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HEARINGS

BEFORE THE

SUBCOMMITTEE ON
ENVIRONMENTAL POLLUTION

OF THE

COMMITTEE ON PUBLIC WORKS
UNITED STATES SENATE

NINETY-FOURTH CONGRESS

SECOND SESSION

ON

S. 3037

A BILL TO EXTEND CERTAIN AUTHORIZATIONS UNDER
THE FEDERAL WATER POLLUTION CONTROL ACT, AS
AMENDED

MAY 25 AND 27, 1976

SERIAL NO. 94-H40

Printed for the use of the Committee on Public Works



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WASHINGTON : 1976

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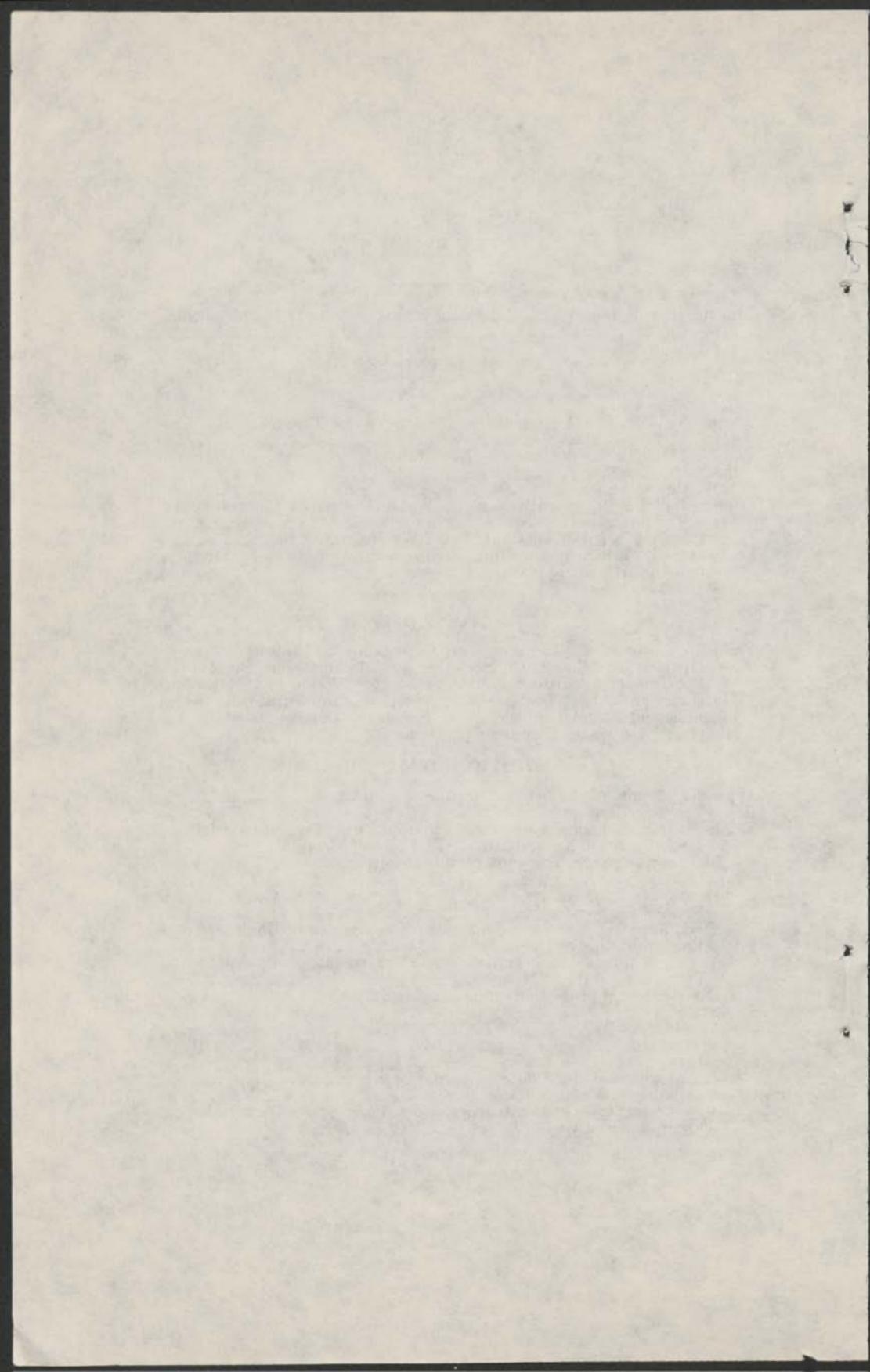
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ALLOTMENT OF WATER POLLUTION CONTROL CONSTRUCTION GRANT FUNDS

TUESDAY, MAY 25, 1976

U.S. SENATE,
COMMITTEE ON PUBLIC WORKS,
SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION,
Washington, D.C.

The subcommittee met at 10:05 a.m., pursuant to call, in room 4200, Dirksen Senate Office Building, Hon. Edmund S. Muskie (chairman of the subcommittee) presiding.

Present: Senators Muskie and Domenici.

OPENING STATEMENT OF HON. EDMUND S. MUSKIE, U.S. SENATOR FROM THE STATE OF MAINE

Senator MUSKIE. The committee will be in order.

I have a brief opening statement which sets out the context of these hearings.

The Subcommittee on Environmental Pollution is meeting this morning to receive testimony on an issue that has plagued the Congress since enactment of Public Law 92-500 in 1972: Allotment among the States of construction grant funds.

Today we will hear from representatives from the States; on Thursday we will hear from the Administrator of the Environmental Protection Agency.

On May 13, the Committee on Public Works reported S. 3037 to the Senate, authorizing \$5 billion for fiscal year 1977 for construction grants to assure that States will not run out of money, and will not lose momentum they have achieved in this program. After these hearings, the committee will meet again to settle on an allotment formula, which will then be added to S. 3037.

Among the States some have supported and some have opposed the needs based allotment formula used to distribute the 1972 act's \$18 billion authorization.

Some of these States did extremely well on a needs based formula. They reported high needs: Usually, big States with old cities, old sewer systems, and lots of rainfall.

Some of the States have had difficulties with the current allotment formulas because they reported low needs. They had made substantial accomplishments prior to 1972, they underreported their needs, and their cities are relatively new with relatively modern sewer systems. These States would probably prefer a population based formula. And, some of the States would benefit from different formulae. But, in common all States need consistency in the Federal funding program.

To assist us, we have today invited representatives of five States: Maine, New Jersey, Georgia, Texas, and California. The divergence of States represented by our witnesses today precisely illustrates the problems and dilemma the Congress faces.

We need to resolve competing interests, while providing program continuity. We need to rise above parochial interests. We need to abandon the current effort to design a distribution formula the primary purpose of which is to maximize the amount of grants available to a majority of the States.

This morning, we are asking you to help us. We are asking you to look beyond the narrow, selfish interests of your own State to the broader national interests. And we are asking you to help us settle on an allotment formula that will assure essential program continuity. [The bill, S. 3037, as introduced and as reported follows:]

94TH CONGRESS
2D SESSION

S. 3037

IN THE SENATE OF THE UNITED STATES

FEBRUARY 25, 1976

Mr. MUSKIE (for himself, Mr. RANDOLPH, Mr. BAKER, Mr. BUCKLEY, Mr. BURDICK, Mr. GRAVEL, Mr. GARY HART, and Mr. MONTOYA) introduced the following bill; which was read twice and referred to the Committee on Public Works

A BILL

To extend certain authorizations under the Federal Water Pollution Control Act, as amended.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 207 of the Federal Water Pollution Control
4 Act, as amended (86 Stat. 839), is amended by striking the
5 period at the end of the sentence and adding “, and for the
6 fiscal year ending September 30, 1977, not to exceed
7 \$7,000,000,000.”.

II

Calendar No. 827

94TH CONGRESS
2D SESSION**S. 3037**

[Report No. 94-870]

IN THE SENATE OF THE UNITED STATES

FEBRUARY 25, 1976

Mr. MUSKIE (for himself, Mr. RANDOLPH, Mr. BAKER, Mr. BUCKLEY, Mr. BURDICK, Mr. GRAVEL, Mr. GARY HART, Mr. MONTROYA, Mr. HATHAWAY, Mr. CULVER, Mr. HUDDLESTON, Mr. MCGEE, and Mr. MONDALE) introduced the following bill; which was read twice and referred to the Committee on Public Works

MAY 13, 1976

Reported by Mr. RANDOLPH, with amendments

[Omit the part struck through and insert the part printed in *italics*]**A BILL**

To extend certain authorizations under the Federal Water Pollution Control Act, as amended.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 ~~That~~ *SECTION 1. (a)* Section 207 of the Federal Water Pol-
- 4 lution Control Act, as amended (86 Stat. 839), is amended
- 5 by striking the period at the end of the sentence and adding
- 6 “, and for the fiscal year ending September 30, 1977, not
- 7 to exceed \$7,000,000,000 \$5,000,000,000.”.
- 8 *(b) Section 104(u)(2) of the Federal Water Pollu-*
- 9 *tion Control Act (33 U.S.C. 1254) is amended by strik-*
- 10 *ing out “1975” and inserting in lieu thereof “1975,*
- 11 *\$7,500,000 for fiscal year 1977.”.*

1 (c) Section 104(u)(3) of the Federal Water Pollu-
2 tion Control Act (33 U.S.C. 1254) is amended by strik-
3 ing out "1975" and inserting in lieu thereof "1975, \$2,500,-
4 000 for fiscal year 1977,".

5 (d) Section 106(a)(2) of the Federal Water Pollu-
6 tion Control Act (33 U.S.C. 1256) is amended by strik-
7 ing out "and the fiscal year ending June 30, 1975;" and
8 inserting in lieu thereof "and the fiscal year ending June 30,
9 1975, and \$75,000,000 for the fiscal year ending Septem-
10 ber 30, 1977,".

11 (e) Section 112(c) of the Federal Water Pollution
12 Control Act (33 U.S.C. 1262) is amended by inserting
13 "\$25,000,000 for the fiscal year ending September 30,
14 1977," immediately after "June 30, 1975,".

15 (f) Section 208(f)(3) of the Federal Water Pollu-
16 tion Control Act (33 U.S.C. 1288) is amended by striking
17 out "and not to exceed \$150,000,000 for the fiscal year
18 ending June 30, 1975." and inserting in lieu thereof "and
19 not to exceed \$150,000,000 per fiscal year for the fiscal
20 years ending June 30, 1975, and September 30, 1977,".

21 (g) Section 304(c)(2) of the Federal Water Pollu-
22 tion Control Act (33 U.S.C. 1324) is amended by strik-
23 ing out "and \$150,000,000 for the fiscal year 1975" and
24 inserting in lieu thereof ", \$150,000,000 for the fiscal year
25 1975; and \$150,000,000 for fiscal year 1977,".

1 (h) Section 517 of the Federal Water Pollution Con-
2 trol Act (33 U.S.C. 1376) is amended by striking out "and
3 \$350,000,000 for the fiscal year ending June 30, 1975,"
4 and inserting in lieu thereof ", \$350,000,000 for the fiscal
5 year ending June 30, 1975, and \$350,000,000 for the fiscal
6 year ending September 3, 1977."

7 SEC. 2. Section 208(f)(2) of the Federal Water Pollu-
8 tion Control Act (33 U.S.C. 2188) is amended to read as
9 follows:

10 "(2) For the two-year period beginning on the date the
11 first grant is made under paragraph (1) of this subsection to
12 an agency, if such first grant is made before October 1, 1977,
13 the amount of each such grant to such agency shall be 100
14 per centum of the costs of developing and operating a con-
15 tinuing areawide waste treatment management planning
16 process under subsection (b) of this section, and thereafter
17 the amount granted to such agency shall not exceed 75 per
18 centum of such costs in each succeeding one-year period. In
19 the case of any other grant made to an agency under such
20 paragraph (1) of this subsection, the amount of such grant
21 shall not exceed 75 per centum of the costs of developing and
22 operating a continuing areawide waste treatment management
23 planning process in any year."

24 SEC. 3. The second sentence of section 208(f)(3) of
25 the Federal Water Pollution Control Act (33 U.S.C. 1288)

- 1 *is amended by striking out the period at the end thereof and*
- 2 *inserting in lieu thereof a comma and the following: "subject*
- 3 *to such amounts as are provided in appropriation Acts."*

Senator MUSKIE. It is a pleasure to welcome as our first witness an old friend from my own State, which has, I am happy to say, achieved I gather at least the third best performance in meeting the objectives of the 1972 act among the 50 States.

They are doing very well. We had one river in our State which was described, when I first took over this committee 13 years ago, as among the 10 dirtiest rivers in America. It is now producing once again fish that made it famous years ago. So we are well on our way of meeting the objectives.

So it is with particular pride that I welcome the commissioner of the Department of Environmental Protection of the State of Maine. I add my compliments for the performance which he has accomplished.

STATEMENT OF WILLIAM R. ADAMS, COMMISSIONER, DEPARTMENT OF ENVIRONMENTAL PROTECTION, STATE OF MAINE

Mr. ADAMS. Thank you, Senator Muskie.

I am William R. Adams, Jr., commissioner of the Maine Department of Environmental Protection and chairman of the Maine Board of Environmental Protection.

It is indeed a pleasure to appear before you this morning and discuss with you the State of Maine's position on the appropriate level for funding the municipal construction grant program under Public Law 92-500 and the method of allotting those funds.

I am sure there is no need to tell you that both the authorization and the allocation formula are extremely important to every State environmental official. It is these funds and the timely expenditure of them that will tip the scales and make the much heralded goals of Public Law 92-500 a reality.

Fifteen months ago I appeared before this committee to discuss this same subject. At that time, I indicated to you that the State of Maine would be able not only to obligate released impounded funds but to have these projects under construction within a very short time, thereby alleviating serious unemployment conditions.

We feel we have been successful in this effort. With the grant offers received last week, the State of Maine has obligated 89.8 percent of its share of the \$18 billion authorized. This obligation has not only added a great deal to our water pollution control effort, but has served the State of Maine well in providing employment in a critical time.

I would be remiss if I did not publicly acknowledge the cooperation and help of EPA's region I. Region I has supported Maine's efforts from every level of its staff. The fact that Maine has been able to obligate 90 percent of the funds available make it imperative that Congress act swiftly so that an authorization can be available to the State no later than the beginning of the next fiscal year. We cannot

afford to slow the momentum for correction of our Nation's pollution problems.

However, my purpose here today is not to revise the successes and failures of the past, but to give you my views of the needs of the future. If I may, I will divide my presentation into three parts.

I will first deal with the allocation, then the formula to distribute that allocation, and third, ways to reduce paperwork. Public Law 92-500 made great promises to the people of the United States. It promised that by July 1, 1977, all discharges to our waters would be receiving best practicable treatment. That promise was cheered by some and jeered by others, but in Maine we took that promise at its face value and got on with the task.

In describing the results of that effort, I have some good news and some bad news. The good news is that industry in the State of Maine will meet that goal. With but two or three exceptions industrial discharges will receive best practicable treatment, not by July 1, 1977, as required by Federal law, but by October of 1976.

Maine and her industries are proud of this accomplishment and feel that the State will benefit from these actions. The bad news is that even with the total release of impounded funds last year and the timely expenditure of those funds, our municipalities will not meet this mandated requirement.

In fact, our needs survey completed last year indicates that to provide treatment facilities, interceptors, and outfalls alone, we must fund 139 projects with a total cost of \$321,966,0000.

If we subtract projects we can fund with moneys now in hand, we are left with a total of 124 projects and an estimated cost of \$242 million. This does not include all of the other items eligible for funding under the law.

If these are added, our estimated cost more than triples. It is certain that most communities in Maine cannot meet the 1977 deadline, so we must set a new target date. Realizing that money does not grow on trees, even in Washington, we struggled to determine a realistic date.

It appears to us that the Federal Government, in order to maintain any credibility with at least the Maine industrial sector, must furnish the funds necessary for municipal facilities in the shortest possible time.

A report prepared in January of this year by our Division of Municipal Services estimates that, if Maine received Federal funds at the rate of \$40 million annually, we will be able to complete our program for the basics; that is, treatment facilities, interceptor sewers and outfalls, in 6 years, or in time to meet the 1983 goals for best available treatment.

It is an absolute necessity that the State receive this amount in order to complete this very minimum amount of work. Obviously, the amount of dollars received by the State of Maine is dependent not only upon the authorization but also upon the formula for distribution.

Not knowing which formula will be chosen, it is difficult for me to recommend a total authorization. However, when we review the various formula proposed, Maine's share of a total national authorization varies from 0.46 percent to 0.54 percent.

Using these percentages, it will be necessary for Congress to appropriate between \$7.4 billion and \$8.7 billion annually. I must stress the need for a continuous funding program. Without assurance of a continuous funding program, the municipalities will lose enthusiasm and the laudable goals of Public Law 92-500 will not be met.

This is an alternative that we cannot permit. States must be able to plan a program for more than 1 year at a time. Government must accomplish what it has required industry to accomplish.

I would also suggest that Congress give more flexibility to the EPA so that funds originally committed to a State can be diverted to other States if delays ensue. Right now, Maine could use funds which are lying idle in commitments to other States. It seems unfortunate that money appropriated by the Congress and badly needed by the citizens cannot be used in a timely manner.

I will now discuss the proposed formula, but first I would like to give you some of my philosophy regarding a distribution formula. I must note that this philosophy has been biased and tempered by the situation and needs of my home State and employer, the State of Maine.

Public Law 92-500 set out to achieve fishable and swimmable water. In my view, the program should be structured so that all States arrive at this goal at approximately the same time. It makes little sense for a municipality in Maine to discharge raw sewage because of the lack of Federal funds to construct basic treatment facilities, while other States use Federal funds to construct collector sewers, storm water systems and other eligible, but less vital, facilities.

That money should be channeled to those States which still need basic facilities on a priority basis so that these can go on-line in the shortest possible time.

Therefore, we recommend that the formula be based upon a State's needs for categories 1, 2, and 4b only. We believe that formulas which include categories other than 1, 2, and 4b are based upon population or other factors ignore the basic intent of the law to provide a national standard of water quality which is acceptable to our society.

However, should Congress feel a need to include items other than essential interceptors, treatment facilities and outfalls in the basic formula, I would strongly recommend that a significant portion of the total authorization be dedicated to those States who have yet to provide these basic facilities because of the lack of Federal funds.

For example, a large percentage of any authorization could be devoted to categories 1, 2, and 4b and the remaining portion distributed to all States on an expanded formula.

There is another funding item which I feel should be considered by this Congress. That is repayment to the States for those projects prefunded between 1969 and 1971. Between those dates, the State of Maine loaned, if you will, the Federal Government approximately \$13 million to construct facilities required by Federal law.

To date, the State of Maine is still due \$3,693,125 for this loan. I doubt that the Internal Revenue Service would permit such delinquency. This item has been left hanging for several years and I believe this is the year that the problem should be corrected by reimbursement to the States.

This could be especially critical to us because, as you well know, Maine is not a rich State and the funds for its share of these municipal

projects must compete with other necessities. The \$3.69 million would, if combined with the Federal share, finance over \$24 million worth of projects. In Maine, this is a lot of construction and a lot of money.

I would like to make a final suggestion concerning funding. In Maine, as well as in other States, the rural nature of the communities and the ledge rock just below topsoil make it financially impractical in many areas to install the usual municipal systems.

As a result, homeowners in these areas are forced to buy individual systems which are not only expensive to install, but also expensive to operate. In many instances, these people are living on pensions or other fixed incomes and the capital investment required is truly beyond their reach.

I believe that Congress should take a look at this problem and consider expanding the present construction program to respond to this need. One possible approach might be the institution of a loan program with payback provisions keyed to average sewer charges for the area. I would be happy to work with your staff in developing this concept.

The third matter on which you have requested comment was the problem of State and Federal paperwork. The desire of everyone in Government to conform to the intent of the law and to avoid that one potential scandal which lurks behind multimillion dollar programs has resulted in a blizzard of forms, checks, and redtape which delays all projects and increases their cost.

The Environmental Protection Agency has implemented regulations concerning the construction grants program which have resulted in a program so complex that it was necessary for them to retain a consultant to diagram the procedure.

A foldout from Water and Sewage Works magazine, prepared for EPA by EcolSciences, Inc. in November 1975, describes the process and is appropriately entitled "Wall Chart."

This was forwarded to me by a friend with a note which simply said, "Everything you wanted to know about construction grants but were afraid to ask." While the objectives of EPA are understandable, I believe that Congress should make it explicitly and firmly clear to the agency that the honest and intelligent expenditure of these funds lies with the municipality and the consulting engineer retained to design the project and to oversee construction.

It seems to me that both the Federal and State government must place a greater reliance upon the consulting engineers who, after all, are professionals. It is my belief that the engineering profession can be relied upon to design and supervise construction of a treatment plant that solves the communities' needs in the most economical manner.

If a firm fails to perform these tasks, then the professional competence of that firm should be publicly questioned and their professional registration withdrawn. Only such a reliance upon the municipalities and the consulting engineering profession will permit construction of the required facilities within a reasonable time.

EPA's role should be limited to general oversight of the program and to periodic audit of the program's progress. Any other choice will only insure the perpetuation of an army of Federal employees and the paperwork that such an army is bound to generate.

To support these suggestions, I would relate my experience as a member of an EPA task force of State and Federal staff administrators

which recently made recommendations on the decentralization of the work requirements of Public Law 92-500.

My team and others in the task force traveled to States throughout the country to interview State officials and EPA people at headquarters and the regional offices. Almost without exception those interviewed agreed that unless there was a substantial delegation of authority and responsibility to the States and municipalities the program would not work.

The resulting task force report also emphasizes that most States were more than willing to accept this delegation providing EPA did not become a Monday morning quarterback. I have attached a copy of this report to my statement and I hope you will give it full attention. (The report appears in the appendix, p. 145.)

There has been no indication from EPA headquarters that these recommendations will be implemented. Perhaps your interest, as expressed in any resulting amendments, would increase their interest as well.

In summary, I strongly recommend that Congress should authorize from \$7.4 billion to \$8.7 billion, each year for not less than 6 years.

I recommend that the distribution formula be based upon the needs in various States for the construction of the basics in waste water treatment—interceptors, treatment facilities, and outfalls only.

I also ask Congress to give a strong indication to EPA that, even though the Federal Government funds these facilities, the basic responsibility for the proper expenditure of these funds lies with the municipality itself and with the professional engineering firm it engages to design and oversee the work.

Finally, I would urge that Congress make it clear to EPA that the primary responsibility for water pollution control rests with the States and that, wherever possible, authority and responsibility for the solving of these complex problems should be delegated to them.

I thank you for the invitation to appear before you and the attention you have given me this morning. I would attempt to answer any questions that you might have.

Senator MUSKIE. If there is no objection, I think it might be helpful to have all the testimony first on the subjects represented and the varying points of views, and then get to the questions.

Our next witness is Mr. David Bardin, of New Jersey, who I understand is still on the Metroliner. So I will turn next to Mr. Leonard Ledbetter, Environmental Protection Division of the Department of Natural Resources from the State of Georgia.

STATEMENT OF J. LEONARD LEDBETTER, DIRECTOR, ENVIRONMENTAL PROTECTION DIVISION, GEORGIA DEPARTMENT OF NATURAL RESOURCES

Mr. LEDBETTER. Thank you, Mr. Chairman and members of the committee.

I am J. Leonard Ledbetter, Director of the Environmental Protection Division of the Georgia Department of Natural Resources. Since June 1965, I have been associated with the water pollution control program in Georgia.

Rather than read my statement, I will summarize some of the highlights. (The statement appears at p. 16.)

To emphasize the importance of this element of the program, it should be noted that over 80 percent of the major industries in Georgia are already in compliance with the July 1, 1977, requirements of Public Law 92-500.

It is anticipated that those industries not now in compliance will be in compliance with the 1977 requirements by the deadline. Therefore, publicly owned systems are creating most of Georgia's major water pollution problems today. To provide the needed secondary treatment facilities, more stringent treatment than secondary when needed to meet water quality standards, and interceptor sewers—frequently referred to as categories 1, 2, and 4(b) in the 1974 needs survey—Georgia local governments must install facilities costing in excess of \$1 billion.

Continuation of the construction grants program is absolutely essential to Georgia's local governments as well as to the State's water pollution abatement efforts.

Following passage of P.L. 92-500 in October 1972, considerable controversy and confusion have prevailed regarding the allocation of the construction grant funds. The fiscal year 1973 and 1974 funds were allotted to the States based on an inaccurate and incomplete needs survey.

Seventeen States, one territory, and the District of Columbia received 71.7 percent of the fiscal year 1973 and fiscal year 1974 funds while 33 States and 4 territories received only 28.3 percent of the funds.

Upon completion of the 1973 "needs" survey, the Congress recognized the gross inequity of the early allocation formula and enacted Public Law 93-243 which incorporated a formula to allocate fiscal year 1975 construction grant funds based on data in the 1973 needs survey.

The fiscal year 1975 allocation formula was more realistic; however, it should be noted that the 17 States, 1 territory, and District of Columbia referred to earlier still received 66.2 percent of the available funds.

If the construction grant funds were allotted according to the population of the various States, the 17 States, 1 territory, and District of Columbia referred to above would receive approximately 55.1 percent of available construction grant funds.

This can be compared to the allocation formula recommended to the Congress on February 10, 1975, by Mr. Russell E. Train, Administrator, Environmental Protection (EPA). Mr. Train's recommendation was based on an equal 50-percent division between population and the EPA adjusted cost estimates from the 1974 needs survey for categories 1, 2 and 4(b) for use in allocating construction grant funds.

Under the Russell Train formula recommended in February 1975, the 17 States, 1 territory, and the District of Columbia discussed above would still receive 54.9 percent of available funds. In other words, approximately the same as using the population only as the basis for our allocation.

However, it is recognized that major water pollution problems exist in those areas.

After a study of the formula recommended by Mr. Train in early 1975, we determined it to be realistic and acceptable to us. On two

different occasions during 1975 the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) had over 35 State administrators vote to support the Russell Train formula as the most fair and equitable.

On September 30, 1975, Governor George Busbee of Georgia presented testimony before the Water Resources Subcommittee of the House Committee on Public Works and Transportation regarding this same subject.

Governor Busbee has strongly endorsed the Train formula as being realistic and equitable. Since we have seen no facts to cause us to change our position, the State of Georgia wishes to go on record again today supporting the Russell Train formula of an equal 50-percent division based on population and 50 percent based on the EPA adjusted cost estimates from the 1974 needs survey for categories 1, 2, and 4(b). We urge this subcommittee to adopt this formula.

Excessive redtape and the earlier impoundment of \$9 billion are in large part responsible for the slow rate of grant obligations in the past 3 years. More than half of the States now have more projects on their funding lists than they have grant allocations for and it is essential to keep these projects moving.

Funding of the construction grants program has been highly variable and unpredictable from year to year under both Public Law 84-660 and Public Law 92-500. The effect of erratic funding of the construction grants programs by the Congress in the past has hindered progress in all factions of the water pollution control field.

Equipment manufacturers, the construction industry, consulting engineering firms, and State regulatory agencies and local governments find it very difficult to cope with "roller coaster" funding.

States, consulting engineers, contractors, equipment manufacturers, and EPA have spent the last 3 years getting geared up to handle the funds currently available, and now that this has been accomplished and the grants are rolling along, there is the possibility of another funding cutback.

Unless the Congress proceeds in the near future with appropriations for fiscal year 1977.

Management decisions for current programs of States, consulting engineers, equipment manufacturers, and contractors have been based on the assumption that \$5 to \$7 billion per year would be available for the next 5 years on the part of many of us.

If no more funds are authorized in fiscal year 1977 and beyond, additional unemployment can be expected in all of these areas.

To plan effectively for the wise use of these funds, the States need to know the approximate level of several years of future funding in advance. The funding of facilities plans and engineering documents for projects on the fiscal year 1976 project funding lists without some indication that future funds will be available for construction of these projects does not promote good program planning and management principles.

We urge that consideration be given to using a 5-year authorization period for planning and management purposes, and that at least \$5 billion per year be appropriated.

The 1974 needs survey of cost estimates for construction of publicly owned wastewater treatment facilities (revised May 7, 1975), estimated the cost of secondary treatment, more stringent treatment, and

new interceptor sewers and appurtenances (categories 1, 2, and 4(b), respectively) to be \$46.3 billion in 1973 dollars.

The EPA guidance currently being used in the 1976 update of the needs survey calls for increasing the revised 1974 estimates by a factor of 40 percent to adjust figures to 1976 dollars. Therefore, inflation alone has increased the estimated needs for treatment facilities and interceptor sewers to about \$65 billion.

The \$223 million in construction grant allocations received by Georgia for fiscal year 1974, 1975, and 1976 are certainly appreciated by the citizens of our State, and with local matching funds, will generate about \$300 million in construction of water pollution control facilities in our State.

However, \$300 million is only 29 percent of Georgia's \$1.02 billion in needs for treatment plants and interceptor sewers indentified in the 1974 needs survey, and will actually satisfy less than 21 percent of those needs when inflation is considered.

A funding authorization of \$5 billion per year for 5 years and allocation of those funds by the Russell Train formula (50-percent population, 50-percent needs from the 1974 needs survey) would be required to satisfy Georgia's category 1, 2, and 4(b) needs, assuming no inflation over 1973 dollars.

Authorization of funds in excess of \$5 billion per year is necessary to keep pace with inflation and to satisfy water pollution abatement needs other than treatment plants and interceptor sewers.

In addition to a consistent level of funding for a 5-year period, a consistent allocation formula is needed. A constant level of funding at the national level will not result in constant levels of funding to each State if allocations are changed as a result of new needs surveys conducted by new guidelines every 2 years.

We suggest that a needs survey be conducted only at 5-year intervals and that national levels of funding and State allocations for the following 5-year period be based on projected populations and the latest needs survey.

All elements of water pollution abatement or control facilities should remain eligible and the States should have the authority to establish priorities for the use of the 75-percent construction grant funds for specific projects.

In the city of Atlanta there is a significant example of the need for all types of water pollution control facilities to be eligible for 75-percent grants and the State to have the authority to establish priorities.

The Chattahoochee River, which is one of Georgia's most important water resources and is in EPA's national water quality surveillance system, receives large amounts of treated wastewater from the metropolitan area in addition to overflows from combined sewers.

The metropolitan governments are actively pursuing programs to provide advanced levels of treatment for dry weather sewage flows, but the Chattahoochee River will not be able to meet water quality standards for fishing at all times unless grant funds can be provided for handling of combined sewer overflows.

Georgia and other States also need the flexibility to set their own priorities for funding of projects in order to be responsive to the needs of smaller municipalities which have many residents living on

low and/or fixed incomes and which are not able to provide their local shares of construction funds unless their sewage collection systems can be expanded along with the necessary treatment plant upgrading projects.

Georgia alone has more than 450 communities with populations less than 10,000.

The Federal grant share must be kept high enough to reduce the financial strain of capital costs for construction and high enough to insure strong interest. The present 75 percent Federal share for all categories of needs is appropriate to accomplish these things.

Most important of all, the waters of Georgia and of the Nation will not be cleaned up in a timely fashion without continued Federal funding. Our municipalities will not be able to meet the 1977 or the 1983 requirements of Public Law 92-500 without this support.

The Nation's industries are expected to meet their requirements by the 1977 deadline, but the Federal Government, if it fails to participate in the grants program, will prevent municipalities from meeting their obligations under the Federal Water Pollution Control Act.

Thank you, Mr. Chairman.

[Mr. Ledbetter's prepared statement follows:]

STATEMENT
TO
SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION
OF THE COMMITTEE ON PUBLIC WORKS

MAY 25, 1976

BY
J. LEONARD LEDBETTER, DIRECTOR
GEORGIA ENVIRONMENTAL PROTECTION DIVISION

MR. CHAIRMAN AND DISTINGUISHED MEMBERS OF THE COMMITTEE:

I AM J. LEONARD LEDBETTER, DIRECTOR OF THE ENVIRONMENTAL PROTECTION DIVISION OF THE GEORGIA DEPARTMENT OF NATURAL RESOURCES. SINCE JUNE 1965 I HAVE BEEN ASSOCIATED WITH THE WATER POLLUTION CONTROL PROGRAM IN GEORGIA.

WE ARE MOST APPRECIATIVE OF THIS OPPORTUNITY TO APPEAR BEFORE THIS COMMITTEE AND PRESENT THE STATE OF GEORGIA'S POSITION ON THE MATTER OF THE MUNICIPAL CONSTRUCTION GRANT PROGRAM. THE PROPOSED AUTHORIZATION OF CONSTRUCTION GRANT FUNDS FOR FUTURE YEARS AND THE ESTABLISHMENT OF AN EQUITABLE ALLOCATION FORMULA FOR DISBURSEMENT OF THESE FUNDS TO THE VARIOUS STATES ARE CRITICAL TO THE SUCCESSFUL CONTINUATION OF OUR ONGOING WATER POLLUTION CONTROL EFFORT IN GEORGIA - AND IN THIS NATION.

TO EMPHASIZE THE IMPORTANCE OF THIS ELEMENT OF THE PROGRAM, IT SHOULD BE NOTED THAT OVER 80% OF THE MAJOR INDUSTRIES IN GEORGIA ARE ALREADY IN COMPLIANCE WITH THE JULY 1, 1977, REQUIREMENTS OF

P.L. 92-500. IT IS ANTICIPATED THAT THOSE INDUSTRIES NOT NOW IN COMPLIANCE WILL BE IN COMPLIANCE WITH THE 1977 REQUIREMENTS BY THE DEADLINE. THEREFORE, PUBLICLY OWNED SYSTEMS ARE CREATING MOST OF GEORGIA'S MAJOR WATER POLLUTION PROBLEMS TODAY. TO PROVIDE THE NEEDED SECONDARY TREATMENT FACILITIES, MORE STRINGENT TREATMENT THAN SECONDARY WHEN NEEDED TO MEET WATER QUALITY STANDARDS, AND INTERCEPTOR SEWERS (FREQUENTLY REFERRED TO AS CATEGORIES I, II, & IVB IN THE 1974 "NEEDS" SURVEY), GEORGIA LOCAL GOVERNMENTS MUST INSTALL FACILITIES COSTING IN EXCESS OF ONE BILLION DOLLARS. CONTINUATION OF THE CONSTRUCTION GRANTS PROGRAM IS ABSOLUTELY ESSENTIAL TO GEORGIA'S LOCAL GOVERNMENTS AS WELL AS TO THE STATE'S WATER POLLUTION ABATEMENT EFFORTS.

FOLLOWING PASSAGE OF P.L. 92-500 IN OCTOBER 1972, CONSIDERABLE CONTROVERSY AND CONFUSION HAVE PREVAILED REGARDING THE ALLOCATION OF THE CONSTRUCTION GRANT FUNDS. THE FISCAL YEAR 1973 AND 1974 FUNDS WERE ALLOTTED TO THE STATES BASED ON AN INACCURATE AND INCOMPLETE "NEEDS" SURVEY. SEVENTEEN STATES, ONE TERRITORY, AND THE DISTRICT OF COLUMBIA RECEIVED 71.7% OF THE FY 73 AND FY 74 FUNDS WHILE 33 STATES AND FOUR TERRITORIES RECEIVED ONLY 28.3% OF THE FUNDS. UPON COMPLETION OF THE 1973 "NEEDS" SURVEY THE CONGRESS RECOGNIZED THE GROSS INEQUITY OF THE EARLY ALLOCATION FORMULA AND ENACTED P.L. 93-243 WHICH INCORPORATED A FORMULA TO ALLOCATE FY 75 CONSTRUCTION GRANT FUNDS BASED ON DATA IN THE 1973 "NEEDS" SURVEY. THE FY 75 ALLOCATION FORMULA WAS MORE REALISTIC; HOWEVER, IT SHOULD BE NOTED THAT THE 17 STATES, ONE TERRITORY, AND DISTRICT OF COLUMBIA REFERRED TO EARLIER STILL RECEIVED 66.2% OF THE AVAILABLE FUNDS.

IF THE CONSTRUCTION GRANT FUNDS WERE ALLOTTED ACCORDING TO THE POPULATION OF THE VARIOUS STATES, THE 17 STATES, ONE TERRITORY, AND DISTRICT OF COLUMBIA REFERRED TO ABOVE WOULD RECEIVE APPROXIMATELY 55.1% OF AVAILABLE CONSTRUCTION GRANT FUNDS. THIS CAN BE COMPARED TO THE ALLOCATION FORMULA RECOMMENDED TO THE CONGRESS ON FEBRUARY 10, 1975, BY MR. RUSSELL E. TRAIN, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY (EPA). MR. TRAIN'S RECOMMENDATION WAS BASED ON AN EQUAL 50% DIVISION BETWEEN POPULATION AND THE EPA ADJUSTED COST ESTIMATES FROM THE 1974 "NEEDS" SURVEY FOR CATEGORIES I, II, AND IVB FOR USE IN ALLOCATING CONSTRUCTION GRANT FUNDS. UNDER THE RUSSELL TRAIN FORMULA RECOMMENDED IN FEBRUARY 1975, THE 17 STATES, ONE TERRITORY, AND THE DISTRICT OF COLUMBIA DISCUSSED ABOVE WOULD STILL RECEIVE 54.9% OF AVAILABLE FUNDS. HOWEVER, IT IS RECOGNIZED THAT MAJOR WATER POLLUTION PROBLEMS EXIST IN THOSE AREAS.

AFTER A STUDY OF THE FORMULA RECOMMENDED BY MR. TRAIN IN EARLY 1975, WE DETERMINED IT TO BE REALISTIC AND ACCEPTABLE. ON TWO DIFFERENT OCCASIONS DURING 1975 THE ASSOCIATION OF STATE AND INTERSTATE WATER POLLUTION CONTROL ADMINISTRATORS (ASIWPCA) HAD OVER 35 STATE ADMINISTRATORS VOTE TO SUPPORT THE RUSSELL TRAIN FORMULA AS THE MOST FAIR AND EQUITABLE.

ON SEPTEMBER 30, 1975, GOVERNOR GEORGE BUSBEE OF GEORGIA PRESENTED TESTIMONY BEFORE THE WATER RESOURCES SUBCOMMITTEE OF HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION REGARDING THIS SAME SUBJECT. GOVERNOR BUSBEE HAS STRONGLY ENDORSED THE TRAIN FORMULA AS BEING REALISTIC AND EQUITABLE. SINCE WE HAVE SEEN NO FACTS TO CAUSE US TO CHANGE OUR POSITION, THE STATE OF GEORGIA WISHES TO GO ON RECORD AGAIN TODAY SUPPORTING THE RUSSELL TRAIN FORMULA

OF AN EQUAL 50% DIVISION BASED ON POPULATION AND 50% BASED ON THE EPA ADJUSTED COST ESTIMATES FROM THE 1974 "NEEDS" SURVEY FOR CATEGORIES I, II, AND IVB. WE URGE THIS SUBCOMMITTEE TO ADOPT THIS FORMULA.

THE 1974 NEEDS SURVEY CONDUCTED BY THE ENVIRONMENTAL PROTECTION AGENCY INDICATED A TOTAL OF \$107 BILLION IN NEEDS FOR CONSTRUCTION OF SEWERAGE FACILITIES, EXCLUSIVE OF TREATMENT AND/OR CONTROL OF STORMWATERS. THIS LEVEL OF NEEDS HAS ALSO BEEN CONFIRMED BY THE NOVEMBER 1975 STAFF DRAFT REPORT OF THE NATIONAL COMMISSION ON WATER QUALITY.

THE \$18 BILLION AUTHORIZED UNDER P.L. 92-500 FOR MUNICIPAL CONSTRUCTION GRANTS WILL SATISFY ONLY A SMALL FRACTION OF THESE NEEDS. THERE ARE SEVERAL REASONS WHY IT IS CRITICAL FOR THE CONGRESS TO AUTHORIZE ADDITIONAL GRANT FUNDS FOR FY 77 AND BEYOND.

CRITICS OF THE CONSTRUCTION GRANTS PROGRAM SAY THAT SEVERAL BILLIONS OF DOLLARS IN UNOBLIGATED FY 75 AND 76 FUNDS REMAIN. THIS IS TRUE, BUT THOSE FUNDS WILL BE SPENT BEFORE THE RESPECTIVE DEADLINES OF JUNE 30, 1976 AND SEPTEMBER 30, 1977 AND MUCH MORE MONEY WILL BE NEEDED. THERE ARE MANY LARGE CONSTRUCTION PROJECTS NATIONWIDE WHICH ARE IN THE GRANTS PROCESS AND WHICH WILL BE AWARDED GRANTS ON SCHEDULE. EXCESSIVE RED TAPE AND THE EARLIER IMPOUNDMENT OF \$9 BILLION ARE IN LARGE PART RESPONSIBLE FOR THE SLOW RATE OF GRANT OBLIGATIONS IN THE PAST THREE YEARS. MORE THAN HALF OF THE STATES NOW HAVE MORE PROJECTS ON THEIR FUNDING LISTS THAN THEY HAVE GRANT ALLOCATIONS FOR AND IT IS ESSENTIAL TO KEEP THESE PROJECTS MOVING.

FUNDING OF THE CONSTRUCTION GRANTS PROGRAM HAS BEEN HIGHLY VARIABLE AND UNPREDICTABLE FROM YEAR TO YEAR UNDER BOTH P.L. 84-660 AND P.L. 92-500. THE EFFECT OF ERRATIC FUNDING OF THE CONSTRUCTION GRANTS PROGRAMS BY THE CONGRESS IN THE PAST HAS HINDERED PROGRESS IN ALL FACTIONS OF THE WATER POLLUTION CONTROL FIELD. EQUIPMENT MANUFACTURERS, THE CONSTRUCTION INDUSTRY, CONSULTING ENGINEERING FIRMS, AND STATE REGULATORY AGENCIES FIND IT VERY DIFFICULT TO COPE WITH "ROLLER COASTER" FUNDING. IT HAS OFTEN BEEN UNKNOWN WHETHER THIS FIELD WOULD BE IN A BOOM PERIOD OR A RECESSION FROM ONE YEAR TO THE NEXT DUE TO INCONSISTENT LEVELS OF FUNDING. STATES, CONSULTING ENGINEERS, CONTRACTORS, EQUIPMENT MANUFACTURERS, AND EPA HAVE SPENT THE LAST THREE YEARS GETTING GEARED UP TO HANDLE THE FUNDS CURRENTLY AVAILABLE, AND NOW THAT THIS HAS BEEN ACCOMPLISHED AND THE GRANTS ARE ROLLING ALONG, THERE IS THE POSSIBILITY OF ANOTHER FUNDING CUTBACK.

MANAGEMENT DECISIONS FOR CURRENT PROGRAMS OF STATES, CONSULTING ENGINEERS, EQUIPMENT MANUFACTURERS, AND CONTRACTORS HAVE BEEN BASED ON THE ASSUMPTION THAT \$5 TO \$7 BILLION PER YEAR WOULD BE AVAILABLE FOR THE NEXT FIVE YEARS. IF NO MORE FUNDS ARE AUTHORIZED IN FY 77 AND BEYOND, ADDITIONAL UNEMPLOYMENT CAN BE EXPECTED IN ALL OF THESE AREAS.

TO PLAN EFFECTIVELY FOR THE WISE USE OF THESE FUNDS, THE STATES NEED TO KNOW THE APPROXIMATE LEVEL OF SEVERAL YEARS OF FUTURE FUNDING. THE FUNDING OF FACILITIES PLANS AND ENGINEERING DOCUMENTS FOR PROJECTS ON THE FY 76 PROJECT FUNDING LISTS WITHOUT SOME INDICATION THAT FUTURE FUNDS WILL BE AVAILABLE FOR CONSTRUCTION OF THESE PROJECTS DOES NOT PROMOTE GOOD PROGRAM PLANNING AND

MANAGEMENT PRINCIPLES. WE URGE THAT CONSIDERATION BE GIVEN TO USING A FIVE-YEAR AUTHORIZATION PERIOD FOR PLANNING AND MANAGEMENT PURPOSES, AND THAT AT LEAST \$5 BILLION PER YEAR BE APPROPRIATED.

THE 1974 "NEEDS" SURVEY OF COST ESTIMATES FOR CONSTRUCTION OF PUBLICLY-OWNED WASTEWATER TREATMENT FACILITIES (REVISED MAY 7, 1975), ESTIMATED THE COST OF SECONDARY TREATMENT, MORE STRINGENT TREATMENT, AND NEW INTERCEPTOR SEWERS AND APPURTENANCES (CATEGORIES I, II, AND IVB, RESPECTIVELY) TO BE \$46.3 BILLION IN 1973 DOLLARS. THE EPA GUIDANCE CURRENTLY BEING USED IN THE 1976 UPDATE OF THE "NEEDS" SURVEY CALLS FOR INCREASING THE REVISED 1974 ESTIMATES BY A FACTOR OF 40% TO ADJUST FIGURES TO 1976 DOLLARS. THEREFORE, INFLATION ALONE HAS INCREASED THE ESTIMATED NEEDS FOR TREATMENT FACILITIES AND INTERCEPTOR SEWERS TO ABOUT \$65 BILLION.

THE \$223 MILLION IN CONSTRUCTION GRANT ALLOCATIONS RECEIVED BY GEORGIA FOR FY 74, 75, AND 76 ARE CERTAINLY APPRECIATED BY THE CITIZENS OF OUR STATE, AND WITH LOCAL MATCHING FUNDS, WILL GENERATE ABOUT \$300 MILLION IN CONSTRUCTION OF WATER POLLUTION CONTROL FACILITIES. HOWEVER, \$300 MILLION IS ONLY 29% OF GEORGIA'S \$1.02 BILLION IN NEEDS FOR TREATMENT PLANTS AND INTERCEPTOR SEWERS IDENTIFIED IN THE 1974 NEEDS SURVEY, AND WILL ACTUALLY SATISFY LESS THAN 21% OF THOSE NEEDS WHEN INFLATION IS CONSIDERED.

A FUNDING AUTHORIZATION OF \$5 BILLION PER YEAR FOR FIVE YEARS AND ALLOCATION OF THOSE FUNDS BY THE RUSSELL TRAIN FORMULA (50% POPULATION, 50% NEEDS FROM THE 1974 NEEDS SURVEY) WOULD BE REQUIRED TO SATISFY GEORGIA'S CATEGORY I, II, AND IVB NEEDS ASSUMING NO INFLATION OVER 1973 DOLLARS. AUTHORIZATION OF FUNDS IN EXCESS OF \$5 BILLION PER YEAR IS NECESSARY TO KEEP PACE WITH INFLATION AND

TO SATISFY WATER POLLUTION ABATEMENT NEEDS OTHER THAN TREATMENT PLANTS AND INTERCEPTOR SEWERS.

IN ADDITION TO A CONSISTENT LEVEL OF FUNDING FOR A FIVE-YEAR PERIOD, A CONSISTENT ALLOCATION FORMULA IS NEEDED. A CONSTANT LEVEL OF FUNDING AT THE NATIONAL LEVEL WILL NOT RESULT IN CONSTANT LEVELS OF FUNDING TO EACH STATE IF ALLOCATIONS ARE CHANGED AS A RESULT OF NEW NEEDS SURVEYS CONDUCTED BY NEW GUIDELINES EVERY TWO YEARS. WE SUGGEST THAT A NEEDS SURVEY BE CONDUCTED ONLY AT FIVE-YEAR INTERVALS AND THAT NATIONAL LEVELS OF FUNDING AND STATE ALLOCATIONS FOR THE FOLLOWING FIVE-YEAR PERIOD BE BASED ON PROJECTED POPULATIONS AND THE LATEST NEEDS SURVEY. IT IS GEORGIA'S PROPOSAL THAT, SINCE THE 1976 NEEDS SURVEY DATA COLLECTION, REVIEW, AND ADJUSTMENT WILL NOT BE COMPLETED UNTIL EARLY 1977, THE ALLOCATIONS FOR FY 77 THRU FY 79 BE BASED ON THE RUSSELL TRAIN FORMULA AND 1974 NEEDS SURVEY DATA. THE 1974 NEEDS DATA SHOULD NOT BE USED FOR ALLOCATION FORMULAS PAST FY 79 BECAUSE FY 79 WILL BE THE FIFTH YEAR FOLLOWING THE 1974 NEEDS SURVEY.

