

AREAWIDE WATER QUALITY MANAGEMENT:

A CASE STUDY

by

GREGORY FRANK BROWN

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Dr. Keith W. Muckleston

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AREAWIDE WATER QUALITY MANAGEMENT:

A CASE STUDY

ABSTRACT: With our present pressing need to clean up our Nation's waterways there has developed a shift from water resource development to water quality management. This shift was manifested in 1972 when Congress created Areawide Water Quality Management in Section 208 of the Federal Water Pollution Control Act Amendments. Section 208 conceives water quality management from an areawide perspective and brings water quality decisions down to local levels of government instead of the traditional state approach. A case study of the Mid Willamette Valley Council of Governments 208 agency in Oregon indicates, however, that the program has been burdened with many administrative problems and with a general lack of proper communication between the different levels of government. It is because of these issues that the efficacy of the 208 program remains for the most part uncertain.

INTRODUCTION

The deterioration of the quality of the Nation's water resources is a cause for national concern. While the Nation has continued to grow and develop there has been a steady increase in waste water and sewage, along with rural runoff and new complex wastes from our growing industries. Our waterways can no longer handle the burden of all these wastes causing water pollution to become one of the most pressing issues of our time.

The task of cleaning up our water resources is, however, a difficult one. Much is needed to be done with the first step being a shift of priorities from water development to water quality management.¹ Within this framework our solution to water pollution and a goal of high water quality standards most likely can be met.

Regional water quality management is one solution proposed within this framework. It offers much in dealing effectively with present water pollution characteristics and is at present a high priority management proposal. It is this regional management proposal that will be the focus of this paper.

BACKGROUND FOR REGIONAL MANAGEMENT

The regional management approach is an attempt to deal more effectively with some of the physical characteristics of water that

has made management more difficult as compared to other resources. Regional organizations are rare in our traditional constitutional system but considering the following characteristics of our water resources it seems as if the regional management approach may be our best alternative for effectively improving our water quality.²

Hydrologic Interdependencies

Water is a mobile resource which makes pollution control difficult because the actions of independent users or development agents are interrelated.³ In other words, upstream uses effect downstream uses. The waste discharged into the river upstream will effect the uses of downstream users.

It is the purpose of regional management to manage these unplanned "spillover" effects from one use-site to another. With a regional perspective incorporated, the hydrologic interdependencies of a system can be incorporated into management decisions, thus insuring more effective water quality programs and more comprehensive management.⁴

Regional Disconformities

Closely related to hydrologic interdependencies are regional disconformities. Regional disconformities are based on the

characteristic of water that it usually does not conform neatly to one jurisdictional area. A river will usually pass through many jurisdictions such as between states or counties. Each jurisdiction has its own restraints and management program, which consequently hinders a coordinated regional management program.

To coordinate these management programs there must be an attempt to incorporate the different jurisdictional lines and override the policy and legal restraints of the different jurisdictions. The regional management program has this ability and it can formulate comprehensive regional water quality plans that are highly unlikely under the traditional management approaches.

Economies of Scale

One of the greatest needs in water resource management is to be more economically efficient in its management strategies. There has been in the past too much waste and overlap as each city, town, or community has invested into their own facility development without the availability of more economical regional facilities. With construction of disposal systems being capital intensive operations, it would seem more feasible to draw upon larger economies to supply the capital for more efficient regional facilities. This can be accomplished by regional management, which can draw on larger economic resources and also plan on a more comprehensive level.

This is supported by a statement by British Water Resource expert Lyle E. Craine when he said: "Capturing scale economies is essential to efficiency in water management".⁵

Most of our past water management programs have failed to capture these economies of scale, resulting in unsatisfactory pollution control and inefficient use of capital. For these reasons the Federal Government has now offered the regional approach as a solution to both of these problems, as was proposed by Assistant Secretary for Community Planning and Management, Department of Housing and Urban Development, Samuel C. Jackson in 1972:⁶

The economic advantages of larger regional systems have been documented many times--both in terms of the cost of meeting water quality standards and in terms of increased efficiency. Therefore, new water pollution legislation should be designed to strengthen the critical role played by area-wide planning agencies in guiding public facility investment.

