

United States Code Annotated

Title 33. Navigation and Navigable Waters (Refs & Annos)

Chapter 26. Water Pollution Prevention and Control (Refs & Annos)

Subchapter II. Grants for Construction of Treatment Works (Refs & Annos)

33 U.S.C.A. § 1284

§ 1284. Limitations and conditions

Currentness

**(a) Determinations by Administrator**

Before approving grants for any project for any treatment works under [section 1281\(g\)\(1\)](#) of this title the Administrator shall determine--

(1) that any required areawide waste treatment management plan under [section 1288](#) of this title (A) is being implemented for such area and the proposed treatment works are included in such plan, or (B) is being developed for such area and reasonable progress is being made toward its implementation and the proposed treatment works will be included in such plan;

(2) that (A) the State in which the project is to be located (i) is implementing any required plan under [section 1313\(e\)](#) of this title and the proposed treatment works are in conformity with such plan, or (ii) is developing such a plan and the proposed treatment works will be in conformity with such plan, and (B) such State is in compliance with [section 1315\(b\)](#) of this title;

(3) that such works have been certified by the appropriate State water pollution control agency as entitled to priority over such other works in the State in accordance with any applicable State plan under [section 1313\(e\)](#) of this title, except that any priority list developed pursuant to [section 1313\(e\)\(3\)\(H\)](#) of this title may be modified by such State in accordance with regulations promulgated by the Administrator to give higher priority for grants for the Federal share of the cost of preparing construction drawings and specifications for any treatment works utilizing processes and techniques meeting the guidelines promulgated under [section 1314\(d\)\(3\)](#) of this title and for grants for the combined Federal share of the cost of preparing construction drawings and specifications and the building and erection of any treatment works meeting the requirements of the next to the last sentence of [section 1283\(a\)](#) of this title which utilizes processes and techniques meeting the guidelines promulgated under [section 1314\(d\)\(3\)](#) of this title. <sup>1</sup>

(4) that the applicant proposing to construct such works agrees to pay the non-Federal costs of such works and has made adequate provisions satisfactory to the Administrator for assuring proper and efficient operation, including the employment of trained management and operations personnel, and the maintenance of such works in accordance with a plan of operation approved by the State water pollution control agency or, as appropriate, the interstate agency, after construction thereof;

(5) that the size and capacity of such works relate directly to the needs to be served by such works, including sufficient reserve capacity. The amount of reserve capacity provided shall be approved by the Administrator on the basis of a comparison of the cost of constructing such reserves as a part of the works to be funded and the anticipated cost of providing expanded capacity at a date when such capacity will be required, after taking into account, in accordance with regulations promulgated

by the Administrator, efforts to reduce total flow of sewage and unnecessary water consumption. The amount of reserve capacity eligible for a grant under this subchapter shall be determined by the Administrator taking into account the projected population and associated commercial and industrial establishments within the jurisdiction of the applicant to be served by such treatment works as identified in an approved facilities plan, an areawide plan under [section 1288](#) of this title, or an applicable municipal master plan of development. For the purpose of this paragraph, [section 1288](#) of this title, and any such plan, projected population shall be determined on the basis of the latest information available from the United States Department of Commerce or from the States as the Administrator, by regulation, determines appropriate. Beginning October 1, 1984, no grant shall be made under this subchapter to construct that portion of any treatment works providing reserve capacity in excess of existing needs (including existing needs of residential, commercial, industrial, and other users) on the date of approval of a grant for the erection, building, acquisition, alteration, remodeling, improvement, or extension of a project for secondary treatment or more stringent treatment or new interceptors and appurtenances, except that in no event shall reserve capacity of a facility and its related interceptors to which this subsection applies be in excess of existing needs on October 1, 1990. In any case in which an applicant proposes to provide reserve capacity greater than that eligible for Federal financial assistance under this subchapter, the incremental costs of the additional reserve capacity shall be paid by the applicant;

(6) that no specification for bids in connection with such works shall be written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing or to provide for necessary interchangeability of parts and equipment. When in the judgment of the grantee, it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement, and in doing so the grantee need not establish the existence of any source other than the brand or source so named.

