

*obsolete
valid July 8, 1985
to Sept. 30, 1987*

TITLE 47
PROCEDURAL RULES
DEPARTMENT OF NATURAL RESOURCES

SERIES 33A
CONSTRUCTION GRANTS - STATE ADVANCE ASSISTANCE PROGRAM

§47-33A-1. General.

1.1. Scope. -- These regulations establish procedural 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.

1.1.1. 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 federal Clean Water Act, particularly, applicable National Pollutant Discharge Elimination System (NPDES) permit requirements.

1.1.2. 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 planning (Step 1) and design (Step 2) 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 1 and 2.

1.1.3. The federal program will continue to provide Step 3 grants for construction of the treatment works. The Step 3 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 Step 3 federal grant.

1.1.4. This program, mandated by Congress, requires the State to:

1.1.4.a. Set aside a reserve of up to ten percent (10%) of the State's annual construction grants program appropriation 0 C.F.R. §35.2020(e).

1.1.4.b. Assist eligible municipalities including other governmental entities such as public service districts by providing advances of allowance for Step 1 and Step 2 work (40 C.F.R. §35.2025).

1.1.4.c. Award advances of allowance calculated as a percentage of eligible building cost estimates of Step 3 and Step 4 projects (40 C.F.R. §35.2025).

1.1.5. After application by the State, the Regional Administrator will award a grant to the State in the amount of the reserve established under 40 C.F.R. §2020(e) so that the State can provide advance allowances to eligible potential grant applicants for facilities planning or project design assistance (40 C.F.R. §35.2025).

1.1.6. According to 40 C.F.R. §35.2025(b)(4) the allowance is based on Appendix A of these regulations and represents an amount of the federal grant which the United States Environmental Protection Agency (hereafter referred to as EPA) considers adequate to perform the necessary facilities planning and design work associated with a project. Such allowances is based on the project's estimated building cost.

1.1.7. The Advance of Allowance Assistance Program consists of the following elements:

1.1.7.a. Establishing a municipalities fundability from the State priority rating system and list;

1.1.7.b. Applications for Facilities Planning Assistance and Design Assistance (DWR-CG-1) from eligible municipalities.

1.1.7.c. Awarding of assistance and the ex-

clusion of an Advance Assistance Agreement (DWR-CG-2) which includes the terms and conditions of assistance;

1.1.7.d. 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;

1.1.7.e. Remedies available to the State in the event of nonperformance or inadequate performance as provided in the Advance Assistance Agreement.

1.1.7.f. Deduction from the allowance from the Step 3 or Step 2/3 federal grant when the project proceeds to construction under the program.

1.2. Authority -- West Virginia Code §20-5A-3

1.3. Filing Date -- June 7, 1985

1.4. Effective Date -- July 8, 1985

§47-33A-2. Definitions.

Unless the context in which used clearly requires a different meaning, as in these regulations the following words and terms mean:

2.1. "Act" means the Clean Water Act (33 U.S.C. §1251 et seq.).

2.2. "Advance of Allowance" means 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.

2.3. "Allowance" means an amount of money based on building costs and calculated from the Tables in Appendix A of these regulations. An allowance represents the sum of money an applicant may receive as assistance in conducting either Step 1 or Step 2 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.

2.4. "Alternative Technology" means 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 (nonpotable); horticulture; revegetation of disturbed land; containment ponds; sludge composting and drying prior to land application; self sustaining incineration; methane recovery; co-disposal of sludge and solid waste and individual and on-site systems.

2.5. "Alternative to Conventional Treatment Works for a Small Community" means treatment works in a small community using innovative or alternative technology.

2.6. "Architectural or Engineering Services" means 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.

2.7. "Best Practicable Waste Treatment Technology (BPWTT)" means 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:

2.7.1. 40 C.F.R. Part 133 (Secondary Treatment of Wastewater);

2.7.2. 40 C.F.R. §122.62(d) (Water Quality Standards and State Requirements);

2.7.3. 41 F.R. 6190 (Alternative Waste Management Techniques for Best Practicable Waste Treatment) (treatment and discharge, land application techniques and utilization practices, and reuse).

2.8. "Building" means the erection, acquisition, alteration, remodeling, improvement or extension of treatment works.

2.9. "Collector Sewer" means 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 connec-

tion with those facilities including:

2.9.1. 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

2.9.2. 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.

2.9.3. 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.

2.10. "Combined Sewer" means a sewer that is designed as both a sanitary sewer and a storm sewer.

2.11. "Compatible Wastewater" means 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.