Decentralization

Federal laws and regulations are usually uniformly applicable but not uniformly adaptable to the wide variety of local conditions and needs.⁷ This has been the case in traditional water pollution control legislation in this country. There needs to develop now, however, flexibility and adaptiveness in these federal laws and regulations. Regional organizations can, in theory, break through the inefficiency and inflexibility in the centralized approach and offer a more effective program for pollution control by taking into account

different local and regional conditions. By doing so, more compatible local and regional solutions can be developed in keeping with local practices.

In summation, regional organizations can offer much to our present situation in dealing with water pollution. They can perform functions that don't fit neatly into fixed geographic jurisdictions, and can cut across the existing political boundaries, offering more economic and efficient alternatives to our rising demands for pollution abatement. As the National Water Commission reported in 1973:⁸

Control of water pollution will increasingly be accomplished through continuous management of water quality within basins and other regional or metropolitan frameworks. Creation of such management systems heightens the need for comprehensive water quality planning. Without a concerted planning effort, attainment of water quality goals will be delayed and costly.

AREAWIDE WATER QUALITY MANAGEMENT

Congress recognizing that previous attempts at improving water quality have failed, created the structure for local and regional governments to work together with the Federal government under Section 208 of the Federal Water Pollution Control Amendments of 1972 (P. L. 92-500). Section 208 calls for areawide water quality management which is to be a decentralized approach to water quality

control, replacing state planning in areas of water quality problems with comprehensive regional water quality planning.⁹ Section 208 was intended to foster the development of local strategies for the prevention and abatement of water pollution.

The program is comprised of an initial two year planning phase followed by a management phase where the plans from the planning phase are implemented by local designated management agencies. The plans from the planning phase must first be approved by the Governor and EPA, but once they have been approved they become legally binding and by law must be implemented.

Problem Statement

The 208 program is a unique water quality programs that weds planning with implementation action. It is this combined role that has made 208 a controversial program among the various levels of government. The purpose of the research is to establish how 208 is being interpreted and implemented in the field as compared to what Congress intended; and to assess what the future looks like for this unique regional approach to water quality management.

Methodology

In federal programs there has often been an imbalance between the legislative approaches to problem solving and the actual

implementation of that solution. Evidence suggests that Section 208 is no exception. In researching the intent of Congress on Section 208, and reviewing its implementation in the field, this imbalance is to be made clear. The actual results, then, of the 208 program will undoubtedly not be a mirror image of the Congressional intent.

The research involved in the paper included both literature and field research. Literature research was done to obtain the Congressional intent of Section 208 of P. L. 92-500. The legislative history of P. L. 92-500 and institutional assessments of the planning sections of P. L. 92-500 were used to accomplish this purpose. Field research was focused on a representative case study of the areawide 208 program in Oregon with the Mid Willamette Valley Council of Governments (MWVCOG) 208 program chosen as the study area. It was intended that this case study would show the major issues surrounding the 208 program, especially those that apply to Oregon.

The bulk of the field research involved phone interviews with those people actively involved in the 208 program at the different levels of government. The interviews were centered around interpretations on the intent of Section 208, and what roles and responsibilities each level of government should play in accomplishing that intent. Those levels of government that were contacted included: Local (cities and counties), Regional (208 planning agencies), State

(Department of Environmental Quality and Governors Office),
and Federal (Environmental Protection Agency).

Congressional Intent and Scope of Section 208

Section 208, as described before, calls for a unique wedding of planning and implementation. Congress intended that the planning aspects of P. L. 92-500 were to direct the implementation of the action elements (management policies) of the Act. Section 208 was to be the main planning mechanism to accomplish the task.¹⁰ The Conference Report on P. L. 92-500 gives us a revealing statement on this intent when speaking to the Environmental Protection Agency (EPA):¹¹

The degree to which the Administrator takes immediate action to implement this section will be convincing evidence of the commitment of the Environmental Protection Agency to early and effective implementation of the water quality management policies established by this legislation.

The wedding of the action elements (permit programs, non-source controls, and the municipal facilities construction program) into the 208 planning mechanism is to be accomplished mainly by including local elected officials in the development of water quality plans. This is done by having the Governor designate areawide planning agencies for those areas with substantial water quality problems. These planning agencies must be representative organizations whose membership include elected officials of local

governments in the planning areas. These planning agencies are then to develop local water quality strategies that deal with point and nonpoint sources of pollution, devise structural and non-structural (including land use requirements) means of control, set construction priorities, establish a regulatory program, identify management agencies, and develop financial arrangements (including user fee structures) necessary to implement the plan or strategy.¹² With the local elected officials involved it is intended that this planning process be responsive to the voting public which should ensure the likelihood that the strategies will actually be carried out. It is in this manner that Congress intended the planning phase to precede the implementation phase with the purpose of producing more adaptable local water quality strategies and more effective water quality control.