AS MEMBERS OF THE CONGRESS KNOW, THERE HAS BEEN CONSIDERABLE DISCUSSION REGARDING POSSIBLE CHANGES IN THE FEDERAL SHARE FOR CONSTRUCTION GRANTS AS WELL AS RESTRICTING THE TYPES OF PROJECTS CONSIDERED ELIGIBLE. ALL ELEMENTS OF WATER POLLUTION ABATEMENT OR CONTROL FACILITIES SHOULD REMAIN ELIGIBLE AND THE STATES SHOULD HAVE THE AUTHORITY TO ESTABLISH PRIORITIES FOR THE USE OF THE 75% CONSTRUCTION GRANT FUNDS FOR SPECIFIC PROJECTS.

IN THE CITY OF ATLANTA THERE IS A SIGNIFICANT EXAMPLE OF THE NEED FOR ALL TYPES OF WATER POLLUTION CONTROL FACILITIES TO BE ELIGIBLE FOR 75% GRANTS AND THE STATE TO HAVE THE AUTHORITY

TO ESTABLISH PRIORITIES. THE CHATTAHOOCHEE RIVER, WHICH IS ONE OF GEORGIA'S MOST IMPORTANT WATER RESOURCES AND IS IN EPA'S NATIONAL WATER QUALITY SURVEILLANCE SYSTEM, RECEIVES LARGE AMOUNTS OF TREATED WASTEWATER FROM THE METROPOLITAN AREA IN ADDITION TO OVERFLOWS FROM COMBINED SEWERS. THE METROPOLITAN GOVERNMENTS ARE ACTIVELY PURSUING PROGRAMS TO PROVIDE ADVANCED LEVELS OF TREATMENT FOR DRY WEATHER SEWAGE FLOWS, BUT THE CHATTAHOOCHEE RIVER WILL NOT BE ABLE TO MEET WATER QUALITY STANDARDS FOR FISHING AT ALL TIMES UNLESS GRANT FUNDS CAN BE PROVIDED FOR HANDLING OF COMBINED SEWER OVERFLOWS.

GEORGIA AND OTHER STATES ALSO NEED THE FLEXIBILITY TO SET THEIR OWN PRIORITIES FOR FUNDING OF PROJECTS IN ORDER TO BE RESPONSIVE TO THE NEEDS OF SMALLER MUNICIPALITIES WHICH HAVE MANY RESIDENTS LIVING ON LOW AND/OR FIXED INCOMES AND WHICH ARE NOT ABLE TO PROVIDE THEIR LOCAL SHARES OF CONSTRUCTION FUNDS UNLESS THEIR SEWAGE COLLECTION SYSTEMS CAN BE EXPANDED ALONG WITH THE NECESSARY TREATMENT PLANT UPGRADING PROJECTS. GEORGIA ALONE HAS MORE THAN 450 COMMUNITIES WITH POPULATIONS LESS THAN 10,000.

THE FEDERAL GRANT SHARE MUST BE KEPT HIGH ENOUGH TO REDUCE THE FINANCIAL STRAIN OF CAPITAL COSTS FOR CONSTRUCTION AND HIGH ENOUGH TO INSURE STRONG LOCAL INTEREST. THE PRESENT 75% FEDERAL SHARE FOR ALL CATEGORIES OF NEEDS IS APPROPRIATE TO ACCOMPLISH THESE THINGS.

MOST IMPORTANT OF ALL, THE WATERS OF GEORGIA AND OF THE NATION WILL NOT BE CLEANED UP IN A TIMELY FASHION WITHOUT CONTINUED FEDERAL FUNDING. OUR MUNICIPALITIES WILL NOT BE ABLE TO MEET THE 1977 OR THE 1983 REQUIREMENTS OF P.L. 92-500 WITHOUT THIS SUPPORT. THE NATION'S INDUSTRIES ARE EXPECTED TO MEET THEIR REQUIREMENTS BY THE 1977 DEADLINE, BUT THE FEDERAL GOVERNMENT, IF IT FAILS TO PARTICIPATE IN THE GRANTS PROGRAM, WILL PREVENT MUNICIPALITIES FROM MEETING THEIR OBLIGATIONS UNDER THE FEDERAL WATER POLLUTION CONTROL ACT.

Senator MUSKIE. Thank you very much, Mr. Ledbetter.

Our next witness is Mr. Jack Fickessen, assistant to the director of the Water Quality Board, State of Texas.

STATEMENT OF JACK R. FICKESSEN, STAFF ASSISTANT, TEXAS WATER QUALITY BOARD

Mr. FICKESSEN. Thank you Mr. Chairman.

I appreciate the opportunity to appear before you today on behalf of the Texas Water Quality Board and the State of Texas to discuss our views on the level of funds necessary for the title II construction grants program for fiscal year 1977 and the method for allotting those funds pursuant to section 205(a) of Public Law 92-500.

We feel that both these topics, the level of funds and the allotment of them, are most important to our continued struggle for clean water in Texas and without congressional resolution that struggle will be greatly impeded.

Consequently, it is my hope that I can explain the problems to you and suggest for your consideration what we feel are possible solutions to them.

ALLOTMENT OF FUNDS

On November 1, 1973, I accompanied Mr. Dick Wittington, deputy director of the Texas Water Quality Board, to Washington, D.C., to give testimony before this subcommittee concerning the 1973 needs survey.

At that time, we related our concerns with the inadequacy of that survey for use in allotting the title II grant funds. We felt the survey did not truly reflect the real needs of the Nation. The subsequent survey done in 1974 has with it the same problem: the inability to make accurate the valid estimates of needs when they must be projected for long-range abatement requirements.

Philosophically, we cannot argue with the use of needs as being a method of allotting funds, provided those needs are in fact accurate and valid. Until such time that the true needs of the Nation can be established we must oppose this as being the basis for allocation.

We believe that the act provides the mechanism for establishing the publicly owned treatment works needs, as contained in section 208. Unfortunately, due to the slowness with which this section was implemented, it appears that it will be at least fiscal year 1979 before those plans are completed which would not allow the Congress to have a realistic estimate of needs until fiscal year 1980.

Since we recognize this fact, we must, as we did in 1973, advocate a return to the use of population as the means for allotting construction grant funds. There are of course several arguments against such a return and therefore I would like to attempt to point those arguments out and discuss each of them with an opposing view on why we should return the population.

Senator DOMENICI. Mr. Chairman, might I ask an interim question?

Senator MUSKIE. Of course.

Mr. FICKESSEN. Yes, sir.

Senator DOMENICI. In the previous paragraph, the one you are on where you mentioned section 208, you indicate that its implementa-

tion was—and you used the past tense—slow in getting off center, therefore, we have a 2- or 3-year timespan before we can expect to get some accurate prioritizing under that kind of mechanism.

Is there anything that can be done to expedite that at this late date?

Mr. FICKESSEN. Yes; there are two things. One is the recognition of the fact that it just takes time physically to do these plans. The second is the need for more money.

Senator DOMENICI. For section 208 do you mean?

Mr. FICKESSEN. Yes, sir. I understand last week there was a district court decision which required EPA to release money for 100-percent financing of section 208 planning which EPA claimed had lapsed from the 208 program.

I don't know what EPA is going to do, but for the States and the area planning councils, or whoever is doing the 208 planning, those funds are necessary so we can get wall-to-wall 208 plans throughout the country. That is where the needs will come ultimately.

Senator DOMENICI. I will come back on that later to all the witnesses.

Aside from the resources need for 208 planning, is the mechanism set up doing the good job of doing the planning and arriving at solutions? Does it have that potential or is there any structural problem with 208 itself from your standpoint?

Mr. FICKESSEN. From the State of Texas' standpoint, I think the mechanism is there and I think we will have the answers we are looking for when it is completed.

Senator DOMENICI. Thank, you Mr. Chairman.

Senator MUSKIE. Thank you very much, Senator.

PROGRAM STABILITY

Mr. FICKESSEN. There are those opposed to a return to population because of the problems surrounding the transition from one method to another.

Gentlemen, I don't have to tell you of the problems encountered when we went from the population method to the needs method as you lived through them just as we have.

I do say that a return to the use of population would not have the same effects for the following reason: Every needs survey that has been conducted shows a State-by-State change in the dollar amounts reported for each eligible category. The end result of this is that every time there is a new survey, and we have four in 3 years, the percentage of what each State receives of the grant funds allotted changes.

The uncertainty involved as to what a State will receive from year to year is disruptive and does not allow a State to adequately plan or implement completed plans because of the instability of a method inherent with distribution of funds based on needs. On the other hand, distribution of funds based upon the estimated 1990 population would remain stable year to year and allow each State to know exactly what percentage of the annually allotted funds they will receive.

The population method would provide stability for the period of time of about 5 years or until a more valid estimate of needs can be determined by the completed section 208 plans.

INEQUITIES

There is a continuing debate over the inequities involved in any method used, be it population, needs, or combination of the two. Those who argue for the needs approach say that a strict population method does not provide adequate funds to States that have high population concentrations and a resulting need for construction of sophisticated treatment facilities.

Those of us who advocate population do not feel the surveys are accurate or valid, which is why we cannot agree that needs or a combination of needs and population is the answer. We do feel that a population method can be utilized and is not inequitable for the following reasons:

First, since the passage of the act, \$18 billion has been allotted for the construction of publicly owned treatment facilities in the United States on the basis of needs. Those States—I think Mr. Ledbetter pointed them out—which supported needs have received the bulk of that money and many of their arguments for lack of funds for high density population areas are somewhat moot in that those areas have received most of those funds; and,

Second, those States which were penalized by the needs method for reasons such as the discriminatory way in which the surveys were conducted or for having done a creditable job of water pollution control in the past, which Texas is one, have had their programs slowed.

We believe the Congress agreed that a problem existed during the passage of the emergency public works legislation, in which the so-called Talmadge-Nunn amendment was made a part. Since the legislation was vetoed by the President, the Senate has recently reaffirmed the inequities, due in a large degree to Senator Muskie's effort, in their recent passage of another emergency public works bill which also contains the provisions of the Talmadge-Nunn amendment.

I would like to deal with one other area of the inequity question—that of growth.

As I am sure you are aware, many States are experiencing tremendous growth due to such factors as energy, cost of living, climate, and quality of life, which is creating a potential environmental problem.

This growth, coupled with our belief that the cost of correcting the pollution of public waters resulting from the discharge of inadequately treated municipal wastes is almost completely a multiple of the number of people involved in producing the wastes to be treated, leads us to believe that the use of population as a means of allotting funds is necessary to stay ahead of these potential problems.

The waters of our State are of relatively good quality, but if we continue utilizing the needs method and the growth rate continues, and it will, we are going to get further and further behind in preventing water quality deterioration.

I think you will agree that it is less costly, both in dollars and health, to prevent pollution from occurring than it is to clean it up after it occurs. This is why we feel that a population formula, based on 1990 estimated growth is necessary to insure that funds will be there to help in our fight for clean water.

The questions of how much money is needed, where and how it will come are all related to this and I will touch upon them later.

EFFORT

At the risk of emphasizing the obvious, I would like to quote a portion of Public Law 92-500. Section 101(f) states, and I quote:

It is the national policy that to the maximum extent possible the procedures utilized for implementing this Act shall encourage the drastic minimization of paper work and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government.

If in fact this is truly the national policy, I can think of very few sections of the act which go against it more than implementation of 205(a). Let me provide examples of what I mean.

Minimum paperwork

The needs survey requirement has caused the States and/or municipalities to be involved in filing our paperwork three times in 4 years. I am sure you have all seen copies of the various survey booklets which have or are presently being utilized and know how difficult it becomes for small municipalities to understand them.

In addition, every survey has had guidelines, each different. After the guidelines have been issued, changes have come out during the actual conduct of the survey which has caused reevaluating work that had already been completed.

Minimum interagency decision procedures

The needs surveys cause the States to question the municipalities over their work and then the EPA questions both the State and the municipalities, and then Congress questions the EPA and States and municipalities, which does not lend to minimizing interagency decision procedures.

Best use of available manpower

On the point of manpower, I can only speak specifically to what it has taken our agency to conduct a survey—an average of 32 man-months per survey. I am sure that our municipalities as well as the EPA have put in much more.

I would point out that the manpower expended for these surveys detracts from our other programs in that they require several people from other programs to assist during the conduct thereof.

Best use of funds

These surveys continue to cost money which could otherwise be used in the water pollution control program more effectively. The amount spent thus far is incalculable by our agency but we feel the amount to be large.

In addition to these drains on the municipalities, States and EPA, other administration agencies, as well as the Congress, have had to put tremendous amounts of money and work into the process of allotting money by the conducting of needs surveys.

Some may argue that these problems have been eliminated by using outside contractors to ascertain needs, but we have found that it actually increases the problem. We at the State level still have the same commitments, if not more, as do the municipalities, the EPA, and the Congress.

In that we have added a new partner, that being the contractor, and we still have the same level of work as we did before.

PUBLIC WORKS ASPECTS

We feel that the population method of allotting grant funds has an additional advantage besides preventing future and reducing present pollution loads on our streams—it will provide a more equitable means for pumping money into the economy and help mitigate a portion of the construction industry's unemployment rate. Continuing to allot by the needs survey will also help in this regard, but since we feel that our current economic problems directly impact people, the population method would allow the grant funds to be more equitably distributed to people in need of help.

In summary, we feel that a return to the method of allocating funds on a basis of population will allow greater program stability, prevent inequities, and would be in keeping with the national policy as contained in section 101(f) of Public Law 92-500, and would provide an equitable distribution of funds to help a sagging economy.

Authorizations for fiscal year 1977

We feel that almost everyone will agree that the \$18 billion provided thus far is adequate to provide only a small part of the collection and treatment requirements of the act.

Since it is extremely doubtful that any 1977 authorization for municipal construction grants will equal the amount of money necessary to meet the act's requirements and understanding that Congress is faced with other budgetary problems besides what level of funding should be authorized for construction grants, we feel that it would be rather presumptive of us to suggest an exact dollar amount. We would like to suggest that you take into consideration the following factors during your deliberations over this authorization, however.

INFLATION

Because of situations unique to the construction industry, we saw the construction cost index rise for municipal treatment plants 20 percent and the index rise for municipal treatment plants 20 percent and the index for sewer construction 17.5 percent during 1974, while at the same time the cost-of-living index rose approximately 12 percent during the same period.

If this situation were to continue at only 10 percent per year, the purchasing power of the construction grant funds in fiscal year 1977 would be reduced by 30 percent. In terms of actual dollars, it would mean that the same material, equipment, and labor \$6 billion bought in fiscal year 1974 would cost approximately \$7.8 billion in fiscal year 1977.

If the funding levels remain stable each year and inflation continues, it penalizes the water pollution control program in two ways:

- (1) Improvements in water quality would slow; and
- (2) The total effort will cost more to complete.

Of course, this situation might be mitigated if all sectors of the economy were experiencing the same rate of inflation, but this is not normally the case in the real world.

We understand the problems with which you, the Members of Congress, must deal in evaluating the impact of general economic conditions with different levels of funding and the economic impact

on particular sectors of the economy. This is why we are hesitant to recommend a specific level of funding for fiscal year 1977.

PROGRAM CONTINUITY

We feel that the Congress must ask itself to what extent they committed the Nation to a continuing municipal construction grant program, and how that commitment affects the other programs in Public Law 92-500.

The impacts on the permit, planning and enforcement programs can vary tremendously with regard to the funding levels authorized, appropriated, and allotted each year. The overall success of water quality management in the Nation is dependent upon those programs operating with some degree of continuity.

PUBLIC WORKS

I touched briefly on the economic impacts of authorization levels when I discussed the problems of inflation and the public works aspects of using the population method for allotting funds.

In addition, we would like you to consider the major impacts of the indirect economic effects of these funds. Factories in all parts of the country producing pollution control equipment will increase production; transportation needs for moving the equipment will increase; there will be more consulting and engineering firms being utilized; and expansion of State and municipal agencies to implement the program all will provide additional jobs. These additional jobs allow expenditures for homes and consumer goods which further stimulates the Nation's economy.

This program is vital, in our opinion, and a specific commitment to accelerate the approval of projects, authorize and obligate grant funds, start construction, would have the effect of getting people to work and help in preventing and reducing pollution of the Nation's water.

I would like to close by discussing very briefly where we are in the State of Texas with regard to the municipal construction grants program. The chart before you provides a picture of how far apart the actual funds Texas has received since 1972 and the dollar amounts of projects which we have ready to approve for funding, if funds were available.

You will note that from fiscal year 1972 the gap has grown to \$571 million in fiscal year 1976. Depending on what funds are made available in fiscal year 1977, and how they are allotted, this gap could widen even further.

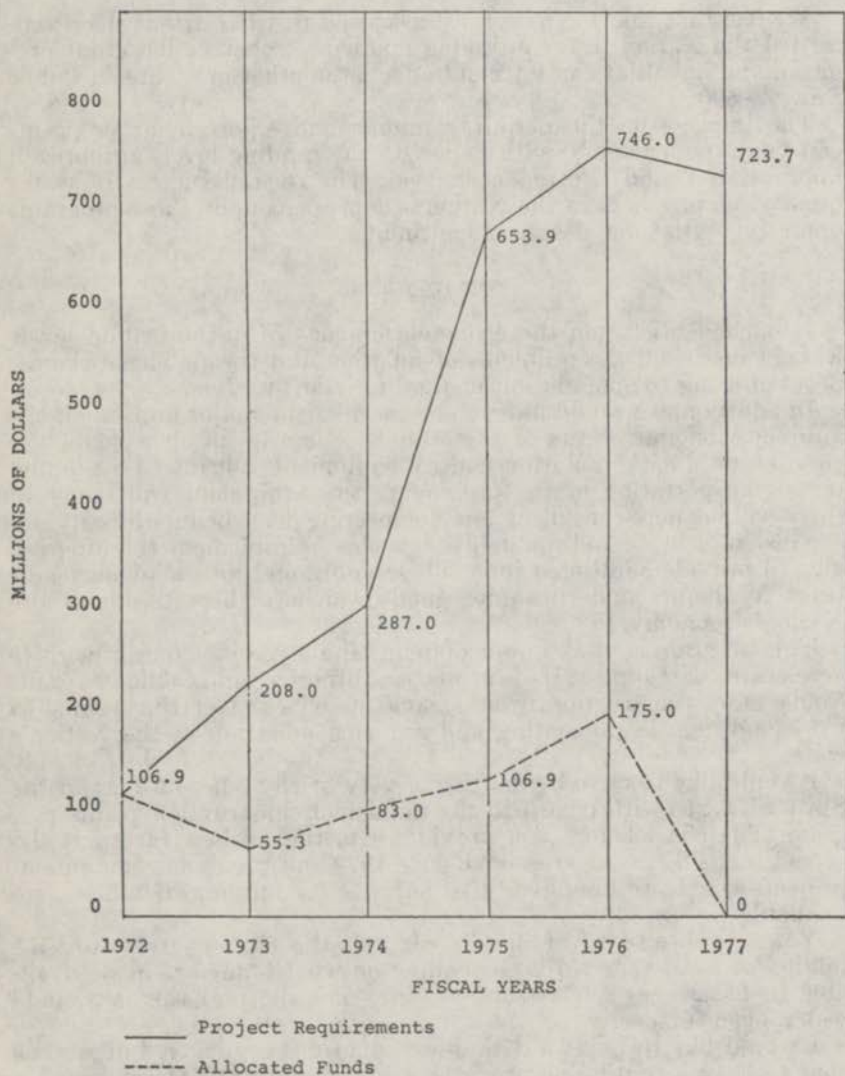
I would like to point out that we could do it quicker, but we feel that to have a continuing program will drag out until December.

In addition, we project Texas will have expended all of its allotted money by December of this year. If additional funding is not forthcoming by then the progress and success of our program will be severely impaired.

Thank you, Mr. Chairman. I will be glad to try and answer any questions you may have.

[A chart appended to Mr. Fickessen's statement follows:]

TEXAS
P.L. 92-500 GRANT
REQUIREMENT AND ALLOCATION
COMPARISON



Senator MUSKIE. Thank you very much.
Our next witness is William B. Dendy, the executive officer of the
Water Resources Control Board of the State of California.

STATEMENT OF WILLIAM B. DENDY, EXECUTIVE OFFICER, WATER
RESOURCES CONTROL BOARD, STATE OF CALIFORNIA

Mr. DENDY. My name is Bill Dendy. I am the executive officer for the Water Resources Control Board in California.

We certainly appreciate the opportunity to participate in these hearings. California and the other western States, with our particular problems of seasonal water supply shortages, and increasing recreationists' demands to share the use of the water, have an acute interest in clean water.

Your kind invitation to come here today to discuss the policy issues of levels of funding and allotment formulas for the municipal construction grant program under Public Law 92-500 has sparked quite a bit of analysis of those issues.

We even went so far as to develop a number of computer programs capable of comparing what the impacts of various assumed funding levels and allotment formulas might be in the light of the needs identified in the most recent EPA needs survey. We also built into our programs the ability to consider assumptions on inflation rates and projected State populations.

As you know, computers have an uncanny ability to generate more printout information than mere humans can fully assimilate. And in this case our results are only in terms of satisfying the needs in the various categories for each of the States. We don't have anything in our computer that tells us how much improvement in water quality would be generated by any particular assumed expenditure. That kind of estimate is still in the realm of best professional judgment.

But our analyses so far indicate one thing very clearly: a definite need to rethink the short-term goals of the clean water grants program.

Back in 1972, when the basic national commitment to clean water was made, nobody knew the exact dimensions of the problem. Not until the later surveys did we start to get a reading on the magnitude of the task ahead.

To provide all the facilities which could be provided would cost well over \$100 million for all grant eligible facilities, excluding those for controlling storm water runoff in separate systems.

Senator DOMENICI. How much was that?

Mr. DENDY. Over \$100 million.

Senator DOMENICI. \$100 billion, isn't it?

Mr. DENDY. Over \$100 billion; I am sorry. No good estimate for separate storm water system is yet available. It is clear that the initial \$18 billion committed to the clean water purpose is inadequate even before it is fully obligated to projects.

An additional \$5 billion per year, the amount proposed for 1977, will not even keep pace with inflationary increases on the remaining needs.

Senator DOMENICI. Mr. Dendy, doesn't that depend on what the Federal Government's obligation is? The statement you are making might be true if the Federal Government has the responsibility of doing all those things that you are estimating.

Mr. DENDY. That is correct.

Senator DOMENICI. Am I not right?

Mr. DENDY. That is correct.

Senator DOMENICI. We don't now that that yet is our commitment by way of a law.

Mr. DENDY. My statement is true if you try to solve all these things. Senator DOMENICI. All right.

Mr. DENDY. My reluctant conclusion today is that we cannot reasonably afford in the short term to accomplish the full task that was spelled out in 1972 for curing municipal water pollution problems. I now believe we should focus our attention and resources for the near future on identifying and correcting the highest priority pollution control needs.

If we can do that, and establish a firm multiyear policy for implementation, I believe we can accomplish a percentage reduction in pollutant discharge much greater than the simultaneous percentage satisfaction of total dollar needs, as listed in the EPA surveys.

I mentioned a multiyear policy for implementation. Next to the general inadequacy of dollar commitment to clean water grants, the biggest problem to contend with has been the lack of stability or predictability in the program.

At first we thought the initial \$18 billion would be spend according to the legislative schedule at \$5, \$6, and \$7 billion per year. Then, of course, \$3 billion per year was impounded, making available \$2, \$3 and \$4 billion per year. We never really knew what to plan for, and neither did the municipalities or their consulting engineer.

Then, just when we had scoped our expectations and our planning at the lower levels, the impounded \$9 billion was released, all at once. We are still hustling to get that money obligated to projects before the legal deadline.

In California, all projects necessary to meet the treatment requirements for 1977 have been elevated to a fundable level on our State priority list.

Coupled with the variations in total money available, of course, have been the increasing complexities of staged application of all the legislative controls that govern such expenditures and the ups and downs of successive EPA needs surveys. From the needs viewpoint of the States and the municipalities, these variations in expectations have been almost impossible to accommodate in program planning and administration. The construction trades workers have shared our confusion.

To us, the need for stability and predictability is almost as great as the need for rethinking the short-term objectives. This program translates into jobs, and if we ever needed to bring some predictability into employment, it is now.

There are probably as many alternative short-term objectives as there are alternative allotment formulas. I believe the main requirement is that the two should be reasonably consistent. If investing in the most cost-effective facilities is the objective, then somehow the allotments should be made to accomplish that.

The factor that prevents simplicity in that approach, though, is that the particular category of facilities that will do the most good in one State is not the same as for another State.

In Connecticut, for example, collection facilities for unsewered communities, or perhaps storm water control projects, may give the greatest clean water benefit.

In California, the proper investment may be for advanced waste treatment.

I suspect, however, based on positions taken by most members of ASIWPCA, the Association of State and Interstate Water Pollution Control Administrators, that categories 1 and 2, the waste treatment needs, are promising candidates for emphasis. Category 4-b, interceptor sewers, is closely related to treatment needs because cost-effectiveness in metropolitan areas often means abandonment of several small treatment plants in favor of central regional facilities. We feel that the data base for these three categories (1, 2 and 4-b) is much better than for the remaining categories.

Another popular position among States, though certainly not all, is that we should return to a population ratio for allotment. This would be a reversal from the idea of allotments based on need, but the data base for some of the needs categories is generally considered to be grossly inadequate and not at all representative of true needs.

The data base is also very much subject to frequent change, as I have indicated previously.

From the single viewpoint of California, the population based formula obviously has great appeal, while a formula based on total needs does not. A population base would give great stability and predictability, of course, but it lacks any short term policy guidance.

Allotment based on total needs has two problems: it gives the appearance of continuing to promise that all facilities will, in fact, be funded, and the data base is highly questionable. Of the two, I like the population base much better.

What we need is an allotment formula that is based on solving high priority needs and that has stability. The form of solution I propose for meeting both those needs is as follows:

First of all, set a 5-year allotment formula, not a 1-year formula. In each of those 5 years, allot half the money each year on the basis of projected 1990 population. This lends a degree of stability for all States.

Then allot the other half of the money each year in a manner that emphasizes treatment needs in the early years and other categories of needs in later years. For instance, with the 50 percent that would be allotted on needs, you could allot in 1977 all of that 50 percent on the basis of the partial needs of perhaps just treatment needs, categories 1 and 2. Then decrease that to 40 percent on the basis of partial needs in 1978, 30 percent in 1979 and 20 percent and 10 percent in the remaining 2 years of the 5-year period.

At the same time the other categories of needs (other than treatment needs) could be improved as to data base with more complete surveys. You could have an increasing emphasis on those other categories during the 5-year period by allotting, on the basis of needs in the other categories, zero in 1977, 10 percent in 1978, 20 percent in 1979, 30 percent in 1980 and 40 percent in 1981.

The impact of that kind of an approach is to give a great incentive to the States to solve the treatment needs by encouraging expenditures for treatment plants first.

Obviously, there are variations on this formula, such as using 1, 2 and 4-b for emphasis in the early years.

Coupled with this type of formula, of course, there has to be a commitment to spend enough money to solve the high priority needs. On the order of \$45 billion to \$50 billion in 1973 dollars will be needed just for categories 1, 2 and 4-b. The Federal share of that is about \$35 billion in 1973 dollars.

Some of these needs will be accommodated by money already allotted, but inflation has limited the impact of those initial expenditures.

In closing, I urge you to make a renewed commitment to the ultimate goals of Public Law 92-500, but to restate the short-term goals in terms of high priorities and in terms of what is realistically achievable.

Then I urge you to support your new short-term goals with a stable investment program that will maximize returns in terms of clean water.

Senator MUSKIE. Thank you very much, Mr. Dendy.

I understand Mr. Bardin has arrived, and we have our final witness this morning, Mr. David Bardin, commissioner of the Department of Environmental Protection, State of New Jersey.

STATEMENT OF DAVID J. BARDIN, COMMISSIONER, NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Mr. BARDIN. Mr. Chairman, it is a pleasure to be here with you. I regret that the Metroliner does not come within the jurisdiction of this august committee.

Senator MUSKIE. On the basis of the testimony we have had thus far, that will be no insurance of any improvement.

Mr. BARDIN. Mr. Chairman, members of the committee, my name is David J. Bardin, commissioner of the New Jersey Department of Environmental Protection.

On behalf of Gov. Brendan T. Byrne, I want to express appreciation for this opportunity to testify today on recommended funding levels and allocation methods for the municipal construction grant program under Public Law 92-500.

I have a prepared statement. In the interest of time I request, Mr. Chairman, if it is permissible, that it be included in the record and I will just highlight it for the sake of the committee.

Senator MUSKIE. Without objection.

[The statement appears at p. 44.]

Mr. Bardin. As to how much money, I believe that you should at a minimum adopt the \$5 billion that was reported out by this committee in S. 3037 for fiscal year 1977. I want you to know that New Jersey under the Byrne administration, which is slightly over 2 years old, has placed a high priority on the effective application of the Federal funds made available by Public Law 92-500.

New Jersey has revised regional priorities since Governor Byrne took office in order to emphasize the existing needs in our urban areas consistently, I believe, with the real intent of Congress.

Moreover, of the \$1.3 billion allotted to New Jersey under Public Law 92-500, over half has been obligated, almost \$700 million, and most of that obligation took place in 2 years since Governor Byrne was inaugurated.

The remaining \$600 million will be certified by my Department to EPA Region II by the end of calendar 1976, by Christmas of this year.

In fact, over \$100 million of that amount has already been certified and some \$200 million more will be certified this month.

So the point I have to emphasize to you very strongly, Mr. Chairman, is that New Jersey is on the verge of running out of obligation opportunities under Public Law 92-500.

If Congress fails to provide adequate authorization and appropriations this year, construction grants in New Jersey will halt just as the new Federal administration takes office next year.

As a result, our water quality program will undergo anguished months of uncertainty while the 95th Congress undoubtedly studies the problem.

We beg you, please don't let that happen.

If need be, we ask you to override any veto if that is what it comes to. It is absolutely essential from our point of view that for continuity of our program stop-and-go funding not take place in this year or next in the waste water grants program.

New Jersey needs \$300 million in additional money in fiscal year 1977, assuming as I do, continuity of 75 percent funding for projects that are construction ready now or will be construction ready next year.

The formula that was proposed by the House committee would supply only \$240 million in fiscal year 1977, which is 20 percent less than we know we need and can use in the immediate fiscal year.

To my way of thinking, that argues, Mr. Chairman, for more than 1 year at a time in a funding program, especially in the funding program that you are undertaking now.

So I say the \$5 billion authorization in S. 3037 is a minimum. I would hope that when that gets to conference it might be considered for more than a 1-year program.

Senator DOMENICI. Can I ask you a question?

Mr. BARDIN. Yes, sir.

Senator DOMENICI. In your first couple of minutes, you were pretty firm on the notion that you had allocated your money on what you called the effectiveness approach. What are some of the characteristics that cause you to think yours is being effectively applied versus someone else's, perhaps?

Is it purely needs or are you talking about old facilities? Are you talking about long-standing needs, cost effectiveness? What are you talking about?

Mr. BARDIN. We made several revisions in the program as it was being administered before Governor Byrne took office. One, we changed our priority system and gave great weight to the population density.

I supplied the staff with a map of New Jersey which shows the 567 municipalities of New Jersey in terms of population density. New Jersey is on the average the most densely populated State in the country, with approximately 1,000 people per square mile.

As you will see from the map, which is based on the 1970 census, which, incidentally, is the basis of all of our State policy allocations, there is a great deal of variation. There are extremely dense areas of population in the Union City area and in the great white area of the center. The principal areas where the population is low that you encounter almost anywhere in the country you will probably find in New Jersey.

Senator DOMENICI. There must be a very little piece in New Jersey.

Mr. BARDIN. It is a small piece, but those who know it well, Senator, love it and it is also a great source for future generations.

One thing we did was to redirect priorities and say that priorities will be based not on population but on density of population, which also happens to be a convenient way, in our context, to identify the older cities, the older industries, the industries which are largely heavily dependent on municipal sewer systems.

We have some major regional sewer systems in New Jersey which receive up to 50 percent of their sewer load from industry. Of course, much of this industry is small business. Much of this industry is business that is in trouble for many other reasons and sewers are very important to it.

We also put an end to the sewerage of farmland. It wasn't called sewerage of farmland, but that, in fact, was the result of the wild spaghetti interceptors which had been built in some places with all their secondary effects. We have taken a very rigorous view on limiting sewerage to existing problems in populated areas.

We have scaled down the proposed size of some facilities, particularly the treatment plants. We look very much askance at the attempt to project very high growth rates well into the future as the basis for sizing and funding sewer facilities.

At the same time, we have begun to move ahead into the funding of collection systems as permitted by Public Law 92-500 in a number of situations.

One, we have old communities which are on overcrowded and overflowing septic systems with an immediate visible, tangible pollution problem. Some of these big communities are now replacing their septic tanks with collection systems.

Two, we have advanced regionalization by tying the collection system for the communities participating in the regional solution to the funding of the regional treatment plant.

Three, we hope to start replacing ancient collection systems that exist in some of the cities of New Jersey. Hoboken, for example, still has wooden sewers—the first round of sewer construction in the 19th century.

I must admit that this is a difficult program to get started and progresses slow because you make the engineering studies to evaluate cost effectiveness of one solution as against another before you are actually willing to spend any Federal money on that program.

But somewhere down the road—it is not in fiscal 1977—but certainly in this coming, I would hope, 5-year cycle of construction, the older cities of this country will undoubtedly have substantial replacement needs which seem to me to be particularly worthy of and need of attention by the Congress.

Because these are the very communities which, by and large, have other funding problems, other capital problems that have caught up with them, these are communities in many cases with a stable population, with no growth potential, even with a shrinking population base in some cases.

Population is often a shrinking route for this set of people and this set of needs. On the other hand, other people, even in New Jersey, live in areas where the septic tank is the correct solution, the economically

and environmentally preferable solution for wastewater disposable needs.

There is probably a growing population in New Jersey, out in the more rural, more ex-urban areas, where we ought to encourage septic tanks, where we ought to develop plans and we ought to develop organizations to handle the cleanup of the septic tank. We need water conservation plumbing for that reason, amongst others, so less flows into the septic tank.

The people who are on septic systems certainly should not be counted in a formula, or would not accurately be counted in a formula designed properly to allocate moneys provided by the Congress or others to meet the capital needs for waste water treatment.

Senator DOMENICI. Let me ask you two more quick questions and then I think we have agreed we want to let you finish.

You have told us in your prepared statement the dilemma you will be in if we don't continue the funding because you have projects ready to go.

Are you in a position to tell us how much New Jersey thinks they need overall to complete what I might call here the present expectation level generated by the law and the formula? How many billions does New Jersey need?

Mr. BARDIN. I can give you a small number, Senator, and a large number. First, let me give you the small number.

Senator DOMENICI. Please. That will make our day.

Mr. BARDIN. Our thinking has been in terms of perhaps two more cycles of 5 years apiece of Federal funding. That is our recommendation to the Congress. If we think in those terms and consider, on the one hand, the needs in terms of highly polluted waters, secondary treatment goals which are already fixed and established, plus the uncertainties as to what is the best solution to some other situations—we have hunches about the runoff of untreated or raw sewage and storm situations, but we are not really including that here—and also posing the constraint of construction readiness within that 5-year cycle so we don't give you a bill for what will be needed but just will not be construction ready for various institutional reasons, we come up with an amount in addition to the \$600 million which we are going to certify by the end of the year.

It will be the \$600 million left to us under Public Law 92-500, plus \$1.5 billion of Federal money to match \$500,000 of non-Federal money over the period through fiscal 1981.

If you want to ask me how about the next period, I could come up with figures. I would rather do it by mail than orally. But it will be at least an equivalent amount, because our present hunch is that on some of the highly populated, densely populated areas, after we have brought them up to the high quality of secondary treatment, the most effective solution for meeting the goals of the act may be separation or dealing with the storm and drain sewers rather than some very costly alternatives that have been considered. That is, of course, in the engineering phase today.

I cannot, as a prophet, as a nonengineer, accurately give that estimate to you.

Senator DOMENICI. You gave us the low figure. What is the high figure?

Mr. BARDIN. That is the figure for this 5 years.

Senator DOMENICI. You said you had a low figure and a high figure.

Mr. BARDIN. The high figure will be for the next 5 years. It will be at least that amount.

Senator DOMENICI. I don't think we need that.

Mr. BARDIN. We have something like \$5 billion worth of unfinished work already identified in New Jersey to deal with secondary treatment, advanced treatment in some of the headwater areas from which we have drawn our drinking water, interceptors, replacement of collection systems, or replacement of septic systems with collection systems in fairly densely populated areas.

There is no allowance in this figure for the nonpoint sources. There is significant runoff in the cities and in places like New Jersey, but we have very little allowed for the storm runoff problem that gets into the sewers.

Senator DOMENICI. When New Jersey reevaluated its needs under the broader definition of needs—and we had that done in late 1974—what did New Jersey submit as the needs figure then?

Mr. BARDIN. What did we submit?

Senator DOMENICI. What was the figure?

Mr. BARDIN. The figure EPA used was \$4.9 billion in 1973 dollars, \$4.894 billion of total needs on a 100-percent basis.

There are pieces of this \$4.9 billion which, of course, have to be somewhat escalated because of inflation.

But there are pieces of it which will actually not be ready for construction in the 5-year cycle I am talking about.

One of the major steps we took in New Jersey was to act on faith that Congress did not mean to drop this program, that Congress had started something in 1972 and was going to be vitally interested in completing it.

On that faith we have segmented projects in the sense that we do not set aside Federal money for many years worth of construction for a given project.

Perhaps an illustration will help. The biggest regional sewer system in New Jersey which handles a little over 20 percent of the sewerage in the State is the Passaic Valley Sewerage Commissioners.

They are responsible for a great tract of the metropolitan area in northern New Jersey. This system includes an interceptor built around the period of World War I, just to transfer the sewage problem from the Passaic River which literally stank and literally peeled off paint, to transfer it into Newark Bay, where the people couldn't see it anymore.

That has to be revised to secondary treatment on a set of sites in downtown Newark. These are very large public constructions. You can imagine the liquid oxygen and many other things. That is being done a piece at a time and will probably be impossible, given a compact area for workmen and contractors, to do all at once.

It is extremely costly. It wouldn't make sense in management and the job. We have funded more than \$100 million of that project. We are going to fund an additional \$200 million.

I have identified a little over \$200 million more, which has to be funded. In every case, piece No. 1 is going to be useful, even if the last piece isn't built.

We are not going to do what happened in the highway program, build a segment on the assumption that something else will be built and it goes from nowhere to nowhere. All these segments go from somewhere to somewhere.

But to meet the effluent goal of secondary treatment, we have got to finish that funding. So you asked me. The full \$500 million or so is included in the needs figure that EPA used, the 1974 needs figure.

But it can't all be funded out of any one piece of authorization language or contract authority that Congress has come up with so far.

Senator DOMENICI. Where does the State of New Jersey get most of its matched money?

Mr. BARDIN. The program in New Jersey has changed. Since the purpose of Public Law 92-500 for most of the time the State put up 15 percent out of State general obligation bonds and the regional sewer authorities raised 10 percent out of their own revenue bonding.

The State is now not putting up money. It is looking to the sewer authorities to raise 25 percent on their own. It is going to cause problems for some of them and it leads immediately to certain conclusions.

One, to welcome the initiative of the House committee to reactivate or substitute for the financing authority which was under Public Law 92-510 which EPA says is no longer necessary to take advantage of the new bank in the Department of the Treasury.

And two, to create an equivalent instrumentality at the State level to try to help out to the extent that the Federal Government does. It seems to me it is more realistic to keep the interest rate down and to assure these regional sewer authorities of the ability to clear the market than to try to sell general obligation bonds in the State to do that.

Senator DOMENICI. Do most New Jersey municipalities, in addition to the bonding approach to financing, also have an ongoing kind of charge that is related to the sewage contribution, the charge for sewage disposal?

Mr. BARDIN. Some do and some don't. Some of the municipalities have done it in the past. Of course, the whole sewer business is going through an evolution, a transition, as a result of the impact of Public Law 92-500 on ratemaking, business economics in relationship to the ordinary users and to the industrial user and the way in which he pays the sewer service.

It seems to me that one of the fundamental facts, perhaps the outstanding principle, that ought to be gotten across by Congress to the people and by all of us to our people, is to look upon wastewater services, the sewer service, as a utility, as a necessity in our concept of what we want in terms of public health, recreation, cleanliness of the waters and the rest. It is not a luxury. It is not mere pork barrel. It is a utility.

If you conclude that it is a utility, I think many other questions assume their proper perspective. If you think it is some kind of pork barrel or some kind of amenity which you do when we have a surplus and want to get rid of it or a make-work program to put people back to work in times of dreadful unemployment, I think you are making a mistake.

Don't misunderstand me. We came into office 2 years ago in Trenton, N.J., at a time of a serious depression in our own economy. We under-

stood the job-creating potential of this program and we were grateful for it because there was nothing else, Senator Muskie, as you can appreciate, that had been made available.

We bent our backs and made a major effort to get these projects moving. But we never pretended to the contractors, to the construction trades unions, to the newspapers or anybody else, that this was make work.

These are real jobs that had to be performed and this was a darned good time to do it. That is the way I would hope you would look upon the program.

One of the things we have done in cooperation with EPA and its Assistant Administrator, Alvin Alm, is to undertake this year to develop a management manual for these sewer authorities. These are big business utilities which have had precious little guidance in the past as to how to run that kind of business.

There are many of them in New Jersey and many of them around the country, I dare say. Naturally, they need all the help they can get, telling them how to perform.

I think that is one of the sources of many of your problems concerning how to affix the rates for sewer service. You want to do it on a more businesslike basis in the future than has often been the case in the past.

Senator DOMENICI. I don't want you to depart too much from your prepared statement, but I want to say for myself that I think that we ought to treat sewage treatment as a utility. I have never considered it pork barrel and I don't think it has a very good job relationship per dollar spent, compared to other public works projects.

I think you can verify that, although perhaps its job impacts is better than we had expected.

I think if it is to be treated as a utility, then it is somewhat false to assume that the capital investment for the utility ought to flow totally from the Federal Government. That is why I asked the question about the local raising of funds.

You speak of it as the management effort. We don't pay for the water facilities in most cities. They charge money. They charge their users or found some way to do it.

As I understand the history of this bill, it was a catchup bill. We looked out in the country and said we want to get clean water. We want to help with the sewage disposal and some of the other very despicable practices of dumping into our streams.

But as we have allowed the needs test with the broad concepts we have coming before us today, it becomes an expectation and expectations frequently do not generate the kind of local plans, the kind of local commitment, the kind of local management.

If it is a utility, then it appears to me we ought to also be hearing from your people on how the local communities and the States are arranging to defer the expense of those things that you don't think are fed within this utility system.

But we aren't hearing very much of that. Perhaps it is not relevant today, but it is relevant to me because it does seem to me the end is going to come and the definition is going to be squeezed.

If we are leaving the expectation that we are going to have a 5-, 15- or 20-year program at \$8 or \$10 billion a year, I am not quite sure that this Congress fully understands that. I think there is going to be a long-

term commitment. But you have claimed your State has budgetary problems.

Senator Muskie and I sit on the Budget Committee and we have some monstrous Federal budgetary problems. We are hoping to be balanced in a couple of years. I don't necessarily throw that out for you to respond in detail but I think it is one of real concern.

When you figure needs against the pot and you ask States to go figure their needs, I have serious question whether you are ever going to get a relevant needs evaluation.

We had one State, Senator Muskie, as you recall, in our very early hearings that sent in a needs evaluation with a west coast State and sent us two. It said, "If we are assuming real needs, it is \$1½ billion. If we are assuming New York and some of the other States, they are going to load it up with every kind of expectation, then we would submit \$3½ billion."

I can verify that. Those figures are off, but that is the kind we got. It was not California, incidentally.

Mr. DENDY. It didn't sound familiar.

Mr. BARDIN. I think, if you will check, Senator, you will find New Jersey, since it was a previous administration, I can't accept any credit, made a very realistic effort in terms of available information.

It was whittled down and changed very little in the course of analysis. What is much more important is what would I do if I were sitting where you are sitting or where Mr. Train is sitting: the obvious answer is that these estimates should not be made once for all times. They should not be made under blank check guidelines to the State to just put in your wish list.

The needs analysis should ultimately become, should more and more be, a carefully controlled economic analysis device.

The third go-around, which is now underway in EPA, as it has been explained to us, involves EPA's retaining outside consultants to prepare their estimate while many of us have given our own estimate and we will have a crack at it and try to correct it. But we will not be putting in the wish list, if it is a wish list, the first time around.

Moreover, if you want this business looked upon as utilities, there are all the problems that you can get into here—ethical problems, cost effectiveness problems, timeliness problems, and the rest.

To get it to be an effectively managed utility you have to bring to bear a kind of economic analysis which is analogous to what goes into all the debates on how we should price electricity services, how much we should invest in nuclear power or coal generating plants in Four Corners, or anything else.

There are disciplines available to us which I don't practice and which I assume few people on the other side of this dais personally practice. But there is expertise out there which has not been brought to bear yet and ought to be over the years.

Look at the population formula. If you give me a population formula it tells me no matter what needs to be done, no matter what is the priority of the Senate, no matter what is the priority of the State of New Jersey or the priority of the executive branch of the Government, we are going to get so many dollars.

That is not the way Congress has undertaken other managerially successful major capital programs.

The outstanding example perhaps of the other way of doing it is the interstate highway program, which is not analogous, I have to admit, for several reasons. But it is analogous to the extent that if there is a national decision made wisely or unwisely undertaking a major capital program, the Federal Government decided what that program was. It committed itself to a total dollar amount, not in dollars but in action, sufficient to get the job done.

Then whatever it meant for a given State, it meant for a given State. If it meant more miles in New Mexico than in New Jersey, so if that is the way they wanted the highways built, it didn't matter that we had a lot of people in New Jersey in terms of our allocations under the highway program.

SENATOR DOMENICI. You did all right in my way also.

MR. BARDIN. I don't really look upon it—

SENATOR DOMENICI. I understand. I don't really think I want to argue the point.

MR. BARDIN. You know, Senator, it is a doing-all-right program, if there is a total dollar amount that you are going to make available to be much less than what is really needed for what you want us to do. But in my way many people in my State think we did too well and they are still resisting the construction of some of the interstate highways. But that is not the point.

The Congress saw to it that there would be enough money to do the job. If it is your intention, for example, to see to it that the municipalities in this country have enough money to build a first go-around of secondary treatment plants, whatever that takes, you are going to know a lot better now and next year and a year from now than you did back in 1972 as to what that is going to take.

But if that is your judgment, then it is a question of how do you administer the program, how do you feed out the dollars, how fast can you afford to do it in terms of all the budgetary constraints which you so correctly mentioned?

We have managed to touch on the question of allocation, Mr. Chairman. So let me just go very quickly to the point. I think I have given away the philosophical predisposition to which I have come.