2.12. "Complete Waste Treatment System" means a complete waste treatment system consists of all the treatment work necessary to meet the requirements in Title 3 of the Act, involving:

2.12.1. The transport of wastewater from individual homes or buildings to plant or facility where treatment of the wastewater is accomplished;

2.12.2. The treatment of wastewater to remove pollutants; and

2.12.3. The ultimate disposal, including recycling or reuse, of the treated wastewater and residues which result from the treatment process.

2.13. "Construction" means any one or more of the following: Preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, fiscal or economic investigation or studies, surveys, designs, plans, working drawings, speci-

fications, procedures, field testing of innovative or alternative wastewater treatment processes and techniques (excluding operation and maintenance) meeting guidelines promulgated under Section 304(d)(3) of the Act, or other necessary actions; erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items.

2.14. "Conventional Technology" means 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.

2.15. "Domestic Wastewater" means wastewater of the type commonly introduced into a treatment works by residential users.

2.16. "Enforceable Requirements of the Act" means those conditions or limitation 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 under the State Water Pollution Control Act, West Virginia Code §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 include 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 treatment standards.

2.17. "Excessive Infiltration/Inflow" means the quantities of infiltration/inflow greater than the flows identified in Section 5.2.2.d of these regulations 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.

2.18. "Field Testing" means 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.

2.19. "Individual Systems" means privately owned alternatives 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.

2.20. "Industrial User" means any nongovernmental, nonresidential user of a publicly owned treatment works which is identified in the Standard Industrial Classification Manual of the federal Office of Management and Budget, 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

2.21. "Infiltration" means 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.

2.22. "Inflow" means 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.

2.23. "Initiation of Operation" means the date specified by the grantee on which use of the project begins for the purposes that it was planned, designed and built.

2.24. "Innovative Technology" means developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which repre-

sents a significant advancement over the state of the art in terms of significant reduction in life cycle cost 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.

2.25. "Interceptor Sewers" means a sewer which is designed for one or more of the following purposes:

2.25.1. To intercept wastewater from a collector sewer and convey such wastes directly to a treatment facility or another interceptor.

2.25.2. 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.

2.25.3. To transport wastewater from one or more municipal collector sewers to another municipality or to a regional plant for treatment.

2.25.4. To intercept an existing major discharge of raw or inadequately treated wastewater for transport directly to another interceptor or to a treatment plant.

2.26. "Intermunicipal Agreement" means an agreement between municipalities setting the terms and conditions under which one municipality renders services to one or more other municipalities.

2.27. "Interstate Agency" means 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.

2.28. "Municipality" means 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.

2.29. "Sanitary Sewers" means a conduit intended to carry liquid and water-carried wastes from resi-

dences, commercial buildings, industrial plants and institutions together with minor quantities of ground, storm and surface water that are not intentionally admitted

2.30. "Short Life Cycle Components" means components of a treatment works that has expected life cycle of seven to ten (7-10) years.

2.31. "Small Community"

2.31.1. For purposes of general assistance, a small community is defined to be a municipality of twenty-five thousand (25,000) population or less.

2.31.2. For purposes of small community alternative funds, a small community is defined to be a municipality of three thousand five hundred (3,500) or smaller or a less densely populated of a larger community.

2.32. "Step 1" means the preparation of the facility plan and other related requirements.

2.33. "Step 2" means the design of the project and other related requirements.

2.34. "Step 3" means the construction of the project and other related requirements.

2.35. "State Project Priority List" means the State's annual project priority list is an ordered listing of projects for which the State expects federal financial assistance.

2.36. "State Agency" means the Department of Natural Resources, Division of Water Resources.

2.37. "Subagreement" means 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.

2.38. "Treatment Works" means any devices and systems for the storage, treatment, recycling, and reclamation of municipal sewage, domestic sewage, or liquid industrial waste 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.

2.39. "Treatment Works Phase or Segment" means

a treatment works phase or segment may be any substantial portion of a facility and its interceptors described in a facilities plan under Section 5.2.2 of these regulations, 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 works phase or segment may, but need not in and of itself result in an operable treatment works.

2.40. "Useful Life" means the period during which a treatment works operates. "Useful Life" does not mean "Design Life" which is the period during which a treatment works is planned and designed to be operated.

2.41. "User Charge" means 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.

2.42. "Value Engineering" means 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.

47-33A-3. State Priority System and Project Priority List.

3.1. State Priority System. The System is based on EPA regulations (40 C.F.R. §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.

