

authorized to construct, operate, and maintain flood control works located in the United States having substantially the characteristics described in “Report on the Flood Control Project Rio Grande, Presidio Valley, Texas”, prepared by the United States section, International Boundary and Water Commission, United States and Mexico; and there are hereby authorized to be appropriated to the Department of State for the use of the United States section of the Commission such sums as may be necessary to carry out the provisions of title II of this Act. No part of any appropriation under this section shall be expended for flood control works on any land, site, or easement unless such land, site, or easement has been acquired under the treaty for other purposes or by donation and, in the case of a donation, the title thereto has been approved in accordance with existing rules and regulations of the Attorney General of the United States.

(Pub. L. 92-549, title II, §202, Oct. 25, 1972, 86 Stat. 1163.)

Editorial Notes

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 92-549, Oct. 25, 1972, 86 Stat. 1161, known as the “American-Mexican Boundary Treaty Act of 1972”. Title II of this Act enacted sections 277d-41 and 277d-42 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 277d-34 of this title and Tables.

§ 277d-43. Definitions

In sections 277d-43 to 277d-46 of this title, the following definitions apply:

(1) Administrator

The term “Administrator” means the Administrator of the Environmental Protection Agency.

(2) Commission

The term “Commission” means the United States section of the International Boundary and Water Commission, United States and Mexico.

(3) IWTP

The term “IWTP” means the South Bay International Wastewater Treatment Plant constructed under the provisions of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), section 510 of the Water Quality Act of 1987 (101 Stat. 80-82), and Treaty Minutes to the Treaty for the Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, dated February 3, 1944.

(4) Secondary treatment

The term “secondary treatment” has the meaning such term has under the Federal Water Pollution Control Act and its implementing regulations.

(5) Secretary

The term “Secretary” means the Secretary of State.

(6) Mexican facility

The term “Mexican facility” means a proposed public-private wastewater treatment fa-

cility to be constructed and operated under sections 277d-43 to 277d-46 of this title within Mexico for the purpose of treating sewage flows generated within Mexico, which flows impact the surface waters, health, and safety of the United States and Mexico.

(7) Mgd

The term “mgd” means million gallons per day.

(Pub. L. 106-457, title VIII, §803, Nov. 7, 2000, 114 Stat. 1977.)

Editorial Notes

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in pars. (3) and (4), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

Section 510 of the Water Quality Act of 1987, referred to in par. (3), is section 510 of Pub. L. 100-4, title V, Feb. 4, 1987, 101 Stat. 80, which is not classified to the Code.

Statutory Notes and Related Subsidiaries

SHORT TITLE

Pub. L. 106-457, title VIII, §801, Nov. 7, 2000, 114 Stat. 1977, provided that: “This title [enacting this section and sections 277d-44 to 277d-46 of this title] may be cited as the ‘Tijuana River Valley Estuary and Beach Sewage Cleanup Act of 2000’.”

PURPOSE

Pub. L. 106-457, title VIII, §802, Nov. 7, 2000, 114 Stat. 1977, provided that: “The purpose of this title [see Short Title note above] is to authorize the United States to take actions to address comprehensively the treatment of sewage emanating from the Tijuana River area, Mexico, that flows untreated or partially treated into the United States causing significant adverse public health and environmental impacts.”

§ 277d-44. Actions to be taken by the Commission and the Administrator

(a) Secondary treatment

(1) In general

Pursuant to Treaty Minute 311 to the Treaty for the Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, dated February 3, 1944, and notwithstanding section 510(b)(2) of the Water Quality Act of 1987 (101 Stat. 81), the Commission is authorized and directed to provide for the secondary treatment of a total of not more than 50 mgd in Mexico—

(A) of effluent from the IWTP if such treatment is not provided for at a facility in the United States; and

(B) of additional sewage emanating from the Tijuana River area, Mexico.

(2) Additional authority

Subject to the results of the comprehensive plan developed under subsection (b) revealing a need for additional secondary treatment capacity in the San Diego-Tijuana border region and recommending the provision of such capacity in Mexico, the Commission may provide

not more than an additional 25 mgd of secondary treatment capacity in Mexico for treatment described in paragraph (1).

(b) Comprehensive plan

Not later than 24 months after November 7, 2000, the Administrator shall develop a comprehensive plan with stakeholder involvement to address the transborder sanitation problems in the San Diego-Tijuana border region. The plan shall include, at a minimum—

(1) an analysis of the long-term secondary treatment needs of the region;

(2) an analysis of upgrades in the sewage collection system serving the Tijuana area, Mexico; and

(3) an identification of options, and recommendations for preferred options, for additional sewage treatment capacity for future flows emanating from the Tijuana River area, Mexico.

(c) Contract

(1) In general

Notwithstanding any provision of Federal procurement law, the Commission may enter into a multiyear fee-for-services contract with the owner of a Mexican facility in order to carry out the secondary treatment requirements of subsection (a) and make payments under such contract, subject to the availability of appropriations and subject to the terms of paragraph (2).

(2) Terms

Any contract under this subsection shall provide, at a minimum, for the following:

(A) Transportation of the advanced primary effluent from the IWTP to the Mexican facility for secondary treatment.

(B) Treatment of the advanced primary effluent from the IWTP to the secondary treatment level in compliance with water quality laws of the United States, California, and Mexico.

(C) Return conveyance from the Mexican facility of any such treated effluent that cannot be reused in either Mexico or the United States to the South Bay Ocean Outfall for discharge into the Pacific Ocean in compliance with water quality laws of the United States and California.

(D) Subject to the requirements of subsection (a), additional sewage treatment capacity that provides for advanced primary and secondary treatment of sewage described in subsection (a)(1)(B) in addition to the capacity required to treat the advanced primary effluent from the IWTP.

(E) A contract term of 20 years.

(F) Arrangements for monitoring, verification, and enforcement of compliance with United States, California, and Mexican water quality standards.

(G) Arrangements for the disposal and use of sludge, produced from the IWTP and the Mexican facility, at a location or locations in Mexico.

(H) Maintenance by the owner of the Mexican facility at all times throughout the term of the contract of a 20 percent equity position in the capital structure of the Mexican facility.

(I) Payment of fees by the Commission to the owner of the Mexican facility for sewage treatment services with the annual amount payable to reflect all agreed upon costs associated with the development, financing, construction, operation, and maintenance of the Mexican facility, including costs associated with the purchase of any insurance or other financial instrument under subparagraph (K). Costs associated with the purchase of such insurance or other financial instrument may be amortized over the term of the contract.

(J) Neither the Commission nor the United States Government shall be liable for payment of any cancellation fees if the Commission cancels the contract.

(K) The owner of the Mexican facility may purchase insurance or other financial instrument to cover the risk of cancellation of the contract by the Commission. Any such insurance or other financial instrument shall not be provided or guaranteed by the United States Government, and the Government may reserve the right to validate independently the reasonableness of the premium when negotiating the annual service fee with the owner.

(L) Transfer of ownership of the Mexican facility to an appropriate governmental entity, other than the United States, if the Commission cancels the contract.

(M) Transfer of ownership of the Mexican facility to an appropriate governmental entity, other than the United States, if the owner of the Mexican facility fails to perform under the contract.

(N) The use of competitive procedures under applicable law, consistent with division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, by the owner of the Mexican facility in the procurement of property or services for the engineering, construction, and operation and maintenance of the Mexican facility.

(O) An opportunity for the Commission to review and approve the selection of contractors providing engineering, construction, and operation and maintenance for the Mexican facility.

(P) The maintenance by the owner of the Mexican facility of all records (including books, documents, papers, reports, and other materials) necessary to demonstrate compliance with the terms of this section and the contract.

(Q) Access by the Inspector General of the Department of State or the designee of the Inspector General for audit and examination of all records maintained pursuant to subparagraph (N)¹ to facilitate the monitoring and evaluation required under subsection (d).

(R) Offsets or credits against the payments to be made by the Commission under this section to reflect an agreed upon percentage of payments that the owner of the Mexican facility receives through the sale of water treated by the facility.

¹ See References in Text note below.

(d) Implementation**(1) In general**

The Inspector General of the Department of State shall monitor the implementation of any contract entered into under this section and evaluate the extent to which the owner of the Mexican facility has met the terms of this section and fulfilled the terms of the contract.

(2) Report

The Inspector General shall transmit to Congress a report containing the evaluation under paragraph (1) not later than 2 years after the execution of any contract with the owner of the Mexican facility under this section, 3 years thereafter, and periodically after the second report under this paragraph.

(Pub. L. 106-457, title VIII, §804, Nov. 7, 2000, 114 Stat. 1978; Pub. L. 108-425, §1, Nov. 30, 2004, 118 Stat. 2420.)

Editorial Notes

REFERENCES IN TEXT

Section 510(b)(2) of the Water Quality Act of 1987, referred to in subsec. (a)(1), is section 510(b)(2) of Pub. L. 100-4, title V, Feb. 4, 1987, 101 Stat. 81, which is not classified to the Code.

