

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

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treatment works. If the discharge of an industrial user exceeds the reserved capacity in volume, strength or delivery flow rate characteristics, the user's industrial cost recovery payment shall be increased to reflect the actual use. If there is no reserve capacity agreement between the industrial user and the grantee, and a substantial change in the strength, volume, or delivery flow rate characteristics of an industrial user's discharge share occurs, the user's share shall be adjusted proportionately.

(e) *Upgrading and expansion.* (1) If the treatment works are upgraded, each existing industrial user's share shall be adjusted proportionately.

(2) If the treatment works are expanded, each industrial user's share shall be adjusted proportionately, except that a user with reserved capacity under paragraph (d) of this section shall incur no additional industrial cost recovery charges unless the user's actual use exceeded its reserved capacity.

(f) [Reserved]

(g) *Collection of industrial cost recovery payments.* Industrial cost recovery payments may be collected on a system-wide or on a project-by-project basis. The total amount collected from all industrial users on a systemwide basis shall equal the sum of the amounts which would be collected on a project-by-project basis.

(h) *Adoption of system.* One or more municipal legislative enactments or other appropriate authority must incorporate the industrial cost recovery system. If the project is a regional treatment works accepting waste-waters from other municipalities, the subscribers receiving waste treatment services from the grantee shall adopt industrial cost recovery systems in accordance with section 204(b)(1)(B) of the Act with §§ 35.928 through 35.928-4. These industrial cost recovery systems shall also be incorporated in appropriate municipal legislative enactments or other appropriate authority of all municipalities contributing wastes to the treatment works. The public shall be consulted prior to adoption of the industrial cost recovery system, in accordance with 40 CFR part 25.

(i) *Inconsistent agreements.* The grantee may have pre-existing agreements which address (1) the reservation of capacity in the grantee's treatment works or (2) the charges to be collected by the grantee in providing waste water treatment services or reserving capacity. The industrial cost recovery system shall take precedence over any terms or conditions of agreements or contracts between the grantee and industrial users which are inconsistent with the requirements of section 204(b)(1)(B) of the Act and these industrial cost recovery regulations.

[43 FR 44049, Sept. 27, 1978, as amended at 44 FR 10304, Feb. 16, 1979; 44 FR 39340, July 5, 1979]

§ 35.928-2 Use of industrial cost recovery payments.

(a) The grantee shall use industrial cost recovery payments received from industrial users as follows:

(1) The grantee shall return 50 percent of the amounts received from industrial users, together with any interest earned, to the U.S. Treasury annually.

(2) The grantee shall retain 50 percent of the amount recovered from industrial users.

(i) A portion of the amounts which the grantee retains may be used to pay the incremental costs of administration of the industrial cost recovery system. The incremental costs of administration are those costs remaining after deducting all costs reasonably attributable to the administration of the user charge system. The incremental costs shall be segregated from all other administrative costs of the grantee.

(ii) A minimum of 80 percent of the amounts the grantee retains after paying the incremental costs of administration, together with any interest earned, shall be used for the allowable costs (see § 35.940) of any expansion, upgrading or reconstruction of treatment works necessary to meet the requirements of the Act. The grantee shall obtain the written approval of the Regional Administrator before the commitment of the amounts retained for expansion, upgrading, or reconstruction.

(iii) The remainder of the amounts retained by the grantee may be used as