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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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OFFICE OF
WATER

MEMORANDUM

SUBJECT: Award of Special Appropriations Act Project Grants Authorized by the Agency's FY 2009 Appropriations Act

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TO: Water Management Division Directors
Regions I - X

PURPOSE

This memorandum provides information and guidelines on how the Environmental Protection Agency (EPA) will award and administer Special Appropriations Act Project (SAAP) grants identified in the State and Tribal Assistance Grants (STAG) account of the Agency's fiscal year (FY) 2009 Appropriations Act.

BACKGROUND

The EPA section of P. L. 111-8, the "Omnibus Appropriations Act, 2009," also referred to as the Agency's FY 2009 Appropriations Act, includes \$145,000,000 in the STAG account for 301 drinking water, wastewater and stormwater infrastructure and water quality protection projects. Also included in the STAG account as a separate line item is \$20,000,000 for the United States-Mexico Border Program. The Joint Explanatory Statement for the FY 2009 Appropriations Act identifies two projects to be funded directly from the line item for the United States-Mexico Border Program: "From within the amount provided for the Mexican Border program, \$2,500,000 is directed to El Paso and Brownsville, Texas as in prior years." The FY 2009 Appropriations Act also contains a rescission of \$10,000,000 from the STAG appropriation account. The Joint Explanatory Statement directs the Agency to take a portion of the rescission from "[b]alances from special project grants appropriated in fiscal year 2002 or earlier that have not been obligated on an approved grant as of July 1, 2009."

The specific requirements governing the award of the special projects and programs are contained in the following documents: the FY 2009 Appropriations Act and the Joint Explanatory Statement for Division E of the FY 2009 Appropriations Act – Department of the

Interior, Environment, and Related Agencies Appropriations Act, 2009, the House Report (H.R. 1105). The specific requirements contained in these documents have been incorporated into this memorandum.

THREE PERCENT SET-ASIDE

The Agency's FY 2001 Appropriations Act (P. L. 106-377) included a provision stating that the Administrator may use up to three percent of the amount appropriated for each earmark to fund State, Corps of Engineer or contractor support for the management and oversight of the special projects. This means that the set-aside monies cannot be used to pay for EPA staff or travel expenses. EPA issued a formal policy memorandum on September 27, 2001, that provides information and guidelines on how the Agency will implement the three percent set-aside provision.¹ EPA also issued a formal policy memorandum, SAAP 06-02, on January 20, 2006, that amends the aforementioned memorandum (attachment 7).

The three percent set-aside provision is a permanent statutory authority which means it applies to all FY 2001 and later SAAPs including those listed in the STAG account of this year's Appropriations Act. However, the three percent set-aside provision does not apply to the United States-Mexico Border Program grants or any other funds in the STAG account.

PROJECTS

The Explanatory Statement submitted by Mr. Obey, Chairman of the House Committee on Appropriations identified two projects funded from monies appropriated for the United States-Mexico Border Program. These two projects will be awarded and administered within the guidelines and provisions contained in this memorandum, unless otherwise noted herein.

Attachment 1 identifies the 301 earmarks listed in the STAG account and the two projects funded from monies appropriated for the United States-Mexico Border Program. Attachment 1 also shows the original amount appropriated for each project, as well as the actual amount available for grant award after the reduction due to the three percent set-aside provision.²

The SAAPs identified in Attachment 1 will be awarded and administered by the Regional Offices. The delegation of authority (1200 TN 516), issued on September 28, 2000 (Attachment 2), is listed in Chapter 1, Delegation Number 1-102, of EPA's Delegation Manual. This delegation of authority transferred the authority to award grants and cooperative agreements for funds included in the STAG account to the Assistant Administrator for Water and the Regional

¹This document is available on the internet at www.epa.gov/owm/mab/owm0318.pdf.

² States that choose to perform the necessary construction oversight activities for the planning, design and building phases of a project at their own expense may request to have the three percent set-aside funds assigned to the respective grant recipients within their States. Headquarters will transfer the necessary funds to the Regions for this purpose after the formal review and approval of the State's request.

Administrators. Accordingly, the Regions and Headquarters have the necessary authority, effective the date of this memorandum, to award grants and cooperative agreements for the special projects and programs identified in the STAG account of the Agency's FY 2009 Appropriations Act.

COST-SHARE REQUIREMENT

The FY 2009 Appropriations Act contains the following language:

\$145,000,000 shall be for making special project grants for the construction of drinking water, wastewater and storm water infrastructure and for water quality protection in accordance with the terms and conditions specified for such grants in the explanatory statement described in section 4 (in the matter preceding division A of this consolidated Act), and, for purposes of these grants, each grantee shall contribute not less than 45 percent of the cost of the project unless the grantee is approved for a waiver by the Agency

Though language from previous year appropriations requiring that waivers be based on financial capability issues was not included in the FY 2009 Appropriations Act or the Explanatory Statement, the Agency will continue to implement the waiver provision in the same manner as FY 2008 and previous years. Accordingly, our policy for the projects listed in Attachment 1 is that grant applicants will be expected to pay for 45 percent of the project costs unless there is specific language in the Explanatory Statement or Appropriations Act that specifies a different matching requirement or a waiver to the matching requirement is approved based on financial capability issues.

Furthermore, in those situations where the description in the Explanatory Statement explicitly defines the scope of work of the project, the Federal share of the grant will be limited to 55 percent of the estimated cost for completing the scope of work described, regardless of the amount appropriated for the project, unless a waiver to the matching requirement is approved based on financial capability issues. This means, in some instances, that the grant amount will be less than the amount appropriated for the project and that some funds will not be obligated. The disposition of any such unobligated grant funds will be determined by Congress.

WAIVERS TO THE MATCHING REQUIREMENT

In March 1997, EPA published *Combined Sewer Overflows -- Guidance for Financial Capability Assessment and Schedule Development*.³ This financial guidance document includes a process for measuring the financial impact of current and proposed wastewater treatment facilities and drinking water facilities on the users of those facilities, and establishes a procedure for assessing financial capability. The process for assessing financial capability contained in that

³This document is available on the internet at www.epa.gov/owm/pdfs/csofc.pdf.

document was initially developed in the 1970's and has been extensively revised based on EPA's experience in the construction grants, State Revolving Fund (SRF), enforcement and water quality standards programs. The assessment process requires the calculation of a financial capability indicator. The Agency approves waivers in those cases where the financial capability indicator shows that the project would result in a high financial burden on the users of the facility.

