

to a State agency under a delegation agreement (§ 35.1030), the term Regional Administrator may be read State agency. This paragraph does not affect the rights of citizens, applicants or grantees provided in subpart F.

(d) In accordance with the Federal Grant and Cooperative Agreement Act (Pub. L. 95-224) EPA will, when substantial Federal involvement is anticipated, award assistance under cooperative agreements. Throughout this subpart we have used the terms grant and grantee but those terms may be read cooperative agreement and recipient if appropriate.

(e) From time to time EPA publishes technical and guidance materials on various topics relevant to the construction grants program. Grantees may find this information useful in meeting requirements in this subpart. These publications, including the MCD and FRD series, may be ordered from: EPA, 1200 Pennsylvania Ave., NW., room 1115 ET, WH 547, Washington, DC 20460. In order to expedite processing of requests, persons wishing to obtain these publications should request a copy of EPA form 7500-21 (the order form listing all available publications), from EPA Headquarters, Municipal Construction Division (WH-547) or from any EPA Regional Office.

§ 35.2005 Definitions.

(a) Words and terms not defined below shall have the meaning given to them in 40 CFR parts 30 and 33.

(b) As used in this subpart, the following words and terms mean:

(1) *Act*. The Clean Water Act (33 U.S.C. 1251 *et seq.*, as amended).

(2) *Ad valorem tax*. A tax based upon the value of real property.

(3) *Allowance*. An amount based on a percentage of the project's allowable building cost, computed in accordance with appendix B.

(4) *Alternative technology*. Proven wastewater treatment processes and techniques which provide for the reclaiming and reuse of water, productively recycle wastewater constituents or otherwise eliminate the discharge of pollutants, or recover energy. Specifically, alternative technology includes 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; and methane recovery.

(5) *Alternative to conventional treatment works for a small community*. For purposes of §§ 35.2020 and 35.2032, alternative technology used by treatment works in small communities include alternative technologies defined in paragraph (b)(4), as well as, individual and onsite systems; 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 to cluster systems.

(6) *Architectural or engineering services*. Consultation, investigations, reports, or services for design-type projects within the scope of the practice of architecture or professional engineering as defined by the laws of the State or territory in which the grantee is located.

(7) *Best Practicable Waste Treatment Technology (BPWTT)*. The cost-effective technology that can treat wastewater, combined sewer overflows and non-excessive infiltration and inflow in publicly owned or individual wastewater treatment works, to meet the applicable provisions of:

(i) 40 CFR part 133—secondary treatment of wastewater;

(ii) 40 CFR part 125, subpart G—marine discharge waivers;

(iii) 40 CFR 122.44(d)—more stringent water quality standards and State standards; or

(iv) 41 FR 6190 (February 11, 1976)—Alternative Waste Management Techniques for Best Practicable Waste Treatment (treatment and discharge, land application techniques and utilization practices, and reuse).

(8) *Building*. The erection, acquisition, alteration, remodeling, improvement or extension of treatment works.

(9) *Building completion*. The date when all but minor components of a project have been built, all equipment is operational and the project is capable of functioning as designed.

(10) *Collector sewer*. The common lateral sewers, within a publicly owned

treatment system, which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual systems, or from private property, and which include service "Y" connections designed for connection with those facilities including:

(i) Crossover sewers connecting 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

(ii) Except as provided in paragraph (b)(10)(iii) of this section, 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.

(iii) 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.

(11) *Combined sewer.* A sewer that is designed as a sanitary sewer and a storm sewer.

(12) *Complete waste treatment system.* A complete waste treatment system consists of all the treatment works necessary to meet the requirements of title III of the Act, involving: (i) The transport of wastewater from individual homes or buildings to a plant or facility where treatment of the wastewater is accomplished; (ii) the treatment of the wastewater to remove pollutants; and (iii) the ultimate disposal, including recycling or reuse, of the treated wastewater and residues which result from the treatment process.

(13) *Construction.* Any one or more of the following: Preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, field testing of innovative or alternative wastewater treatment processes and techniques (excluding operation and maintenance) meeting guidelines promulgated under section 304(d)(3) of the Act, or other necessary actions, erection, building, ac-

quisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items.

(14) *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 source discharge to surface waters.

(15) *Enforceable requirements of the Act.* Those conditions or limitations of section 402 or 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 applicable State laws. If a permit has not been issued, the term shall include any requirement which, in the Regional Administrator's judgment, would be included in the permit when issued. Where no permit applies, the term shall include any requirement which the Regional Administrator determines is necessary for the best practicable waste treatment technology to meet applicable criteria.

(16) *Excessive infiltration/inflow.* The quantities of infiltration/inflow 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 costs for transportation and treatment of the infiltration/inflow. (See §§ 35.2005(b) (28) and (29) and 35.2120.)

