

after the initial review where there is reason to believe that it will not result in compliance with the enforceable requirements of the Act. Before making a final determination, the Regional Administrator will initiate a public hearing on this issue. Questioned projects shall not be funded during this administrative process. Consideration of grant award will continue for those projects not at issue in accordance with all other requirements of this section.

(i) The Regional Administrator shall establish the procedures for the public notice and conduct of any such hearing, or, as appropriate, the procedures may be adapted from existing agency procedures such as § 6.400 or §§ 123.32 and 123.34 of this chapter. The procedures used must conform to minimum Agency guidelines for public hearings under part 25 of this chapter.

(ii) Within 30 days after the date of the hearing, the Regional Administrator shall transmit to the appropriate State agency a written determination about the questioned projects. If the Regional Administrator determines that the project will not result in compliance with the enforceable requirements of the Act, the State shall remove the project from the priority list and modify the priority list to reflect this action. The Regional Administrator's determination will constitute the final agency action, unless the State or municipality files a notice of appeal under part 30, subpart J of this subchapter.

(2) The State may use 25 percent of its funds during each fiscal year for projects or portions of projects in categories IIIB, IVA, IVB, and V (see § 35.915(a)(1)(ii)). These projects must be eligible for Federal funding to be included on the priority list. EPA will generally not review these projects under paragraph (g)(1) of this section to determine if they will result in compliance with the enforceable requirements of the Act. The Regional Administrator will, however, review all projects or portions thereof which would use funds beyond the 25-percent level according to the criteria in paragraph (g)(1) of this section.

(h) *Regional Administrator review for eligibility.* If the Regional Adminis-

trator determines that a project on the priority list is not eligible for assistance under this subpart, the State and municipality will be promptly advised and the State will be required to modify its priority list accordingly. Elimination of any project from the priority list shall be final and conclusive unless the State or municipality files a notice of appeal under part 30, subpart J of this subchapter.

[43 FR 44049, Sept. 27, 1978, as amended at 44 FR 37595, June 27, 1979; 44 FR 39339, July 5, 1979]

§ 35.915-1 Reserves related to the project priority list.

In developing the fundable portion of the priority list, the State shall provide for the establishment of the several reserves required or allowed under this section. The State shall submit a statement specifying the amount to be set aside for each reserve with the final project priority list.

(a) *Reserve for State management assistance grants.* The State may (but need not) propose that the Regional Administrator set aside from each allotment a reserve not to exceed 2 percent or \$400,000, whichever is greater, for State management assistance grants under subpart F of this part. Grants may be made from these funds to cover the reasonable costs of administering activities delegated to a State. Funds reserved for this purpose that are not obligated by the end of the allotment period will be added to the amounts last allotted to a State. These funds shall be immediately available for obligation to projects in the same manner and to the same extent as the last allotment.

(b) *Reserve for innovative and alternative technology project grant increase.* Each State shall set aside from its annual allotment a specific percentage to increase the Federal share of grant awards from 75 percent to 85 percent of the eligible cost of construction (under § 35.908(b)(1)) for construction projects which use innovative or alternative waste water treatment processes and techniques. The set-aside amount shall be 2 percent of the State's allotment for each of fiscal years 1979 and 1980, and 3 percent for fiscal year 1981. Of this amount not less than one-half of 1 percent of the State's allotment shall

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be set aside to increase the Federal grant share for projects utilizing innovative processes and techniques. Funds reserved under this section may be expended on projects for which facilities plans were initiated before fiscal year 1979. These funds shall be reallocated if not used for this purpose during the allotment period.

(c) *Reserve for grant increases.* The State shall set aside not less than 5 percent of the total funds available during the priority list year for grant increases (including any funds necessary for development of municipal pretreatment programs) for projects awarded assistance under §35.935-11. The funds reserved for this purpose shall be reallocated if not obligated. Therefore, if they are not needed for grant increases they should be released for funding additional projects before the reallocation deadline.

(d) *Reserve for step 1 and step 2 projects.* The State may (but need not) set aside up to 10 percent of the total funds available in order to provide grant assistance to step 1 and step 2 projects that may be selected for funding after the final submission of the project priority list. The funds reserved for this purpose shall be reallocated if not obligated. Therefore, they should be released for funding additional projects before the reallocation deadline.

(e) *Reserve for alternative systems for small communities.* Each State with a rural population of 25 percent or more (as determined by population estimates of the Bureau of Census) shall set aside an amount equal to 4 percent of the State's annual allotment, beginning with the fiscal year 1979 allotment. The set-aside amount shall be used for funding alternatives to conventional treatment works for small communities. The Regional Administrator may authorize, at the request of the Governor of any non-rural State, a reserve of up to 4 percent of that State's allotment for alternatives to conventional treatment works for small communities. For the purposes of this paragraph, the definition of a small community is any municipality with a population of 3,500 or less, or highly dispersed sections of larger municipalities, as determined by the Regional Ad-

ministrator. In States where the reserve is mandatory, these funds shall be reallocated if not obligated during the allotment period. In States where the reserve is optional, these funds should be released for funding projects before the reallocation deadline.

§ 35.917 Facilities planning (step 1).

(a) Sections 35.917 through 35.917-9 establish the requirements for facilities plans.

(b) Facilities planning consists of those necessary plans and studies which directly relate to the construction of treatment works necessary to comply with sections 301 and 302 of the Act. Facilities planning will demonstrate the need for the proposed facilities. Through a systematic evaluation of feasible alternatives, it will also demonstrate that the selected alternative is cost-effective, i.e., is the most economical means of meeting established effluent and water quality goals while recognizing environmental and social considerations. (See appendix A to this subpart.)

(c) EPA requires full compliance with the facilities planning provisions of this subpart before award of step 2 or step 3 grant assistance. (Facilities planning initiated before May 1, 1974, may be accepted under regulations published on February 11, 1974, if the step 2 or step 3 grant assistance is awarded before April 1, 1980.)

(d) Grant assistance for step 2 or step 3 may be awarded before approval of a facilities plan for the entire geographic area to be served by the complete waste treatment system of which the proposed treatment works will be an integral part if:

(1) The Regional Administrator determines that applicable statutory requirements have been met (see §§ 35.925-7 and 35.925-8); that the facilities planning related to the proposed step 2 or step 3 project has been substantially completed; and that the step 2 or step 3 project for which grant assistance is made will not be significantly affected by the completion of the facilities plan and will be a component part of the complete system; and

(2) The applicant agrees to complete the facilities plan on a schedule the State accepts (subject to the Regional