It is not hard to see why EPA viewed 208 as an entirely new activity, one that was very different from past planning programs. They saw it as potentially powerful and disruptive with its impact on land use and requirement for regional planning and management, and potentially upsetting established Federal/State relationships and involving EPA in State/Local disputes.¹³ They expressed this view in a statement prepared by EPA Administrator William D. Ruckelshaus, to the Chairman of the Committee on Public Works, John A. Blatnik, during hearings for P.L. 92-500 in 1972:¹⁴

Although we fully endorse the concept of regional waste treatment planning, we do not favor the provisions of Section 208. . . . New special purpose authorities should not be created without regard to other planning underway or without regard to important functions of other levels of government.

The complexity of 208 was a problem in administration and implementation from the start. This is still true now as there are many unresolved issues to be dealt with four and one-half years later. By looking at the MWVCOG 208 program now, it is intended to show more specifically just what these issues are today in regards to Oregon.

CASE STUDY

The MWVCOG is centered in Salem, Oregon. Their 208 planning region consists of Polk County, Yamhill County, and most of Marion County (no map available yet). The 208 program was started in June of 1975 with a grant from EPA to the amount of \$446,300.¹⁵ The planning phase is to be finished in June, 1977 with the plans submitted to the State for approval.

Participation by Local 208

In interviews with those people involved with the 208 program in the MWVCOG, they indicated that participation by local elected officials has been very good. The Program Manager of 208 for the

MWVCOG was very pleased with the response from the county commissioners in the three county area and also from the city of Salem itself.¹⁶ The County Commissioner for Polk County felt strongly that the 208 program was moving in the appropriate direction while the County Commissioner for Yamhill County felt input into the 208 planning program by cities, counties, and soil and conservation districts was very good indeed.¹⁷

With the 208 program hinging to a great extent on the success of the local 208 designates in getting good participation from the local elected officials, the MWVCOG 208 appears to be heading for a successful program. This does not, however, seem to be the case in other local 208 designates, as indicated by the Rogue Valley Council of Governments 208 program. This lack of support in other local 208 designates could affect the future administration of the 208 program in Oregon by the EPA.

Limited Capabilities Realized

With 208 planning encompassing virtually all aspects of water pollution control, the local area-wide designates are having some trouble in their planning. In other words, areawide planning agencies in operation today have been largely advisory and are not accustomed to planning or acting in hard areas of budgeting and regulation.

The MWVCOG has realized that they are not adequately equipped to do all aspects of planning and implementation, even with federal funding. They realize that even though Section 208 called for local decision making in contrast to State decision making, there are some areas of planning and regulation that are best left up to the State. One example of this would be that of standard setting. A leading 208 official at MWVCOG feels that the State should be responsible for establishing standards because areawide 208's do not necessarily take in river basins while standard setting should be done with the river basin concept in mind.¹⁹ He also felt that enforcement of the 208 plans need not all be done at the local level, but that the important part was that the plans be enforced, whether it be by the State or by the local governments.²⁰

Confident Work

In June of 1977 the MWVCOG will submit to the State its 208 water quality plan, confident of the quality of their work. As shown before, they feel they have had the needed participation to develop comprehensive implementable plans. They were also realistic in accepting their capabilities and did not attempt to do things they were not qualified to do.

The Program Manager of 208 for the MWVCOG feels that much work has gone into these plans and the strategies called for are

profitable for water quality control in their planning area.²¹ One County Commissioner feels that the public involvement has been so good that implementation of the 208 plans are assured if the plans are approved.²²

To see these plans put on the shelf and not implemented would certainly be a discouragement to all those who have worked hard during the last two years to come up with the local strategies called for in Section 208 of P. L. 92-500. However, even with the confident spirit and involvement of those people in the 208 planning in the MWVCOG, there are many issues surrounding the program that leave much doubt as to the future of the 208 plans. The major issues which may impede implementation of the MWVCOG 208 program are discussed below.

EPA Administration

The administration of Section 208 by EPA has met with much criticism. Section 208, and P. L. 92-500 in general, did present early administrative problems to EPA, but even now EPA has done little except to fragment the implementation of the 208 program and cause confusion in all levels of government.