(17) *Field testing.* Practical and generally small-scale testing of innovative or alternative technologies directed to 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.

(18) *Individual systems.* Privately owned alternative 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 to cluster systems.

(19) *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 and supplemented, 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

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

(21) *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.

(22) *Initiation of operation.* The date specified by the grantee on which use of the project begins for the purpose for which it was planned, designed, and built.

(23) *Innovative technology.* Developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent 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.

(24) *Interceptor sewer.* A sewer which is designed for one or more of the following purposes:

- (i) To intercept wastewater from a final point in a collector sewer and convey such wastes directly to a treatment facility or another interceptor.
- (ii) 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.
- (iii) To transport wastewater from one or more municipal collector sewers to another municipality or to a regional plant for treatment.
- (iv) To intercept an existing major discharge of raw or inadequately treated wastewater for transport directly to another interceptor or to a treatment plant.

(25) *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.

(26) *Marine bays and estuaries.* Semi-enclosed coastal waters which have a free connection to the territorial sea.

(27) *Municipality.* A city, town, borough, county, parish, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created under State law, or an Indian tribe or an authorized Indian tribal organization, having jurisdiction over disposal of sewage, industrial wastes, or other waste, or a designated and approved management agency under section 208 of the Act.

(i) This definition includes a special district created under State law such as a water district, sewer district, sanitary district, utility district, drainage district or similar entity or an integrated waste management facility, as defined in section 201(e) of the Act, which has as one of its principal responsibilities the treatment, transport,

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or disposal of domestic wastewater in a particular geographic area.

(ii) This definition excludes the following:

(A) Any revenue producing entity which has as its principal responsibility an activity other than providing wastewater treatment services to the general public, such as an airport, turnpike, port facility or other municipal utility.

(B) Any special district (such as school district or a park district) which has the responsibility to provide wastewater treatment services in support of its principal activity at specific facilities, unless the special district has the responsibility under State law to provide wastewater treatment services to the community surrounding the special district's facility and no other municipality, with concurrent jurisdiction to serve the community, serves or intends to serve the special district's facility or the surrounding community.

(28) *Nonexcessive infiltration.* The quantity of flow which is less than 120 gallons per capita per day (domestic base flow and infiltration) or the quantity of infiltration which cannot be economically and effectively eliminated from a sewer system as determined in a cost-effectiveness analysis. (See §§ 35.2005(b)(16) and 35.2120.)

(29) *Nonexcessive inflow.* The maximum total flow rate during storm events which does not result in chronic operational problems related to hydraulic overloading of the treatment works or which does not result in a total flow of more than 275 gallons per capita per day (domestic base flow plus infiltration plus inflow). Chronic operational problems may include surcharging, backups, bypasses, and overflows. (See §§ 35.2005(b)(16) and 35.2120.)

(30) *Operation and Maintenance.* Activities required to assure the dependable and economical function of treatment works.

(i) *Maintenance:* Preservation of functional integrity and efficiency of equipment and structures. This includes preventive maintenance, corrective maintenance and replacement of equipment (See § 35.2005(b)(36)) as needed.)

(ii) *Operation:* Control of the unit processes and equipment which make up the treatment works. This includes

financial and personnel management; records, laboratory control, process control, safety and emergency operation planning.

(31) *Principal residence.* For the purposes of § 35.2034, the habitation of a family or household for at least 51 percent of the year. Second homes, vacation or recreation residences are not included in this definition.

(32) *Project.* The activities or tasks the Regional Administrator identifies in the grant agreement for which the grantee may expend, obligate or commit funds.

(33) *Project performance standards.* The performance and operations requirements applicable to a project including the enforceable requirements of the Act and the specifications, including the quantity of excessive infiltration and inflow proposed to be eliminated, which the project is planned and designed to meet.

(34) *Priority water quality areas.* For the purposes of § 35.2015, specific stream segments or bodies of water, as determined by the State, where municipal discharges have resulted in the impairment of a designated use or significant public health risks, and where the reduction of pollution from such discharges will substantially restore surface or groundwater uses.

(35) *Project schedule.* A timetable specifying the dates of key project events including public notices of proposed procurement actions, subagreement awards, issuance of notice to proceed with building, key milestones in the building schedule, completion of building, initiation of operation and certification of the project.

(36) *Replacement.* Obtaining and installing equipment, accessories, or appurtenances which are necessary during the design or useful life, whichever is longer, of the treatment works to maintain the capacity and performance for which such works were designed and constructed.

(37) *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 waters that are not admitted intentionally.

(38) *Services*. A contractor's labor, time or efforts which do not involve the delivery of a specific end item, other than documents (e.g., reports, design drawings, specifications). This term does not include employment agreements or collective bargaining agreements.