Subparagraph (N) of subsec. (c)(2) of this section, referred to in subsec. (c)(2)(Q), was redesignated as subparagraph (P) by Pub. L. 108-425, §1(b)(3), Nov. 30, 2004, 118 Stat. 2420.

CODIFICATION

In subsec. (c)(2)(N), “division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41” substituted for “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108-425, §1(a), substituted “Pursuant to Treaty Minute 311 to the Treaty for the Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, dated February 3, 1944,” for “Subject to the negotiation and conclusion of a new Treaty Minute or the amendment of Treaty Minute 283 under section 1005 of this Act.”

Subsec. (c)(1). Pub. L. 108-425, §1(b)(1), added par. (1) and struck out former par. (1) which read as follows: “Subject to the availability of appropriations to carry out this subsection and notwithstanding any provision of Federal procurement law, upon conclusion of a new Treaty Minute or the amendment of Treaty Minute 283 under section 5, the Commission may enter into a fee-for-services contract with the owner of a Mexican facility in order to carry out the secondary treatment requirements of subsection (a) of this section and make payments under such contract.”

Subsec. (c)(2)(I). Pub. L. 108-425, §1(b)(2), substituted “, including costs associated with the purchase of any insurance or other financial instrument under subparagraph (K). Costs associated with the purchase of such insurance or other financial instrument may be amortized over the term of the contract.” for “, with such annual payment to maintain the owner’s 20 percent equity position throughout the term of the contract.”

Subsec. (c)(2)(J), (K). Pub. L. 108-425, §1(b)(3), added subpars. (J) and (K). Former subpars. (J) and (K) redesignated (L) and (M), respectively.

Subsec. (c)(2)(L), (M). Pub. L. 108-425, §1(b)(4), added subpars. (L) and (M) and struck out former subpars. (L) and (M) which read as follows:

“(L) Provision for the transfer of ownership of the Mexican facility to the United States, and provision for a cancellation fee by the United States to the owner of the Mexican facility, if the Commission fails to perform its obligations under the contract. The cancellation fee shall be in amounts declining over the term of the contract anticipated to be sufficient to repay construction debt and other amounts due to the owner that remain unamortized due to early termination of the contract.

“(M) Provision for the transfer of ownership of the Mexican facility to the United States, without a cancellation fee, if the owner of the Mexican facility fails to perform the obligations of the owner under the contract.”

Pub. L. 108-425, §1(b)(3), redesignated subpars. (J) and (K) as (L) and (M), respectively. Former subpars. (L) and (M) redesignated (N) and (O), respectively.

Subsec. (c)(2)(N). Pub. L. 108-425, §1(b)(3), (5), redesignated subpar. (L) as (N) and inserted “under applicable law” after “competitive procedures”. Former subpar. (N) redesignated (P).

Subsec. (c)(2)(O) to (R). Pub. L. 108-425, §1(b)(3), redesignated subpars. (M) to (P) as (O) to (R), respectively.

§ 277d-45. New Treaty Minute**(a) Congressional statement**

In light of the existing threat to the environment and to public health and safety within the United States as a result of the river and ocean pollution in the San Diego-Tijuana border region, the Secretary is requested to give the highest priority to the negotiation and execution of a new Treaty Minute, or a modification of Treaty Minute 283, consistent with the provisions of sections 277d-43 to 277d-46 of this title, in order that the other provisions of sections 277d-43 to 277d-46 of this title to address such pollution may be implemented as soon as possible.

(b) Negotiation**(1) Initiation**

The Secretary is requested to initiate negotiations with Mexico, within 60 days after November 7, 2000, for a new Treaty Minute or a modification of Treaty Minute 283 consistent with the provisions of sections 277d-43 to 277d-46 of this title.

(2) Implementation

Implementation of a new Treaty Minute or of a modification of Treaty Minute 283 under sections 277d-43 to 277d-46 of this title shall be subject to the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(3) Matters to be addressed

A new Treaty Minute or a modification of Treaty Minute 283 under paragraph (1) should address, at a minimum, the following:

(A) The siting of treatment facilities in Mexico and in the United States.

(B) Provision for the secondary treatment of effluent from the IWTP at a Mexican facility if such treatment is not provided for at a facility in the United States.

(C) Provision for additional capacity for advanced primary and secondary treatment of additional sewage emanating from the Tijuana River area, Mexico, in addition to the treatment capacity for the advanced primary effluent from the IWTP at the Mexican facility.