First, early implementation of Section 208 was expressed before as being vital to carrying out the goals of P. L. 92-500. Instead EPA assigned Section 208 a low priority and waited a full

year to even publish their regulations regarding the program. They asked Governors on May, 1973 to designate local 208 agencies, yet they waited until a year later to publish regulations on 208 grants and the planning process.²³ The Governors had to wait, consequently, until 1975 to designate 208 planning agencies which meant the intended immediate implementation took two and one-half years to begin.

By going on this time schedule the EPA has allowed many of the action elements of P. L. 92-500 to precede the planning elements. With the local 208 plans not due until June, 1977, construction grants and permit programs will have operated on a case-by-case basis for five to six years and not as a part of locally developed areawide cleanup strategy.²⁴ This is actually the opposite of what Congress intended in the implementation of P. L. 92-500. The planning elements were to precede the action elements but the EPA has effectively done away with that intent for now.

This fragmented approach, however, is still going on as is indicated by the EPA's fifth water quality paper (1977), which deals with "Individual Program Strategies". These strategies are broken down into five headings and fourteen subheadings which deal with individual programs. "Program Management" (Planning) is separated from the part of the strategy paper that includes the action elements which would seem to be the departure point for areawide water quality management planning.²⁵

In conclusion, EPA has done much to cause confusion in the 208 program by slow and fragmented implementation of its responsibilities. The EPA approach to the program, to date, has been a bundle of different programs with planning only one of those programs.

Too Many Actors

One of the most complexing issues confronting the 208 program in the MWVCOG is the sorting out of roles and responsibilities of the various levels of government under the area-wide approach. With the creation of the new regional entity (208), there is serious question as to how this will effect the traditional relationships between the levels of government. It is imperative to the program that guidelines be worked out for smooth implementation of the 208 plans.

The 208 Program Manager of MWVCOG feels that the new regional 208 entities are surely not capable of being responsible for all aspects of water pollution management in an area, but they are to take a very large part of the responsibility in both planning and implementation. But to do so it would take more authority than the present 208 agencies have; therefore legal statutes must be passed to give more authority to 208 agencies in order for them to carry out their responsibilities in implementation.²⁶ Granting additional authority to 208 agencies has not happened in Oregon, however, due

largely to the influence of the State's Department of Environmental Quality (DEQ).

The Program Director of 208 for DEQ looks at 208 as being merely a shift of emphasis from state to regional water management programs because of negative responses by the Federal Government to State programs.²⁷ He feels, much like the Project Director of 208 for DEQ that this shift is starting to come back the other way now, as indicated by EPA granting money for Statewide 208 planning in 1976, when originally EPA was not going to give money to local 208 designates.²⁸

This shift of policy by EPA, first favoring the local 208 agency and then the state, can be considered to be the equivalent of putting the State into the pivotal role of 208 planning and implementation. This is clearly the opposite of the intent of Section 208, which calls for areawide based planning and implementation. EPA feels justified in doing so because they claim there has been a lack of local participation in many of the designated areas. By putting the State back into the pivotal role, the program will be able to continue, but with a slightly different emphasis than the original. The Head of the Water Quality Division, EPA, Region X, sees this state approach as being the most effective, with the local area-wide plans taking on more of an advisory emphasis.²⁹

The EPA does have some evidence to support this position, but

even the 208 Program Director of DEQ feels that EPA may be premature in selling out the work of the area-wides.³⁰ If this is the case, the area-wide 208 entities will probably play only minor roles and responsibilities in planning and implementation and never get the chance to work out their water quality decisions.

This issue is still to be answered, but undoubtedly the local 208 designates will probably never gain the authority they were intended, as indicated by EPA actions (premature or not) to date.

Lack of Communication

With 208 grants going to the State in 1976, there has developed two parallel 208 programs in Oregon. While the area-wide 208 entities are continuing with their plans for their areas, the State is planning for the rest of the State not included in the designated areas. One side effect of this parallel planning has been the total lack of communication between the two programs; consequently, the local 208's do not really know how they fit in with the State planning and are concerned about the response by the State to their plans.

