

exists, an adequate sewer system evaluation survey and, if required, a rehabilitation program must be furnished, except as set forth in paragraph (c) of this section before grant assistance for step 2 or 3 can be awarded. A step 1 grant may be awarded for the completion of this segment of step 1 work, and, upon completion of step 1, grant assistance for a step 2 or 3 project (for which priority has been determined under § 35.915) may be awarded.

(c) *Exception.* If the Regional Administrator determines that the treatment works would be regarded (in the absence of an acceptable program of correction) as being subject to excessive infiltration/inflow, grant assistance may be awarded if the applicant establishes to the Regional Administrator's satisfaction that the treatment works project for which grant application is made will not be significantly changed by any subsequent rehabilitation program or will be a component part of any rehabilitated system. The applicant must agree to complete the sewer system evaluation and any resulting rehabilitation on an implementation schedule the State accepts (subject to approval by the Regional Administrator), which shall be inserted as a special condition in the grant agreement.

(d) *Regional Administrator review.* Municipalities may submit through the State agency the infiltration/inflow analysis and, when appropriate, the sewer system evaluation survey to the Regional Administrator for his review at any time before application for a treatment works grant. Based on such a review, the Regional Administrator shall provide the municipality with a written response indicating either his concurrence or nonconcurrence. In order for the survey to be an allowable cost, the Regional Administrator must concur with the sewer system evaluation survey plan before the work is performed.

§ 35.928 Requirements for an industrial cost recovery system.

(a) The Regional Administrator shall approve the grantee's industrial cost recovery system and the grantee shall implement and maintain it in accordance with § 35.935-15 and the require-

ments in §§ 35.928-1 through 35.928-4. The grantee shall be subject to the noncompliance provisions of § 35.965 for failure to comply.

(b) Grantees awarded step 3 grants under regulations promulgated on February 11, 1974, or grantees who obtained approval of their industrial cost recovery systems before April 25, 1978, may amend their systems to correspond to the definition of industrial users in § 35.905 or to provide for systemwide industrial cost recovery under § 35.928-1(g).

§ 35.928-1 Approval of the industrial cost recovery system.

The Regional Administrator may approve an industrial cost recovery system if it meets the following requirements:

(a) *General.* Each industrial user of the treatment works shall pay an annual amount equal to its share of the total amount of the step 1, 2, and 3 grants and any grant amendments awarded under this subpart, divided by the number of years in the recovery period. An industrial user's share shall be based on factors which significantly influence the cost of the treatment works. Volume of flow shall be a factor in determining an industrial user's share in all industrial cost recovery systems; other factors shall include strength, volume, and delivery flow rate characteristics, if necessary, to insure that all industrial users of the treatment works pay a proportionate distribution of the grant assistance allocable to industrial use.

(b) *Industrial cost recovery period.* The industrial cost recovery period shall be equal to 30 years or to the useful life of the treatment works, whichever is less.

(c) *Frequency of payment.* Except as provided in § 35.928-3, each industrial user shall pay not less often than annually. The first payment by an industrial user shall be made not later than 1 year after the user begins use of the treatment works.

(d) *Reserve capacity.* If an industrial user enters into an agreement with the grantee to reserve a certain capacity in the treatment works, the user's industrial cost recovery payments shall be based on the total reserved capacity in relation to the design capacity of the