

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-9115-1]

**Notice of Availability of Class Deviation; Dispute Resolution Procedures Related to Clean Water and Drinking Water State Revolving Fund (CWSRF and DWSRF, Respectively) Reallocation Under the American Reinvestment and Recovery Act of 2009 (ARRA)****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of availability.

**SUMMARY:** This document provides notice of availability of a Class Deviation from EPA's assistance agreement dispute procedures and also sets forth the procedures that will apply to the resolution of disputes that may arise in connection with the CWSRF and DWSRF reallocation decisions made by EPA under the ARRA. Currently, with respect to states and local governments, assistance agreement disputes and disagreements are resolved in accordance with EPA assistance agreement dispute procedures at 40 CFR 31.70. EPA has determined, however, through a Class Deviation, that these procedures are not practicable to use for CWSRF and DWSRF reallocation disputes and that it is appropriate to replace those procedures with the procedures contained in this document. The Class Deviation and this action only affect the dispute resolution procedures for CWSRF and DWSRF reallocation decisions under the ARRA.

**DATES:** These procedures are effective as of February 17, 2010.**FOR FURTHER INFORMATION CONTACT:** Jordan Dorfman, (202) 564-0614.

**SUPPLEMENTARY INFORMATION:** Under EPA's appropriation provisions contained in Division A, Title VII of the ARRA, the Administrator is required to "reallocate funds appropriated \* \* \* for the Clean and Drinking Water State Revolving Funds (Revolving Funds) where projects are not under contract or construction within 12 months of the date of enactment of this Act \* \* \*." On December 24, 2009, EPA's Office of Water (OW) issued a memorandum to implement this requirement. See "Reallocation Process for Funds Deobligated after February 17, 2010 under the American Reinvestment and Recovery Act of 2009." That memorandum, among other things, requires states to certify by March 1, 2010, that they have complied with the statutory requirement that projects were under contract or construction, gives

EPA the opportunity to assess the compliance, and describes the reallocation process. It also notes that EPA's Office of Grants and Debarment will provide guidance regarding the resolution of any reallocation disputes.

In addition to the February 17, 2010, reallocation requirement, Section 1603 of the general provisions of the ARRA requires, with limited exceptions not applicable to the CWSRF or DWSRF programs, that all funds appropriated under the ARRA are available for obligation until September 30, 2010. To ensure that SRF funds are fully obligated for construction projects by September 30th, the OW guidance memorandum makes clear that any funds reallocated to a State that are not under assistance agreements and under contract by June 17, 2010 will be subject to further reallocation.

As described in 40 CFR 31.70, the dispute resolution process can involve up to four levels of review and take several months to complete. Specifically, an entity disputing a decision can attempt to resolve the issue at the lowest level possible, request a final Agency decision, and request a reconsideration of the final decision. A possible fourth step is an EPA headquarters discretionary review of a final Regional decision. This timeframe is too long to permit the Agency to meet ARRA requirements for timely reallocation.

EPA's Office of Grants and Debarment has therefore issued a Class Deviation to streamline the 40 CFR 31.70 procedures. The Class Deviation will allow the Agency to comply with ARRA reallocation requirements and at the same time provide States with a meaningful disputes resolution process in the event a State disagrees with a reallocation decision.

*Statutory and Executive Order Reviews:* Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to OMB review. Because this grant action is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small governments. This action does not have tribal implications, as specified in Executive Order 13175 (63 FR 67249, November 9, 2000). This action will not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action

is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act, 5 U.S.C. 801 *et seq.* generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Since this final grant action contains legally binding requirements, it is subject to the Congressional Review Act, and EPA will submit this action in its report to Congress under the Act.

**List of Subjects in 40 CFR Part 31**

Environmental protection, Administrative practice and procedure, Reporting and recordkeeping requirements.

*ARRA CWSRF and DWSRF Assistance Agreement Reallocation Decision Dispute Resolution Procedures:*

EPA establishes ARRA CWSRF and DWSRF Assistance Agreement Reallocation dispute resolution procedures as follows:

1. The authority citation for the ARRA CWSRF and DWSRF assistance agreement reallocation disputes resolution procedures in this document is the Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6301(3).

2. The disputes resolution procedures that will apply to ARRA CWSRF and DWSRF assistance agreement reallocation disputes are as follows:

*Dispute Resolution Procedures:*

1. After receiving certifications provided by states, but not later than March 2, 2010, EPA will assess the certifications. As soon as possible thereafter, EPA will notify states that have any amount of ARRA funds identified as not under contract by February 17, 2010, that those funds will be deobligated and reallocated to eligible states.