A leading 208 official of MWVCOG expressed that there has been absolutely no communication between the MWVCOG 208 and the State (DEQ).³¹ With this lack of communication there is no doubt why areas such as roles and responsibilities by the various levels of government for planning and implementation, have yet to be dealt

with. This attitude of reluctance on the part of the State is certainly going to hurt the effectiveness of the 208 program and consequently, give impetus to the shift of emphasis in water quality management back to the State. The Program Director of 208 for Rogue Valley Council of Government, feels that this reluctance is caused by DEQ's reluctance to see Section 208 create "little DEQ's" throughout the State.³² The Program Manager of MWVCOG also feels that it is a matter of the DEQ not willing to give up responsibility it already has to someone else.³³

Whatever the reason may be, the results of this lack of communication has been more confusion than before. No one seems to know for sure how the local 208 plans are going to fit into the State water quality strategy, and until communication finally takes place, uncertainty will prevail over all local 208 designates and their plans.

Submittal of Plans

With the MWVCOG 208 plan due in June, 1977, the issues that have been discussed previous will soon have to be addressed. The roles and responsibilities of the various levels of government will be dealt with for the first time, with the outcome uncertain.

The MWVCOG 208 planning agency is also concerned that because of the lack of communication between them and the State, their plans are probably going to be received largely as advisory.³⁴ DEQ

personnel do not necessarily hold this view and have expressed that, if the local 208's have done good planning, the State will approve their plans and they should not worry.³⁵ But how can the local 208's not worry, since with no open channels of communication, they have little feedback from the State on their plans.

The State doesn't really seem to be doing their part in seeing to it that the local plans are of good quality. EPA has also not taken enough initiative in getting the State to communicate with the local 208 designates. The results of all of this will be soon in coming, now that the plans are being submitted and consequently, forcing the State and EPA to deal with the local areawide plans.

CONCLUSIONS

Since its enactment in 1972 Section 208 has been a center of controversy in all levels of government. With Section 208 calling for the creation of areawide entities to plan and implement water quality strategies, there has been a need to incorporate these new entities into the traditional relationships between the various levels of government. This process of incorporation, however, has been slow and fragmented. Regional organizations are not common in our traditional water quality strategies, especially those that have authority to implement plans. Traditional relationships between levels of government need to be restructured in order to make room for these new

areawide entities, but in Oregon little has been done to accomplish this task, due mainly to the reluctance on the part of the State and EPA.

With the new areawide entities having trouble finding a place in the traditional governmental relationships, there has developed several vital unresolved issues in the present 208 program. These issues include: the sorting of roles and responsibilities by the different levels of government in the 208 program, the future of the 208 plans that are to be submitted in June of 1977, and the administration of the 208 program by EPA. All of these issues are vital to the success of the 208 program and until they are answered the future of the 208 program remains uncertain.

The first two issues stem mainly from an absence of communication between the State and local governments. The reason for this lack of communication is unclear, but the result has been uncertainty in the local 208 designates over their responsibilities in the areawide program and the future of their areawide plans. Both of these issues should have been dealt with earlier in the 208 program but not until June of 1977, when the 208 plans are submitted, will the outcome of these issues be decided.

In the area of administration, EPA has employed a fragmented program in regards to 208 and has not required that the states and local governments communicate. They have even changed the basic

emphasis of the 208 program from an areawide to State-wide approach, before any 208 plans are submitted. Indicative of this fragmented approach is a statement made by George Abel of EPA in June of 1976:³⁶

If the local agencies are successful and achieve at least partial implementation of their programs, we feel that additional funds will be forthcoming from Congress. . . .

If, on the other hand, the local agencies do not achieve their goals and instead produce ineffective paper plans, it is likely that these programs will be further centralized to higher levels of government through passage of new Federal laws and regulations. We hope this does not happen because solutions worked out at local levels are generally less expensive and more compatible with established local practices and administrative procedures.

It was shortly after this statement that EPA granted money to State-wide 208 planning and indicated all further grants would go through the State. This action can certainly be considered a vote against further areawide development. This move by EPA could be the best indication we have for the future of local areawide plans and that indication is not a good one.

What can we then expect to see in the near future for the 208 plans from the MWVCOG? At best one can only hope that the DEQ

and the Governor recognize good work when they see it. It is unfortunate, however, that the MWVCOG and other local 208's have had little support offered them since the start of the program in Oregon in 1975. This lack of support does certainly not appear to be in keeping with a deep concern for the areawide water quality management approach expressed by Congress when passing P. L. 92-500.

