



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

OFFICE OF
WATER

February 17, 2000

CWSRF 00-08

MEMORANDUM

SUBJECT: User Charge System Requirements for Treatment Works Constructed under Title II of the Clean Water Act and the Clean Water State Revolving Fund Program

FROM: Michael B. Cook, Director
Office of Wastewater Management

TO: Water Division Directors
Regions I-X

This is in response to recurring questions from various parties concerning the length of time user charge system requirements apply to wastewater treatment works constructed with grant funds awarded under Title II of the Clean Water Act and treatment works constructed with funds made available through the Clean Water State Revolving Fund Program. A discussion of the user charge system requirements under each of the programs is set forth below:

User Charge Requirements for Treatment Works Constructed With Grant Funds Awarded Under Title II of the Clean Water Act

Section 204(b)(1)(A) of the Clean Water Act, 33 U.S.C. 1284(b)(1)(A), requires, as a condition of receiving Federal funding for wastewater treatment works, that the applicant:

. . .has adopted or will adopt a system of charges to assure that each recipient of waste treatment services within the applicant's jurisdiction... will pay its proportionate share...of the costs of operation and maintenance (including replacement) of any waste treatment services provided by the applicant;

Regulations implementing Section 204(b)(1)(A) require that grantees as a condition of Title II funding adopt, implement, and maintain a user charge system. The regulations set forth the requirements for such user charge system(s). Under 40 CFR 35.925-11 (1974) "the applicant must agree that such system(s) will be maintained"...and under 40 CFR Part 35, Subpart E, Appendix B at (f)(1974) "The user charge system...shall be maintained by the grantee in accordance with the following requirements:"

We have been asked by states, grantees, and rate payers whether the Title II user charge system requirements continue to apply even though the Title II construction grant was awarded many years ago. The answer is yes. The Clean Water Act does not place a time limit on how long the user charge system requirements must be maintained. Early Title II construction grant regulations indicated that user charge system requirements were to be maintained for the service life of the treatment works [40 CFR 35, Subpart E, Appendix B at (d) (1)]. Service life has been interpreted by the Agency as the useful life of the treatment works. Subsequent Title II construction grant regulations stated specifically that user charge system requirements must be implemented for the “useful life of the treatment works” [40 CFR 35.2208 (1984)]. “Useful life” is defined as the “period during which a treatment work operates” [40 CFR 35.2005(b)(51) (1984)]. Therefore, so long as the grant-funded treatment works have not been abandoned, or the Federal interests disposed, the Title II construction grant requirements for the user charge system remain as long as the treatment works are operational.

In order for user charge systems to meet the Title II construction grant requirements, each user (or user class) must pay its proportionate share of operation and maintenance (including equipment replacement) costs of the waste treatment services based on the quantity and character of its discharges [40 CFR 35.929-1(a)]. While the statute and regulations permit the establishment of classes of users, the classes that are established must be based on the “users having similar flows and wastewater characteristics; *i.e.*, levels of biochemical oxygen demand, suspended solids, etc.” [40 CFR Part 35, Subpart E, Appendix B, at (e)]. Generally, most wastewater treatment grantees establish four user classes having similar wastewater flow and characteristics: residential, commercial, industrial, and governmental/institutional. When such user classes are established, each class is assigned its share of the waste treatment works operation and maintenance (including equipment replacement) costs based on the proportional contribution of the class to the total treatment works loading. Each user within a user class pays its proportionate share of the costs attributed to the user class. When the costs of wastewater treatment increases or decreases, the grantee must proportionately increase or decrease the wastewater treatment rates for each class of users. The one exception to the proportionality requirement is for low income residential users provided in Section 204(b)(1).

User Charge Requirements for Treatment Works Constructed With Funds Made Available Through the Clean Water State Revolving Fund (CWSRF) Program

Section 602(b)(6) of the Clean Water Act, 33 U.S.C. 1382(b), requires that treatment works constructed in whole or part before October 1, 1994, with funds made directly available by capitalization grants (known as “CWSRF equivalency funds”) from the state water pollution control revolving fund must also comply with the user charge system requirements set forth in Section 204(b)(1)(A) of the Clean Water Act. However, the CWSRF statute and regulations (40 CFR Part 35, Subpart 31) require only that states meet the statutory requirements, not the federal regulatory requirements promulgated for the Title II construction grants program. The CWSRF regulations at 40 CFR 35.3135 allow states to develop their own procedures for implementing the statutory provisions. The statutory requirements for the CWSRF program do not specify a time frame for the imposition of the user charge system. Therefore, states can use the federal regulatory definition for the “useful life” of the facilities, the duration of the loan, or any other criteria to

establish the applicable time period for the user charge system requirements under their CWSRF programs. Each state's CWSRF agency is responsible for establishing its specific user charge system implementation procedures which will be accepted by the Regional Administrator if the procedures adequately assure compliance with the statutory requirements.

In the situations where treatment works received funding from both Title II construction grants and CWSRF loans, the recipients as a minimum must adhere to the user charge system requirements of the Title II construction grants program.

Compliance Under Title II and CWSRF

The normal course of action for non-compliance with user charge requirements is for EPA and the state to provide the grantee/loan recipient with technical assistance plus an opportunity to correct its user charge system in order to avoid grant annulment or compliance action.

In the case of Title II grant recipients, the failure to meet the user charge requirements discussed above can ultimately result in the annulment of their construction grant(s) and repayment of all construction grant funds [40 CFR 30.920-5 (1979)]. With regard to CWSRF loan recipients, a state would be expected to bring a compliance action against the loan recipient pursuant to Section 605 of the Clean Water Act and 40 CFR 35.3170 for failure to satisfy the terms of its loan agreement and the state capitalization agreement with regard to user charges system as required by Section 602(b)(6) of the Clean Water Act.

If you have any questions on how user charge requirements apply to these programs, please call me at (202)260-5850 or Haig Farmer at (202)260-7279.

cc: Regional Branch Chiefs
CWSRF Coordinators