Exceptions to the 45 percent match requirement must be approved by EPA Headquarters. All requests for an exception should be prepared by the EPA Regional Offices using information provided by the grant applicant. The request must include the information contained in Chapters III and IV of the Financial Capability Assessment guidance document.⁴ The requests, including the necessary supporting documentation and appropriate background material, should be submitted to the Chief, State Revolving Fund Branch, (Mail Code 4204M), USEPA, 1200 Pennsylvania Avenue NW, Washington, D.C. 20460.

FEDERAL FUNDS AS A SOURCE OF MATCHING FUNDS

Federal funds from other programs may be used as all or part of the match for the SAAPs only if the statute authorizing those programs specifically allows the funds to be used as a match for other Federal grants. Additionally, the other Federal programs must allow their appropriated funds to be used for the planning, design and/or construction of water, wastewater or groundwater infrastructure projects. Listed below are the major Federal programs whose grant or loan funds can be used to provide all or part of the match for the SAAPs:

- Department of Agriculture, Rural Development program;
- Department of Housing and Urban Development, Community Development Block Grant program; and
- Appalachian Regional Commission grants.

As previously stated, Federal funds may be used as all or part of the match for other Federal grant programs only if the authorizing legislation includes such authority. Since the FY 2009 Appropriations Act does not include such language, the special Appropriations Act grant funds cannot be used as a source of matching funds for other Federal programs.

LOANS FROM A STATE REVOLVING FUND AS A SOURCE OF MATCHING FUNDS

The Agency provides funding for two separate State Revolving Fund (SRF) loan programs, the Clean Water State Revolving Fund (CWSRF) program and the Drinking Water State Revolving Fund (DWSRF) program. The Agency has taken actions that allow particular

⁴ All of the financial data used to calculate the financial capability indicator must be indexed to the same year. The Bureau of Labor Statistics= web site (www.bls.gov/cpi/) contains an "Inflation Calculator" that will automatically perform this function.

sources of funds from the two SRF programs to be used as a source of the local match. Specifically, the Agency issued the following two documents:

- A class deviation from the regulatory provisions of 40 CFR 35.3125(b)(1). The class deviation,⁵ issued August 16, 2001, pertains to the CWSRF program.
- A policy memorandum designated as DWSRF 02-01. The policy memorandum,⁶ issued October 10, 2001, pertains to the DWSRF program.

The class deviation and policy document listed above allow State SRF programs to use the non-Federal and non-State match share of SRF funds to provide loans that can be used as the match for the special projects. The non-Federal funds include repayments, interest earnings and bond proceeds. The non-State match share (i.e., the overmatch) is any State contribution to the SRF above the statutorily required 20 percent match.

The use of a loan from an SRF to provide part of or the entire match for a SAAP is a State SRF program agency decision. However, the action must be consistent with established State policy, guidelines and procedures governing the use of SRF loans. Projects that receive SRF assistance must also adhere to Federal CWSRF or DWSRF program requirements relating to eligibility and prioritization.

PRE-AWARD COSTS

The Office of Grants and Debarment (OGD) issued a policy memorandum (GPI 00-02) on March 30, 2000, that applies to all grants, including special Appropriations Act projects awarded on or after April 1, 2000. Additionally, a clarification to the policy memorandum (GPI 00-02(a)) was issued by OGD on May 3, 2000. The two memorandums revised the Agency's interpretation of a provision contained in the general grant regulations at 40 CFR 31.23(a) concerning the approval of pre-award costs.

In essence, the OGD memorandums state that:

- Recipients may incur pre-award costs [up to] 90 calendar days prior to the award date provided they include such costs in their application, the costs meet the definition of pre-award costs and are approved by the EPA Project Officer and EPA Award Official.
- The award official can approve pre-award costs incurred more than 90 calendar days prior to the grant award date, in appropriate circumstances, if the pre-award costs are

⁵This document is available on the internet at www.epa.gov/owm/mab/owm0324.pdf.

⁶This document is available on the internet at www.epa.gov/owm/mab/owm0325.pdf.

in conformance with the requirements set forth in OMB Circular A-87 and with applicable Agency regulations, policies and guidelines.

The OGD memorandums state that the award official can approve pre-award costs incurred prior to grant award in appropriate situations if the approval of the pre-award costs is consistent with the intent of the requirements for pre-award costs set forth in OMB Circular A-87 and are in conformance with Agency regulations, policies and guidelines. The following two situations meet these requirements:

- Any allowable costs incurred *after* the start of the fiscal year for which the funds were appropriated but before grant award (*for FY 2009 projects, this date is October 1, 2008*).
- Allowable facilities planning and design costs associated with the construction portions of the project included in the grant that were incurred *before* the start of the fiscal year for which the funds were appropriated (*for FY 2009 projects, this date is October 1, 2008*).

Accordingly, effective April 1, 2000, the Regions have the authority to approve pre-award costs for the two situations described above. Any approval, of course, is contingent on the Regional Office determination that the pre-award costs in question are in conformance with the applicable Federal laws, regulations and executive orders that govern EPA grant awards and are allowable, reasonable and allocable to the project.

The Regions may not approve any pre-award costs for SAAPs, other than those that involve the two situations discussed above, without written approval from Headquarters. The request, with sufficient supporting documentation, should be submitted to the Chief, State Revolving Fund Branch, (Mail Code 4204M), USEPA, 1200 Pennsylvania Avenue NW, Washington, D.C. 20460. The State Revolving Fund Branch will consult, in appropriate circumstances, with the National Policy, Training and Compliance Division (NPTCD) within OGD and the Office of General Counsel. If appropriate, a deviation from 40 CFR 31.23(a) will be processed and issued.

LAWS, REGULATIONS AND REQUIREMENTS

A listing of the Federal Laws and Executive Orders that apply to all EPA grants, including the projects authorized by the Agency's FY 2009 Appropriations Act, is contained in Attachment 3. Some of the authorities only apply to grants that include construction, e.g., EO 13202. A more detailed description of the Federal laws, Executive Orders, OMB Circulars and their implementing regulations is available through the OGD Grants Intranet website at <http://intranet.epa.gov/ogd/>, or through the OGD public grant website at <http://www.epa.gov/ogd/>.

The regulations at 40 CFR Part 31 apply to grants and cooperative agreements awarded to State and local (including tribal) governments. The regulations at 40 CFR Part 30 apply to grants with nonprofit organizations and with non-governmental for-profit entities. In appropriate circumstances, such as grants for demonstration projects, the research and demonstration grant regulations at 40 CFR Part 40 can be used to supplement either 40 CFR Part 30 or Part 31.

The Agency issued a memorandum⁷ on January 3, 1995 concerning the applicability of 40 CFR Part 29 (Intergovernmental Review) to the special projects authorized by the Agency's FY 1995 Appropriations Act. That memorandum also applies to the special projects authorized by the Agency's FY 2009 Appropriations Act.

The Davis-Bacon Act does not apply to grants awarded under the authority of the Agency's FY 2009 Appropriations Act because the Appropriations Act does not include language that positively asserts authority. However, if FY 2009 funds are used to supplement funding of a construction contract that includes Clean Water Act Title II requirements (e.g., contracts awarded under the construction grants or coastal cities programs), the entire contract is subject to Davis-Bacon Act requirements, including the portion funded with FY 2009 funds.

SPECIFIC ENVIRONMENTAL REQUIREMENTS

The National Environmental Policy Act (NEPA) and other relevant applicable statutes and Executive Orders, such as the Endangered Species Act (ESA), apply to the SAAPs and programs in the STAG account authorized by the Agency's FY 2009 Appropriations Act. The applicable NEPA regulations are the Council of Environmental Quality's implementing regulations at 40 CFR Parts 1500-1508 and EPA's NEPA regulations at 40 CFR Part 6.

EPA revised regulations that implement NEPA for EPA actions on October 19, 2007. These regulations replace all previous guidance and memoranda. In accordance with EPA's revised NEPA regulations, EPA must complete the NEPA process before a grant award for construction. However, the development of information needed to determine compliance with NEPA and other cross-cutting Federal requirements is an allowable cost that, if not already performed and is needed, can be included in the scope of work of a grant for planning and design prior to construction of the project.

It should be noted that NEPA and other cross-cutting Federal requirements that apply to the major Federal action (i.e., the approval and/or funding of work beyond the conceptual design point) cannot be delegated. Although EPA may fund the grantee or state/tribal development of an Environmental Information Document (EID) or other analysis for cross cutting authorities or executive orders in order to provide supporting information, EPA has the legal obligation to issue the NEPA documents, to sign NEPA determinations, and to fulfill other cross-cutting Federal requirements before approving or paying for design and/or construction. However, EPA

⁷This document is available on the internet at www.epa.gov/owm/mab/owm0326.pdf.

grant funds cannot be used to prepare a federal document, such as an Environmental Assessment or Environmental Impact Statement.

When both EPA and another Federal agency are funding the same project, the agencies may negotiate an agreement for one to be the lead agency for performing grant oversight and management activities, including those related to NEPA and other cross-cutting Federal requirements. The lead agency can be the one which is providing the most funds for the project, or the agency that provided the initial funds for the project. If an environmental impact statement (EIS) is required, EPA should be a co-lead or cooperating agency so that it can adopt the EIS without recirculating it. If the project requires an environmental assessment (EA), EPA may adopt the other agency's EA and use it as a basis for its finding of no significant impact (FONSI), provided EPA has independently reviewed the EA and agrees with the analysis and circulates the FONSI and attached EA for the requisite 30 day comment period. Note that EPA may not use a categorical exclusion of another Federal agency unless EPA's regulations at 40 CFR Part 6 also provide for the categorical exclusion.

OPERATING GUIDELINES

The authority for awarding grants for the SAAPs listed in Attachment 1 is P. L. 111-8, the "Omnibus Appropriations Act, 2009."

The Catalog of Federal Domestic Assistance (CFDA) number for the SAAPs is 66.202 "Congressionally Mandated Projects." The Object Class Code (budget and accounting information) for the SAAPs is 41.92. Applicants should use Standard Form 424 (OMB Number: 4040-0004) to apply for the grants.

Grants Involving Geospatial Information

In accordance with OMB Circular A-16 and the One-Stop Geospatial E-gov Initiative, Program Offices must indicate in the funding recommendation for a proposed assistance agreement that the grant involves or relates to geospatial information. Geospatial information includes information that identifies the geographic location and characteristics of natural or constructed features or boundaries on the Earth, or applications tools, and hardware associated with the generation, maintenance, or distribution of such information. The information may be derived from, among other things, GPS, remote sensing, mapping, charting, and surveying technologies, or statistical data.

Grants to Non-Profit Organizations

Funds appropriated under the STAG account can, if the situation warrants, be used for grants to non-profit organizations. However, grants cannot be awarded to a nonprofit organization classified by the Internal Revenue Service as a 501(c)(4) organization unless that organization certifies that it will not engage in lobbying activities, even with their own funds (see Section 18 of the Lobbying Disclosure Act, 2 U.S.C.A § 1611). The rationale for any award

to a non-profit organization should be clearly explained, suitably documented, and included in the project file.

Additionally, EPA Order 5700.8, “Assessing Capabilities of Non-Profit Applicants for Managing Assistance Awards⁸,” requires programmatic and administrative capability determinations be made for each monetary action for a non-profit recipient. Further, if the award is for more than \$200,000 in federal funds, the applicant may be required to complete an “EPA Administrative Capability Questionnaire” and submit supporting documentation demonstrating sufficient administrative capability to successfully manage the agreement. The inability to successfully demonstrate either programmatic or administrative capability under the Order may result in the Agency not making an award.

Grants to Private For-Profit Entities

Funds appropriated under the STAG account may be used for grants to private for-profit entities, such as a privately owned drinking water company, when the language contained in the Conference Report clearly indicates that intention. The specific requirements for awarding a grant to a private for-profit entity will be addressed in a policy memorandum in the future, if necessary.

Grant Recipient

The Agency’s FY 2006 Appropriations Act included the following language pertaining to the identification of the grantee:

“notwithstanding this or any other appropriations Act, heretofore and hereafter, after consultation with the House and Senate Committees on Appropriations and for the purpose of making technical corrections, the Administrator is authorized to award grants under this heading to entities and for purposes other than those listed in the joint explanatory statements of the managers accompanying the Agency’s appropriations [sic] Acts for the construction of drinking water, wastewater and stormwater infrastructure and for water quality protection.”

Therefore, if the grantee is specified, such as a local water quality department, any change to the grantee must be submitted to EPA Headquarters in accordance with SAAP memo 06-01 (attachment 6, issued 10/26/05). Additionally, any change to the named grantee, such as from a county to town, or from one town to another, must also be submitted in accordance with SAAP memo 06-01. The only circumstance in which EPA Headquarters approval is not needed is if the intended grantee is an agency of the specified grantee. For instance, if the grantee is listed as Anytown, USA, but the intended grantee is the Anytown Department of Water Quality, the grant may be made to the intended grantee without EPA Headquarters approval. EPA’s

⁸The Order may be found at: http://intranet.epa.gov/ogd/policy/order/5700_8.pdf for the public, the order may be found at www.epa.gov/ogd/grants/award/5700_8.pdf.

Office of General Counsel has agreed that in circumstances where information is missing, EPA has the discretion to determine the appropriate grantee.

This provision does not apply to the United States-Mexico Border Program grants or any other funds in the STAG account.

Ownership Requirements

With the exception of small, on-site/decentralized wastewater treatment systems, which are discussed later in this section, only wastewater and drinking water infrastructure facilities that are or will be owned by the grant or subgrant recipient are eligible for grant funding. This means that house laterals (the sewer line from the collection system to the house) and drinking water service lines (the line from the drinking water distribution system to the house) must be owned by the grantee or subgrantee in order for these facilities to be eligible for grant funding. The ownership requirement applies to new construction, as well as the rehabilitation of existing facilities, and to infiltration/inflow correction associated with existing sewer lines, including house laterals. The grantee or subgrantee can have ownership by either fee simple title, by the issuance of an enforceable easement with right of access, or other suitable authority such as an ordinance assuring right of access for such purposes as inspection, monitoring, building, operation, rehabilitation and replacement. Since the grantee or subgrantee has ownership of these facilities, the grantee or subgrantee would be responsible for the operations and maintenance of those facilities for the life of those facilities. Additionally, the grantee or subgrantee could not transfer ownership of the facilities to any entity without written approval from EPA.

In those rare situations where a grant or subgrant is awarded to a governmental or non-profit entity that does not have the legal authority to own or operate drinking water, wastewater, or groundwater protection infrastructure facilities, and the grant includes the construction or acquisition of infrastructure facilities, that entity can transfer ownership of the grant funded infrastructure facilities with the approval of EPA. In all cases, the receiving entity must have the managerial and legal capability to assume all of the relevant responsibilities associated with the ownership of an EPA grant funded infrastructure facility, including any special conditions contained in the original grant agreement. Generally, EPA's approval to transfer ownership should be incorporated into the grant award document in the form of a special term and condition.

On-Site Systems

For small, privately-owned, on-site/decentralized wastewater treatment systems, such as a septic system or individual drinking water wells, an eligible applicant may apply for a grant to build or renovate these privately-owned systems. In such cases the applicant must:

- demonstrate that the total cost and environmental impact of building the decentralized system will be less than the cost of a conventional system;

- certify that ownership by a public entity or a suitable non-profit organization (such as a home owners’ association or cooperative) is not feasible and list the reasons;
- certify that the treatment facilities will be properly operated and maintained for the life of the facilities; and
- provide assurance of access to the systems at all reasonable times for such purposes as inspection, monitoring, building, operation, rehabilitation and replacement.

Intermunicipal Projects and Service Agreements

Although a SAAP grant may be awarded to one entity, the successful operations of the grant funded project may depend on the support and cooperation of other entities, municipalities, or utility districts. This is especially evident when one entity is providing wastewater treatment services or supplying drinking water to another entity. Accordingly, for projects involving interactions between two or more entities, the applicant should provide assurances that the grant funded project will function as intended for its expected life. Adequate assurance may be met through the creation of special service districts, regionalization of systems, or intermunicipal service agreements.

Special service districts and regionalization of systems are considered to be obligations in perpetuity to serve the customers of the newly created authority and automatically meet the expected lifetime requirements. The intermunicipal service agreement or contract is a legal document for cooperative ventures between separate entities, both of which wish to continue functioning with a large degree of independent control in their respective service areas. Such agreements will need to extend for a minimum number of years for an EPA funded project to be considered viable. For the purposes of SAAPs and STAG programs, EPA will accept the following contract lifetimes as meeting the minimum standard⁹:

<u>ITEM</u>	<u>LIFE (years)</u>
• <u>Land</u>	Permanent
• <u>Wastewater/Water Conveyance Structures:</u> collection systems,	

⁹The anticipated useful life of the facility components is based on the low end of the assumed service life for items in EPA’s Construction Grants Program and past experience with the award and administration of special Appropriations Act projects.

pipes, interceptors, force mains, tunnels, distribution lines, etc.	40
• <u>Other Structures</u> : plant buildings, concrete tankage, basins, lift station and pump station structures, inlet structures, etc.	30
• <u>Wastewater and Drinking Water Process Equipment</u>	15
• <u>Auxiliary Equipment</u>	10

A shorter time frame may be accepted if suitably justified and approved by EPA. Additionally, should a SAAP project include more than one of these components at a facility, then the minimum number of years will be 40 years.

Non-Construction Costs

The scope of work of a grant may include planning, design and administrative activities, and the cost of land. Land need not be an "integral part of the treatment process" as in the Clean Water Act Title II construction grant program. However, all elements included within the scope of work of the grant must conform to the requirements of 40 CFR Parts 30 or 31. This means, if planning, design and administrative activities are included in the grant, the procurement of those services and the contracts must comply with the applicable sections of Parts 30 or 31. If land is included, there will be a Federal interest in the land regardless of when it was purchased and the purchase must be (must have been) in accordance with the applicable sections of Parts 30 or 31 and the Uniform Relocation Assistance and Real Property Acquisition regulations for Federal and Federally assisted programs at 49 CFR Part 24.

Refinancing

Funds appropriated for the SAAPs may not be awarded solely to repay loans received from SRF Programs or other indebtedness unless there are explicit instructions to do so in the Appropriations Act or accompanying reports, or the facts of the case are such that this is the only way to award the funds that were appropriated for the project. Any request to use SAAP grant funds to repay a loan, in whole or in part, must be approved, in writing, by EPA Headquarters. The request, with sufficient supporting documentation, should be submitted to the Chief, State Revolving Fund Branch, (Mail Code 4204M), USEPA, 1200 Pennsylvania Avenue NW, Washington, D.C. 20460.

Definitions

In the context of determining that the scope of work of the grant is in conformance with the project description contained in Attachment 1, the word 'water' can be considered to mean: drinking water, wastewater, storm water or combined sewer overflow. Furthermore, the words 'and' & 'or' as used in the project description are interchangeable. Additionally, the phrases 'sewer project,' 'sewer improvements,' 'sewer upgrade,' 'sewer development,' 'sewer

expansion,' 'sewer system,' 'plant project,' 'plant upgrade,' or 'plant expansion' are considered broad enough to include all aspects of the upgrade, expansion and development of a complete wastewater treatment system as defined at 40 CFR 35.2005(12). Comparable phrases concerning the project descriptions for drinking water facilities should be similarly interpreted.

GRANTS MANAGEMENT: ENVIRONMENTAL RESULTS UNDER EPA ASSISTANCE AGREEMENTS

Introduction

EPA Order 5700.7¹⁰, 'Environmental Results Under Assistance Agreements,' applies to all funding packages/funding recommendations submitted to the Grants Management Offices after January 1, 2005. The Order requires EPA Program Offices to: 1) link proposed assistance agreements to the Agency's Strategic Plan/Government Performance and Results Act (GPRA) architecture; 2) ensure that outputs and outcomes are appropriately addressed in assistance agreement work plans¹¹ and funding recommendations; and 3) ensure that progress in achieving agreed-upon outputs and outcomes is adequately addressed in recipient progress reports and advanced monitoring activities.

The Strategic Plan/GPRA Architecture

EPA's 2006-2011 *Strategic Plan*¹² sets out five long-term goals for the five-year period. Each of these five goals is supported by a series of objectives and sub-objectives that identify, as precisely as possible, what environmental outcomes or results the EPA seeks to achieve within a defined time frame using resources expected to be available. The objectives and sub-objectives established in EPA's Strategic Plan are part of the 'GPRA architecture' that is used to measure the EPA's progress in meeting its strategic goals.

Program offices must include in the funding package for a proposed assistance agreement a description of how the project fits within the EPA's Strategic Plan/GPRA architecture. In developing the aforementioned descriptions, a project officer must list all applicable EPA strategic goals and objectives and, where available, sub-objectives in the Strategic Plan/Program Results Code (PRC) crosswalk in the funding recommendation. The project officer must ensure that the PRC(s) listed on the commitment notice is consistent with the selected strategic goals, objectives and sub-objectives.

¹⁰The Order is available on the EPA intranet at <http://intranet.epa.gov/ogd/policy/order/5700.7.pdf>. The public may obtain a version at www.epa.gov/ogd/grants/award/5700.7.pdf.

¹¹For construction projects, output/outcome information can be typically found in a Facility Plan, Preliminary Engineering Report, or an Environmental Information Document but should be incorporated into the workplan as a narrative. Should these documents not exist at the time of grant application then the grantee should qualify and/or quantify outputs and outcomes in the workplan to the best extent possible.

¹²The Strategic Plan is available on the internet at www.epa.gov/ocfo/plan/2006/entire_report.pdf.

Environmental Results: Outputs and Outcomes

The term 'output' means an environmental activity, effort, and/or associated work products related to an environmental goal or objective that will be produced or provided over a period of time or by a specified date. See EPA Order 5700.7. Outputs may be quantitative or qualitative but must be measurable during an assistance agreement funding period. Outputs reflect the products and services provided by the recipient, but do not, by themselves, measure the programmatic or environmental results of an assistance agreement. Examples of outputs for SAAPs are:

- Number of additional homes (or equivalents) provided adequate wastewater treatment (can be centralized or decentralized).
- Number of additional homes (or equivalents) provided safe drinking water.
- Percent improvement in infrastructure reliability and maintenance (e.g., collection and distribution system improvements, pump replacement, improvements at wastewater treatment or drinking water facilities plant, upgrade, expansion, integrity, reduction of infiltration/inflow, etc.).
- Capacity (MGD) of newly constructed wastewater treatment plant.
- For expansion of an existing wastewater treatment plant, increase in capacity (MGD) of plant.
- For upgrade of an existing wastewater treatment plant, new level of treatment provided.
- Storage (MG) provided by newly constructed drinking water tank.
- Storage (MG) provided by new reservoirs.
- Feet of sewer lines replaced.
- Feet of sewer lines extended.
- Feet of water lines replaced.
- Feet of water lines extended.
- Wet weather improvements.
- Environmental restoration improvements.

- Enhanced security improvements to wastewater or drinking water facilities.

The term ‘outcome’ means the result, effect or consequence that will occur from carrying out an environmental program or activity that is related to an environmental or programmatic goal or objective. See EPA Order 5700.7. Outcomes may be environmental, behavioral, health-related or programmatic in nature, must be quantitative, and may not necessarily be achievable within an assistance agreement funding period. There are two major types of outcomes - end outcomes and intermediate outcomes. End outcomes are the desired end or ultimate results of a project or program. They represent results that lead to environmental/public health improvement. Intermediate outcomes are outcomes that are expected to lead to end outcomes but are not themselves ‘ends.’ Given that the end outcomes of an assistance agreement may not occur until after the assistance agreement funding period, intermediate outcomes realized during the funding period are an important way to measure progress in achieving end outcomes.

Program offices must include in the funding recommendation for a proposed assistance agreement an assurance that the program office has reviewed, or will review, the assistance agreement work plan¹³ and that the work plan includes, or will include, well-defined outputs and, to the maximum extent practicable, well-defined outcomes.

The CWSRF program has finalized a ‘Benefits Assessment’ format for individual projects, see Attachment 5. This format can be used to measure ‘outcomes’ for the SAAPs. Accordingly, the Regions can include the information contained in Items 1, 2, 3, and 4 of Attachment 5 as a means for measuring and reporting outcomes.