3.1.1. The priority system includes the following general elements:

3.1.1.a. Administration;

3.1.1.b. Management;

3.1.1.c. Public participation;

3.1.1.d. Ranking methodology;

3.1.1.e. Rating methodology;

3.1.2. The administration and management elements include:

3.1.2.a. Financial review which evaluates financial affordability;

3.1.2.b. Alternative systems bypass which allows the maximum utilization of innovative, alternative, and small community alternative set asides;

3.1.3.c. General bypass which can remove projects which fail to proceed in accordance with approved schedules.

3.1.3. Public Participation Elements include:

3.1.3.a. Annual public hearing to receive comments from the general public concerning funding eligibility of municipalities;

3.1.3.b. The State agency responsiveness summary.

3.1.4. The priority rating and ranking methodology includes an evaluation of the following criteria:

3.1.4.a. The impairment of classified water uses resulting from existing municipal pollutants discharges;

3.1.4.b. The extent of surface or ground water use, restoration or public health improvement resulting from the reduction in pollution;

3.1.4.c. The need to complete a waste treatment system for which a grant for a phase or segment was previously awarded.

3.2. State Priority List. The list is produced according to the state priority system pursuant to Federal requirements, and represents an order 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.

§47-33A-4. General Advance Assistance Application and Award Procedures.

4.1. 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 a Step 2/3 or Step 3 grant. The advance may not exceed the federal share of the estimate of allowance provided by the EPA Construction Grants Program in accordance with Appendix A of these regulations. Applicants for Step 1 and Step 2 advance assistance shall submit applications to the State on the approved State Advance Assistance Application Form.

4.2. Basic Application. In addition to application requirements contained in Sections 5.1 and 7.1 of these regulations, all applications shall:

4.2.1. 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;

4.2.2. Provide evidence of ability to finance local cost;

4.2.3. 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.

4.3. Limitations on Award. Before awarding advance assistance for any project the chief shall determine that the applicant and the applicant's project have met all of the applicable procedural requirements of Section 3 and Sections 4.1 through 9.3 of these regulations.

4.4. 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:

4.4.1. Recipient must have a preapplication meeting with the Construction Grants Branch Head to detail scope proposed project.

4.4.2. Recipient must make written request to proceed with work prior to incurring cost.

4.4.3. Scope of project cannot conflict with applicable federal or grant regulations.

4.4.4. Project is expected to proceed to construction within two to three (2-3) years advance award.

4.4.5. Work cannot proceed until the recipient has received written state agency confirmation of prior approval.

4.5. 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 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.

4.6. 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.

47-33A-5. Facilities Planning.

5.1. Contents of Facilities Planning Application for Advance Assistance. An application for a facility plan advance assistance shall be submitted on the State application form.

5.1.1. The application must include the following;

5.1.1.a. The scope of the proposed planning area;

5.1.1.b. A copy of documentation providing evidence of municipal status;

5.1.1.c. The nature and scope of the proposed Step 1 project and public participation program, including a schedule for the completion of specific tasks; and

5.1.1.d. An itemized description of the estimated cost of the project.

5.1.2. Proposed Subagreements;

5.1.3. Required comments or approval of relevant State and local agencies including clearinghouse requirements.

5.2. Contents of Facilities Plan.

5.2.1. 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 §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 nonmonetary considerations). For sewerred communities with a population of ten thousand (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 ten thousand (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.

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

5.2.2.a. A description of both the proposed treatment works, and the complete waste treatment system of which it is a part.

5.2.2.b. A description of the Best Practicable Wastewater Treatment Technology (BPWTT).

5.2.2.c. A cost-effective analysis of the feasible conventional, innovative and alternative wastewater treatment works, processes and techniques capable of meeting the applicable effluent, water quality and public health requirements over the design life of the facility while recognizing environ-

mental and other nonmonetary considerations. The planning period for the cost-effectiveness analysis shall be twenty (20) years. The monetary costs to be considered must include the present worth or equivalent annual value of all capital costs and operation and maintenance cost. The discount rate established by EPA for the construction grants program shall be used in the cost-effectiveness analysis. The population forecasting in the analysis shall be consistent with the Current Needs Survey.

5.2.2.c.1. 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 seventy (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.)

5.2.2.c.2. 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 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 project flows.)

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

5.2.2.c.4. And evaluation of the alternative methods for the reuse or ultimate disposal of treated wastewater and sludge material resulting from the treatment process.

5.2.2.c.5. A consideration of systems with revenue generating applications;

5.2.2.c.6. An evaluation of opportunities to reduce use of or recover energy;

5.2.2.c.7. Cost information on total capital costs, and annual operation, maintenance and replacement costs, as well as estimated annual or monthly cost to residential and industrial users.