2. If a state disagrees with the decision to deobligate funds or the amount of funds that the Agency determined is appropriate for deobligation of the state's CWSRF or DWSRF assistance agreement, it must

file a written request for reconsideration within three (3) calendar days of receiving the notification of intent to deobligate the funds. Any detail or arguments regarding why the state disagrees with the deobligation decision shall be provided at that time.

3. The written request for reconsideration shall be sent via E-Mail (PDF) or Facsimile to Jordan Dorfman. E-Mail address is *Dorfman.Jordan@epa.gov*; Fax is 202-501-2346.

4. The Assistant Administrator for the Office of Water shall review all reconsideration submissions, and shall issue a decision in writing within three (3) calendar days of receiving the reconsideration request. This decision shall be the final decision of the Agency.

5. The Agency will follow the same type of procedure for any subsequent reallocations.

**Craig E. Hooks,**

*Assistant Administrator, Office of Administration and Resources Management.*

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**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-9118-5]

**Clean Water Act Section 303(d): Availability of Ten Total Maximum Daily Loads (TMDLs) in Louisiana**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces the availability for comment on the administrative record files and the calculations of ten TMDLs prepared by EPA Region 6.

This notice covers waters in the State of Louisiana's Atchafalaya and Mississippi River Basins that were identified as impaired on the States Section 303(d) list. These TMDLs were completed in response to a court order in the lawsuit styled *Sierra Club, et al. v. Clifford, et al.*, No. 96-0527, (E.D. La.).

**DATES:** Comments must be submitted in writing to EPA on or before March 29, 2010.

**ADDRESSES:** Comments on the ten TMDLs should be sent to Diane Smith, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX

75202-2733 or e-mail: *smith.diane@epa.gov*. For further information, contact Diane Smith at (214) 665-2145 or fax 214.665.7373. The administrative record files for the ten TMDLs are available for public inspection at this address as well. Documents from the administrative record files may be viewed at <http://www.epa.gov/earth1r6/6wq/npdes/tmdl/index.htm>, or obtained by calling or writing Ms. Smith at the above address. Please contact Ms. Smith to schedule an inspection.

**FOR FURTHER INFORMATION CONTACT:** Diane Smith at (214) 665-2145.

**SUPPLEMENTARY INFORMATION:** In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal Court against the EPA, styled *Sierra Club, et al. v. Clifford, et al.*, No. 96-0527, (E.D. La.). Among other claims, plaintiffs alleged that EPA failed to establish Louisiana TMDLs in a timely manner. EPA proposes these ten TMDLs pursuant to a consent decree entered in this lawsuit.

**EPA Seeks Comment on Ten TMDLs**

By this notice EPA is seeking comment on the following ten TMDLs for waters located within Louisiana:

Subsegment	Waterbody name	Pollutant
010301 .....	West Atchafalaya Basin Floodway .....	Dissolved Oxygen.
070203 .....	Devil's Swamp Lake and Bayou Baton Rouge .....	Fecal Coliform.
070401 .....	Mississippi River Passes (estuarine) .....	Fecal Coliform.
070403 .....	Octave Pass and Main Pass (estuarine) .....	Fecal Coliform.
070404 .....	Tiger Pass, Red Pass, Grand Pass, and Tante Phine Pass (estuarine).	Fecal Coliform.
070501 .....	Bayou Sara .....	Fecal Coliform.
070502 .....	Thompson Creek .....	Fecal Coliform.
070503 .....	Capitol Lake .....	Fecal Coliform.
070505 .....	Tunica Bayou .....	Fecal Coliform.
070601 .....	Mississippi River Basin Coastal Bays and Gulf Waters to the State three-mile limit.	Fecal Coliform.

EPA requests the public provide to EPA any water quality related data and information that may be relevant to the calculations for the ten TMDLs. EPA will review all data and information submitted during the public comment period and will revise the TMDLs where appropriate. EPA will then forward the TMDLs to the Louisiana Department of Environmental Quality (LDEQ). The LDEQ will incorporate the TMDLs into its current water quality management plan.

Dated: February 18, 2010.

**Miguel I. Flores,**

*Director, Water Quality Protection Division, EPA Region 6.*

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**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-HQ-OW-2009-0921; FRL-9118-6]

**Extension of Request for Scientific Views for Draft 2009 Update Aquatic Life Ambient Water Quality Criteria for Ammonia—Freshwater**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; extension of the request for scientific views.

**SUMMARY:** On December 30, 2009 (74 FR 69086), EPA announced the availability of draft national recommended water quality criteria for ammonia for the