

Supplemental Interpretive Guidance for Certain Amendments in the Water Resources Reform and Development Act to Title VI of the Federal Water Pollution Control Act

Background

On June 10, 2014, President Obama signed into law the Water Resources Reform and Development Act of 2014. Among its provisions are amendments to Titles I, II, V, and VI of the Federal Water Pollution Control Act (FWPCA). On September 18, 2014, the Environmental Protection Agency provided initial interpretative guidance for those provisions taking effect October 1, 2014. This document provides guidance for the 602(b)(13) provision that takes effect October 1, 2015.

Subtitle A: Amended Provisions in Title VI

Section 5002. Capitalization Grant Agreements (Section 602)

Section 602(b)(13)

As amended, the FWPCA now includes section 602(b)(13), which states:

(13) beginning in fiscal year 2016, the State will require as a condition of providing assistance to a municipality or intermunicipal, interstate, or State agency that the recipient of such assistance certify, in a manner determined by the Governor of the State, that the recipient—

(A) has studied and evaluated the cost and effectiveness of the processes, materials, techniques, and technologies for carrying out the proposed project or activity for which assistance is sought under this title; and

(B) has selected, to the maximum extent practicable, a project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation, taking into account—

(i) the cost of constructing the project or activity;

(ii) the cost of operating and maintaining the project or activity over the life of the project or activity; and

(iii) the cost of replacing the project or activity;

Under the FWPCA section 602(b)(13), Clean Water State Revolving Fund (CWSRF) programs must require all assistance recipients meeting the definition of municipality or intermunicipal, interstate, or State agency to conduct the studies and evaluations described in 602(b)(13)(A) and (B), herein referred to collectively as a cost and effectiveness analysis. A cost and effectiveness analysis is an eligible cost and CWSRFs can provide assistance for preliminary engineering activities that involve this analysis; however, the analysis must be completed before CWSRF assistance is provided for final design or construction. If planning, design, and construction activities are combined into one assistance agreement, the agreement must be conditioned such that this analysis is completed before an assistance recipient is allowed to proceed with final design or construction. This provision applies to all types of assistance provided to the public

entities described above for which the recipient submits an application¹ on or after October 1, 2015.

The statute requires that a cost and effectiveness analysis involve, at a minimum:

- the study and evaluation of the cost and effectiveness of the processes, materials, techniques, and technologies for carrying out the proposed project or activity for which assistance is sought under this title; and
- the selection, to the maximum extent practicable, of a project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation, taking into account—
 - the cost of constructing the project or activity;
 - the cost of operating and maintaining the project or activity over the life of the project or activity; and
 - the cost of replacing the project or activity.

Each CWSRF program must develop specific criteria for the cost and effectiveness analysis that meet these minimum requirements (*see Appendix XYZ for examples and resources*). States may consider creating tiered requirements that scale the complexity of the analysis to the size of the project and/or the assistance recipient (e.g., population of a municipality or millions of gallons treated for a utility). States may also consider recognizing within the certification process how certain categories of projects, such as purchasing land and planting trees, are handled.

The State has the discretion to decide how an assistance recipient will certify that it has completed the required cost and effectiveness analysis (e.g., a professional engineer's certification). At a minimum, CWSRFs must obtain a written certification from the assistance recipient that it has completed the analysis and that it has selected, to the maximum extent practicable, a project or activity that maximizes the potential for water and energy conservation, as appropriate. As a best practice, it is recommended that CWSRFs also review the cost and effectiveness analysis for selected projects, particularly if paid for by the CWSRF.

¹ States will determine what constitutes an application and must be consistent.

APPENDIX XYZ

Supplemental Information for Implementing Section 602(b)(13)

Under Section 602(b)(13)...

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