5.2.2.d. If the flow rate at the existing treatment

facility is more than one hundred and twenty (120) gallons per capita per day during periods of high groundwater, the applicant shall either:

5.2.2.d.1. Perform a study of the sewer system to determine the quantity of excessive infiltration and to propose a sewer rehabilitation program to eliminate the excessive infiltration ; or

5.2.2.d.2. If the flow rate is not significantly more than one hundred and twenty (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 one hundred and twenty (120) gallons per capita per day under 40 C.F.R. §35, Subpart One, Appendix A.G.2.a.

5.2.2.e. An analysis of the potential open space and recreation opportunities associated with the project.

5.2.2.f. An adequate evaluation of the environmental impacts of alternatives under 40 C.F.R. Part 6.

5.2.2.g. An evaluation of the water supply implications of the project.

5.2.2.h. For the selected alternative, a concise description at an appropriate level of detail, of at least the following:

5.2.2.h.1. Relevant design parameters;

5.2.2.h.2. Estimated capital construction and operation and maintenance cost, (identifying the Federal, State and local shares), and a description of the manner in which local costs will be financed;

5.2.2.h.3. Estimated cost of future expansion and long term needs for reconstruction of facilities following their design life;

5.2.2.h.4. Cost impacts on wastewater system users; and

5.2.2.h.5. Institutional and management arrangements necessary for successful implementation.

5.2.3. Submission in review of facilities plan. Each facilities plan must be submitted to the State

Agency for review.

47-33A-6. Special Facilities Planning Elements.

6.1. 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.

6.2. Privately Owned Individual System(s).

6.2.1. An eligible applicant may apply for advance assistance for privately owned treatment works serving one or more principal residences or small commercial establishments.

6.2.2. In addition to those applicable limitations set forth in Sections 5 through 6.5 of these regulations, the applicant shall:

6.2.2.a. Demonstrate that the total cost and environmental impact of building the individual system will be less than the cost of a conventional system;

6.2.2.b. 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;

6.2.2.c. Apply on behalf of a number of individual units to be served in the facilities planning area;

6.2.2.d. Certify that public ownership of such works is not feasible and list the reasons; and

6.2.2.e. Certify that such treatment works will be properly operated and maintained and will comply with all other requirements of Section 204 of the Act.

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

47-33A-7. Design.

7.1. Contents of Applications for Design Advance Assistance.

7.1.1. An Application for Design Advance Assistance shall include;

7.1.1.a. Completed application form (DWR-CG-1);

7.1.1.b. An approvable facilities plan;

7.1.1.c. Adequate information regarding availability of proposed site(s), if relevant;

7.1.1.d. Proposed subagreements;

7.1.1.e. Proposed or executed intermunicipal agreements necessary for the construction and operation of the proposed treatment works, for any projects serving two or more municipalities;

7.1.1.f. A financial analysis of Step 3 project cost estimates and an affordability analysis;

7.1.1.g. Satisfactory scheduling of developing documents required by Sections 7.7, 7.8, and 7.9 of these regulations.

7.1.1.h. Plan of Design, defining a task schedule;

7.1.1.i. Plan of Operation in accordance with Section 7.3 of these regulations.

7.1.1.j. Other applicable federal and State statutory and regulatory requirements.

7.2. Plans and Specifications. The final product of a Design advance of allowance will be an approved set of Design plans and specifications which are suitable for bidding purposes.

7.3. Plan of Operation. The applicant shall submit a draft 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.

7.4. 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 cost allocation system will be administered.

7.5. Collection System. For a municipality requesting design assistance involving collection, such work:

7.5.1. Shall be for the replacement or major rehabilitation 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

7.5.2. 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 existence on October 18, 1972. The expected flow will be subject to the limitations for interceptors contained in 40 C.F.R. §35.213. 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.

7.6. 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.

7.6.1. 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.

7.6.2. Infiltration. If the flow rate at the existing treatment facility is one hundred and twenty (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.

7.7. 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 (see Section 7.9 of these regulations) and proposed (or existing) sewer use ordinance (see Section 7.8 of these regulations). 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.

7.8. Sewer Use Ordinance. The sewer use ordinance (see also Sections 7.7 and 8.4 of these regulations) 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 West Virginia Administrative Regulations, Water Resources Board, Series 3, Section 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.

7.9. User Charge System. The user charge system to be developed (see Sections 7.7 and 8.4 of these regulations) must be designed to produce adequate revenues require 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.

7.9.1. 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) pay its proportionate share of operation and maintenance (including replacement) cost 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).

7.9.2. 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.

7.9.3. Each customer charge system must include an adequate financial management system that will accurately account for revenues generated by the system and expenditures for operation and maintenance (including replacement) of the treatment system, based on a adequate budget identifying the basis for determining the annual operation and maintenance cost and the costs of personnel, material, energy and administration.

7.9.4. The user charge system shall provide that the cost 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:

7.9.4.a. In the same manner that it distributes the cost for their actual use, or

7.9.4.b. Under a system which uses one or any combination of the following factors on a reasonable basis;

7.9.4.b.1. Flow volume of the users;

7.9.4.b.2. Land area of the users;

7.9.4.b.3. Number of hookups or discharges of the users;

7.9.5. 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 charge systems in accordance with Section 204(b)(1)(A) of the Act and this section of these regulations. 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.

7.9.6. 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 of these regulations.

47-33A-8. Advance Award Conditions.

8.1. 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.

8.2. Project Changes. There are no eligible project changes.

8.3. 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 plan of operation (see Section 7.3 of these regulations) approved by the State.

8.4. Adoption of Sewer 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 Sections 7.8 and 7.9 of these regulations 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.

8.5. Project Initiation and Completion.

8.5.1. 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.

8.5.2. 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.

8.5.2. Nothing in this section of these regulations shall be construed to prohibit a recipient from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing project work.

47-33A-9. Procedures for Assistance Payments.

9.1. 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 40 C.F.R. §35.2025(a).

9.2. Advance Payments.

9.2.1. The chief shall pay the State share of the advance under Section 9.1 of these regulations in accordance with the payment schedule within the advance assistance agreement (DWR-CG-2).

9.2.2. In addition to adjustments settlement under 40 C.F.R. §30.802, the chief may review or audit, any payment request and may make revisions as appropriate.

9.2.3. By the recipient 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 expectations previously specified in writing between the chief and the recipient.

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

47-33A-10. Record Keeping by Recipient.

10.1. 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.

47-33A-11. Subagreement Enforcement.

11.1. Subagreement Enforcement.

11.1.1. 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.

11.1.2. 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.

11.1.3. 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.

Editors note: Appendix A which includes forms, instructions, tables and federal rules is excluded.

Table 47
procedures/rules

~~WEST VIRGINIA PROCEDURAL REGULATIONS~~
~~WEST VIRGINIA DEPARTMENT OF NATURAL RESOURCES~~
~~DIVISION OF WATER RESOURCES~~
~~SERIES XVII CHAPTER 20-5A~~
~~SUBPART - PROCEDURAL RULES~~

Series ~~17~~ 33A

Title: CONSTRUCTION GRANTS - STATE ADVANCE ASSISTANCE PROGRAM

Section 1 GENERAL

1.1 ~~Purpose, Description, and Scope~~

1.1~~a~~ These regulations establish procedural 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.

1.1~~a~~ 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.

1.1~~b~~ 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 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.

1.1~~c~~ 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.

Department of Natural Resources
Procedural Rules
Chapter 20-5A
Series XVII, Section 1

1.1~~4~~^d This program, mandated by Congress, requires the State to:

1.1~~4~~¹ Set aside a reserve of up to 10% of the States annual Construction Grants Program appropriation. 40 CFR 35.2020(e)

1.1~~4~~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.

1.1~~4~~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.

1.1~~4~~^e 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.

1.1~~4~~^f 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.

1.1~~4~~^g The Advance of Allowance Assistance Program consists of the following elements:

1.1~~4~~¹ Establishing a municipalities fundability from the State Priority rating system and list;

1.1~~4~~² Applications for Facilities Planning Assistance and Design Assistance (DWR-CG-1) from eligible municipalities.

1.1~~4~~³ Awarding of assistance and the execution of an Advance Assistance Agreement (DWR-CG-2) which includes the terms and conditions of assistance;

1.1~~4~~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;

Department of Natural Resources
Procedural Rules
Chapter 20-5A
Series XVII, Section 1

1.1⁹.5 Remedies available to the State in the event of non-performance or inadequate performance as provided in the Advance Assistance Agreement.

1.1⁹.6 Deduction from the allowance from the Step III or Step II/III federal grant when the project proceeds to construction under the program.