FOOTNOTES

- 1 National Water Commission, Water Policies For the Future: Final Report to the President and to the United States Congress, (Washington, D. C., 1973), p. 63.
- 2 Martha Derthick, Between State and the Nation, (The Brookings Institution: Washington, D. C., 1974), p. 4.
- 3 Lyle E. Craine, Water Management Innovations in England, Washington, Resources for the Future, (Baltimore: John Hopkins Press, 1969), p. 9.
- 4 Craine, op. cit., footnote 3, p. 9.
- 5 Craine, op. cit., footnote 3, p. 11.
- 6 U. S. Congress, House, Assistant Secretary for Community Planning and Management Samuel C. Jackson speaking for area-wide waste treatment, Section 208, HB 11896, 92nd Cong., 2nd sess., 22 September 1972, Congressional Quarterly Almanac 27:710.
- 7 Derthick, op. cit., footnote 2, p. 12.
- 8 National Water Commission, op. cit., footnote 1, p. 83.

- 9 Report Published by the School of Public and Environmental Affairs, Indiana University, Problems and Approaches to Area-wide Water Quality Management, (Bloomington: Indiana University Press, 1973), pp. 20, 21.
- 10 Institutional Assessment of the Implementation of the Planning Requirements of the Water Pollution Control Act Amendments of 1972, directed by Harold F. Wise, (Draft Report, 1975), p. 20.
- 11 Environmental Policy Division of the Congressional Research Service, A Legislative History of the Water Pollution Control Act Amendments of 1972, (Washington: U. S. Government Printing Office, 1973), p. 154.
- 12 Wise, op. cit., footnote 10, pp. i, ii.
- 13 Wise, op. cit., footnote 10, pp. 33, 34.
- 14 Legislative History, op. cit., footnote 11, p. 154.
- 15 Mid Willamette Valley Council of Governments, Project Control Program: Areawide Wastewater Treatment Management Planning, (Revised April 1976), Budget Information.
- 16 Interview with Kurt Smelser, Mid Willamette Valley Council of Governments, Salem, Oregon, 5 April 1977.

- 17 Interview with Allan Miller, County Commissioner, Polk County, Dallas, Oregon, 15 March 1977.
- 19 Interview with Ted Loposzynski, County Commissioner, Yamhill County, McMinnville, Oregon, 14 March 1977.
- 20 Interview with Kurt Smelser, Mid Willamette Valley Council of Governments, Salem, Oregon, 2 March 1977.
- 21 Smelser, op. cit., footnote 20, 2 March 1977.
- 22 Luposzynski, op. cit., footnote 19, 14 March 1977.
- 23 Wise, op. cit., footnote 10, p. 35.
- 24 U. S., National Commission on Water Quality, Staff Report to the National Commission on Water Quality, (Washington: U. S. Government Printing Office, April, 1976), p. V-105.
- 25 U. S. Environmental Protection Agency, Federal Water Quality Strategy Paper for 1977, (Washington: U.S. Government Printing Office, 1976), p. D-1.
- 26 Smelser, op. cit., footnote 20, 2 March 1977.
- 27 Interview with Tom Lucas, Department of Environmental Quality, Portland, Oregon, 12 March 1977.

- 28 Lucas, op. cit., footnote 27, 12 March 1977; and Interview with Jack Churchill, Department of Environmental Quality, Portland, Oregon, 18 March 1977.
- 29 Interview with George Abel, Environmental Protection Agency, Seattle, Washington, 10 March 1977.
- 30 Lucas, op. cit., footnote 27, 12 March 1977.
- 31 Smelser, op. cit., footnote 16, 5 April 1977.
- 32 Interview with Jeff Gibbs, Rogue Valley Council of Governments, Medford, Oregon, 3 March 1977.
- 33 Smelser, op. cit., footnote 20, 2 March 1977.
- 34 Smelser, op. cit., footnote 20, 2 March 1977.
- 35 Lucas, op. cit., footnote 27, 12 March 1977.
- 36 George Abel, "Managing Non-Point Source Pollution," in Non-Point Sources of Water Pollution, Seminar conducted by Oregon State University Water Resources Research Institute, (Oregon State University, July 1976), p. 91.