Environmental Results: Review of Recipient Performance Reports

EPA Order 5700.7 also establishes requirements for program office review of construction and non-construction interim and final recipient performance reports for progress in achieving outputs and outcomes contained in assistance agreement work plans. Under 40 CFR Parts 30 and 31, EPA may require recipients to submit performance/progress reports as frequently as quarterly but no less frequently than annually. These regulations also require recipients to provide the EPA with an acceptable final performance report within 90 days of the project end date. While performance reports are one way for the EPA to obtain information on a recipient’s progress toward achievement of agreed-upon outputs and outcomes, program offices may also conduct mid-year and end-of-year reviews to evaluate recipient performance.

The review of recipient performance reports is largely the responsibility of the EPA project officer. The project officer must review interim¹⁴ and final¹⁵ performance reports to

¹³See Footnote 10, supra.

¹⁴For construction projects, on-site technical inspections and certified percentage of construction data meet the interim reporting requirements, see 40 CFR 31.40(c).

¹⁵For construction projects, the final inspection report or other final performance report should include a comparison of the actual

determine whether they adequately address the achievement of agreed-upon outputs/outcomes, including providing a satisfactory explanation for insufficient progress or a failure to meet planned accomplishments (when compared with the most recently approved project schedule and completion dates for project milestones). This review must be documented in the official project file. If a report does not adequately address the achievement of outputs/outcomes, the project officer should seek further explanation from the recipient and require appropriate corrective action.

Award officials must use the following special conditions in all assistance agreements requiring performance reports to provide a comparison of actual accomplishments to agreed-upon outputs/outcomes:

Required special conditions for assistance agreements to State and local governments:

In accordance with 40 CFR. ' 31.40, the recipient agrees to submit performance reports that include brief information on each of the following areas: 1) a comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement work plan for the period; 2) the reasons for slippage if established outputs/outcomes were not met by the agreed upon or scheduled date; and 3) additional pertinent information, including, when appropriate, analysis and information of cost overruns or high unit costs.

In accordance with 40 CFR. ' 31.40(d), the recipient agrees to inform EPA as soon as problems, delays or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan.

Required special conditions for assistance agreements to institutions of higher education and other non-profit organizations:

In accordance with 40 CFR ' 30.51(d), the recipient agrees to include in performance reports submitted under this agreement brief information on each of the following areas: 1) a comparison of actual accomplishments to the outputs/outcomes specified in the assistance agreement work plan and scheduled or established for the period; 2) reasons why anticipated outputs/outcomes were not met; and 3) other pertinent information, including, when appropriate, analysis and information of cost overruns or high unit costs.

In accordance with 40 CFR ' 30.51(f), the recipient agrees that it will notify EPA of problems, delays or adverse conditions which materially impair the ability to meet the outputs/outcomes or objectives of the award specified in the assistance agreement work plan and what corrective actions are being contemplated to resolve the situation.

Environmental Results: Advanced Monitoring (On-Site Reviews or Desk Reviews)

EPA Order 5700.6A2 directs program offices, when conducting on-site reviews or desk reviews to include an assessment of the recipient's progress in achieving the outputs and outcomes set forth in the assistance agreement work plan.¹⁶ If the assessment reveals significant problems in meeting agreed-upon outputs/outcomes, the project officer must require the recipient to develop and implement an appropriate corrective action plan and implementation schedule. The results of the assessment must be documented in the Grantee Compliance Database in a format determined by OGD's Director of the National Policy, Training and Compliance Division.

GRANTS MANAGEMENT: OTHER REQUIREMENTS

Grants awarded under the authority of an Appropriations Act are subject to assistance agreement regulations, OMB cost principles and Agency policies. The SAAP grants must be awarded and managed as any other assistance agreement. OGD has developed Orders, Grants Policy Issuances (GPIs), and grant guidance documents to assist project officers and Program Offices to understand and meet the requirements (available on the Grants Intranet website at <http://intranet.epa.gov/ogd/policy/policy.htm>). Several grant requirements are discussed in further detail below.

Cost Review Requirements

A specific cost review checklist was developed for SAAPs, and is available at http://intranet.epa.gov/ogd/cost_review/main/index.htm for project officer use. The checklist applies to all funding packages/funding recommendations submitted after October 1, 2007.

Subaward Policy

OGD added a section to the Assistance Administration Manual 5700 outlining Agency policy on the award and management of subawards, "*Policy on Subawards Under Assistance Agreement*". The policy applies to subaward work under awards and supplemental amendments issued after May 15, 2007. The policy clarifies subrecipient eligibility, addresses subaward competition requirements, and provides guidance regarding the distinctions between procurement contracts and subawards. It also includes special considerations regarding subawards to 501(c)(4) and for-profit organizations, and subawards to foreign/international organizations or any entity performing work in a foreign country. The policy is primarily implemented through an administrative National Term and Condition for Subawards. The subaward policy can be found at <http://intranet.epa.gov/rmpolicy/ads/updates.htm> (under Update 3).

¹⁶See Footnote 10, supra.

Post-Award Management: Baseline and Advanced Monitoring

EPA Order 5700.6A2, issued September 24, 2007, which went into effect on January 1, 2008,¹⁷ streamlines post-award management of assistance agreements and helps ensure effective oversight of recipient performance and management. The Order encompasses both the administrative and programmatic aspects of the Agency's financial assistance programs. It requires each EPA program office providing assistance to develop and carry out a post-award monitoring plan, and conduct annual baseline monitoring or the equivalent, for every award. If during monitoring it is determined that there is reason to believe that the grantee has committed or commits fraud, waste and/or abuse, then the project officer must contact the Office of the Inspector General.

All baseline monitoring activities must be documented in the Integrated Grants Management System (IGMS) Post-Award Database. OGD has agreed that the semi-annual or annual inspection for a SAAP project is equivalent to a baseline monitoring activity. Project officers must indicate in the Post-Award Database that a semi-annual or annual inspection has been completed for the SAAP project by checking the box for SRF/SAAPs under the Alternatives Completed in Lieu of Baseline Monitoring section and attaching the relevant documentation. Advanced monitoring activities must be documented in the official grant file and in the Grantee Compliance Database. The EPA Order applies to the projects identified in Attachment 1.

In addition to the general requirements contained in the EPA Order, the following types of activities, which are directly related to construction projects, should be considered in the development of a post-award monitoring plan:

- Review periodic payment requests.
- Compare actual completion percentages and milestones with the approved project schedule.
- Compare actual costs incurred with the approved project budget.
- Conduct interim inspections.
- Review change orders and claims.
- Review and approve final payment requests.
- Determine that the project is capable of meeting the objectives for which it was planned, designed and built and is operational.