**(b) Additional determinations; issuance of guidelines; approval by Administrator; system of charges**

(1) Notwithstanding any other provision of this subchapter, the Administrator shall not approve any grant for any treatment works under [section 1281\(g\)\(1\)](#) of this title after March 1, 1973, unless he shall first have determined that the applicant (A) has adopted or will adopt a system of charges to assure that each recipient of waste treatment services within the applicant's jurisdiction, as determined by the Administrator, will pay its proportionate share (except as otherwise provided in this paragraph) of the costs of operation and maintenance (including replacement) of any waste treatment services provided by the applicant; and (B) has legal, institutional, managerial, and financial capability to insure adequate construction, operation, and maintenance of treatment works throughout the applicant's jurisdiction, as determined by the Administrator. In any case where an applicant which, as of December 27, 1977, uses a system of dedicated ad valorem taxes and the Administrator determines that the applicant has a system of charges which results in the distribution of operation and maintenance costs for treatment works within the applicant's jurisdiction, to each user class, in proportion to the contribution to the total cost of operation and maintenance of such works by each user class (taking into account total waste water loading of such works, the constituent elements of the wastes, and other appropriate factors), and such applicant is otherwise in compliance with clause (A) of this paragraph with respect to each industrial user, then such dedicated ad valorem tax system shall be deemed to be the user charge system meeting the requirements of clause (A) of this paragraph for the residential user class and such small non-residential user classes as defined by the Administrator. In defining small non-residential users, the Administrator shall consider the volume of wastes discharged into the treatment works by such users and the constituent elements of such wastes as well as such other factors as he deems appropriate. A system of user charges which imposes a lower charge for low-income residential users (as defined by the Administrator) shall be deemed to be a user charge system meeting the requirements of clause (A) of this paragraph if the Administrator determines that such system was adopted after public notice and hearing.

(2) The Administrator shall, within one hundred and eighty days after October 18, 1972, and after consultation with appropriate State, interstate, municipal, and intermunicipal agencies, issue guidelines applicable to payment of waste treatment costs by industrial and nonindustrial recipients of waste treatment services which shall establish (A) classes of users of such services, including categories of industrial users; (B) criteria against which to determine the adequacy of charges imposed on classes and categories of users reflecting all factors that influence the cost of waste treatment, including strength, volume, and delivery flow rate characteristics of waste; and (C) model systems and rates of user charges typical of various treatment works serving municipal-industrial communities.

(3) Approval by the Administrator of a grant to an interstate agency established by interstate compact for any treatment works shall satisfy any other requirement that such works be authorized by Act of Congress.

(4) A system of charges which meets the requirement of clause (A) of paragraph (1) of this subsection may be based on something other than metering the sewage or water supply flow of residential recipients of waste treatment services, including ad valorem taxes. If the system of charges is based on something other than metering the Administrator shall require (A) the applicant to establish a system by which the necessary funds will be available for the proper operation and maintenance of the treatment works; and (B) the applicant to establish a procedure under which the residential user will be notified as to that portion of his total payment which will be allocated to the cost of the waste treatment services.

**(c) Applicability of reserve capacity restrictions to primary, secondary, or advanced waste treatment facilities or related interceptors**

The next to the last sentence of paragraph (5) of subsection (a) of this section shall not apply in any case where a primary, secondary, or advanced waste treatment facility or its related interceptors has received a grant for erection, building, acquisition, alteration, remodeling, improvement, or extension before October 1, 1984, and all segments and phases of such facility and interceptors shall be funded based on a 20-year reserve capacity in the case of such facility and a 20-year reserve capacity in the case of such interceptors, except that, if a grant for such interceptors has been approved prior to December 29, 1981, such interceptors shall be funded based on the approved reserve capacity not to exceed 40 years.

**(d) Engineering requirements; certification by owner and operator; contractual assurances, etc.**

(1) A grant for the construction of treatment works under this subchapter shall provide that the engineer or engineering firm supervising construction or providing architect engineering services during construction shall continue its relationship to the grant applicant for a period of one year after the completion of construction and initial operation of such treatment works. During such period such engineer or engineering firm shall supervise operation of the treatment works, train operating personnel, and prepare curricula and training material for operating personnel. Costs associated with the implementation of this paragraph shall be eligible for Federal assistance in accordance with this subchapter.

(2) On the date one year after the completion of construction and initial operation of such treatment works, the owner and operator of such treatment works shall certify to the Administrator whether or not such treatment works meet the design specifications and effluent limitations contained in the grant agreement and permit pursuant to [section 1342](#) of this title for such works. If the owner and operator of such treatment works cannot certify that such treatment works meet such design specifications and effluent limitations, any failure to meet such design specifications and effluent limitations shall be corrected in a timely manner, to allow such affirmative certification, at other than Federal expense.

(3) Nothing in this section shall be construed to prohibit a grantee under this subchapter from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party to a contract pertaining to a project assisted under this subchapter, than those provided under this subsection.

#### CREDIT(S)

(June 30, 1948, c. 758, Title II, § 204, as added [Pub.L. 92-500](#), § 2, Oct. 18, 1972, 86 Stat. 835; amended [Pub.L. 95-217](#), §§ 20-24, Dec. 27, 1977, 91 Stat. 1572, 1573; [Pub.L. 96-483](#), § 2(a), (b), Oct. 21, 1980, 94 Stat. 2360, 2361; [Pub.L. 97-117](#), §§ 10(a), (b), 11, 12, Dec. 29, 1981, 95 Stat. 1626, 1627; [Pub.L. 100-4, Title II, § 205\(a\)-\(c\)](#), Feb. 4, 1987, 101 Stat. 18.)

#### Footnotes

<sup>1</sup> So in original. The period probably should be a semicolon.  
33 U.S.C.A. § 1284, 33 USCA § 1284  
Current through PL 117-51.