

## Environmental Protection Agency

## § 35.910-1

small community (a municipality with a population of 3,500 or less or a highly dispersed section of a larger municipality, as defined by the Regional Administrator), funds from the reserve in §35.915(e) may be used for the 75 percent portion of the Federal grant.

(v) Only if sewer related costs qualify as alternatives to conventional treatment works for small communities are they entitled to the grant increase from 75 to 85 percent, either as part of the entire treatment works or as components.

(2) A project or portions of a project may be designated innovative or alternative on the basis of a facilities plan or on the basis of plans and specifications. A project that has been designated innovative on the basis of the facilities plan may lose that designation if plans and specifications indicate that it does not meet the appropriate criteria stated in section 6 of appendix E.

(3) Projects or portions of projects that receive step 2, step 3, or step 2=3 grant awards after December 27, 1977, from funds allotted or reallocated in fiscal year 1978 may also receive the grant increase from funds allotted for fiscal year 1979 for eligible portions that meet the criteria for alternative technologies in appendix E, if funds are available for such purposes under §35.915-1(b).

(c) *Modification or replacement of innovative and alternative projects.* The Regional Administrator may award grant assistance to fund 100 percent of the eligible costs of the modification or replacement of any treatment works constructed with 85-percent grant assistance if:

(1) He determines that:

(i) The facilities have not met design performance specifications (unless such failure is due to any person's negligence);

(ii) Correction of the failure requires significantly increased capital or operating and maintenance expenditures; and

(iii) Such failure has occurred within the 2-year period following final inspection; and

(2) The replacement or modification project is on the fundable portion of the State's priority list.

(d) *Sole source procurement.* A determination by the Regional Administrator under this section that innovative criteria have been met will serve as the basis for sole source procurement (see §35.936-13(b)) for step 3, if appropriate, to achieve the objective of demonstrating innovative technology.

### §35.909 Step 2=3 grants.

(a) *Authority.* The Regional Administrator may award grant assistance for a step 2=3 project for the combination of design (step 2) and construction (step 3) of a waste water treatment works.

(b) *Limitations.* The Regional Administrator may award step 2=3 grant assistance only if he determines that:

(1) The population is 25,000 or less for the applicant municipality (according to most recent U.S. Census information or disaggregations thereof);

(2) The treatment works has an estimated total step 3 construction cost of \$2 million or less, as determined by the Regional Administrator. For any State that the Assistant Administrator for Water and Waste Management finds to have unusually high costs of construction, the Regional Administrator may make step 2=3 awards where the estimated total step 3 construction costs of such treatment works does not exceed \$3 million. The project must consist of all associated step 2 and step 3 work; segmenting is not permitted; and

(3) The fundable range of the approved project priority list includes the step 2 and step 3 work.

(c) *Application requirements.* Step 2=3 projects are subject to all requirements of this subpart that apply to separate step 2 and step 3 projects except compliance with §35.920-3(c) is not required before grant award. An applicant should only submit a single application.

(d) *Cross references.* See §§35.920-3(d) (contents of application), 35.930-1(a)(4) (types of projects) and 35.935-4 (grant conditions).

### §35.910 Allocation of funds.

#### §35.910-1 Allotments.

Allotments are made on a formula or other basis which Congress specifies for