APPENDIX

PUBLIC LAW 92-500
92nd Congress, S. 2770
October 18, 1972

AREAWIDE WASTE TREATMENT MANAGEMENT

Sec. 208. (a) For the purpose of encouraging and facilitating the development and implementation of areawide waste treatment management plans--

(1) The Administrator, within ninety days after the date of enactment of this Act and after consultation with appropriate Federal, State, and local authorities, shall be regulation publish guidelines for the identification of those areas which, as a result of urban-industrial concentrations or other factors, have substantial water quality control problems.

(2) The Governor of each State, within sixty days after publication of the guidelines issued pursuant to paragraph (1) of this subsection shall identify each area within the State which, as a result of urban-industrial concentrations or other factors, has substantial water quality control problems. Not later than one hundred and twenty days following such identification and after consultation with appropriate elected and other officials of local governments having jurisdiction in such areas, the Governor shall designate (A) the boundaries of each such area, and (B) a single representative organization, including elected

officials from local governments or their designates, capable of developing effective areawide waste treatment management plans for such area. The Governor may in the same manner at any later time identify any additional area (or modify an existing area) for which he determines areawide waste treatment management to be appropriate, designate the boundaries of such area, and designate an organization capable of developing effective areawide waste treatment management plans for such area.

(3) With respect to any area which, pursuant to the guidelines published under paragraph (1) of this subsection, is located in two or more States, the Governors of the respective States shall consult and cooperate in carrying out of the provisions of paragraph (2), with a view toward designating the boundaries of the interstate area having common water quality control problems and for which areawide waste treatment management plans would be most effective, and toward designating, within one hundred and eighty days after publication of guidelines issued pursuant to paragraph (1) of this subsection, of a single representative organization capable of developing effective areawide waste treatment management plans for such area.

(4) If a Governor does not act, either by designating or determining not to make a designation under paragraph (2) of

this subsection, within the time required by such paragraph, or if, in the case of an interstate area, the Governors of the States involved do not designate a planning organization within the time required by paragraph (3) of this subsection, the chief elected officials of local governments within an area may by agreement designate (A) the boundaries for such an area, and (B) a single representative organization including elected officials for such local governments, or their designees, capable of developing an areawide waste treatment management plan for such area.

(5) Existing regional agencies may be designated under paragraphs (2), (3), or (4) of this subsection.

(6) The State shall act as a planning agency for all portions of such State which are not designated under paragraphs (2), (3), or (4) of this subsection.

(7) Designations under this subsection shall be subject to the approval of the Administrator.

(b) (1) Not later than one year after the date of designation of any organization under subsection (a) of this section such organization shall have in operation a continuing areawide waste treatment management planning process consistent with section 201 of this Act. Plans prepared in accordance with this process shall contain alternatives for waste treatment management, and be applicable to all

wastes generated within the area involved. The initial plan prepared in accordance with such process shall be certified by the Governor and submitted to the Administrator not later than two years after the planning process is in operation.

(2) Any plan prepared under such process shall include, but not be limited to--

"(A) the identification of treatment works necessary to meet the anticipated municipal and industrial waste treatment needs of the area over a twenty-year period, annually updated (including an analysis of alternative waste treatment systems), including any requirements for the acquisition of land for treatment purposes; the necessary waste water collection and urban storm water runoff systems; and a program to provide the necessary financial arrangements for the development of such treatment works;

(B) The establishment of construction priorities for such treatment works and time schedules for the initiation and completion of all treatment works;

(C) the establishment of a regulator program to--

(i) implement the waste treatment management requirements of section 201 (c).

(ii) regulate the location, modification, and construction of any facilities within such area which may result

in any discharge in such area, and

(iii) assure that any industrial or commercial wastes discharged into any treatment works in such area meet applicable pretreatment requirements;

(D) the identification of those agencies necessary to construct, operate, and maintain all facilities required by the plan and otherwise to carry out the plan;

(E) the identification of the measures necessary to carry out the plan (including financing), the period of time necessary to carry out the plan, the costs of carrying out the plan within such time, and the economic, social and environmental impact of carrying out the plan within such time;

(F) a process to (i) identify, if appropriate, agriculturally and silviculturally related nonpoint sources of pollution, including runoff from manure disposal areas, and from land used for livestock and crop production, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

(G) a process to (i) identify, if appropriate, mine-related sources of pollution including new, current, and abandoned surface and underground mine runoff, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

(H) a process to (i) identify construction activity related sources of pollution, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

(I) a process to (i) identify, if appropriate, salt water intrusion into rivers, lakes, and estuaries resulting from reduction of fresh water flow from any cause, including irrigation, obstruction, ground water extraction, and diversion, and (ii) set forth procedures and methods to control such intrusion to the extent feasible where such procedures and methods are otherwise a part of the waste treatment management plan;

(J) a process to control the disposition of all residual waste generated in such area which could affect water quality; and

(K) a process to control the disposal of pollutants on land or in subsurface excavations within such area to protect ground and surface water quality.