I have mentioned to you my view, on the one hand, that the management of these funds is a utility function and should be so regarded both in the Congress and at the receiving end.

The social goal, of course, is what is called improvement. This is the point Chairman Muskie made 10 months ago in the debate on the Talmadge-Nunn amendment.

I have given you two illustrations I want to touch on lightly. The septic tank portion of our population, perhaps 20 percent nationally, which really isn't the population that needs to be served by sewer investment in many, many cases but in most cases it is.

On the other, you have the industrial use of sewers in the Passaic Valley Sewage Commissioners and the Middlesex Sewage County, two of our largest systems.

This is a very large fraction of, as I say, 50 percent of the total volumes flowing through. Many of them are small businessmen, who are least able to sustain the first round costs of upgrading sewer facilities and whose needs tend to be overlooked in the Rockefeller Commission staff analysis and in other analyses which seem to focus so much on the very large industries that self-treat or self don't.

I mentioned the problems peculiar perhaps to the northeast and the northern rim of States, but serious problems exist in the country as a whole in terms of our energy and long-term allocation of resources. Population is shrinking in many areas which have very serious water pollution control problems.

I particularly urge you against any use of 1990 population guesses as to what the population might be in 1990 or some point far in the future as the means of dividing up the dollars that are going to be put to work today and next year and the year to come.

I want to emphasize that where we in our own New Jersey allocations and priorities lists have given effect to population factors amongst other, particularly the density populations, we have looked at the 1970 census as the hardest facts we could get. We have not looked at some wild blue yonder estimates.

The criticisms against a formula or principle or any particular needs formula application seems to me to really go to the accuracy with which needs are measured, to the improvement of the needs analysis; they ignore the fundamental point that Congress ought to know what the needs are in any event.

You ought to act this year and next year in terms of an appreciation of what it will cost the country to accomplish a given level of effort, such as the secondary treatment.

Thank you very much, Mr. Chairman.

[Mr. Bardin's prepared statement follows:]

STATEMENT OF

NEW JERSEY COMMISSIONER OF ENVIRONMENTAL PROTECTION
DAVID J. BARDIN

BEFORE THE

UNITED STATES SENATE
COMMITTEE ON PUBLIC WORKS
SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION
Washington, D.C.

May 25, 1976

Mr. Chairman, members of the Committee, my name is David J. Bardin, Commissioner of the New Jersey Department of Environmental Protection. On behalf of Governor Brendan T. Byrne, I want to express appreciation for this opportunity to testify today on recommended funding levels and allocation methods for the municipal construction grant program under P.L. 92-500.

As to how much money, I believe that an authorization of at least \$5 billion in FY 77, as was reported by this Committee in S.3037, is essential if we are to maintain the momentum and keep our commitment to clean up our nations' waters.

New Jersey under the Byrne Administration has placed high priority on effective application of federal funds for construction of wastewater projects. We have revised our regional priorities to emphasize existing needs in our urban areas. Of the \$1.3 billion allotted to New Jersey under P.L. 92-500 almost \$700 million has been obligated, most of that amount in the two years since Governor Byrne took office. The remaining \$600 million will be certified

by my Department to EPA Region II by the end of calendar year 1976. If Congress fails to provide adequate authorizations and appropriations this year, construction grants in New Jersey will halt just as the new federal Administration takes office next year and our water quality program will undergo anguished months of uncertainty as the 95th Congress studies the problem. ^{we began,} Please don't let that happen.

Stop and go funding is no way to run a multi-billion dollar program. Efficient and effective management of this vast public works and pollution control program must rely upon an orderly development of projects. This includes the current group of projects finally starting construction after satisfying the many changes in the federal requirements. Other projects for construction start over the next five to ten years must now begin the preliminary studies and complete the necessary construction drawings and specifications.

New Jersey needs \$300 million in additional, FY 77 federal funds (based on a seventy-five percent federal grant) for projects that are or will be construction ready next year. The formula currently proposed by the House Public Works and Transportation Committee would supply only \$240.5 million, 20% less than we need.

I urge that Congress authorize sufficient funds for FY 77 and for the longer term of five years to enable this program to continue moving forward.

Development of these new facilities cannot proceed in an orderly manner without knowledge of the basic factors for these projects, including continued availability and level of federal financing.

A five year (1977-1981) national program should be established. It should include:

- (a) Firm commitment of money for each fiscal year.
- (b) Fixed allotment formula for distribution of funds to the states.
- (c) Seventy-five percent federal grants.

The second question I was asked to address was how the authorizations should be allotted. I feel that funds should be allotted to maximize state and local governments' ability to meet the goals and objectives of the Federal Water Pollution Control Act. There should be continuity from year to year, consistent with the necessity for long-range planning under the Act. The allotment of funds should also be flexible, to be responsive to changing conditions. The allotment must be based on a method that has legitimacy, that is accepted as valid and fair in concept as well as application. In the view of the State of New Jersey, an allotment formula based on "needs," as provided in P.L. 92-500, best accomplishes these objectives.

The Congress and the Environmental Protection Agency determined, in 1972, that allocations based on population were not related to the real needs of the states and localities, and that the municipal construction grant program funds

should be based on an EPA-developed, Congressionally-approved needs formula. While a population-based formula may provide what appears to be greater equality among states an absolutely equal distribution based on population figures ignores the central issue of water quality improvement. Water quality needs are not related solely to population. The growing recognition of limits to federal spending ability forces us to be ever so much more watchful that our scarce federal dollars go where they are needed to accomplish the law's purpose.

As the Chairman of this Subcommittee, Senator Muskie, stated some 10 months ago during the debate on the Nunn-Talmadge Amendment which amended the formula to retroactively apply on a 50% population-50% needs basis:

The population portion of the Nunn-Talmadge formula assumes a capacity to use money for projects which is unrelated to water pollution problems. It was this inadequacy of the population formula which caused us to reject population as the basis for allocation in 1972. Some States could not use the moneys that were allocated to them on the basis of population, so we chose instead to allocate funds on the basis of needs.

(A population-based formula) will have States which will not be able to use the money because they do not have the demand, and we will have States that will not be able to use the money

because they are not prepared for the new infusion of Federal funds. And then, we will have States who are fully prepared to use every penny of the available money on the basis of their anticipation of that allocation. So, on the one hand, we will have stopped progress, and on the other hand we will not be able to move forward, and the loser will be the environment and the working man, who needs the job.

As your statement so aptly recognized, Mr. Chairman, the construction grants program should secure real benefits for our country. We should concentrate the effort where there is a job that needs doing and needs doing now.

For example, in some parts of the country, septic tanks are preferable to sewers. Even in New Jersey, the most densely populated state in the country, we conclude that for significant portions of the state and its population the environmentally and economically correct solution will continue to be septic tanks for the foreseeable future. Thus a portion of our population in rural and ex-urban areas does not represent a need for sewer capital (although it does represent an important need for water quality planning, controls and services). A population-based allocation formula would exaggerate the real capital need.

Moreover, many of our older industrial facilities are served by municipal sewers. For such industries survival in the crowded Northeast may depend on sewer

utility service amongst other factors. Industries contribute up to half of the total municipal sewer load of some of New Jersey's largest regional systems. The capital needs for bringing these regional systems up to secondary treatment, the national effluent standard for the present term, is the most pressing capital need in New Jersey. Yet a population-based allocation formula would disregard the large industrially-generated fraction of that capital requirement.

The critical policy judgment for America is to recognize wastewater treatment as an essential utility in our urbanized and suburbanized life: Not a luxury, not mere pork barrel, but a utility. The most urgent need is to complete the construction of facilities that will at least satisfy the short term national effluent standard so that we can progress from there. Until we have achieved that standard (which Congress first hoped to attain by 1977), it would be a grave mistake to turn our back on the capital costs of meeting the actual needs.

You should also consider the particularly regressive effect of federal failure to allocate sufficient funds for the upgrading to the secondary treatment level in the case of those urban communities which have generally hit hard times. Some of these urban centers have stable, or even declining populations. Some of them have an effectively stable or shrinking tax base. Many of them need to rehabilitate their existing sewer collection facilities. When the investment in secondary treatment facilities is added to the other burdens, it may be difficult to raise

even 25% of the facility's cost.

We also urge retention of a needs formula to maintain continuity of the funding program. The next Congress is expected to undertake a major review of the Federal Water Pollution Control Act. Therefore, now is not the time to be making major changes in the way funds are allotted under that Act. We desperately need funds to keep us going through next year - we don't need a new formula.

The 1972 Amendments created an integrated approach to cleaning up the nation's waters. Congress should not now tinker with the Act on a piece-meal basis, but rather should examine the allocation formula issue in the over all context of a comprehensive review of P.L. 92-500. A new formula now, with the possibility of change again next year, will bring more disruption and instability to this important program.

A needs formula also provides greater flexibility and responsiveness than one based on population. Updated every two years, it can take into consideration short-term population shifts, new technologies, changing economic conditions and other factors that affect total needs. Population alone is a lead weight, out of place in a program as dynamic as the municipal construction grant program must be.

Of particular concern is a population formula based on 1990 population projections. This would further discriminate against industrialized states that have been losing population

but whose water quality problems remain. It also adds a speculative element into the formula. A primary objective of the 1972 Amendments was to deal with existing pollution problems, and the use of funds for population growth was severely proscribed. The Act was not intended to pay now for speculative, distant, future growth. From the perspective of New Jersey, encouraging further population sprawl at the expense of urban centers is not a wise investment of scarce public resources, and that is precisely what a 1990 population formula would encourage.

The most fundamental criticism against a needs formula is that it lacks "legitimacy." The answer is not replacement of the needs formula, but rather a good-faith effort by states, localities, and EPA to refine it. We have the opportunity in the legislative review next year and the 1977 EPA needs study now being prepared. We can wait at least that long before making significant changes.

In conclusion, we need more money to carry our momentum through to next year, at least \$5 billion for FY 77. It is not the right time to make a major revision to one of the major elements of the Federal Water Pollution Control Act Amendments of 1972 by changing the present needs formula for allotting municipal construction grant funds. Any changes should await next year's major review of the Act and the recommendations of the National Commission on Water Quality. It is the position of the State of New Jersey that no change in the formula is necessary or desirable. We should be putting our efforts where the needs are by retaining the needs basis for allocations.

Senator MUSKIE. Let me make a couple of observations.

First of all, the Congress, as Senator Domenici correctly pointed out, does not provide in Public Law 92-500 for the funding of growth. That section was definitely discussed and not enacted. In the present law, growth as a part of the formula is not a relevant consideration, as I understand it.

Secondly, I think there was an assumption in the law, which has been stated, that once this backlog was dealt with, the burden of responsibility shifts, or should shift, to State and local governments to meet the needs from then on.

Again that was not mandated, but it was the assumption. As a matter of fact, the administration at that time—several administrations I think—strongly urged a one-shot Federal role even more restricted than that funded by the Federal Government. This was the nature of the issue that arose as between President Nixon and the Congress which had the veto of the 1972 law and the override of that veto, the impoundment of the funds and the delay of it, which was a Supreme Court decision.

So when you talk about growth and a continuing 15- or 20-year commitment, that is an issue that has been discussed, raised, and resolved in terms of one-shot, massive aid assistance to the States to catch up on the backlog.

That is what we dealt with.

Also, with respect to continuity of funding, as this issue has developed, if it develops any time the majority of Senators can somehow find the ingenuity in their staffs or among themselves to persuade the majority of their colleagues that their States will get more money out of some change in the formula, it is that majority who decides what the formula is going to be.

This has happened.

I doubt very much if you people in your statements this morning have explored the full range of possible ingenious formulas that could be contrived for that purpose. How about the square miles of water in your States?

It is waters that we are treating, after all, we in Maine wouldn't do too badly. We have 2,500 miles of coastline, 2,500 streams, 2,500 lakes and ponds. So if we use waterways, square miles of waterways as a formula, what is wrong with that? That is what we want to get clean. That is the objective.

Senator DOMENICI. I don't like it. The waterways run 1 week out of a year.

Senator MUSKIE. Or you take miles of water that meet minimum standards. The minimum standards you could use could shift the eligibility. You have to use a computer to figure them all out.

Would you use what a trout can breathe? Or would you use what a salmon could breathe or what a catfish could breathe? Or would you use swimability or fishability? What would you use?

There are miles of water that doesn't even meet a certain minimum standard and that standard would be set not in terms of any biological analysis but by the number of votes you can get on the Senate floor to support the change, if you like that.

It seems to me that what we have done here and what this committee is struggling with is not just a biological test or an economics test or a water qualities test but a political test. How are we going to get the

votes in the Senate to support the allocation formula and the distribution that that implies?

As the witness from Georgia referred to the Nunn-Talmadge amendment in conference, the response to that conference was not based upon anything but pure politics. How can we buy off those votes that the Nunn-Talmadge amendment accrued in the Senate to change the current formula? That was the basis. No other basis, that was pure and simple.

So that was a payment we made to get those votes for the overall legislative package, which included some other very important public interest needs.

That is not to say that any one of you doesn't have a rational case based upon your thoughtful analysis of your own State's requirements with the position you take on formula allocation.

I am simply saying to you that we have tried it over 15 years now, going back before I came to the Senate, back to 1956. We have tried it. You may remember the 1956 law provided for a maximum grant to any State of, I think, 15 million and a maximum for eligible cities to 125,000 population.

If you want to go back and find discrimination, the 1966 law was the first one that broke away from that. So that we have never yet succeeded—even as we increased the Federal commitment, increased the Federal dollars to try to find needs tests, population tests—we have never yet succeeded in making everybody happy long enough for continuity of planning and long enough to assure funding.

We haven't heard anything new this morning. We appreciate your testimony. It reflects once again the diversity of views. But I don't think we have found an answer.

Let me ask you some short questions.

Twenty-two States, I gather—unless I am wrong—would require some additional funding in order to continue on with this year's program. So what are your options? Your options are 1 year, simple extension of some amount. The other option is to try to find something on a permanent basis.

If you try the second, which is the nature of our support, then what we do is attract a lot of other suggestions for addition to the legislation and you get a lot of other problems connected with the water problem approach.

If we go that route, it seems to me there is a strong prospect for such delay in the legislative process that we may get nothing by the way of supplementary funding or answers to this question of equities among States that have real differences of position. We understand the differences.

In Maine, talking about the highway program, we have half the land there in New England, but we didn't get half of the legislative money. And at least a third of our State has no public roads at all.

With the crowding of the centers in our country could we make a case—not that we would want it—for the colonization of areas to send more road money into those areas? Well, we took the Federal Government's judgment and took all we were entitled to.

With some resistance in 1956 to add 40 miles, just 40 miles to at least give to the northern tip of our State—and we have been unsuccessful.

We get about 0.45 percent or less of the entire State money, which is less than our percentage of the population, which is about 0.54 percent. What we are getting for water is 0.56 percent you say, which is at the top of the range, Mr. Adams. That is only 0.2 above our share of the population and yet the majority of the Senate, when the Nunn Talmadge amendment was offered, said we were getting too much. We were getting our fair share.

If Nunn-Talmadge had stuck, our allocations for this year would have been cut in half. Isn't that right? So it is not easy. When we write this formula we are not going to be looking at the very legitimate considerations you gentlemen offer. We are going to be looking at where the votes are. And our judgment on that may be changed next year, when circumstances change and the majority shifts to some other criteria.

Is that what you consider continuity? That is simply to make a very practical point.

I appreciate your testimony. I am going to let Senator Domenici continue questioning on some of the details and try to fill in behind him on some other matters.

Incidentally, I might invite each of you to comment. I think Senator Domenici in his discussion made some points that were very relevant. It seems to me if any others want to comment on any point that was raised in this discussion, you have this opportunity to do that.

You won't recall every question probably, but if there is anything that strikes you that you ought to say in response to questions that Senator Domenici has raised or that Mr. Bardin responded to, at this point I would be delighted to have you make any comment you would like.

Otherwise, I yield to Senator Domenici at this point and then I will follow his questioning with whatever is left over.

Senator Domenici.

Senator DOMENICI. Thank you, Mr. Chairman. I am going to be brief. I know the chairman is just recovering from his illness and I don't think I want to delay the hearings that require your presence for an untoward amount of time.

I did want to add one thing to what Senator Muskie said. I think some of you have been in Government long enough to know this but, actually, the explanation of changing formulas is not exaggerated at all.

In fact, my first year in the Senate I was amazed that in an educational grant bill someone came to the floor with a set of States that would benefit if we kept the old formula. The new formula would cut maybe 26 of them a little bit.

Would you believe, we sit around and criticize the Office of Education for its bureaucracy and what we did on the floor of the Senate and couldn't resolve that issue—it was sort of a tie vote. So we said we will have both formulas in effect. Those States that get more under the old law will use the old one and those that get more under the new one will use the new one. And we sent it down there to be effective for 2 years and they have not allocated the money.

Let me change to one area that I have been rather concerned about in the overall technology sense. It appears to me that, regardless of whether the Federal Government is the prime mover in capital

expenditures, especially in sewage disposal treatment as a general term, whether it is us or whether it is you, we are looking at a huge expenditure of dollars over the next 15 or 20 years.

Senator MUSKIE. Would you yield just a minute?

Senator DOMENICI. Surely.

Senator MUSKIE. The staff has proposed some excellent questions related to the practical considerations for legislation this year. I think, rather than take each of you separately and put the questions to you separately, we will submit these questions. They are not that numerous. They are not like an EPA form.

If you will each submit your answers to these questions, it will save us some time this morning and a lot of repetition and give us some valuable factual information. I don't think we need to take your time or our time to go to each of you seriatim to get it out this morning.

If you have no objections to that approach, I submit those questions to you. I think it will make a very useful comparison.

[The questions and answers appear at p. 69.]

Senator DOMENICI. We have a similar set we will coordinate with the majority staff and get them into some sequence so we don't have duplication, and ask that they be answered in the same manner.

Let me just ask this one question, if the chairman will permit, and we will get the answer to the basic questions from our written ones. I have grave concern about the development of new approaches to waste treatment, new technology, new chemical means, new thrusts.

I think the law, the way it is written and the way it is being administered by EPA with reference to demonstration programs for the application of new technology is extremely inhibitive, rather than productive of experimentation on demonstration type work.

As an example, it appears to me that we ought to permit local entities to get demonstrations funding and not necessarily charge that against his formula allocation, unless it works, but to promote it from the standpoint of reasonable applied demonstration technology.

As I look down the line, many of you said let's use the engineers a little bit more and let them have a little more discretion. It does seem to me there is a vacuum in terms of the kind of R. & D. effort, basically because plants are being drawn by engineers who basically have one school of thought.

I am looking for ways to get the ingenuity of the American marketplace more involved in new approaches to waste treatment and new technologies.

Could you just comment on that for me quickly?

Mr. DENDY. Senator, in California we are trying to do some of what you say. For instance, we are giving demonstration grants through the construction grant program. We don't call them demonstration grants but they are designed to show new technology.

I don't think there has been a significant improvement in the municipal waste treatment for at least 40 years.

Probably you will have to go back before that to see when the activated sludge treatment process was invented.

We have one project going in Orange County in southern California now that takes an entirely different approach to treating municipal wastes. We have great hopes for it. We have a 1 million gallon per day demonstration plant in operation now.

The Cal Tech Laboratory is doing the work and NASA is applying some of its technology.

The problem with trying to do new technology development now is that it will come too late—the money will basically be spent on secondary treatment with existing technology—by the time these new processes can be developed.

Furthermore, the nature of the program really prevents us from investing in new technology. The reason for that is, and I guess the simplest way to say it, is that there is a \$10,000 fine for violating the waste disposal permit.

It is very difficult for municipalities to invest in the new technologies which might work when they can invest in the established technologies which they understand and know will work and know that they won't violate the permit.

Senator DOMENICI. Do you have any thoughts on whether or not we ought to provide some flexibility in that area of sanctions where new technology fails to work? We did that in the Clean Air Act. If there was a new technology, the compliance schedule, based upon certification that it was a new technology with a reasonable chance of success, as I recall, Mr. Chairman, we gave it a 2-year extension beyond the compliance schedule that we are building into the new law.

Mr. DENDY. Some kind of an extension to try the new technology would be a good idea, I think.

Senator DOMENICI. Or some kind of enforcement waiver perhaps.

Mr. DENDY. Yes.

Senator DOMENICI. Does anyone else have any comments on this?

Mr. LEDBETTER. I will agree with Mr. Dendy of California. We need to create as much incentive and flexibility as possible. One good example is in some parts of the country, of course, for many years we actually had some reluctance and opposition on the part of the regulatory agencies influencing the Federal people on land applications.

Now we are beginning to move in that direction. It is a cost-effective approach in many cases in which we have situations, such as the gentleman from New Jersey cited. That is not an approach.

So what we really need are those incentives, including the flexibility of the \$9 billion itself, as well as the application of some construction grant funds to go out and create some new technologies, because I agree with him, we have seen very little in the last 40 years.

Senator DOMENICI. Any other comments?

Mr. ADAMS. I agree with both of the gentlemen at my side. I think one of the problems in getting into the research and development of new technology is that somehow Government is never expected to fail.

Every project is expected to be a winner. I think any legislation that encourages it has got to recognize that all of these undertakings will not be successful. So that there is a better chance that people will try something and not be afraid of getting stung with a failure.

Senator DOMENICI. That is a very good point. The point I should have made is that probably one of the real problems in new technology and R. & D. thrusts is that the national EPA makes the decision on whether or not it could be tried.

I think you might be suggesting that you are there where the problems are and a little bit more of the risk taking ought to be placed on your back without significantly penalizing you for making that individual judgment.

We could not do that with immunity because there was a chance of politics and other things intervening. But it seems to me we can consider in the final markup some better balancing of where the risk ought to be placed and therefore the decision to move ahead with a new R. & D. effort.

I am pleased to remind you of that. I don't have that in my amendment for this bill.

Mr. BARDIN. We should get credit for some innovation. The adaptation of mass production of liquefied oxygen seems to me at least a nice development which is actually under construction in the Middlesex plant and under construction in Linden and will be in the Passaic Valley.

Second, between EPA Washington and ourselves and other regions, one has been occasionally critical of lack of regional supervision. I think you should know that in region II they are pushing very hard for innovations in the case of sludge disposal.

That is an area, the area of sludge disposal, the disposal where planning has been funded by EPA and gives every indication that region II is anxious in the next few months to start some sort of demonstration project and test at least one sludge disposal method.

I think one of the areas you might consider are innovations which are not capital intensive construction. Of course, in many of our Government programs, State as well as Federal, there is some glamor in putting up a lot of money to build something.

I mentioned septic systems. There is a large area in the country, and a large minority fraction of the population which can be served very well by septic systems, particularly if on the one hand you reduce the amount of wasteful water consumption in water rich places like New Jersey, as well as in arid places, and we can competently develop an operating mechanism to clean out those septic tanks on a timely schedule.

That requires manpower, foresight and management, but very little capital funds as compared to operating funds.

Similarly, the analogy of the sources of water pollution. People made enormous estimates of construction projects fairly well in the open, to deal with nonpoint runoff of city streets.

The question was raised that maybe it would be cheaper to sweep the streets. That was initially pooh-poohed as a possibility by the EPA experts, who want very much capital and high engineering oriented projects. Yet there is low technology which perhaps ought to be brought back into focus on a low capital basis to deal with some of our problems which are going to remain even after the first round of secondary treatment construction, which is very well.

Senator DOMENICI. I think that is an excellent observation.

I would have one further comment and see if any of you agree with this. We are not having as much difficulty getting demonstration grant programs where it is purely an R. & D. thrust as we are for a demonstration program in the field for a part of the implementation of an ongoing program.

For instance, Mr. Chairman, there is a very exciting project in the State of New Mexico with one of our nuclear laboratories funded by three agencies: Agriculture, EPA, and ERDA. They are going to experiment with the use of nuclear radiation. They have done it in a

lab and they will take our sewage effluent, run it over radioactive materials and it will come out absolutely 100 percent clean from the standpoint of health.

The product then becomes usable for two things: fertilizers and literally for the feeding of animals.

They have funded this. It is an extremely optimistic one. But the point I make is that after they have demonstrated it in a small \$15,000 project, we run into the snag that when the city of Albuquerque or one of you were to try for \$1.5 million grant to use this as part of a large facility, you cannot.

That is when you run into the extremely traditionally oriented experts who won't let you take the gamble. I think it is in that area that we have got to mandate some flexibility.

I have one last question. The gentleman from Georgia indicated that for rural areas, as I recall your statement, where you couldn't afford the difficult municipal treatment sewage system, and the like, that you would like to see us get involved in a loan program. I think you mentioned fixed income people, and the like, and you probably couldn't capitalize under the typical bonding approach.

Your statement seemed a bit inconsistent because then you said a loan program that would be geared to a reasonable charge to defer the loan. It seems to me that if the charge would defer the loans, unless the loans are at some unusually low rate of interest, that you really are asking us to substitute for the lack of local ingenuity in forming the financing district to put together this kind of rural system. Did I read you right or wrong?

MR. ADAMS. That was me. I was referring to those communities where a municipal system just cannot be economically developed.

People are now discharging into the waterways. State and Federal law both require that they treat. Cost of this treatment is extremely expensive. The capital investment for many of the small homes is too high.

My point was that perhaps we ought to look at some way to allow States to use some of their construction grant funds to finance individual systems and that the payback of this—I think it should be a payback—should be tied to what the people in the community are paying for their services. That would be the rate.

It would be some sort of a mortgage that goes with the property so that there would be assurance of getting it back but that the interest would be low, perhaps nonexistent, long-term and the amount being paid back would be comparable to what they would be paying if they were within a municipality where capital investment is settled over 25 years by the municipality.

SENATOR DOMENICI. Why can't the State of Maine do that?

MR. ADAMS. We can't do it with construction grant funds.

SENATOR DOMENICI. Why not?

MR. ADAMS. Because the community then would have to own the facility. I am not sure the community wants to own it, but rather just to give some sort of help to those people who need it to construct their own.

SENATOR DOMENICI. I have one last question, if you will permit me, Mr. Chairman.

My present intuition—and that is all it is—is to support a 1-year \$5-billion extension based upon a politically acceptable formula and

seriously consider the use of the 208 planning mechanism on an accelerated basis to mandate the planning and prioritizing by the States under some definition of what we would expect. The 208 planning mechanism would then feed back to us a kind of plan to prioritize need in the 208 planning region.

Does the notion make any sense? I was somewhat set back by the indication from the gentleman from Texas that this 208 planning has not proceeded very rapidly for a number of reasons. Perhaps you could comment on that as a concept. Maybe it has no relevance at all, but I would appreciate some comments on it.

Mr. DENDY. I don't know about the others, but I would be very disappointed to see you go back to a \$5 billion level. But if that is all there is then that is all there is, of course.

From our standpoint we would like not to see you wait for 208 planning to be done. Maybe we are further ahead than some, as far as the facilities planning aspect but that would just constitute a further delay and further inflationary costs. That we really don't need to experience now.

On our basic needs for waste treatment, we know what we need in those areas.

As far as the other categories of needs for combined sewers and nonpoint source pollution, perhaps waiting for the 208 planning results would be of some help.

Back to the other subject you mentioned about rural systems. California has a lot of people. We are generally considered to be an urban State, but about 10 percent of our people don't live in cities. Two million people have to be accommodated in rural settings. That is more than a lot of States have altogether.

We have the same kind of problem as other States of people not being able to afford collection systems. The collection system often costs two or three times as much as the treatment plant to service it.

We are entering into a demonstration project this year in which we hope to look at alternatives to collection systems and alternatives to septic tanks in those areas. A lot of them are in the mountain areas where there is poor soil cover and septic tanks just don't work very well. The result is that the septic tank development has had to take place in places where there is good soil classified as class I agricultural land.

We have several incentives for trying alternative collection systems. We hope that we will be successful in the next year or so in demonstrating that.

Mr. LEDBETTER. Senator, if I may respond to a couple of points that you raised.

We would be very reluctant and concerned about systems if 208 were not extended. For example, in our State where we have four of our estimates designated, yet they were not funded. EPA ran out of funds prior to funding those.

So at this point in time we really are just beginning to get prepared to deal with the 208 effort.

With the end of 1978 as a target date for EPA to renew, and so forth, we see using that approach on an interim basis as very much a problem for us in being able to proceed with the continuity we were talking about this morning.

The other thing, if I may touch on also the fuel aspects, first of all, for the benefit of the record, Senator Muskie, it might be good to point out since I am from Georgia and our distinguished Senator's amendment has been referred to this morning—interestingly enough not by me—I think if you will look at my statement in the record, my colleagues may have referred to that, but I think it is unfortunate there has been some misunderstanding regarding that, in that the formula for the actual allocations formula itself in the Talmadge-Nunn amendment originally—of course, that amendment was changed along the way as well—that was based on Mr. Train's formula, which was 50 percent on the basis of population and 50 percent on the basis of categories 1, 2 and 4(b), as he recommended it to the Congress in February of 1975.

That was my recommendation of our Governor, which is very much akin to the type of formula that the gentleman from California recommended and the one, of course, that ASIWPCA group has gone on record as supporting the Train formula.

But the problem we see on the local situation is that we have, as I mentioned, over 450 local communities, we are now dealing with those same communities with the Federal Drinking Water Act.

They are faced with considerable demands on them for their watering sewage systems. In many cases, we are looking on the report of those communities for a minimum water and sewer bill with a \$20 or \$30 per month minimum in order to take care of the 25 percent Federal requirement under the law and get 25 percent and then get their 75 percent Federal grant and then make the improvements required to their water systems.

We are talking about minimum of \$20 or \$30 a month in Georgia most of those 450 communities who have 50 percent are minorities. We have many older people who live in those communities. All these groups have a very low fixed income. So when we talk about a minimum of \$10, \$20, \$30 per month of water and sewer bill for them to get the revenues down in order to finance their share, I don't think that the traffic will bear much more than that.

So it does require than we analyze those situations very closely when we are looking at local governments in those kinds of situations and try to help them provide the same conveniences and needs and clean water for their living as we do in situations such as we do in Atlanta or some of the more heavily populated areas.

Senator MUSKIE. Incidentally, may I say with respect to the Nunn-Talmadge amendment, I challenged the right of my colleagues who served the interest of their States, which is often an issue of that kind.

One of the difficulties of that amendment was that the commitments had already been made to the States for the current fiscal year. In States like Minnesota, it is made.

So if you can only get half as much as you were allotted, it struck me as asserting the power of the majority a little harshly. It wasn't a change in the formula down the road. I am not prejudiced in what the Congress may do in respect to the rest of the formula down the road, but its impact immediately seemed to me to be a rather harsh application of the power of the majority.

On the numbers, that was Senator Dominici's question, let me make this point. This program is growing very slowly. I can remember when—it wasn't so long ago—we were able to persuade the Appropriations Committee to come up with as much as \$1 billion a year. At the present time, we are obligating at the rate of about \$5 billion a year, and at the end of this fiscal year we will have obligated, with that rate of obligation this year, the first \$9 billion of the \$18 billion; \$9 billion will be unobligated. We are actually expending at the rate of \$3.5 billion, liquidating those obligations at \$3.5 billion a year this year.

So that we are far behind the full commitment of the original \$18 billion.

What we are proposing is adding \$5 billion to the unobligated \$9 billion, which is \$14 billion. So we have the question not only how we allocate the 5, but conceivably how we allocate the \$14 billion and for over how long a period. Because that \$9 billion is in the period for which the program has expired, as you gentlemen know.

We had authorized \$18 billion for 4 years; 1975 was the last year, so the period for which that \$9 billion was originally authorized has expired and we are simply spending it out under pressure from us at the fastest rate that you can spend it out and still make legitimate and professionally justified projects.

There has been an acceleration, but that acceleration still leaves us with \$9 billion of the original \$18 billion unobligated. The annual spending rate has been at the level of \$2.5 billion. I think those are numbers the committee will take into consideration. The staff tells me that those numbers are somewhat soft. I thought you might be interested in having that perspective. Those are not hard numbers.

Gentlemen, we have had a good hearing. I would like to hope that each of you would make yourselves available and help us as we proceed with the problem of trying to find a viable formula for allocation and a sensible amount of additional authorization and resolve the question to keep us going until we can get some of those questions answered. That is the nature of the problems we face.

This is a Presidential election year which has been chopped up by two political conventions and substantially reducing the legislative time available to us. All of us have to take all of that into account as we try to do what we must do minimally to keep this going.

I think all of us here present this morning share the commitment of keeping this thing moving along without abrupt interruption attributable to a situation in which we find ourselves.

I understand that there is also a statement of the witness from Virginia to be included in the record at this point. Without objection, it will be entered.

[The statement referred to and responses to written questions follow:]

S T A T E M E N T
FOR THE
COMMONWEALTH OF VIRGINIA *

THE VIRGINIA STATE WATER CONTROL BOARD IS VITALLY CONCERNED WITH THE FORMULA USED FOR ALLOCATION OF FUNDS FOR CONSTRUCTION OF MUNICIPAL SEWERAGE SYSTEMS. THE COMMONWEALTH HAS MOVED RAPIDLY TO CONSTRUCT MUNICIPAL SEWERAGE SYSTEMS AND IS CONCERNED THAT THIS MOMENTUM NOT BE DIMINISHED. A TABLE SHOWING THE STATUS OF VIRGINIA'S CONSTRUCTION GRANTS PROGRAM IS SHOWN IN TABLE NO. 1 ATTACHED. VIRGINIA, UNLIKE SOME OTHER STATES, HAS HAD REASONABLY GOOD SUCCESS IN PROCESSING APPLICATIONS THROUGH THE ENVIRONMENTAL PROTECTION AGENCY (EPA) AND ANTICIPATES THAT ALL FUNDS WILL BE COMMITTED BY SEPTEMBER 30, 1976.

SEVERAL ALLOCATION FORMULAS HAVE BEEN PROPOSED DURING THE PAST FEW YEARS, EACH OF WHICH WOULD BE SUPPORTED BY SOME STATES AND REJECTED BY OTHERS. IN MANY INSTANCES IT HAS SEEMED THAT THE CRITERIA USED FOR JUDGING THE FORMULAS WAS "HOW MUCH WILL WE GET?" STATES MUST BE FORGIVEN FOR THIS ATTITUDE, FOR ALTHOUGH PUBLIC LAW 92-500 SETS NATIONAL GOALS, EACH STATE IS PRIMARILY CONCERNED WITH THE RESOLUTION OF PROBLEMS WITHIN ITS OWN BORDERS, AND KNOWS THAT THERE WILL NOT BE MONEY ENOUGH FOR ALL PROJECTS.

THE STATE WATER CONTROL BOARD OF VIRGINIA HAS MAINTAINED, AND CONTINUES TO SUPPORT, THE POSITION THAT THE ALLOCATION

* Prepared by the Virginia State Water Control Board for the official hearing record, Senate Public Works Committee Hearing on allocation formulas for sewerage construction grants funding to states, May 25, 1976.

COMMONWEALTH OF VIRGINIA

FORMULA SHOULD, IDEALLY, BE BASED ON THE NEEDS ASSESSMENT AS PROVIDED IN SECTIONS 205 AND 516 OF PL 92-500 (THE ACT). THE NEEDS ASSESSMENT SHOULD CONTINUALLY PROVIDE UPDATED ESTIMATES OF CONSTRUCTION COSTS FOR COMPLIANCE WITH TREATMENT REQUIREMENTS IN THE ACT. TO PRODUCE A VALID NEEDS ASSESSMENT, THERE MUST BE READY ACCESS TO APPLICABLE DATA. PLANNING EFFORTS UNDERTAKEN BY THE STATES HAVE A DIRECT BEARING ON THE OUTCOME OF THE NEEDS ASSESSMENT IN THAT THEY PRODUCE THE NECESSARY DATA. IF PLANNING EFFORTS SUCH AS THOSE DESCRIBED IN SECTIONS 208 AND 303(E) OF THE ACT ARE NEGLECTED, THE DATA PRODUCED IN THE NEEDS ASSESSMENT IS NOTHING MORE THAN A GUESS. ON THE OTHER HAND, IF A STATE HAS A GOOD PLANNING SYSTEM, SUCH AS VIRGINIA'S, THE SURVEY PROVIDES A REASONABLY GOOD INDICATION OF WHAT IS NEEDED AND WHEN.

IN THE REAL WORLD OF WATER POLLUTION CONTROL, IT HAS BECOME APPARENT THAT NOT ALL STATES HAVE DEVELOPED THEIR PLANNING PROCESSES TO A POINT WHICH WILL SUPPORT A RELIABLE "NEEDS ASSESSMENT." THE STATE EFFORTS TO CONSTRUCT RELIABLE NEEDS ESTIMATES HAVE BEEN FURTHER FRUSTRATED BY EPA WORK SCHEDULES, UNWIELDY FORMS, INFLATION, CONFUSION OVER MINIMUM TREATMENT LEVELS, AND ABSENCE OF A MEANINGFUL DECISION ON HANDLING OF TOXIC AND HAZARDOUS SUBSTANCES. EVEN THE CONGRESS CONTRIBUTED TO THE GENERAL CONFUSION THROUGH HR 11928, WHICH REQUIRED THAT STATES "ESTIMATE" THE COST OF TREATING URBAN RUNOFF.

EARLY IN THE YEAR 1975 THE ASSOCIATION OF STATE AND INTER-STATE WATER POLLUTION CONTROL ADMINISTRATORS GAVE SUPPORT TO A FORMULA, WHICH ALSO HAD EPA'S SUPPORT, WHICH WOULD ALLOW A 50% FACTOR BASED ON THE POPULATION OF THE STATE AND A

COMMONWEALTH OF VIRGINIA

50% FACTOR BASED ON CATEGORIES I, II, AND IV-B OF THE 1974 NEEDS ASSESSMENT. THIS FORMULA WAS PROPOSED FOR USE UNTIL 1980 WHEN A NEW NEEDS ASSESSMENT WOULD BE CONDUCTED. THE VIRGINIA WATER CONTROL BOARD OFFERED ITS SUPPORT FOR THIS PROPOSAL IN MARCH OF 1975, RECOGNIZING THAT IT WAS AN ACCEPTABLE COMPROMISE. THE BOARD HAS NOT CHANGED ITS POSITION.

VIRGINIA WOULD ALSO SUPPORT A PROPOSAL SUCH AS THAT INCORPORATED IN HR 9560, CURRENTLY UNDER HOUSE CONSIDERATION. THE HOUSE FORMULA IS BASED 25% ON TOTAL NEEDS (NEEDS SURVEY CATEGORIES I, II, III-A, III-B, IV-A, IV-B, AND V), 50% ON PARTIAL NEEDS (NEEDS SURVEY CATEGORIES I, II AND IV-B), AND 25% ON POPULATION. WE WOULD HAVE LITTLE QUARREL WITH ANY FORMULA WHICH GAVE NO MORE THAN A 50% FACTOR FOR POPULATION. IT IS EXPECTED THAT OVER THE NEXT SEVERAL YEARS THE GRANTS PROGRAM WILL SHIFT GRADUALLY FROM A POLLUTION-ORIENTED TO A POPULATION-GEARED SYSTEM AS MAJOR POLLUTION PROBLEMS ARE RESOLVED. FOR THIS REASON, A FORMULA WHICH GIVES SOME WEIGHT TO POPULATION WILL ALLOW POLLUTION ABATEMENT, IN ORDER OF CRITICALITY, UNTIL WATER QUALITY GOALS ARE MET AND ALLOW POPULATION TO BECOME THE PRIME FACTOR AFTER THAT TIME. IT MAY ALSO BE NOTED THAT VIRGINIA'S PRIORITY SYSTEM FOR DISTRIBUTION OF FUNDS AT THE LOCAL LEVEL IS ALSO GEARED TO THIS SAME SHIFTING OF PRIORITIES.

IT HAS BEEN STATED THAT WE FAVOR A FORMULA WITH THE MAJORITY OF WEIGHT GIVEN TO NEEDS. HOWEVER, WE SAY THIS WITH THREE RESERVATIONS:

COMMONWEALTH OF VIRGINIA

1. IF THE NATION IS TO USE A NEEDS-WEIGHTED FORMULA, WE MUST BE REALISTIC AND REQUIRE RELIABLE UPDATING OF DATA FROM ALL STATES.
2. NEEDS DATA SHOULD NOT INCLUDE ESTIMATED COSTS FOR CORRECTION OF URBAN RUNOFF. THE TECHNICAL BASES FOR NEEDS ESTIMATES IN THIS AREA ARE NOT YET SUFFICIENTLY PRECISE TO PRODUCE UNIFORM ESTIMATES.
3. NEEDS DATA SHOULD REFLECT THE COSTS OF REMOVAL OF TOXIC AND HAZARDOUS SUBSTANCES IN MUNICIPAL WASTE STREAMS. WE SUGGEST AN ADDITIONAL NEEDS CATEGORY FOR THIS ELEMENT.

IN SUPPORT OF THE THIRD PROPOSAL ABOVE, VIRGINIA HAS DEVELOPED PRELIMINARY DATA TO ILLUSTRATE THE COSTS FOR REDUCING EFFLUENT TOXICITY AS COMPARED WITH OTHER NEEDS. VIRGINIA'S TOTAL NEEDS THROUGH 1990 (1974 NEEDS SURVEY) EQUAL \$1.9 BILLION. CATEGORIES I, II, AND IV-B TOTAL \$907 MILLION FOR THAT SAME TIME FRAME. THE FY 1976 305(B) REPORT (WATER QUALITY INVENTORY) FOR VIRGINIA REPORTS CONSTRUCTION FUNDING NEEDS OF \$823 MILLION THROUGH 1985. (SEE TABLE NO. 2 ATTACHED). OF THIS TOTAL, \$622 MILLION IS NEEDED TO FUND TO COMPLETION ON-GOING PROJECTS AND \$201 MILLION IS NEEDED FOR NEW PROJECTS TO MEET REQUIREMENTS OF THE ACT (THE \$823 MILLION EXCLUDES SCHOOLS, STATE FACILITIES, TRICKLING FILTERS, AND STABILIZATION PONDS, EXCEPT TO MEET WATER QUALITY LIMITED STANDARDS). IN COMPARISON, ACHIEVEMENT OF NON-TOXIC EFFLUENT GOALS WOULD INCREASE COSTS IN VIRGINIA BY ABOUT \$400 MILLION. THESE COSTS INVOLVE UPGRADING EXISTING

COMMONWEALTH OF VIRGINIA

MUNICIPAL PLANTS WITH MORE THAN 500,000 GALLONS PER DAY FLOW TO ADVANCED WASTE TREATMENT WITH MINERAL ADDITION, COAGULATION, FILTRATION AND CARBON ABSORPTION. VIRGINIA'S EXPERIENCE WITH KEPONE IS CERTAINLY SUGGESTIVE OF THE NEED FOR CAREFUL CONSIDERATION OF THIS ASPECT OF WATER POLLUTION CONTROL.

THE NATIONAL WATER QUALITY COMMISSION HAS RECOMMENDED THAT TOXICITY CONTROLS BE IMPLEMENTED NO LATER THAN OCTOBER 1, 1980. EPA IS DEVELOPING TREATMENT STANDARDS FOR TOXIC ELEMENTS AND WILL PROBABLY COMPLETE THEM BEFORE 1979. EARLY DEVELOPMENT OF NEEDS DATA FOR CONTROL OF TOXIC SUBSTANCES SEEMS A REALISTIC AND PRUDENT UNDERTAKING.

IN SUMMARY, THE COMMONWEALTH OF VIRGINIA WOULD FAVOR AN ALLOCATION FORMULA WITH PRIME CONSIDERATION GIVEN TO NEEDS AND SECONDARY WEIGHT FOR POPULATION. THE STATE WATER CONTROL BOARD HAS HISTORICALLY SUPPORTED THIS CONCEPT, AND WOULD ENTHUSIASTICALLY SUPPORT A FORMULA SUCH AS THAT INCORPORATED IN HR 9560, WHICH WOULD GIVE CATEGORIES I, II AND IV-B OF THE NEEDS DATA THE GREATEST WEIGHT. THE REASON FOR THIS PREFERENCE IS THAT THE COST ESTIMATES FOR THESE THREE CATEGORIES ARE THE MOST RELIABLE OF THE SEVEN BECAUSE OF THE AVAILABILITY OF LONG-TERM DATA. WE PROPOSE THAT A NEEDS CATEGORY BE ESTABLISHED FOR CORRECTION OF TOXIC ELEMENTS TO BE USED IN THE NEXT NEEDS SURVEY UPDATE. WE SUGGEST THAT MORE ATTENTION BE GIVEN TO ACCURATE UPDATING OF THE BIENNIAL NEEDS SURVEY. WE OPPOSE INCLUSION OF COSTS FOR URBAN RUNOFF CORRECTION IN THE NEEDS ASSESSMENT UNTIL ACCURATE NATIONWIDE DATA IS AVAILABLE.

TABLE NO. 1
FUTURE FUNDING NEEDED
TO COMPLETE CURRENT
ON-GOING PROJECTS

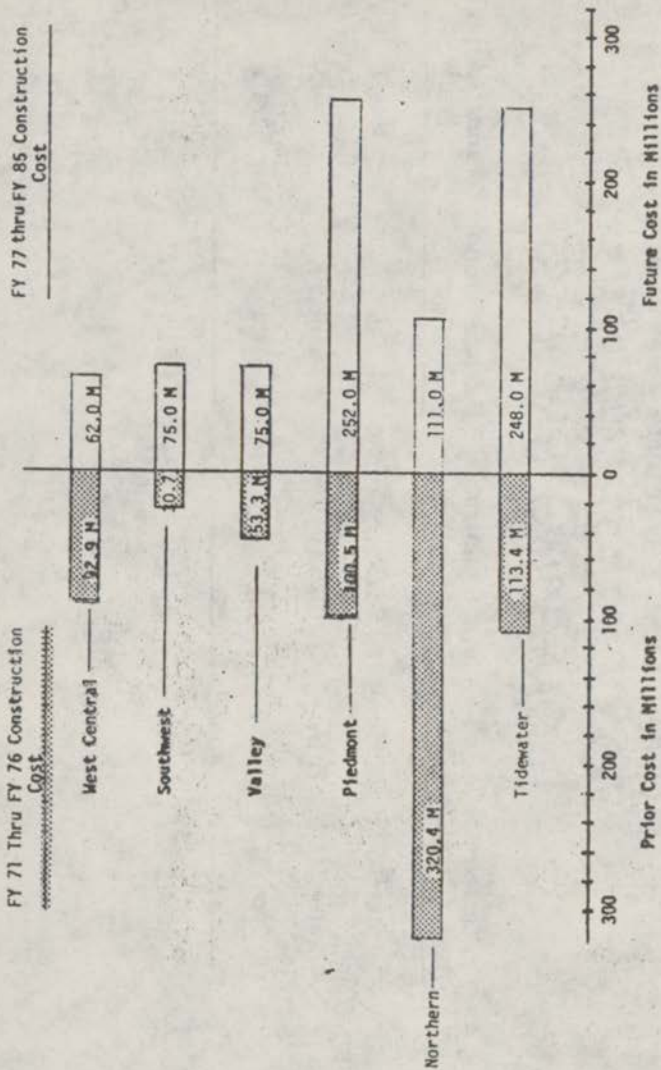
CURRENT PROJECT STATUS**	No.	TOTAL ESTIMATED PROJECT COSTS*	PREVIOUS FUNDING PROVIDED*	FUTURE FUNDING NEEDS*
STEP I	63	\$ 351.5	\$ 7.4	\$344.1
STEP II	17	110.8	12.0	98.8
STEP III	11	548.1	369.0	179.1
TOTALS	91	\$1,010.4	\$388.4	\$622.0

* IN MILLIONS-OF-DOLLARS

** PROJECTS ON FY 1976
PRIORITY LIST

4-1576

TABLE NO. 2.
PRIOR CONSTRUCTION COST AND FUTURE NEEDS
BY STATE WATER CONTROL BOARD REGIONAL OFFICE





JOE D. TANNER
Commissioner

Department of Natural Resources

ENVIRONMENTAL PROTECTION DIVISION
270 WASHINGTON STREET, S.W.
ATLANTA, GEORGIA 30334

J. LEONARD LEDBETTER
Division Director

June 11, 1976

Honorable Edmund S. Muskie, U.S.S.
Chairman, Subcommittee on Environmental Pollution
United States Senate
Committee on Public Works
Washington, D. C. 20510

Dear Senator Muskie:

We sincerely appreciate the opportunity of testifying before your subcommittee on May 25, 1976, on the subject of allotting the \$5 billion for construction grants authorized by the Public Works Committee.