Many of these activities can be performed by a State, the Corps of Engineers or a contractor, and as such, are eligible for funding under the three percent set-aside provision. Inspections should be performed in sufficient frequency by the State, Corps of Engineers, or contractor to provide adequate oversight of the project. The goal is to inspect projects once a year during the construction phase of the project.

¹⁷The Order is available on the EPA intranet at http://intranet.epa.gov/OGD/policy/order/5700_6A2.pdf

PROJECT OFFICER RESPONSIBILITIES

A directive in the Assistance Administration Manual 5700 outlines roles and responsibilities for all EPA staff with grants management responsibilities and is available at <http://intranet.epa.gov/OGD/policy/11.0-Roles-Topics.htm>.

The project officers must review the grant application to determine that:

- the scope of work of the grant is clearly defined;
- the scope of work is in conformance with the project description contained in Attachment 1;
- project schedule and milestones are addressed;
- there is a clearly stated environmental or public health objective;
- there is a narrative description of anticipated outputs and outcomes;
- the applicant has the programmatic capability to successfully manage the project;
- it is expected that the project will achieve its objective(s); and
- the costs are necessary, reasonable, and allocable to the project.

Grant applications should be processed in a timely manner, but the applications should be carefully reviewed and the grant awarded only when it is prudent to do so. Additionally, the Regions may impose reasonable requirements through grant conditions in those situations considered necessary.

On January 20, 2006, OGD issued Interim Guidance “Assessing Grants Management Performance under the Performance Appraisal and Recognition Systems (PARS)”. On September 5, 2008 OGD issued GPI-08-05, “Guidance regarding Grants Management and the Management of Interagency Agreements under the Performance Appraisal and Recognition System (PARS)” (<http://intranet.epa.gov/OGD/policy/7.0-GPI-Topics.htm>). OGD issued the guidance for consideration in assessing grants project officer and supervisor/manager compliance with key grants management policies under the 2008 PARS process, developing 2009 PARS performance agreements and conducting 2009 mid-year and end-of-year performance reviews. In addition, OGD provided a two-page Manager's Guide to facilitate discussions with project officers while reviewing their grants management performance under PARS (Attachment C to the September 5, 2008 memorandum).

PROJECT MANAGEMENT RESOURCES

You should invite State agencies to participate as much as possible in the pre-application, application review, and grant administration process.

Legislative language in the Agency's FY 1997 Appropriations Act authorized the use of Title II deobligations for State administration of special Appropriations Act *wastewater* projects, coastal/needy cities projects and construction grant projects. The guidance document on the implementation of this provision was issued by the Director, Municipal Support Division, on December 3, 1996.¹⁸ This provision does not apply to the United States-Mexico Border Program grants or any other funds in the STAG account.

States may also use funds awarded under Section 106 of the Clean Water Act (P. L. 92-500) for activities associated with these special projects provided Section 106 program officials agree.

The Agency's FY 2001 Appropriations Act states that "the Administrator may use up to 3 percent of the amount of each project appropriated to administer the management and oversight of construction of such projects through contracts, allocation to the Corps of Engineers, or grants to States." Regardless of the means used to administer the management and oversight of project construction, EPA is ultimately responsible for the project grant and must provide oversight of the project management resource used (contractor, Corps of Engineers, or State). For contractors and the Corps of Engineers, EPA personnel will have direct involvement and oversight of these resources. In the case of States receiving three percent set-aside grants, the EPA regional office should conduct annual State visits to monitor overall management and oversight of project grants. A discussion of the three percent set-aside provision is contained on page two of this memorandum.

VOLUNTARY ENVIRONMENTAL INITIATIVES

Introduction

The following sections describe various Agency initiatives targeting the water infrastructure sector, both drinking water and wastewater, and may be applicable to certain water quality management activities. Since SAAPs are typically water infrastructure and water quality protection projects, these initiatives are listed here to inform SAAP grant recipients of their purpose in addressing key water infrastructure and quality issues. Incorporating these initiatives into SAAPs is strictly voluntary but should be considered where possible in order to produce better outputs and more effective environmental results.

The voluntary environmental initiatives discussed below are eligible for funding with SAAP funds only if the specific voluntary initiative activity selected by the recipient falls within the scope of the project as defined by Congress. Applicants that are interested in including one or more of the voluntary initiative activities in their workplan should discuss the matter with their regional project officer to determine the eligibility of the activity.

¹⁸This document is available on the internet at www.epa.gov/owm/mab/owm0328.pdf.

Sustainable Water Infrastructure

As the country's water infrastructure ages, we are facing a looming crisis in replacing and maintaining the systems that protect the quality of our drinking water and our streams. Deferred maintenance, crumbling systems and a gap between revenues and long term costs are presenting an increasing challenge to the utilities and communities that provide us safe and clean water. As a result, EPA has been pursuing a Sustainable Water Infrastructure Initiative in an attempt to raise the visibility of the challenges and to affect a change towards more sustainable practices.

In May 2007, EPA and six national water and wastewater associations signed an agreement to jointly promote effective utility management based on a series of *10 Attributes of Effectively Managed Utilities and other Keys to Management Success*. For the first time, this Agreement provides utilities with a common management framework to evaluate and pursue management improvements in all facets of utility operations. Since signing the Agreement, EPA and the Associations have developed a suite of tools to help utilities as they move towards ever more sustainable practices. These include 1) a Primer to help utilities better understand the Attributes and set their priorities – as well as an on-line, interactive tool based on the Primer, 2) a series of suggested utility-specific performance measures linked to the Attributes and Keys to Management Success, 3) an electronic resource “toolbox” that provide utilities with easy access to various guides and other resources linked to the Attributes, and 4) a set of case studies illustrating some of the successes that utilities have had through embracing Effective Utility Management. These implementation tools can be found at <http://www.epa.gov/waterinfrastructure/watereum.html>.

In synch with the framework provided by Effective Utility Management, several specific areas and approaches that utilities have found useful in the move to great sustainability are outlined below. EPA strongly encourages that the principles and approaches outlined here be considered by those receiving special appropriations for water, wastewater, stormwater, or water quality protection projects. Doing so will not only help utilities in the long run, but in many cases actually reduce costs in the short term.