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

1.3 Filing Date - These regulations were filed in Office of the Secretary of State on June 7, 1985.

1.4 Effective Date - These regulations become effective July 8, 1985.

Section 2 DEFINITIONS

Unless the context in which used clearly requires a different meaning, as used in these regulations the following words and terms mean:

2a. "Act" - The Clean Water Act (33 U.S.C. 1251 et seq; as amended).

2b. "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.

2c. "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.

2d. "Alternative technology" - Proven wastewater treatment processes and techniques which provide for the reclaiming and reuse of water, productive recycling of

Department of Natural Resources
Procedural Rules
Chapter 20-5A
Series XVII, Section 1

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

2e. "Alternative to conventional treatment works for a small community" - treatment works in a small community using innovative or alternative technology.

2f. "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.

2g. "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:

2g.1 40 CFR Part 133 "Secondary Treatment of Wastewater";

2g.2 40 CFR 122.62(d) "Water quality standards and State requirements"

2g.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).

2h. "Building" - The erection, acquisition, alteration, remodeling, improvement or extension of treatment works.

2i. "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:

Department of Natural Resources
Procedural Rules
Chapter 20-5A
Series XVII, Section 1

2i.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

2i.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.

2i.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.

2j. "Combined sewer" - A sewer that is designed as both a sanitary sewer and a storm sewer.

2k. "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.

2l. "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:

2l.1 the transport of wastewater from individual homes or buildings to a plant or facility where treatment of the wastewater is accomplished;

2l.2 the treatment of wastewater to remove pollutants; and

2l.3 the ultimate disposal, including recycling or reuse, of the treated wastewater and residues which result from the treatment process.

2m. "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

Department of Natural Resources
Procedural Rules
Chapter 20-5A
Series XVII, Section 1

techniques (excluding operation and 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.

2n. "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.

2o. "Domestic wastewater" - Wastewater of the type commonly introduced into a treatment works by residential users.

2p. "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.

2q. "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.

2r. "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.

2s. "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

Department of Natural Resources
Procedural Rules
Chapter 20-5A
Series XVII, Section 1

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.

2t. "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

2u. "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.

2v. "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.

2w. "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.

2x. "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 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

Department of Natural Resources
Procedural Rules
Chapter 20-5A
Series XVII, Section 1

municipal and industrial systems, or the confined disposal of pollutants so that they will not migrate to cause water or other environmental pollution.

2y. "Interceptor sewers"- A sewer which is designed for one or more of the following purposes:

2y.1 To intercept wastewater from a collector sewer and convey such wastes directly to a treatment facility or another interceptor.

2y.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.

2y.3 To transport wastewater from one or more municipal collector sewers to another municipality or to a regional plant for treatment.

2y.4 To intercept an existing major discharge of raw or inadequately treated wastewater for transport directly to another interceptor or to a treatment plant.

2z. "Intermunicipal agreement" - An agreement between municipalities setting the terms and conditions under which one municipality renders services to one or more other municipalities.

2aa. "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.

2bb. "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.

2cc. "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.

2dd. "Short life cycle components" - Components of a

Department of Natural Resources
Procedural Rules
Chapter 20-5A
Series XVII, Section 1

treatment works that has expected life cycle of 7-10 years.

2ee. "Small community"

2ee.1 For purposes of general assistance, a small community is defined to be a municipality of 25,000 population or less.

2ee.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.

2ff. "Step I" - The preparation of the facility plan and other related requirements.

2gg. "Step II" - The design of the project and other related requirements.

2hh. "Step III" - The construction of the project and other related requirements.

2ii. "State project priority list" - The States annual project priority list is an ordered listing of projects for which the State expects Federal financial assistance.

2jj. "State agency" - Department of Natural Resources, Division of Water Resources.

2kk. "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.

2ll. "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.

2mm. "Treatment works phase or segment" - A treatment works phase or segment may be any 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 works phase or segment may, but need not in and of itself, result in an operable treatment works.

2nn. "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.)

2oo. "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.

2pp. "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.

Section 3 STATE PRIORITY SYSTEM AND PROJECT PRIORITY LIST

3.1 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.

3.1a. The priority system includes the following general elements:

- 3.1a.1 administration;
- 3.1a.2 management;
- 3.1a.3 public participation;
- 3.1a.4 ranking methodology;
- 3.1a.5 rating methodology;

3.1b The Administration and Management elements include:

- 3.1b.1 financial review - which evaluates financial affordability;

Department of Natural Resources
Procedural Rules
Chapter 20-5A
Series XVII, Section 1

3.1b.2 alternative systems bypass - which allows the maximum utilization of innovative, alternative, and small community alternative set asides;

3.1b.3 general bypass - which can remove projects which fail to proceed in accordance with approved schedules.