Attached is Georgia's response to the list of questions prepared by your staff on this subject. In addition to these questions, my staff received an additional question by telephone from Mr. John Freshman on June 2, 1976. That question is: What is Georgia's reaction to the allocation of the authorized \$5 billion on a first come, first served basis?

In response to that, we must say that Georgia is opposed to such an arrangement because it would be exceedingly inequitable. The allotment of funds would not be based on needs, nor population, nor a combination thereof; it would be based almost entirely on each State's readiness to proceed with Step 3 grants. Readiness does not reflect the fact that many States have serious, legitimate water pollution control needs which can, should, and will be served if sufficient time is given to satisfy the requirements of the grants regulations. Readiness does not reflect the fact that the grants regulations, guidelines, and policies are not administered evenly by EPA from Region to Region, which has resulted in some States being able to move projects to readiness for Step 3 grants more quickly than others. A first come, first served allotment procedure would ignore the fact that State agencies, consulting engineering firms, equipment manufacturers, and construction companies have programmed to move the grants and get treatment facilities built on certain schedules at certain levels of funding, and that there must be stability in this entire process for it to function properly. A first come, first served allotment would bring chaos to these elements of the economy in many areas of the country.

We hope that our comments will be of use to you and your staff in developing a fair and equitable allotment system. Again, we appreciate the opportunity to make these comments. If we can be of any further assistance, please do not hesitate to contact us.

Sincerely,

J. Leonard Ledbetter
J. Leonard Ledbetter
Director



JLL:mdg
Enclosure

GEORGIA'S RESPONSE TO COMMITTEE STAFF QUESTIONS
FOLLOWING HEARING OF MAY 25, 1976

Issue 1: Adequacy of the \$5 Billion Construction Grant Authorization

- A. "What will be the effect under the various formulae that have been proposed on your State? How will that enable you to continue, increase or diminish the pace of your program?"

Three basic formulae have been proposed: allotment based 100% on Category I, II, and IVB needs; allotment based 100% on 1990 population; and allotment 50% on needs and 50% on population (Russell Train formula). Georgia has 2.2% of the nation's I, II, and IVB needs and 2.2% of the nation's 1990 population; therefore, its allotment will be essentially the same under all three formulae. We still feel that the Russell Train formula is most fair and equitable to all States. Georgia's grant program is presently geared to obligate approximately \$125 million per year, so the \$110 million we would receive (2.2% of \$5 billion) would allow us to continue the pace of the program with slight diminishment.

- B. "Will you use all of your allotment under these formulas? Under which formulas will you not use all your allotment?"

All of Georgia's allotment will be used under any of the proposed formulae.

- C. "If your allotment is inadequate to maintain your present pace how much more would be needed? Is there another way of giving your State an adequate allotment rather than raising the total?"

Georgia's allotment under the formulae named in A. above would generally be adequate for F.Y. 1977. We must reiterate that an authorization of \$5 to \$7 billion per year for five years would be needed to satisfy our Category I, II and IVB needs. We could expand the program to obligate at the rate of about \$150 million per year if more money were available. Adequate allotment can be made by funding the program for several more years.

- D. "How much employment will be generated in your state by your allotment of the \$5 billion dollars assuming the formula in existence now?"

It is our understanding from EPA and the Utility Contractors Associations that on a national average, about 25,000 primary jobs (on-site) are created by each billion dollars of expenditure, and another 25,000 jobs are created off-site as secondary effects. Assuming the formula in existencenow for allocation of F.Y. 1976 funds, Georgia would receive \$65.4 million. This amount plus the local share of funds would create a total of about 4350 jobs.

- E. "What is the current rate of inflation on the construction industry in your state? Do you expect that rate to continue at that level? For how long? How will that affect your ability to construct projects?"

The current rate of inflation in the construction industry in Georgia is 9.0%. We expect it to continue at that level indefinitely and to proportionately hinder our ability to construct projects.

Issue #2: Validity of Needs and Population as Basis for Allotment

- A. "How reliable do you consider the figures that you submitted to the Environmental Protection Agency in accordance with each of the needs surveys that have been conducted since passage of the 1972 Act? What were these figures based upon?"

The 1974 Needs Survey figures submitted are quite reliable for urban areas (Cities and counties with population exceeding 10,000) and are less reliable for smaller communities. Many of the figures for larger communities were based on reports and assessments by the consulting engineers of those communities, while those for smaller communities were prepared by State staff engineers using EPA guidance and cost curves. The survey data are as good as the EPA guidance and cost curves.

- B. "Did you make an effort to submit only actual needs which met the criteria for cost-effectiveness of Section 201 of the Act?"

Yes, such an effort was made, insofar as it could be done with available resources and within EPA guidance. As cost-effectiveness is defined today, none of the work done in the previous two needs surveys would qualify as a true cost-effectiveness analysis. Again, that is a function of EPA guidance.

- C. "Do you feel that allotment of the funds on the basis of population would provide some states with more money than they either need or could use? Do you feel that allotment on the basis of needs would provide States with more money than they either need or can use? If in fact the needs surveys that have been done are unreliable how can a formula which uses them in part be justified?"

Our discussions with other States and our review of past needs surveys make us believe that every State can use all the money it is allotted under any reasonable formula. If past needs surveys are unreliable, their use can be justified by using only the most reliable portions thereof (generally conceded to be Categories I, II, IVB), and by using those needs as only part of the formula (such as the Train formula).

- D. "How have your yearly allotments changed in the four year experience with the 1972 Act? What has caused these changes?"

Georgia's allotments have increased each year (\$19.5 million in F.Y. 1973, \$29.2 million in F.Y. 1974, \$76.2 million in F.Y. 1975, and \$117.8 million in F.Y. 1976) but have been unpredictable. This variability has been due, obviously, to the earlier impoundment of funds by the President and to the changing allotment formulas.

Issue #3: Distribution of Remaining F.Y. 1976 Funds If No Additional Funds Are Authorized for F.Y. 1977.

- A. "If no new authorization is made available would you favor reallocation among the States? What formula would you propose be used for that reallocation? Would you prefer using the unobligated money to be distributed to specific projects on a first come/first serve basis?"

Georgia does not favor a reallocation among the States if no new authorization is made available, and unobligated money should not be distributed to projects on a first come, first served basis. The F.Y. 1976 allocations are, by existing Federal regulations, available to the States until the end of F.Y. 1977 and must remain so. The fact that most States have not yet obligated all their F.Y. 1976 allocations and will not have completed that task until the later part of F.Y. 1977 is not the fault of the States or the grant applicants. It takes two to four years to move a project, depending on complexity, from the preapplication conference to the Step 3 award due to excessive EPA red tape. Planning for currently available funds needed to begin two to four years ago, but in many cases this could not be done due to the impoundment of funds and uncertainty of future funding levels. Variability of EPA's administration of the grants program from Region to Region also gives some States an unfair advantage of readiness over others, if a first come, first served approach is used. Given until the end of F.Y. 1977, we believe that all States will obligate currently available funds. A reallocation at this time would be insane - this program has had too many shocks already.

Issue #4: Problems with Getting Outlay Funds to Pay Grantees

- A. "Are you experiencing a shortage of funds to make payments to contractors? For what reasons?"

Yes, Georgia is experiencing a shortage of funds to make grant payments. The reason is that EPA Region IV is apparently out of money.

- B. "Has EPA contacted cities in your State to ask them to withhold making payments or to tell you that they are going to withhold making payments on contracts?"

Yes.

- C. "Do you have any indication that the outlay figures suggested by EPA will be adequate for you in the coming months, especially between now and June 30? Between June 30 and October 1? After October 1?"

No.

- D. "How can similar problems be prevented in the future?"

Similar problems can be avoided by better planning on the part of EPA, the Treasury Department, and the Congress. The Congress should authorize a set level of funding each year for a period of several years, and the funds should be allocated by one equitable formula for as many of those years as

possible. EPA, with the cooperation of the States, can then schedule anticipated grant payment levels, and the budget for the program can be set from these projections. No manipulations of the authorizations, allotment formula, and budget should be allowed by any party.

TEXAS WATER QUALITY BOARD

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EXECUTIVE DIRECTOR

PH. (512) 475-2651

1700 NORTH CONGRESS AVE.
P.O. BOX 13246 CAPITOL STATION 78711
AUSTIN, TEXAS

June 2, 1976

Senator Edmund Muskie
Chairman, Subcommittee on
Environmental Pollution
Senate Public Works Committee
Washington, D.C. 20510

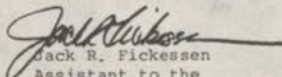
Dear Senator Muskie:

Thank you for the kind remarks in your letter of May 26, 1976, with regard to the State of Texas' testimony before the Subcommittee on Environmental Pollution. I hope that we contributed somewhat in the deliberations underway with regard to the level of funding for the Title II construction grants program during fiscal year 1977 and the allotment of those funds.

I am enclosing this Agency's response to the written questions which you requested be answered and hope that they provide some insight into our situation here in Texas.

Again, thank you for the opportunity you gave us in allowing our testimony to be heard by the Subcommittee. If I can be of any further assistance, please do not hesitate to call on me.

Sincerely,


Jack R. Fickessen
Assistant to the
Executive Director

Enclosure

TEXAS

1. ISSUE: Adequacy of the \$5 billion dollar construction grant authorization.

EPA initially requested from OMB \$7 million dollars for construction grants based upon the amount available for allotment (release of impounded funds) in FY 1976. The Committee settled on \$5 billion with the understanding that it would provide sufficient funds to each State for them to continue their program at the present pace during FY 1977.

Question: What will be the effect under the various formulae that have been proposed on your State?

Answer: The State would receive the following percentages under the various formulae:

1. 1990 population -- 5.33% of total
2. 50% population/50% needs (Cat. 1, 2, 4b) -- 4.85% of total
3. 50% partial needs (Cat. 1, 2, 4b), 25% total needs, 25% population -- 4.27% of total
4. 100% partial needs (Cat. 1, 2, 4b) -- 4.33% of total
5. 100% all needs -- 1.53% of total

Question: How will that enable you to continue, increase or diminish the pace of your program?

Answer: Because of the small amount of funds Texas has been allotted since the passage of PL 92-500, any of the funding mechanisms other than 100% of all needs (Categories 1 - 6) would provide an increase in funds utilizing a total of \$5 billion.

Question: Will you use all of your allotment under these formulas? Under which formulas will you not use all your allotment?

Answer: Yes, we currently have in excess of \$750 million in projects on our priority list and could use all of any allotment up to that amount of money. None of the proposed formulas would give Texas enough to meet the projects which we have on our priority list.

Question: If your allotment is inadequate to maintain your present pace how much more would be needed?

Answer: As was explained earlier, any allotment formula except 100% of all needs would provide enough money to maintain our present pace because it has slowed so much; however, it would not come close to meeting our priority list of projects.

Question: Is there another way of giving your State an adequate allotment rather than raising the total?

Answer: Yes, a reallocation of the unexpended \$9 billion which was allocated to the States in January by the EPA.

Question: How much employment will be generated in your state by your allotment of the \$5 billion dollars assuming the formula in existence now?

Answer: None, because the present allotment formula would not increase the amount of dollars to the State. In fact, because of inflation, it would be less than what we have received in the past.

Question: What is the current rate of inflation on the construction industry in your state?

Answer: The current rate of inflation for the construction industry is approximately 10% per year in Texas.

Question: Do you expect that rate to continue at that level?

Answer: It is expected to remain at that level.

Question: For how long?

Answer: The expected continuance of the 10% rate is unknown.

Question: How will that affect your ability to construct projects?

Answer: If the funding levels remain stable each year and inflation continues it will penalize our program in two ways:

1. improvements in water quality would slow, and
2. the total effort will cost more to complete.

2. ISSUE: The proposals that have been offered for allotment of the \$5 billion dollars are either needs-based or population-based or some combination thereof. Much of the discussion of the witnesses will center on the validity of the needs approach and the validity of the population approach. In that regard the 1972 Act represented a departure when it moved to a needs based formula from all of the pre-existing acts which distributed money on the basis of population.

Question: How reliable do you consider the figures that you submitted to the Environmental Protection Agency in accordance with each of the needs surveys that have been conducted since passage of the 1972 Act? What were these figures based upon?

Answer: The 1973 Survey conducted by the EPA did not reflect the true needs due to the limitations placed upon the reporting entities in the guidelines. The 1974 Survey allowed the maximum possible needs without specific consideration of developed basin/areawide plans.

Question: Did you make an effort to submit only actual needs which met the criteria for cost-effectiveness of Section 201 of the Act?

Answer: The survey guidelines required the cost-effective analysis and Texas complied to the best of our ability. It is not felt that this requirement would significantly change the cost of the needs reported except under Category 6.

Question: Do you feel that allotment of the funds on the basis of population would provide some states with more money than they either need or could use?

Answer: At some point in time it would possibly occur that this might happen; however, the same situation could exist under the needs approach. In either case, the law has a provision for reallocating unobligated funds if they are not used.

Question: Do you feel that allotment on the basis of needs would provide States with more money than they either need or could use?

Answer: This is a possibility -- the same as could exist by allotting funds on a population basis. In fact, we feel that a portion of the \$9 billion which was allotted in January on the basis of "needs" will be subject to reallocation because in some cases, states which received the bulk of that money will not be able to spend it fast enough.

Question: If in fact the needs surveys that have been done are unreliable, how can a formula which uses them in part be justified?

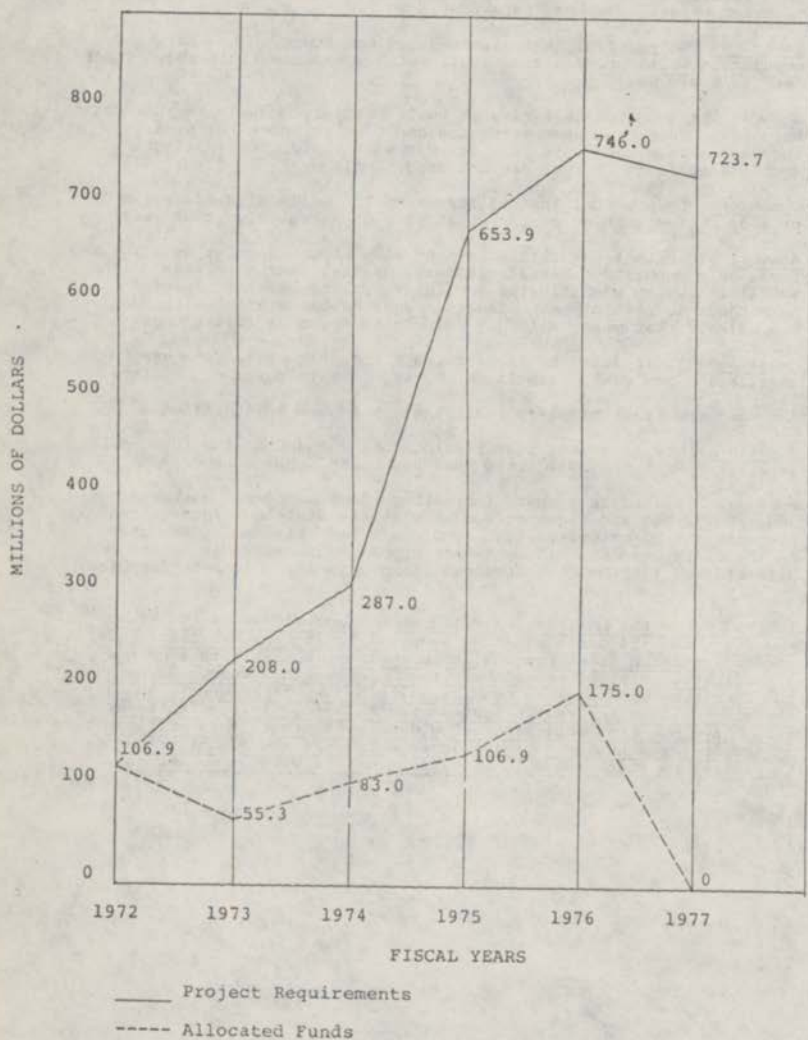
Answer: The State of Texas feels that it cannot be justified.

Question: How have your yearly allotments changed in the four years experience with the 1972 Act? What has caused these changes?

Answer: Attached is a chart indicating the funds Texas has received under PL 92-500 and a comparison of what the state has in required projects on the priority list. There are two reasons for the change in the dollar amounts: (1) the amount of funds available to be allotted and (2) the Congressional changes in the allotment formulae.

3. ISSUE: Given the political difficulties associated with the House amendment and the Administration's opposition to any new funding for the construction grant program it is entirely possible that no new authorization will be provided by the Congress this year. Maybe then the Committee will have to consider alternative approaches. Among the alternatives are reallocation at the end of FY 1976 of whatever funds have not been obligated (should be approximately \$9 billion) to the States. Another opinion is to authorize the Administrator to distribute these funds to specific projects without making an

TEXAS
P.L. 92-500 GRANT
REQUIREMENT AND ALLOCATION
COMPARISON



allotment to the States -- on a first come/first served basis. Both of these would insure that the money that is available will get to the States and the projects that are ready to use them.

Question: If no new authorization is made available, would you favor reallocation among the States?

Answer: Yes, if no authorization is made.

Question: What formula would you propose be used for that reallocation?

Answer: A formula based upon the projected 1990 population of each State.

Question: Would you prefer using the unobligated money to be distributed to specific projects on a first come/first serve basis?

Answer: No, definitely not on a nationwide basis by EPA. The problems of deciding who was first, as well as politics entering into those decisions, does not lend itself to a program such as this. We have witnessed what can happen with political pressure with regard to EPA's handling of grant funds in February, 1973, when millions of dollars in grants were awarded to projects in order that they could be funded before user charge requirements were mandatory.

4. ISSUES: Recently a problem arose with the Appropriations Committee outlay ceilings. Many States apparently are in a serious bind in getting their outlay funds to pay off their contractors, and have been requested by EPA to hold off in payment on the large projects until beginning of our next fiscal year.

Question: Are you experiencing a shortage of funds to make payments to contractors? For what reasons?

Answer: Yes, due to limitations placed on outlay payments by EPA. Most Cities cannot realign their funds to support non-payment of the Federal share, or are limited in their ability to realign their funds. We are attaching a letter which was sent to Mr. Russell Train expressing our concerns over this problem.

Question: Has EPA contacted cities in your State to ask them to withhold making payments or to tell you that they are going to withhold making payments on contracts?

Answer: Yes.

Question: Do you have any indication that the outlay figures suggested by EPA will be adequate for you in the coming months, especially between now and June 30? Between June 30 and October 1? After October 1?

Answer: Between now and June 30 we know that the funding levels in Texas will be inadequate in that EPA has requested approximately 25 cities to withhold submission on payment requests until after that date. Between June 30 and October 1, we have no idea of what will be requested by the Administration for appropriation levels. We have heard rumors to the effect that the level of requested appropriations during this period of time may fall short by some \$75 million, which could create the same problems in September that cities are presently experiencing.

Question: How can similar problems be prevented in the future?

Answer: By the Congress taking a more active role in determining the level of funds needed to liquidate their contractual obligations.

5. ISSUES: The 1975 needs survey submitted by the States added combined sewer overflow and stormwater treatment costs and resulted in many instances in greatly inflated needs. In order to avoid the skewing of state allotment ratios the EPA adopted regulations allotting half of available funds on a specifically limited formula -- the partial needs categories.

Question: Is "the partial needs" concept an effective or equitable method of controlling the compilation and use of stated needs?

Answer: As stated earlier, Texas does not feel that any method which incorporates needs is effective because there is no mechanism to determine the true needs. We do think that if needs must be used, the partial needs concept is a much more equitable method.

Question: Should "total needs" continue to be employed in allotment formulas?

Answer: No.

Question: Can you suggest a more effective or equitable method of compiling needs and allocating funds using the needs concept?

Answer: Yes, areawide planning under Section 208 of the Act will provide a mechanism for establishing needs.

Question: Excluding toxics, after the 1977 technological goal of secondary treatment is achieved (at whatever date), would it be feasible to allot further construction grant funding on the basis of what is needed to attain the 1983 "fishable-swimmable" standard?

Answer: Yes, provided that the so-called "fishable-swimmable standard" could be achieved by using those grant funds.

Question: Would such an approach better focus our municipal sewage construction effort toward the goal of improving water quality?

Answer: Yes, provided that funds are available to insure that municipalities who discharge to streams which are already "fishable-swimmable" are not precluded from receiving funds to insure those waters are not degraded.

Question: Could Section 208 planning be used as a basis for determining these water quality needs over the long-range?

Answer: Yes.

Question: What steps is your State taking to utilize less capital-intensive solutions to municipal waste treatment, for example physical-chemical methods and improved land application, instead of conventional primary-secondary-tertiary engineering works?

Answer: The State currently utilizes the facility plans developed under a Step I grant to insure that cost-effective solutions are utilized. In the future, the State will utilize Section 208 areawide plans to insure cost-effectiveness.

TEXAS WATER QUALITY BOARD

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1100 NORTH CONGRESS AVE.
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AUSTIN, TEXAS

May 20, 1976

Mr. Russell Train, Administrator
U. S. Environmental Protection Agency
401 M Street SW
Washington, D.C. 20460

Dear Mr. Train:

Representatives from the State of Louisiana have contacted me regarding the cash-flow crunch that now exists in the Construction Grants Program. Projects in Louisiana, like those in the other states in this region, are being adversely impacted. I understand the large sewage treatment facility project in New Orleans, in particular, is being severely impacted and construction is now stopped or will have to be stopped.

The representatives from Louisiana have asked me, as the member of the State-Federal Water Programs Advisory Committee from this region, to check into what can be done about this problem--both in terms of the immediate problem and in terms of precluding a recurrence. As we understand the situation, there is an insufficient amount of cash remaining in the 1976 fiscal year balance to pay on a timely basis obligations as they occur, thus necessitating a deferral of payment until the so-called transition quarter. From this understanding, we derive several concerns: (1) Is the cash shortage a non-recurring event which will not occur again?, (2) How are we sure that an adequate cash authorization is forthcoming for the transition quarter and beyond?, and (3) Is the problem one of predicting cash-flow and, if so, can the states help EPA in making more adequate cash-flow projections?

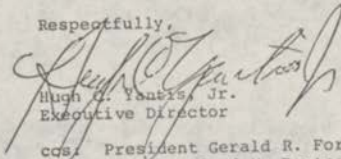
In Texas our communities have been able, by working with Region VI, to accommodate this problem. Apparently, this has not been the case in Louisiana. We have no knowledge of the severity of the impact of this problem in other states and areas of the nation. In any event, in Texas we have approximately 25 communities which will be paid only about 10 to 15 percent of the amount due until July 1, 1976, when the new transition quarter commences. If this is a one-time event, Texas communities have been inconvenienced but not severely harmed. Should this recur, I am sure our communities will have a considerably lessened interest in working out the problem on an amicable basis.

