

Environmental Protection Agency

§ 35.929-2

of the costs of operation and maintenance based upon actual use.

§ 35.929-2 General requirements for all user charge systems.

User charge systems based on actual use under § 35.929-1(a) or ad valorem taxes under § 35.929-1(b) shall also meet the following requirements:

(a) *Initial basis for operation and maintenance charges.* For the first year of operation, operation and maintenance charges shall be based upon past experience for existing treatment works or some other method that can be demonstrated to be appropriate to the level and type of services provided.

(b) *Biennial review of operation and maintenance charges.* The grantee shall review not less often than every 2 years the waste water contribution of users and user classes, the total costs of operation and maintenance of the treatment works, and its approved user charge system. The grantee shall revise the charges for users or user classes to accomplish the following:

(1) Maintain the proportionate distribution of operation and maintenance costs among users and user classes as required herein;

(2) Generate sufficient revenue to pay the total operation and maintenance costs necessary to the proper operation and maintenance (including replacement) of the treatment works; and

(3) Apply excess revenues collected from a class of users to the costs of operation and maintenance attributable to that class for the next year and adjust the rate accordingly.

(c) *Toxic pollutants.* The user charge system shall provide that each user which discharges any toxic pollutants which cause an increase in the cost of managing the effluent or the sludge of the grantee's treatment works shall pay for such increased costs.

(d) *Charges for operation and maintenance for extraneous flows.* 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 of the grantee's treatment works system based upon either of the following:

(1) In the same manner that it distributes the costs of operation and

maintenance among users (or user classes) for their actual use, or

(2) Under a system which uses one of any combination of the following factors on a reasonable basis:

(i) Flow volume of the users;

(ii) Land area of the users;

(iii) Number of hookups or discharges to the users;

(iv) Property valuation of the users, if the grantee has a user charge system based on ad valorem taxes approved under § 35.929-1(b).

(e) *Adoption of system.* One or more municipal legislative enactments or other appropriate authority must incorporate the user charge system. If the project is a regional 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 §§ 35.929 through 35.929-3. 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. The public shall be informed of the financial impact of the user charge system on them and shall be consulted prior to adoption of the system, in accordance with 40 CFR part 25.

(f) *Notification.* Each user charge system must provide that each user be notified, at least annually, in conjunction with a regular bill, of the rate and that portion of the user charges or ad valorem taxes which are attributable to waste water treatment services.

(g) *Inconsistent agreements.* The grantee may have preexisting agreements which address: (1) The reservation of capacity in the grantee's treatment works, or (2) the charges to be collected by the grantee in providing wastewater treatment services or reserving capacity. The user charge system shall take precedence over any terms or conditions of agreements or contracts between the grantee and users (including industrial users, special districts, other municipalities, or Federal agencies or installations) which are inconsistent with the requirements of section 204(b)(1)(A) of the Act and these regulations.

§ 35.929-3

40 CFR Ch. I (7-1-04 Edition)

(h) *Costs of pretreatment program.* A user charge system submitted by a municipality with an approved pretreatment program shall provide that the costs necessary to carry out the program and to comply with any applicable requirements of section 405 of the Act and related regulations are included within the costs of operation and maintenance of the system and paid through user charges, or are paid in whole or in part by other identified sources of funds.

[43 FR 44049, Sept. 27, 1978, as amended at 44 FR 10304, Feb. 16, 1979]

§ 35.929-3 Implementation of the user charge system.

(a) When a grantee's user charge system is approved, implementation of the approved system shall become a condition of the grant.

(b) The grantee shall maintain such records as are necessary to document compliance with these regulations.

(c) Appendix B to this subpart contains guidelines with illustrative examples of acceptable user charge systems.

(d) The Regional Administrator may review, no more often than annually, a grantee's user charge system to assure that it continues to meet the requirements of §§ 35.929-1 through 35.929-3.

§ 35.930 Award of grant assistance.

The Regional Administrator's approval of an application or amendments to it through execution of a grant agreement (including a grant amendment), in accordance with § 30.345 of this subchapter, shall constitute a contractual obligation of the United States for the payment of the Federal share of the allowable project costs, as determined by the Regional Administrator. Information about the approved project furnished in accordance with § 35.920-3 shall be considered incorporated in the grant agreement.

§ 35.930-1 Types of projects.

(a) The Regional Administrator is authorized to award grant assistance for the following types of projects:

(1) *Step 1.* A facilities plan and related step 1 elements (see § 35.920-3(b)), if he determines that the applicant has submitted the items required under

§ 35.920-3(a); (In the case of grant assistance awarded solely for the acquisition of eligible land, the following provisions are deferred until the award of the ensuing step 3 assistance for the construction of facilities: §§ 35.925-10, 35.925-11(b), 35.935-12 (c) and (d), 35.935-13(c), 35.935-15(c), 35.935-16 (b) and (c));

(2) *Step 2.* Construction drawings and specifications, if he determines that the applicant has submitted the items required under § 35.920-3(b);

(3) *Step 3.* Building and erection of a treatment works, if he determines that the applicant has submitted the items required under § 35.920-3(c); or

(4) *Steps 2 and 3.* A combination of design (step 2) and construction (step 3) for a treatment works (see § 35.909) if he determines that the applicant has submitted the items required under § 35.920-3(d).

(b) The Regional Administrator may award Federal assistance by a grant or grant amendment from any allotment or reallocation available to a State under § 35.910 *et seq.* for payment of 100 percent of the cost of construction of treatment works required to train and upgrade waste treatment works operations and maintenance personnel and for the costs of other operator training programs. Costs of other operator training programs are limited to mobile training units, classroom rental, specialized instructors, and instructional material, under section 109(b) of the Act.

(1) Where a grant is made to serve two or more States, the Administrator is authorized to make an additional grant for a supplemental facility in each State. The Federal funds awarded under section 109(b) to any State for all training facilities or programs shall not exceed \$500,000.

(2) Any grantee who received a grant under section 109(b) before December 27, 1977, is eligible to have the grant increased by funds made available under the Act, not to exceed 100 percent of eligible costs.

[43 FR 44049, Sept. 27, 1978, as amended at 44 FR 39340, July 5, 1979]

§ 35.930-2 Grant amount.

The grant agreement shall set forth the amount of grant assistance. The grant amount may not exceed the