(3) Areawide waste treatment management plans shall be certified annually by the Governor or his designee (or Governors or their designees, where more than one State is involved) as being consistent with applicable basin plans and such areawide waste treatment management plans shall be submitted to the Administrator for his approval.

(4) Whenever the Governor of any State determines (and notifies the Administrator) that consistency with a statewide regulatory program under Section 303 so requires, the requirements of clauses (F) through (K) of paragraph (2) of this subsection shall be developed and submitted by the Governor to the Administrator for application to all regions within such State.

(c) (1) The Governor of each State, in consultation with the planning agency designated under subsection (a) of this section, at the time a plan is submitted to the Administrator, shall designate one or more waste treatment management agencies (which may be an existing or newly created local, regional, or State agency or political subdivision) for each area designated under subsection (a) of this section and submit such designations to the Administrator.

(2) The Administrator shall accept any such designation, unless, within 120 days of such designation, he finds that the designated management agency (or agencies) does not have adequate authority--

(A) to carryout appropriate portions of an areawide waste treatment management plan developed under section (b) of this section;

(B) to manage effectively waste treatment works and related facilities serving such area in conformance with any plan required by subsection (b) of this section;

(C) directly or by contract, to design and construct new

works, and to operate and maintain new and existing works as required by any plan developed pursuant to subsection (b) of this section;

(D) to accept and utilize grants, or other funds from any source, for waste treatment management purposes;

(E) to raise revenues, including the assessment of waste treatment charges;

(F) to incur short- and long-term indebtedness;

(G) to assure in implementation of an areawide waste treatment management plan that each participating community pays its proportionate share of treatment costs;

(H) to refuse to receive any wastes from any municipality or subdivision thereof, which does not comply with any provisions of an approved plan under this section applicable for such area; and

(I) to accept for treatment industrial wastes.

(d) After a waste treatment management agency having the authority required by subsection (c) has been designated under such subsection for an area and a plan for such area has been approved under subsection (b) of this section, the Administrator shall not make any grant for construction of a publicly owned treatment works under section 201 (g) (1) within such area except to such designated agency and for works in conformity with such plan.

(e) No permit under section 402 of this Act shall be issued for any point source which is in conflict with a plan approved pursuant to subsection (b) of this section.

(f) (1) The Administrator shall make grants to any agency designated under subsection (a) of this section for payment of the reasonable costs of developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section.

(2) The amount granted to any agency under paragraph (1) of this subsection shall be 100 per centum of the costs of developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section for each of the fiscal years ending on June 30, 1973, June 30, 1974, and June 30, 1975, and shall not exceed 75 per centum of such costs in each succeeding fiscal year.

(3) Each applicant for a grant under this subsection shall submit to the Administrator for his approval each proposal for which a grant is applied for under this subsection. The Administrator shall act upon such proposal as soon as practicable after it has been submitted, and his approval of that proposal shall be deemed a contractual obligation of the United States for the payment of its contribution to such proposal. There is authorized to be appropriated to carry out this subsection not to exceed \$50,000,000 for the fiscal year ending

June 30, 1973, not to exceed \$100,000,000 for the fiscal year ending June 30, 1974, and not to exceed \$150,000,000 for the fiscal year ending June 30, 1975.

(g) The Administrator is authorized, upon request of the Governor or the designated planning agency, and without reimbursement, to consult with, and provide technical assistance to, any agency designated under subsection (a) of this section in the development of areawide waste treatment management plans under subsection (b) of this section.

(h) (1) The Secretary of the Army, acting through the Chief of Engineers, in cooperation with the Administrator is authorized and directed, upon request of the Governor or the designated planning organization, to consult with, and provide technical assistance to, any agency designed under subsection (a) of this section, in developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section.

(2) There is authorized to be appropriated to the Secretary of the Army, to carry out this subsection, not be exceed \$50,000,000 per fiscal year for the fiscal years ending June 30, 1973, and June 30, 1974.