Environmental Management Systems

An Environmental Management System (“EMS”) is a comprehensive approach for identifying, monitoring, and managing activities that have potential environmental impacts. An EMS provides structure and consistency for overseeing daily activities that shift the environmental focus from reactive to proactive and from focusing exclusively on regulatory compliance to focusing on continual environmental performance in all operations.

The implementation of an EMS at water and wastewater utilities can result in increased efficiency, reduced costs and greater operational consistency; improved ability to meet environmental compliance requirements; improved succession planning; and better relationships with regulators.

Working with utilities that have successfully implemented an EMS, EPA has developed a number of state-of-the-art tools to help water and wastewater utilities as they launch an EMS or strive to take an existing EMS to the next level. These tools have been compiled in an EMS Toolbox, and are available free of charge at www.peercenter.net. These tools include:

- EMS Handbook for Wastewater Utilities
- EMS Compendium for Wastewater Utility Managers
- Case studies on successful EMS implementation at wastewater and water utilities

A similar implementation guide for water utilities, *Environmental Management Systems: A Tool to Help Water Utilities Manage More Effectively*, is available at www.awwarf.org.

Asset Management¹⁹

Asset management (“AM”) processes help utilities inventory the condition, age, service history and estimated useful life of each asset - and then prioritize assets based on criteria that include: remaining useful life; criticality of the asset; failure probability; cost; actual or potential risk to public health or environment; customer demands and improved operations.

During initial AM implementation, the data and information collected helps build asset management plans that document preventive maintenance schedules, data collection instructions, operational controls and work instructions, performance monitoring requirements, quality control processes, necessary funding reserves for rehabilitation/replacement, etc.

The five major steps of developing an asset management system are based on answering the following questions:

- 1) What is the current state of my assets?
- 2) What is my required level of service?
- 3) Which assets are critical to sustained performance?
- 4) What are my best O&M and capital improvement strategies?
- 5) What is my best long term funding strategy?

¹⁹ An issue related to asset management is “Full Cost Pricing.” When measured as percentage of household income, the U.S. pays less for water/wastewater bills than other developed countries. Because of this, the public has been led to believe that water is readily available and cheap. Thinking in this area needs to shift to meet our essential infrastructure needs. Pricing that recovers the costs of building, operating, and maintaining a system is absolutely essential to achieving sustainability. Drinking water and wastewater utilities must be able to price their services to reflect the full costs of treatment and delivery. While this activity is not eligible for funding under SAAP grants, wastewater and water facilities are encouraged to consider their pricing structure.

EPA has brought together information and tools on water and wastewater pricing which can be found at <http://www.epa.gov/waterinfrastructure/pricing/index.htm>.

The Environmental Finance Center at Boise State, Idaho also provides free “Rate Check Up” software which may be useful. <http://efc.boisestate.edu/efc/Tools/UtilityRateDesignwithRATECheckup/tabid/85/Default.aspx>.

Through preventative maintenance and prioritization of rehabilitation and replacement, Asset Management can improve the efficiency of operations and reduce the long term costs of providing service. Here are a few links to help you learn more and get started in Asset Management:

EPA's Asset Management web site

<http://www.epa.gov/owm/assetmanage/index.htm>

[Asset Management: A Handbook for Small Water Systems](#)

http://www.epa.gov/safewater/smallsystems/pdfs/guide_smallsystems_asset_mgmnt.pdf

Water Efficiency

Water Efficiency can make infrastructure systems more sustainable by reducing the quantity of water treated and distributed through water and wastewater systems. Water withdrawn from the environment for human use must be used wisely and effectively, and successfully perform its intended function while using only the practical minimum amount of water. EPA is promoting an ethic of improving water use practices to increase efficiency, eliminate waste, and conserve water resources, resulting in a decreased burden on our infrastructure.

The WaterSense program, <http://www.epa.gov/watersense>, works to enhance the market for water efficient products by labeling those products which perform as well as their less efficient counterparts. Promoting water efficiency in communities is important to long term sustainability.

Also, a tremendous amount of drinking water is lost from aging and leaky distribution pipes. By addressing water loss from a distribution system, utilities can reduce the burden on our treatment systems and recover the cost of more of the clean water that they provide.

Watershed Approaches to Infrastructure

There are a variety of watershed-based approaches to infrastructure management which can achieve cost efficiency while producing the same or better water quality results, as well as ancillary benefits. To move towards a sustainable future, utilities will need to look beyond their 'fence lines' and traditional approaches to adopt practices that will help move their systems toward being managed in a sustainable manner while ensuring protection of water quality.

For example, the use of **Green Infrastructure** to manage wet weather employs site-specific best management practices (BMPs) that are designed to maintain natural hydrologic functions by absorbing and infiltrating precipitation where it falls. Examples include rain gardens, swales, porous pavements, and green roofs. Green Infrastructure can reduce our reliance on traditional stormwater structures (i.e. pipes, channels, and treatment plants) that are

increasingly expensive to build, operate and maintain. In addition, green infrastructure has numerous other benefits such as the protection of surface water quality and drinking water supplies, mitigation of urban heat islands effects, reductions in energy demand (and resulting mitigation of greenhouse gas emissions), and the protection of highly valued natural habitats, forests, and agricultural lands. More information can be found at http://cfpub.epa.gov/npdes/home.cfm?program_id=298.

Source water protection is another watershed approach that can reduce the need for or burden on water infrastructure. Protecting drinking water sources usually requires the combined efforts of many partners in a watershed, such as public water systems, communities, resource managers and the public. Information on source water protection can be found at <http://cfpub.epa.gov/safewater/sourcewater>.

Additional details on the Sustainable Infrastructure Initiative can be found at www.epa.gov/waterinfrastructure. Please See Attachment 8 for the brochure entitled, "Sustaining Our Nation's Water Infrastructure."

ACTIONS

If you have not already done so, you and your staff should initiate discussions with the appropriate grant applicants to develop a detailed scope of work and to explain the grant application and review process. Additionally, the grant applicant should be provided with a copy of this memorandum prior to grant award to ensure that the applicant is on notice of the applicable requirements before the grant is awarded.

If you have any questions concerning the contents of this memorandum, you may contact me, or have your staff contact George Ames, Chief, State Revolving Fund Branch, Municipal Support Division, at (202) 564-0661.

Attachments

cc: Municipal Construction Program Managers, Regions I – X
Regional NEPA Contacts, Regions I – X
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