3.1c Public Participation Elements include:

3.1c.1 annual public hearing to receive comments from the general public concerning funding eligibility of municipalities;

3.1c.2 the State agency responsiveness summary

3.1d The priority rating and ranking methodology includes an evaluation of the following criteria:

3.1d.1 the impairment of classified water uses resulting from existing municipal pollutant discharges;

3.1d.2 the extent of surface or ground water use, restoration or public health improvement resulting from the reduction in pollution;

3.1d.3 the need to complete a waste treatment system for which a grant for a phase or segment was previously awarded;

3.2 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.

Section 4 GENERAL ADVANCE ASSISTANCE APPLICATION AND AWARD PROCEDURES.

4.1 General - Pursuant to the Act the State may provide advances of allowance only to small communities which would otherwise be

Department of Natural Resources
Procedural Rules
Chapter 20-5A
Series XVII, Section 1

unable to complete an application for an EPA Step III or Step II/III grant. The advance may not exceed the federal 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.

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

4.2a 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;

4.2b Provide evidence of ability to finance local cost;

4.2c 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.

4.3 Limitations on award - Before awarding advance assistance for any project the Chief shall determine that the applicant and the applicant's project have met all of the applicable procedural requirements of Sec. 3 and Sec. 4.01 through 9.03.

4.4 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:

4.4a Recipient must have a preapplication meeting with the Construction Grants Branch Head to detail scope of proposed project.

4.4b Recipient must make written request to proceed with work prior to incurring cost.

4.4c Scope of project cannot conflict with applicable federal or grant regulations.

4.4d Project is expected to proceed to construction within 2-3 years of advance award.

4.4e Work cannot proceed until the recipient has received written state agency confirmation of prior approval.

4.5 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 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.

4.6 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.

Section 5 FACILITIES PLANNING

5.1 Contents of Facilities Planning Application for Advance Assistance - An application for a facility plan advance assistance shall be submitted on the State application form.

5.1a The application must include the following;

5.1a.1 The scope of the proposed planning area;

5.1a.2 A copy of documentation providing evidence of municipal status;

5.1a.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

Department of Natural Resources
Procedural Rules
Chapter 20-5A
Series XVII, Section 1

5.1a.4 An itemized description of the estimated cost of the project.

5.1b Proposed subagreements;

5.1c Required comments or approvals of relevant State and local agencies including clearinghouse requirements.

5.2 Contents of Facilities Plan

5.2a 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 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 unsewerred 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.

5.2b Facilities plan Elements. A completed facilities plan must include the following elements:

5.2b.1 A description of both the proposed treatment works, and the complete waste treatment system of which it is a part.

5.2b.2 A description of the Best Practicable Wastewater Treatment Technology (BPWTT). (See Sec. 2,G)

5.2b.3 A cost-effectiveness analysis of the feasible conventional, innovative and alternative wastewater treatment works, processes and techniques capable of meeting the applicable effluent, water quality and public health requirements over the design life of the facility while recognizing environmental and other non-monetary considerations.

Department of Natural Resources
Procedural Rules
Chapter 20-5A
Series XVII, Section 1

The planning period for the cost-effectiveness analysis shall be 20 years. The monetary costs to be considered must include the present worth or equivalent annual value of all capital costs and operation and maintenance costs. The discount rate established by EPA for the construction grants program shall be used in the cost-effectiveness analysis. The population forecasting in the analysis shall be consistent with the current Needs Survey.

5.2b.3a 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.)

5.2b.3b 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 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)

5.2b.3c 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;

5.2b.3d An evaluation of the alternative methods for the reuse or ultimate disposal of treated wastewater and sludge material resulting from the treatment process.

5.2b.3e A consideration of systems with revenue generating applications;

5.2b.3f An evaluation of opportunities to reduce use of, or recover energy;

5.2b.3g 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.

5.2b.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:

Department of Natural Resources
Procedural Rules
Chapter 20-5A
Series XVII, Section 1

5.2b.4a Perform a study of the sewer system to determine the quantity of excessive infiltration and to propose a sewer rehabilitation program to eliminate the excessive infiltration; or

5.2b.4b 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.

5.2b.5 An analysis of the potential open space and recreation opportunities associated with the project.

5.2b.6 An adequate evaluation of the environmental impacts of alternatives under Part 6 of Chapter 40 CFR.

5.2b.7 An evaluation of the water supply implications of the project.

5.2b.8 For the selected alternative, a concise description at an appropriate level of detail, of at least the following:

5.2b.8a Relevant design parameters;

5.2b.8b 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;

5.2b.8c Estimated cost of future expansion and long term needs for reconstruction of facilities following their design life;

5.2b.8d Cost impacts on wastewater system users; and

5.2b.8e Institutional and management arrangements necessary for successful implementation.

5.2c Submission and review of facilities plan. Each facilities plan must be submitted to the State agency for review.

Section 6 SPECIAL FACILITIES PLANNING ELEMENTS

6.1 Innovative and alternative technologies

Department of Natural Resources
Procedural Rules
Chapter 20-5A
Series XVII, Section 1

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.

6.2 Privately owned individual system(s)

6.2a An eligible applicant may apply for advance assistance for privately owned treatment works serving one or more principal residences or small commercial establishments.

6.2b In addition to those applicable limitations set forth in Section 5 and through Section 6.05 the applicant shall:

6.2b.1 Demonstrate that the total cost and environmental impact of building the individual system will be less than the cost of a conventional system;

6.2b.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;

6.2b.3 Apply on behalf of a number of individual units to be served in the facilities planning area;

6.2b.4 Certify that public ownership of such works is not feasible and list the reasons; and

6.2b.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.

6.3 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.

Section 7 DESIGN

7.1 Contents of Applications for Design Advance Assistance

Department of Natural Resources
Procedural Rules
Chapter 20-5A
Series XVII, Section 1

7.1a An Application for Design Advance Assistance shall include;

7.1a.1 Completed application form (DWR - CG - 1)

7.1a.2 An approvable facilities plan;

7.1a.3 Adequate information regarding availability of proposed site(s), if relevant;

7.1a.4 Proposed subagreements;

7.1a.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;

7.1a.6 A financial analysis of Step III project cost estimates and an affordability analysis;

7.1a.7 Satisfactory scheduling of developing documents required by Sec. 7.07, 7.08, 7.09.

7.1a.8 Plan of Design, defining a task schedule;

7.1a.9 Plan of Operation in accordance with Sec. 7.03.

7.1a.10 Other applicable Federal & State statutory and regulatory requirements.

7.2 Plans & Specifications - The final product of a Design advance of allowance will be an approved set of Design plans and specifications which are suitable for bidding purposes.

7.3 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.

7.4 Intermunicipal Service Agreements - If the

Department of Natural Resources
Procedural Rules
Chapter 20-5A
Series XVII, Section 1

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.

7.5 Collection System - For a municipality requesting design assistance involving collection, such work:

7.5a Shall be for the replacement or major rehabilitation 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

7.5b 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.

7.6 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.

7.6a 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

Department of Natural Resources
Procedural Rules
Chapter 20-5A
Series XVII, Section 1

a cost-effectiveness analysis.

7.6b 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.

7.7 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 (§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.

7.8 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 20, Series XII, 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. 3

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

Department of Natural Resources
Procedural Rules
Chapter 20-5A
Series XVII, Section 1

the effluent or sludge from the treatment works shall pay for such increased cost.

7.9a 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).

7.9b 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.

7.9c Each customer charge system must include an adequate financial management system that will accurately account for revenues generated by the system and 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.

7.9d 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:

7.9d.1 In the same manner that it distributes the costs for their actual use, or

7.9d.2 Under a system which uses one or any combination of the following factors on a reasonable basis;

7.9d.1a Flow volume of the users;

7.9d.1b Land area of the users;

7.9d.1c Number of hookups or discharges of the users;

7.9e 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

Department of Natural Resources
Procedural Rules
Chapter 20-5A
Series XVII, Section 1

waste treatment services from the grantee shall adopt user 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.

7.9f 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.

Section 8 ADVANCE AWARD CONDITIONS.

8.1 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.

8.2 Project Changes - There are no eligible project changes.

8.3 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.

8.4 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.

8.5 Project initiation and completion

8.5a 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.

8.5b 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.

8.5c 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.

Section 9 PROCEDURES FOR ASSISTANCE PAYMENTS

9.1 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).

9.2 Advance Payments

9.2a 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).

9.2b 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.

9.2c 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.

9.3 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 be added to its most

recent grant for advances of allowance.

Section 10 RECORD KEEPING BY RECIPIENT

10.1 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.

Section 11 SUBAGREEMENT ENFORCEMENT

11.1 Subagreement enforcement

11.1a 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.

11.1b 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.

11.1c 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.

Ed. Note: Appendix A which includes forms, instructions, figures and federal rules. It is suitable for the DNR.