(39) *Small commercial establishments*. For purposes of § 35.2034 private establishments such as restaurants, hotels, stores, filling stations, or recreational facilities and private, nonprofit entities such as churches, schools, hospitals, or charitable organizations with dry weather wastewater flows less than 25,000 gallons per day.

(40) *Small Community*. For purposes of §§ 35.2020(b) and 35.2032, any municipality with a population of 3,500 or less or highly dispersed sections of larger municipalities, as determined by the Regional Administrator.

(41) *State*. A State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Marianas. For the purposes of applying for a grant under section 201(g)(1) of the act, a State (including its agencies) is subject to the limitations on revenue producing entities and special districts contained in § 35.2005(b)(27)(ii).

(42) *State agency*. The State agency designated by the Governor having responsibility for administration of the construction grants program under section 205(g) of the Act.

(43) *Step 1*. Facilities planning.

(44) *Step 2*. Preparation of design drawings and specifications.

(45) *Step 3*. Building of a treatment works and related services and supplies.

(46) *Step 2+3*. Design and building of a treatment works and building related services and supplies.

(47) *Step 7*. Design/building of treatment works wherein a grantee awards a single contract for designing and building certain treatment works.

(48) *Storm sewer*. A sewer designed to carry only storm waters, surface runoff, street wash waters, and drainage.

(49) *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. These include intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power, and other equipment and their appurtenances; extensions, improvement, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment (including land for composting sludge, temporary storage of such compost and land used for the storage of treated wastewater in land treatment systems before land application); or any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined storm water and sanitary sewer systems.

(50) *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 § 35.2030, 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.

(51) *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.)

(52) *User charge*. A charge levied on users of a treatment works, or that portion of the ad valorem taxes paid by a user, 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 and this subpart.

(53) *Value engineering*. A specialized cost control technique which uses a

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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.

[49 FR 6234, Feb. 17, 1984, as amended at 50 FR 45894, Nov. 4, 1985; 55 FR 27095, June 29, 1990]

§ 35.2010 Allotment; reallocation.

(a) Allotments are made on a formula or other basis which Congress specifies for each fiscal year (FY). The allotment for each State and the availability period shall be announced each fiscal year in the FEDERAL REGISTER. This section applies only to funds allotted under section 205 of the Act.

(b) Unless otherwise provided by Congress, all sums allotted to a State under section 205 of the Act shall remain available for obligation until the end of the one year after the close of the fiscal year for which the sums were appropriated. Except as provided in § 35.2020(a), sums not obligated at the end of that period shall be subject to reallocation on the basis of the same ratio as applicable to the then-current fiscal year, adjusted for the States which failed to obligate any of the fiscal year funds being reallocated, but none of the funds reallocated shall be made available to any State which failed to obligate any of the fiscal year funds being reallocated. Any sum made available to a State by reallocation under this section shall be in addition to any funds otherwise allotted to such State for grants under this subpart during any fiscal year and the reallocated funds shall remain available for obligation until the last day of the fiscal year following the fiscal year in which the reallocated funds are issued by the Comptroller to the Regional Administrator.

(c) Except for funds appropriated for FY 72 and fiscal years prior to 1972, sums which are deobligated and reissued by the Comptroller to the Regional Administrator before their reallocation date shall be available for obligation in the same State and treated in the same manner as the allotment from which such funds were derived.

(d) Except for funds appropriated for FY 72 and fiscal years prior to 1972, deobligated sums which are reissued by

the Comptroller to the Regional Administrator after their reallocation date shall be available for obligation in the same State until the last day of the fiscal year following the fiscal year in which the reissuance occurs.

(e) Deobligated FY 72 and prior to 1972 fiscal year funds, except 1964, 1965 and 1966 funds, will be credited to the allowances of the same Region from which such funds are recovered, and the Regional Administrator may determine how these recoveries are credited to the States within the Region.

[49 FR 6234, Feb. 17, 1984, as amended at 50 FR 45895, Nov. 4, 1985]

§ 35.2012 Capitalization grants.

Amounts allotted to a State under title II may be deposited in that State's water pollution control revolving fund as a capitalization grant in accordance with 40 CFR 35.5020 (f) and (g).

[55 FR 27095, June 29, 1990]

§ 35.2015 State priority system and project priority list.

(a) *General.* The Regional Administrator will award grant assistance from annual allotments to projects on a State project priority list developed in accordance with an approved State priority system. The State priority system and list must be designed to achieve optimum water quality management consistent with the goals and requirements of the Act. All projects for building treatment works to be funded by EPA must be included on a State project list, except training facilities funded under section 109(b) of the Act and marine CSO projects funded under section 201(n)(2) of the Act.

(b) *State priority system.* The State priority system describes the methodology used to rank projects that are considered eligible for assistance. The priority system should give high priority to projects in priority water quality areas. The priority system may also include the administrative, management, and public participation procedures required to develop and revise the State project priority list. The priority system includes at least the following elements: