

## Environmental Protection Agency

## § 35.3010

criterion will be provided by EPA to adjacent governmental entities in accordance with 40 CFR 130.15.

(3) The Indian Tribe is reasonably expected to be capable, in the Regional Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the Clean Water Act and applicable regulations.

(c) Where a Tribe has previously qualified for treatment as a State under a Clean Water Act or Safe Drinking Water Act program, the Tribe need only provide the required information which had not been submitted in a previous treatment as a State application.

[48 FR 37818, Aug. 19, 1983, as amended at 55 FR 27098, June 29, 1990]

### § 35.3005 Policy.

(a) EPA's policy is to delegate management of the wastewater treatment works construction grant program to the maximum extent possible consistent with the objectives of the Act, prudent fiscal management, and EPA's overall national responsibility for the program. The policy is premised on an on-going partnership between EPA and the States that includes consultation with the States in formulation of policy and guidance by EPA. EPA expects States to undertake full delegation of all project level activities, including preliminary determinations of non-delegable requirements. The objective of delegation is to eliminate duplication of Federal and State effort in the management of the construction grant program, to increase State participation in the construction grant program, and to improve operating efficiency.

(b) Program delegation is to be accomplished through a formal delegation agreement between the Regional Administrator and the State. The delegation agreement will specify the functions which the State will perform and procedures for State certification to EPA.

(c) EPA will overview the performance of the program under delegation to ensure that progress is being made toward meeting the construction grant program objectives and that the State is continuing to employ administrative, fiscal, and program controls to guard against fraud, misuse, and mis-

management of public funds. Overview will also include review of the State management process to ensure it is efficient, effective and assures timely State reviews.

### § 35.3010 Delegation agreement.

(a) Before execution of the delegation agreement, the Regional Administrator must determine that the unit of the State agency designated to implement the agreement is capable of carrying out the delegated functions. The Regional Administrator will evaluate those aspects of the unit which directly affect the State's capability to implement the agreement.

(b) In the delegation agreement, the State agency will assure the Regional Administrator that it will execute its responsibilities under the delegation agreement in conformance with all applicable Federal laws, regulations, orders, and policies.

(c) The delegation agreement will:

(1) Designate the organizational unit within the State responsible for the implementation of the delegation agreement;

(2) List the functions delegated and functions to be delegated, with a schedule for their assumption by the State;

(3) Identify procedures to be followed and records to be kept by the State and EPA in carrying out each delegated function;

(4) Identify the staffing, hiring, training, and funding necessary to carry out the delegated functions;

(5) Estimate program costs by year for the term of the delegation agreement;

(6) Identify an accounting system, acceptable to the Regional Administrator, which will properly identify and relate State costs to the conduct of delegated functions; and

(7) Identify the form and content of the system for EPA overview of State performance consistent with the requirements in § 35.3025 of this subpart, including the frequency, method, and extent of monitoring, evaluation, and reporting.

(d) The term of the delegation agreement shall generally be five years. As subsequent construction management assistance is awarded, the delegation

### § 35.3015

agreement may be amended to maintain a five-year period.

(e) The delegation agreement will be revised, as necessary, to reflect substantial program or procedural changes, as determined by the Regional Administrator.

(Approved by the Office of Management and Budget under control number 2000-0417)

### § 35.3015 Extent of State responsibilities.

(a) Except as provided in paragraph (c) of this section, the Regional Administrator may delegate to the State agency authority to review and certify all construction grant documents required before and after grant award and to perform all construction grant review and management activities necessary to administer the construction grants program.

(b) The State may also act as the manager of waste treatment construction grant projects for small communities. The State, with the approval of the community, may serve as the community contracting agent and undertake responsibilities such as negotiating subagreements, providing technical assistance, and assisting the community in exercising its resident engineering responsibility. In this capacity, the State is in the same position as a private entity and cannot require a small community to hold the State harmless from negligent acts or omissions. The State may also execute an agreement with any organization within the State government, other than the State agency, which is capable of performing these services. The terms of the agreement to provide these services to small communities must be approved by the Regional Administrator before execution of the agreement.

(c) The Regional Administrator shall retain overall responsibility for the construction grant program and exercise direct authority for the following:

(1) Construction grant assistance awards, grant amendments, payments, and terminations;

(2) Projects where an overriding Federal interest requires greater Federal involvement;

(3) Final determinations under Federal statutes and Executive Orders (e.g., the National Environmental Pol-

### 40 CFR Ch. I (7-1-10 Edition)

icy Act of 1969, 42 U.S.C. 4321 *et seq.*, Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*), except for sections 201, 203, 204, and 212 of the Clean Water Act;

(4) Final resolution of construction grant audit exceptions; and

(5) Procurement determinations listed under 40 CFR 33.001(g).

### § 35.3020 Certification procedures.

(a) The State will furnish a written certification to the Regional Administrator for each construction grant project application submitted to EPA for award. The certification must state that all Federal requirements, within the scope of authority delegated to the State under the delegation agreement, have been met. This certification must be supported by documentation specified in the delegation agreement. The documentation must be made available to the Regional Administrator upon request.

(b) Certification that a construction grant project application complies with all delegable pre-award requirements consists of certification of compliance with the following sections of subpart I of this part: § 35.2030 (Facilities planning); § 35.2040 (a) and (b) (Grant application); § 35.2042 (Review of grant applications); and §§ 35.2100 (Limitations on award) through and including 35.2125, except for § 35.2101 (Advanced treatment reviews for projects with incremental capital advanced treatment costs of over \$3 million), § 35.2112 (Marine waiver discharge applicants), and § 35.2113 (final decisions under the National Environmental Policy Act).

### § 35.3025 Overview of State performance under delegation.

The Regional Administrator will review the performance of a delegated State through an annual overview program, developed in accordance with procedures agreed to in the delegation agreement (§ 35.3010(c)(7)). The purpose of the overview program is to ensure that both the delegated State and EPA efficiently and effectively execute the fiscal and program responsibilities under the Clean Water Act and related legislation. The overview program is comprised of three steps: