

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460



OFFICE OF  
WATER

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MEMORANDUM

SUBJECT: Guidance for Management of Section 205(j)(1) and Section 604(b) Funds During Fiscal Years 1988 - 1990

FROM: *William A. Whittington*  
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TO: Water Management Division Directors  
Regions I - X

Purpose

This guidance provides principles and procedures for award and oversight of 205(j)(1) and 604(b) funds during FY 1988-90. It replaces previous guidance, including the 205(j) guidance of September 24, 1982, and has been coordinated with the Office of General Counsel.

Background

The Clean Water Act (CWA) was amended in 1981 to authorize grants to States and funding for substate agencies for Water Quality Management (WQM) planning under Section 205(j). The Water Quality Act of February 4, 1987, contains amendments to the CWA which modify specific provisions of this Section. These amendments change Section 205(j)(3) relating to management of planning grants under 205(j)(2), add Title VI which authorizes State revolving funds for construction of POTWs and requires States to reserve WQM planning funds under Section 604(b), and establish under Section 205(j)(5) a new reserve of funds to be used to address nonpoint source problems.

Section 205(j)(1) requires EPA to reserve each year for each State 1% of its share of Title II funds or \$100,000, whichever is greater, to carry out planning under 205(j)(2), including, "implementing Section 303(e)." Beginning in FY 1989, Section 604(b) requires each State to reserve each year 1% of its Title VI allotment or \$100,000, whichever is greater, for "planning under Sections 205(j) and 303(e)." Section 205(j)(1) and Section 604(b) funds will be awarded under Section 205(j)(2).

Perhaps the most important change affecting WQM grants is the amendment to Section 205(j)(3) which provides, with certain exceptions, that at least 40% of a State's funds awarded under 205(j)(2) must be allotted to other organizations for WQM activities. This provision will increase the number of entities in each State engaged in WQM activities and will require additional oversight on the part of EPA and the State to assure that work programs are developed and implemented effectively.

These changes do not affect the basic purposes for which WQM planning funds are reserved. As stated in the Act, these funds are to be used to determine the nature, extent and causes of point and nonpoint source pollution problems and to develop plans to resolve these problems.

The scope of this guidance is limited to the period FY 1988 - 90 to cover the remaining years in which 205(j)(1) funds are authorized. EPA intends to issue guidance concerning management of 604(b) funds after FY 1990 at the appropriate time for FY 1991 guidance.

#### Management Process for 205(j)(1) and 604(b) Funds

Award and management of 205(j)(2) grants from 205(j)(1) and now 604(b) reserves is part of the annual Office of Water (OW) program cycle which begins in the Spring of every year with the issuance of EPA's Agency Operating Guidance. EPA's Regional Offices then provide specific guidance to States which, in turn, submit draft grant work programs in June or July. In FY 1989 and 1990, each State is required by Section 604(b) of the CWA, as amended, to reserve 1% of Title VI allotments or \$100,000, whichever is greater, for planning under 205(j) and 303(e) of the Act. These funds will supplement the 205(j)(1) funds reserved in those years. In FY 1989 and 1990, draft work programs will describe all activities and outputs supported by both 205(j)(1) and 604(b) funds. After revising the work programs based on EPA comments, the final grant application is submitted in September, and EPA takes action on the application after appropriations are received, usually in October. The annual grant cycle described in this paragraph may vary where EPA provides grants to match the State fiscal year cycle.

Pursuant to Section 205(j)(3), States shall provide at least 40% of their 205(j)(1) and 604(b) funds reserved and awarded in FY 1988 and future years to Regional Public Comprehensive Planning Agencies\* (RPCPOs) and Interstate Organizations\* (IOs), unless the Governor, in consultation with RPCPOs/IOs and with the approval of the EPA Regional Administrator, determines that provision of such an amount "will not result in significant participation by such

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\* When Congress in February 1987 amended Section 205(j)(3) of the Clean Water Act to require States to allocate at least 40 percent of water quality management planning funds to RPCPOs/IOs, the Congress did not intend to change the eligibility of organizations to receive such funds. Consequently, all organizations which were eligible to receive such planning funds prior to the passage of the Water Quality Act of 1987 continue to be eligible funding recipients.

organizations in water quality management planning and not significantly assist in development and implementation of the water quality management plan.\*\* Only in such situations may State allocations to RPCPOs/IOs be less than 40% of the State grant amount. This 40% requirement applies to all FY 1988 funds and those in future years until awarded, even though the award may not be made in the year of the appropriation.

In managing the process of selecting and funding RPCPOs/IOs, States should communicate clearly their water quality goals, program priorities and expectations for RPCPO/IO participation in ongoing and prospective projects. Generally, the States will have the best information regarding the nature and causes of priority water quality problems and may already be involved in efforts to resolve them. In the case of more localized problems (e.g., in lakes and aquifers) where RPCPOs/IOs may be most familiar with the issues, States can provide technical and other forms of assistance. No matter what the nature of the project being funded, coordination and cooperation between the State and the RPCPO/IO is essential to successful resolution of the water quality problem being addressed.

#### Developing Work Programs for 205(j)(2) Grants

The 40% pass-through provision means that significantly more RPCPOs/IOs will receive WQM funds from the States, and that both EPA and the States must devote additional staff time and effort to funding and oversight of these agencies. First, States in accordance with Section 205(j)(3) must "develop jointly" with RPCPOs/IOs an annual work program for use of 205(j)(2) grants. In practical terms, this means that States, prior to development of their WQM work programs, must invite eligible organizations to submit applications for the forthcoming fiscal year. Similarly, RPCPOs/IOs should take the initiative and contact State agencies early in the calendar year to express their interest in obtaining 205(j)(1) funds and propose specific work activities for the forthcoming fiscal year. States and RPCPOs/IOs may find other methods of joint development, such as meetings to discuss WQM work priorities and to assure coordination, which will be useful in promoting coordinated work program development. When States have determined which RPCPOs/IOs are interested in applying for funds, States should communicate in writing to those organizations information regarding the schedule for work program development, State priorities for planning activities, a process for discussing proposed projects and related matters.

For FY 1988 States should contact RPCPOs/IOs as soon as possible, so that work program development can begin.

Once States have received and analyzed all RPCPO/IO funding projects, they should select those RPCPO/IO activities to be included as part of their draft work programs to be submitted to EPA. When considering RPCPO/IO proposals

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\* EPA Headquarters has initiated the process to delegate to the Regional Administrator authority to approve or not approve the Governor's determination.

for funding, States should assess the capacity of each agency's current or proposed water quality staff to manage the proposed work, any previous water quality or environmental experience, the potential of the proposed work to abate significant water quality problems, the degree of proposed coordination between ongoing or prospective State activities and those proposed by the RPCPO/IO, and other relevant criteria. EPA encourages States to include in their draft work program submittals a summary and an evaluation of all funding proposals. In accordance with EPA's "Policy on Performance Based Assistance," State, RPCPO and IO work products should be expressed in the work program as quantified outputs wherever possible, and the State work program should contain the evaluation plan required by the same policy.

Because the amount of funds available for RPCPOs/IOs in a given State may not be sufficient to provide adequate funds to all applications, Regions and States should assure that applicants which are selected receive enough funding to undertake significant projects. As a general rule, such funding should at a minimum be sufficient to pay the direct and indirect costs of supporting one full time staff person.

Work to be done by RPCPOs/IOs with 205(j)(1) and 604(b) funds provided by States must be embodied in legally binding written agreements which specify in detail the work to be performed and a schedule and quantified outputs related to each task wherever possible. Copies of these agreements must be transmitted by the State to the EPA Regional Office within 10 days after they have been signed by the State and the RPCPO/ IO. Confirmation that a State has passed through at least 40% of its grant will be based on these signed agreements.

The draft work program submitted by the State to the EPA Regional Office should explain how the work to be accomplished by RPCPOs/IOs is to be coordinated with current or prospective State activities. Generally, the State will already be involved in identifying or resolving water quality problems in major streams near RPCPOs/IOs and may be, with respect to more localized water quality problems, doing work in nearby lakes, small streams, and aquifers. Coordination of work activities related to such water bodies can result in more efficient use of available funding and a more effective identification of roles for RPCPOs/IOs. Section 205(j)(2) work programs should also explain how the activities in it are related to State work activities funded under 106, 205(j)(5), 319(h) and (i), 314, 320 and related grants consistent with the State's Clean Water Strategy.

The portion of the State work program which contains RPCPO/IO activities should have the same level of detail as the portion related to State activities, and the work program should include a description of the State's process for oversight and evaluation of RPCPO/IO tasks funded by 205(j)(2) grants. States may consider negotiating multi-year work programs with RPCPOs/IOs, but funding for these agencies should be on an annual basis to promote accountability. The purpose of multi-year work programs (which are optional) is that in some cases they may enhance program continuity and stability and establish program goals and tasks which require more than 12 months to accomplish. The requirement for annual funding is to ensure accountability by evaluating each agency's performance prior to approving additional funding.

The 1987 Amendments to Section 205(j) and this guidance assign to the States the central oversight role in coordinating and managing RPCPO/IO use of 205(j)(1) funds. This role requires additional State expenditures, primarily in the form of staff to negotiate, coordinate and evaluate RPCPO/IO activities. Since the WQA provides no additional funding to States to carry out these functions, Regions should ensure that State work programs identify 205(j)(2) or 106 grant funds to be devoted to these functions.

### Management Oversight

In reviewing the draft State work program, Regions should place strong emphasis on ensuring that the increased funding for RPCPOs/IOs is targeted by the State to address high priority problems. This same emphasis will be placed on EPA mid-year and end of year evaluations of the State program to determine that State, RPCPO and IO outputs and other work program commitments are achieved on schedule.

It is important to note that the statutory requirement that each State pass through 40% of its award from 205(j)(1) and 604(b) funds each year does not create entitlements to receive continuing funding on the part of the recipient RPCPOs/IOs. If, for example, a RPCPO receives 205(j)(1) funding in FY 1988 and does not fulfill the major commitments in its written agreement with the State, the State should consider shifting that funding to another agency in FY 1989. Part of the Regional Office oversight responsibility is to ensure that States provide 205(j)(1)/604(b) funds to RPCPOs/IOs which perform effectively.

In general, EPA expects the States to provide oversight of RPCPO/IO activities which are paid for with 205(j)(1)/604(b) funds. In turn, EPA Regions will provide oversight of all State activities which are funded from 205(j)(1) and 604(b) reserves and will ensure that State and RPCPO/IO activities are effectively coordinated. Regional Office oversight of 205(j)(2) grants will be in accordance with EPA's "Policy on Performance Based Assistance."

EPA expects the States to fulfill their work program commitments, including those dependent upon RPCPO/IO performance. In the event that a State fails to perform satisfactorily, the Regions will apply the most appropriate measures consistent with the Performance Based Assistance Policy, including sanctions when warranted. The States, in overseeing the work of RPCPOs/IOs, should apply similar measures. In the event of a RPCPO's or IO's substantial and continuing failure to produce outputs or carry out activities according to the work plan it has negotiated with the State, and which the State has incorporated in its 205(j)(2) work program, the State should consider recovering pass through funds. However, 205(j)(2) grant funds passed through to RPCPOs/IOs must be redistributed to other RPCPOs or IOs to the extent such funds made up a part of the annual 40% minimum pass through required under 205(j)(3). Such actions by the State will require amendment of the 205(j)(2) grant, and submission to the Region of any new or amended State-RPCPO/IO contracts.

In the event disputes about 205(j)(2) grants arise that cannot be cooperatively resolved, 205(j)(2) grant applicants or recipients (i.e., States, Territories, and the District of Columbia) may seek EPA review of a dispute

under EPA's, "General Regulations for Assistance Programs," 40CFR Part 30, Subpart L. Since RPCPOs and IOs are not EPA grant recipients they are not eligible to seek dispute review under Subpart L. Nevertheless, RPCPOs/IOs may bring to EPA's attention concerns they may have about State compliance with 205(j)(3) but should first exhaust State administrative remedies.

Authorized Funding (FY 1988 - 1990)

The 1987 Amendments extended the authorized funding for Title II through FY 1990 and provided authorizations for Title VI (State revolving funds) beginning in FY 1989. These authorizations are shown in the table below.

<u>FY</u>	<u>Title II (billions)</u>	<u>Title VI (billions)</u>
1988	\$2.4	--
1989	\$1.2	\$1.2
1990	\$1.2	\$1.2

Amounts available for grants under 205(j)(2) each year will depend on Congressional appropriations. Funding available to be reserved under 205(j)(1) continues to be one percent of each State's Title II allotment or \$100,000, whichever amount is greater. Title II allotments will be reduced by two national set asides (Sections 518(c) and 205(1)) added by the 1987 Amendments. The set asides deduct 1 1/2% from the appropriation before the allotments are calculated in FY 1988 and 2% in FY 1989 and 1990. In addition, the Amendments changed the allotment formula under Section 205.\*

As a result of these two changes, most States' 205(j)(1) reserves will be slightly less in FY 1988 than in FY 1987. The exact reserves available for each State will be published when the FY 1988 appropriations are enacted.

In FY 1989 and FY 1990 authorized funding for Title II construction grants and set-asides is reduced to \$1.2 billion while \$1.2 billion is authorized under Title VI for the establishment of State Revolving Funds. The 1987 Amendments require the States to reserve FY 1989 and FY 1990 funds under Section 604(b) for, "planning under Sections 205(j) and 303(e)," as well as continuing the EPA reserve of WQM planning funds under Section 205(j)(1) through FY 1990. Reserves under Sections 205(j)(1) and 604(b) will be determined separately.

The following table shows simplified\*\* examples for States where a \$100,000 minimum reserve is required under both sections in FYs 1989 and 1990 (STATES A & B), and for States receiving larger allotments requiring them to reserve 1% (STATE C).

\* EPA Headquarters issued a joint OMPC/OWRS memorandum, "Construction Grants Allotments and Reserves Under the Water Quality Act of 1987 (P.L. 100-4)," on July 8, 1987.

\*\* Differences in the bases for determining FY88 and FY89 reserves are not considered. Such differences would have no significant effect on the example.

STATE	1% SHARE TITLE II FY88	FY88 RESERVE 205(j)(1)	FY89 RESERVES		205(j)(2) GRANTS	
			205(j)(1)	604(b)	FY88	FY89
A	\$90,000	\$100,000	\$100,000	\$100,000	\$100,000	\$200,000
B	\$180,000	\$180,000	\$100,000	\$100,000	\$180,000	\$200,000
C	\$250,000	\$250,000	\$125,000	\$125,000	\$250,000	\$250,000

No Title II funds are authorized after FY 1990, and, while Title VI funding is authorized through FY 1994, the allotment formula for Title VI in Section 205(c)(3) is effective only from FY 1987 through FY 1990. Thus, continued set-asides under Section 604(b) for WQM planning after FY 1990 will require action by Congress to extend the allotment formula under Title VI through FY 1994.