design Plans and Specifications _____
 (check)

2. TO: GRANTS ADMINISTRATION SECTION
 CONSTRUCTION GRANTS BRANCH
 DIVISION of WATER RESOURCES
 DEPARTMENT of NATURAL RESOURCES
 617 BROAD STREET
 CHARLESTON, W. Va. 25305

3. RECIPIENT ORGANIZATION:

- a. Name: _____
 b. Street Address or P.O. Box: _____

 c. City; State: _____
 d. Zip Code: _____

4. PROJECT No. C 540 _____

5. ESTIMATE OF TOTAL BUILDING
 COST(from Facilities Plan)\$ _____

6. REQUEST FOR ADVANCE PAYMENT AND STATUS OF FUNDS

CLASSIFICATION	COLUMN 1 ESTIMATED ADVANCE AMOUNT	COLUMN 2 AMOUNT THIS PAYMENT	COLUMN 3 CUMULATION AMOUNT
a. Facilities Plan Advance	\$ _____	\$ _____	\$ _____
b. Advance for Design	\$ _____		
1. 30% level (Request may be submitted with acceptance of assistance agreement).....		\$ _____ 30% of col.1, line b	\$ _____ (sum of col.3, line a + col.2, line b(1))
2. 50% level (Proof of 50% completion of work must accompany request).....		\$ _____ (20% of col.1, line b)	\$ _____ (sum of col.2, line b(2) + col.3, line a + b(1))
c. Advance for Design and unpaid advance for Facilities Plan	\$ _____		
1. 1st payment (request may be submitted with acceptance of assistance agreement)		\$ _____ (30% of col.1, line c)	\$ _____ (30% of col.1, line c)
2. 2nd payment (proof of 50% completion of work must accompany request for payment)		\$ _____ (35% of col.1, line c)	\$ _____ (sum of col.3, line c(1) + col.2, line c(2))

**6 REQUEST FOR ADVANCE PAYMENT AND STATUS OF FUNDS
(CONTINUED)**

**d. Determination of
Final Allowance**

- (1) Actual Eligible
Building Contract Price
- (2) Actual Allowance
Based on Actual
Contract Award
- (3) Change in Amount
of Federal share
of Allowance
- (4) Final Payment

\$ _____

\$ _____

\$ _____
Indicate (+) or (-)

\$ _____

\$ _____

e. NOTE: If the Advance (of Allowance) has been overpaid by the State due to a reduction in scope of the project, the overage must be repaid to the State upon terms and conditions to be negotiated at the start of construction.

7. FOR RECIPIENT ORGANIZATION:

NAME: _____

TITLE: _____ TELEPHONE NUMBER _____

SIGNATURE OF AUTHORIZED OFFICIAL: _____ DATE: _____

8. FOR DIVISION of WATER RESOURCES

NAME: _____ TELEPHONE NUMBER _____

TITLE: _____

AMOUNT APPROVED: \$ _____

SIGNATURE OF ADVANCE ASSISTANCE OFFICER

(SIGNATURE)

DATE PAID: _____

STATE OF WEST VIRGINIA

OUTLAY REPORT
and
REQUEST FOR PAYMENT
of
ADVANCE ASSISTANCE

INSTRUCTIONS

1. Indicate the type project for which the advance payment is requested.
2. Self explanatory.
3. Self explanatory.
4. Self explanatory.
5. Give the estimate of the total eligible building cost of the selected alternative from the Facilities Plan. A/E's fees, contingencies and other costs related to construction but not actual building costs are ineligible.
- 6a. In the first column, show the estimated advance amount calculated from the tables in West Virginia Administrative Regulations, DNR, Chapter 20-5A, Series 17, Appendix A, Tables I and II. In the second column, show the amount requested, which in the case of a facilities plan, is the same as the estimated advance. Column 3 is a summation of amounts requested to date.
- 6b. Show the advance for design as calculated from the tables in the Regulations cited above.
- 6b.1. & 2. Self explanatory.
- 6c. Show the advance for design and unpaid advance for approved facilities plan if the facilities plan was completed without advance assistance.
- 6c.1. & 2. Self explanatory.
- 6d. Self explanatory.
7. The above information is to be filled in by the recipient and the name, title, telephone number and signature of the authorized representative are to be entered in Section 7 with the date.
8. The DWR Advance Assistance Officer will corroborate or correct the amount of payment requested, enter the amount paid, sign, and date the Outlay Report and Payment Request and return it to the recipient with the payment.