Mr. Russell Train
May 20, 1976
Page 2

I am therefore requesting that you advise me as quickly as possible what can be done about the immediate problem, and what the states can do to help avoid future problems. In this connection, I think it would be worthwhile to call immediately a meeting of the State-Federal Water Programs Advisory Committee to delve into this problem and its resolution.

A copy of this letter is being sent to President Ford so that he will be apprised should his office be required to resolve the problem.

Respectfully,


Hugh C. Pantis, Jr.
Executive Director

cqs. President Gerald R. Ford
Senator Lloyd M. Bentsen
Senator Pete V. Domenici
Senator Joseph M. Montoya
Representative James C. Wright
Representative Ray Roberts
Representative Dale Milford
Representative John B. Breaux
Representative John Paul Hammerschmidt
Mr. S. Ladd Davies, Director
Department of Pollution Control & Ecology, Arkansas
Mr. Robert Lafleur, Executive Secretary
Stream Control Commission, Louisiana
Mr. James F. Coerver, Director
Bureau of Environmental Health
Louisiana Health & Human Resources Administration
Mr. John Wright, Chief of Water Quality Division
Environmental Improvement Agency, New Mexico
Mr. Charles Newton
Department of Health, Oklahoma
Mr. John C. White, Regional Administrator
Environmental Protection Agency - Region VI
Members of the State-Federal Water Programs Advisory Committee

STATE WATER RESOURCES CONTROL BOARD

BOICM YDIX RESOURCES AGENCY
 MONITORING RESOURCES AGENCY
 P. O. Box 100
 Sacramento, CA 95801
 (916) 445-7971



In Reply Refer
 to: 540:AW

JUN 18 1976

Honorable Edmund S. Muskie, Chairman
 Subcommittee on Environmental Pollution
 Committee on Public Works
 United States Senate
 Washington, D.C. 20510

Dear Senator Muskie:

Thank you for your May 26, 1976, letter requesting responses to committee questions concerning allotment of the authorized funds for construction grants. My responses are attached following the issue and question to which they are addressed.

I have formulated these responses on the basis of two major premises. They are: (1) the amount authorized for allocation will be \$5 billion, and (2) Federal eligibility criteria will remain essentially unchanged. The California Water Resources Control Board has some flexibility with its policies concerning collector sewers and second grants for capacity. This flexibility would help us cope with limited perturbation of the above two "fixed" parameters.

I appreciate this opportunity to offer my responses to these questions. If I can provide any additional information, please let me know.

Sincerely,

Bill B. Dendy
 Executive Officer

Attachment

ATTACHMENT

1. Adequacy of the \$5 billion construction grant authorization. EPA initially requested from OMB \$7 million for construction grants based upon the amount available for allotment (release of impounded funds) in F.Y. 1976. The Committee settled on \$5 billion with the understanding that it would provide sufficient funds to each state for them to continue their program at the present pace during F.Y. 1977.

- a. What will be the effect under the various formulae that have been proposed on your state? How will that enable you to continue, increase or diminish the pace of your program?

None of the formulae would slow our pace during F.Y. 1977 so long as the \$9 billion released by the Supreme Court remains available and is not reallocated among the states. Formulae which would allot less to California would slow California's pace after October 1, 1977.

- b. Will you use all of your allotment under these formulas? Under which formulas will you not use all your allotment?

We plan to use our total allotment under every formula. We will be moving at a pace to commit the maximum amount, and we will build up a backlog of approvable projects if a smaller allotment is made.

- c. If your allotment is inadequate to maintain your present pace how much more would be needed? Is there another way of giving your State an adequate allotment rather than raising the total?

Allotments received to date, including the funds recently released by the Supreme Court, are adequate to maintain California's present pace until October 1, 1977. Future annual authorizations of \$8 billion to \$9 billion will be necessary, assuming California will receive approximately nine percent of this amount to sustain the present pace in California. Authorizations of that amount are also required, according to the inflation multiplied figures from the 1974 needs survey to achieve secondary treatment by 1982.

- d. How much employment will be generated in your State by your allotment of the \$5 billion dollars assuming the formula in existence now?

Assuming California would receive 9.32 percent of \$5 billion, 4,140 jobs would be created in the construction industry. This figure represents only construction workers as actually reported on Federal EEO forms. From a study done by a California state agency, a figure of 2.5 to 1 has been developed to reflect the actual number of persons employed. This would be 10,350 jobs and would include everyone connected with the project including laborers, foremen, superintendents, project managers, secretaries, payroll personnel, safety officers, EEO officers, etc. It would not include off-site equipment manufacturers or off-site commercial materials suppliers (concrete, asphalt concrete, etc.) and their delivery truck drivers.

- e. What is the current rate of inflation on the construction industry in your state? Do you expect that rate to continue at that level? For how long? How will that affect your ability to construct projects?

Based on the Engineering News-Record Construction Cost Indexes for California, construction costs are escalating about 13 percent a year. It is anticipated this rate will continue for the short term. While governmental policies may reduce monetary inflation in the future, an improved economic climate would increase construction activity and result in increased construction costs due to higher demand. Long-term construction cost escalation cannot be predicted, but it would be expected to follow national trends in costs. Inflation reduces our ability to construct projects by eroding the value of dollars allotted to pollution control. Water pollution control bonds approved by California voters in 1974 will now purchase 20 percent less wastewater treatment facilities than at the time of election.

2. The proposals that have been offered for allotment of the \$5 billion dollars are either needs-based or population-based or some combination thereof. Much of the discussion of the witnesses will center on the validity of the needs approach and the validity of the population approach. In that regard the 1972 Act represented a departure when it moved to a needs based formula from all of the pre-existing acts which distributed money on the basis of population.

- a. How reliable do you consider the figures that you submitted to the Environmental Protection Agency in accordance with each of the needs surveys that have been conducted since passage of the 1972 Act? What were these figures based upon?

In our experience, category I and II costs (treatment) are very reliable. Category IV costs (collector and interceptor sewers) are somewhat less reliable, but still acceptable. The remaining categories — III: infiltration-inflow correction and sewer system rehabilitation, V: correction of combined sewer overflows, and VI: treatment and control of storm waters — are extremely difficult to estimate without extensive studies of each individual system. Models or other generalized concepts provide unacceptable accuracy. California has a high level of confidence in the results of the 1973 needs survey. The relaxation of reporting requirements permitted during the 1974 survey lessened the reliability of the data collected for that survey. Reliance upon generalized cost estimating procedures results in less reliable figures than those which can be obtained by contacting persons experienced with a given location. California was able to utilize the latter approach during the 1973 survey and hopes to utilize similar input for the 1976 survey.

- b. Did you make an effort to submit only actual needs which meet the criteria for cost-effectiveness of Section 201 of the Act?

The question is unclear as to cost effectiveness; however, the published survey instructions were followed. Cost effectiveness analyses have not yet been completed in numerous areas where water quality problems require pollution abatement measures. Needs reported for these areas were based upon analyses which have been completed for similar areas.

- c. Do you feel that allotment of the funds on the basis of population would provide some states with more money than they either need or could use? Do you feel that allotment on the basis of needs would provide States with more money than they either need or can use? If in fact the needs surveys that have been done are unreliable, how can a formula which uses them in part be justified?

California has adequate needs and staffing to allocate funds allotted on either basis. An allocation based solely on population would not initially provide excess funds

to any state. Eventually, however, states with population concentrations which permit collection and treatment economies of scale may have excess funds in comparison to more rural states. Allocations based on needs should be approached with caution concerning the accuracy of the reported needs. California's position is that needs surveyed in categories I, II and IVB have reasonable reliability and should continue to be utilized as bases of allocation.

- d. How have your yearly allotments changed in the four year experience with the 1972 Act? What has caused these changes?

California's allocations, and the bases therefore are summarized below:

F.Y. 1973 -- \$196,352,000 (9.8176% of \$2 billion allotted from Table III of House Public Works Committee Print #92-50)

F.Y. 1974 -- \$294,528,000 (9.8176% of \$3 billion allotted from Table III of House Public Works Committee Print #92-50)

F.Y. 1975 -- \$457,420,100 (11.6340% of \$4 billion allotted 50% from Table I and 50% from Table II of House Public Works Committee Print #93-28)

F.Y. 1976 -- \$945,776,800 (based upon a rather involved procedure documented in the Federal Register, Vol. 40, No. 40 -- Thursday, February 27, 1975)

3. Given the political difficulties associated with the House amendment and the Administration's opposition to any new funding for the construction grant program, it is entirely possible that no new authorization will be provided by the Congress this year. Maybe then the Committee will have to consider alternative approaches. Among the alternatives are reallocation at the end of F.Y. 1976 of whatever funds have not been obligated (should be approximately \$9 billion) to the States. Another option is to authorize the Administrator to distribute these funds to specific projects without making an allotment to the States -- on a first come/first served basis. Both of these would insure that the money that is available will get to the States and the projects that are ready to use them.

If no new authorization is made available would you favor reallocation among the States? What formula would you propose be used for that reallocation? Would you prefer using the unobligated money to be distributed to specific projects on a first come/first serve basis?

California would strongly oppose a reallocation of the \$9 billion released by the Supreme Court. We would even more strongly oppose the distribution of unobligated money to specific projects on a first come/first served basis. In California, public hearings are held by a Regional Board and then by the State Board before the priority list is finally adopted by the State Board. The California projects on which the State share of the \$9 billion will be spent entered the plan of study phase more than a year ago, facility plans for most projects were started 9 months ago and most projects are into the design stage. By June 30, 1976, present scheduling shows that \$300 million of the California allotment will have been committed and the State will have full commitment prior to the September 30, 1977, deadline. A comprehensive strategy has been developed by the California State Water Resources Control Board to assure full commitment; therefore, California would strongly oppose disruption to our program at this late stage.

4. Recently a problem arose with the Appropriations Committee outlay ceilings. Many States apparently are in a serious bind in getting their outlay funds to pay off their contractors, and have been requested by EPA to hold off in payment on the large projects until beginning of our next fiscal year.

- a. Are you experiencing a shortage of funds to make payments to contractors? For what reasons?

Yes, lack of Federal cash has been a concern. EPA, Region IX, funds, according to our calculations, were fully expended on March 23, 1976. They received a reallocation of \$2 million from other EPA regions in early April and made a limited number of payments. The remainder of the Federal payments (35 grantees had a total of nearly \$12 million withheld) were made April 22 and 23, so some grantees had payments withheld for about 30 days. However, as far as we know, these payment delays have caused no major difficulties for California agencies.

- b. Has EPA contacted cities in your State to ask them to withhold making payments or to tell you that they are going to withhold making payments on contracts?

No.

- c. Do you have any indication that the outlay figures suggested by EPA will be adequate for you in coming months, especially between now and June 30? Between June 30 and October 1? After October 1?

From the present through June 30, the outlay will be inadequate since Region IX was out of funds as of June 9th. Payments to California agencies were limited to \$300,000 per project from April 24, 1976, until May 15, 1976, and to \$1,500,000 per project since then. Any payments limited to the \$300,000 were, of course, paid up to the \$1,500,000 on May 15. Only one agency has been affected since the increase to \$1,500,000, but normally several payments of that amount are made each quarter.

We cannot comment on the outlay figures for the future as we do not know the projected amounts.

- d. How can similar problems be prevented in the future?

If a contingency fund of some type could be established to cover unforeseen expenditures, it would greatly ease the problem. Accurate projections are very difficult as Federal payments in California have ranged from a low of less than \$4 million per month to a high of nearly \$27 million in the last two years. There seems to be no logical seasonal or other variation that can be accurately predicted. However, it can be expected that there will be a significant increase in requests for payment in the near future since a number of very large projects are in the construction bidding stage.



STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DAVID J. BARDIN, COMMISSIONER
P. O. BOX 1390
TRENTON, N. J. 08625
609-292-2885

June 24, 1976

Honorable Edmund S. Muskie
United States Senate
Chairman, Subcommittee on
Environmental Pollution
Committee on Public Works
Washington, D.C. 20510

Dear Senator Muskie:

At the request of Commissioner Bardin, I am enclosing detailed answers to the questions you posed on the construction grants program.

We appreciate this opportunity to aid in your deliberations. Please do not hesitate to contact me if you should require any additional information.

Very truly yours,

A handwritten signature in cursive script, reading "Rocco D. Ricci".

Rocco D. Ricci, P.E.
Deputy Commissioner

Enclosure

Response of New Jersey
Department of Environmental Protection

Questions on Authorization and Allotment
As Requested May 26, 1976 by
U. S. Senate Committee on Public Works
Subcommittee on Environmental Pollution

Issue I - Adequacy of a \$5 Billion Construction Grant
Authorization

- a) What will be the effect under the various formulas that have been proposed on your State? How will that enable you to continue, increase or diminish the pace of your program?
- b) Will you use all of your allotment under these formulas? Under which formulas will you not use all your allotment?
- c) If your allotment is inadequate to maintain your present pace how much more would be needed? Is there another way of giving your State an adequate allotment rather than raising the total?

New Jersey anticipates using all funds currently available by the end of calendar year 1976. We would require an allotment of \$300 million in fiscal 1977, over and above funds currently available, to maintain our current pace. None of the proposed allotment formulas, applied to a fiscal 1977 authorization of \$5 billion, will provide this adequate level of funding.

Our actual needs for fiscal 1977 would amount to six percent of the proposed \$5 billion Senate authorization. The various formulas (using the 1974 needs survey where relevant) would result in lesser allotments to New Jersey as follows:

	<u>Formula</u>	<u>% of National Totals</u>
1.	100% partial needs (Categories I, II and IV-B)	5.62
2.	100% total needs	4.56
3.	50% total needs +50% partial needs	5.09

	<u>Formula</u>	<u>% of National Totals</u>
4.	25% 1990 population +50% partial needs +25% total needs	4.81
5.	50% 1990 population +50% partial needs	4.53
6.	50% 1990 population +50% total needs	4.00
7.	100% 1970 population (U.S. Census)	3.54
8.	100% 1990 population	3.44

Reallotting all funds which have not been obligated by states by the end of fiscal 1976 might give New Jersey an adequate allotment without raising the total authorization depending on the amount of money that is available for reallotment and on the formula used to reallot these funds.

- d) How much employment will be generated in your state by your allotment of the \$5 billion dollars assuming the formula in existence now?

The \$254.4 million which New Jersey would receive under the current formula, applied to an authorization of \$5 billion, would contribute 75% of total project costs of \$339.2 million. Using data from the state Department of Labor and Industry this construction would generate approximately 18,500 jobs.

- e) What is the current rate of inflation on the construction industry in your state? Do you expect that rate to continue at that level? For how long? How will that affect your ability to construct projects?

According to the New Jersey Utility Contractors Association the current rate of inflation in New Jersey on the utility construction industry is currently 5 to 6% per year and is expected to continue at a rate of 5 to 8% per year over the next two years.

Issue II - Proposals Offered for Allotment of \$5 Billion

- a) How reliable do you consider the figures that you submitted to the Environmental Protection Agency in accordance with each of the needs surveys that have been conducted since passage of the 1972 Act? What were these figures based upon?

The degree of reliability is dependent upon the stage of development of each project. The 1973 and 1974 needs surveys reflected, in many cases, estimates based upon early stages of development. For these projects, the degree of reliability was not as great as it was for projects where the plans and specifications were completed. The 1976 Needs Survey which has recently gotten underway will reflect a higher degree of reliability since a greater percentage of projects will have proceeded to a later stage of development.

Figures were supplied by consulting engineers for the sewerage agencies, which then were evaluated by state and EPA staff. EPA cost curves were used to assist in assessing these estimates.

- b) Did you make an effort to submit only actual needs which met the criteria for cost-effectiveness of Section 201 of the Act?

An effort was made to submit "actual" needs in accordance with the cost-effectiveness requirement of Section 201 where 201 studies were completed.

- c) Do you feel that allotment of the funds on the basis of population would provide some states with more money than they either need or could use? Do you feel that allotment on the basis of needs would provide States with more money than they either need or can use? If in fact the needs surveys that have been done are unreliable, how can a formula which uses them in part be justified?

Distribution of funds on the basis of population figures may result in some states receiving more money than they need or could use. Absolute population figures do not necessarily correlate with water pollution abatement needs (although the use of population density and urbanized area population probably correlate more accurately to water pollution problems).

Segments of the population live in rural and ex-urban areas which do not need sewers for the foreseeable future because septic tanks are more appropriate for sewage disposal. Including these people in the population base thus exaggerates the capital needs of the state for wastewater facility construction.

The use of population alone does not take into account the need to treat industrial effluent discharged through municipal systems. In New Jersey there are many industries which discharge their wastes in this manner. The need to treat this industrial segment of the wastewater is obvious but is ignored by a population based formula.

If a population based formula is used a population which is served by projects which already have been built will again be counted toward figuring the state allocation. Thus, the needs of a state would be overestimated.

It is possible that variables in the needs surveys could result in some states receiving surplus money. However, it might be desirable to control the variables in the surveys and use the results for the long-range financial planning of facilities.

- d) How have your yearly allotments changed in the four year experience with the 1972 Act? What has caused these changes?

Since the passage of P. L. 92-500 New Jersey has been allotted: \$154.1 million in fiscal 1973, \$231.1 million in fiscal 1974, 254.7 million in fiscal 1975 and \$660.8 million in fiscal 1976. The changes in allotments were caused by changes in the formula and by the release of funds formerly impounded by the President.

Issue III - Proposed Use of Available Funds on First Come/
First Served Basis

- a) If no new authorization is made available would you favor reallocation among the States? What formula would you propose be used for that reallocation? Would you prefer the unobligated money to be distributed to specific projects on a first come/first serve basis?

If no new authorization is made, only reallotment to the states could provide the needed funding continuity for the grants program. All funds not obligated (or certified to EPA) by the end of fiscal 1976, including fiscal 1975 funds, would "return" to EPA for reallotment. The concept of first come/first served set forth by the question has much merit if appropriately implemented. Implementation could appropriately rely upon New Jersey's successful experience with an analogous "construction readiness" system to allocate all available funds. This first come/first served system is equally applicable to any new authorization of funds or to a reallotment of existing funds.

Prior to each fiscal year the New Jersey Department of Environmental Protection establishes a Project Priority List based upon relative pollution abatement needs. The methodology is described in Appendix A of the enclosed draft NJDEP Water Pollution Control Program for fiscal 1977.

The Priority list also separates the needed projects into two categories: (a) those projects which are expected to be ready to initiate construction during the fiscal year, and (b) those projects which will be ready in subsequent fiscal years. The first category represents New Jersey's actual funding requirements for that fiscal year. During the fiscal year the progress of projects to be funded is reviewed quarterly to determine if the projects are making sufficient progress to receive a federal grant by the end of the fiscal year. Deviation from an acceptable implementation schedule will result in deferral of a project's funding to a later fiscal year. Each deferral releases funds to be used for other projects which will be ready to proceed within the fiscal year. This first come/first served concept is detailed on page A-11 of the enclosed draft NJDEP Water Pollution Control Program.

This system can be adapted to allot construction grant funds to the states. Congress could require all states to submit to EPA a list of their actual needs for the coming fiscal year together with project implementation schedules for listed projects. Funds should be tentatively allotted for the year to meet anticipated actual needs with EPA policing on a quarterly basis to assure readiness in fact.

Where projects are not ready to proceed, EPA could allot funds to other projects within a state where there is a probability that the schedule for a specific project will not be met, or to allot funds to another state if no other projects within the state will be able to utilize the available funds. Step 1 and 2 projects should also be included on the list for funding on the basis of readiness to proceed.

Issue IV - Outlay Funds

- a) Are you experiencing a shortage of funds to make payments to contractors? For what reasons?
- b) Has EPA contacted cities in your State to ask them to withhold making payments or to tell you that they are going to withhold making payments on contracts?
- c) Do you have any indication that the outlay figures suggested by EPA will be adequate for you in the coming months, especially between now and June 30? Between June 30 and October 1? After October 1?

At the present time there does not appear to be a significant shortage of funds to make payments to contractors in New Jersey. While EPA has not contacted grantees in the State requesting them to withhold payments, nor have they told us that they intend to withhold payments, EPA has indicated that outlay funds may not be adequate in the coming months.

- d) How can similar problems be prevented in the future?

These problems could be prevented in the future by better management and monitoring of project implementation schedules by all levels of government. This will greatly assist in calculating when expenditures will be necessary and will assist EPA in requesting appropriations.

Issue V - Use of Needs in Allotment Formulas

- a) Is "the partial needs" concept an effective or equitable method of controlling the compilation and use of stated needs?
- b) Should "total needs" continue to be employed in allotment formulas? Can you suggest a more effective or equitable method of compiling needs and allocating funds using the needs concept?

We propose that total needs be used as the basis for long-term financial planning. However, actual needs, as determined annually on the basis of readiness to proceed, should be the basis for annual funding. This proposal is discussed under Issue III.

Issue VI - Funding to Achieve Water Quality Standards

Excluding toxics, after the 1977 technological goal of secondary treatment is achieved (at whatever date), would it be feasible to allot further construction grant funding on the basis of what is needed to attain the 1983 "fishable-swimmable" standard?

- a) Would such an approach better focus our municipal sewage construction effort toward the goal of improving water quality?

By the time all municipal dischargers are providing secondary treatment, water quality management planning may be advanced to the point where we can determine what is needed to meet the 1983 "fishable-swimmable" standard. In any event, New Jersey requires considerably more than one year funding to achieve secondary treatment for all dischargers.

- b) Could Section 208 planning be used as a basis for determining these water quality needs over the long-range?

Section 208 planning perhaps could be used as the long-range planning tool which will help to provide information as to where our resources will best be placed to solve our long-range water pollution problems. However, the 208 planning timetable makes it virtually inconceivable that this tool really could help in making construction funding decisions before fiscal 1979.

Issue VII - Alternative Waste Management Techniques

What steps is your State taking to utilize less capital-intensive solutions to municipal waste treatment, for example physical-chemical methods and improved land application, instead of conventional primary-secondary-tertiary engineering works?

The DEP will be looking to Section 208 planning to determine those areas of the state best served by septic tanks. The planning will look to the establishment of septic tank disposal districts for regulation and management.

At the present time New Jersey has several modest land disposal projects. They are being used to develop design and operating criteria for such projects statewide. Additionally, the DEP is exploring alternative methods of sludge disposal.



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June 9, 1976

Honorable Edmund S. Muskie
Chairman, Subcommittee on
Environmental Pollution
United States Senate
Washington, D.C. 20510

Dear Senator Muskie:

Thank you for your letter of May 26 and the opportunity to testify before your subcommittee on the best method for allotting the five billion dollar authorization for construction grants. I will attempt to answer the questions raised on the various issues which were attached to your letter.

1. ISSUE: Adequacy of the \$5 billion dollar construction grant authorization.

A \$5 billion dollar authorization will mean that Maine must reduce its construction grant program no matter what formula for distribution is used. The formula based on categories 1, 2 and 4b is the most advantageous to the State of Maine. The table below indicates the percent of total grant and the dollar amount to be received by the State of Maine for several different formulae.

Federal Funding Formulae Based on \$5 billion

50% Needs (Cat. I, II, IVB)	0.5174%
<u>50% Population</u>	\$25,870,000
Needs (Cat. I, II, IVB)	0.5892%
	\$29,460,000
Needs (Cat. I-V)	0.53600%
	\$26,800,000

Population (1990)	0.4457%
	\$22,285,000
Needs	
75% (I, II, IVB)	0.5533%
<u>25% Population</u>	\$27,665,000
Needs	
75% (I-V)	0.5134%
<u>25% Pop.</u>	\$25,670,000
50% (I, II, IVB)	
25% (I-V)	0.5400%
<u>25% Population</u>	\$27,000,000

The State of Maine will be able to use all of its allotment under any of the formulae proposed.

The State of Maine should have \$40 million dollars per year in order to maintain the present pace of our program. At even this rate our construction program will extend to 1983. One way of increasing the allotment to states with an actual need would be to distribute the funds based on the needs listed in category 1, 2 and 4b. The ability for EPA to reallocate dollars not spent in other states more promptly would also be beneficial.

The estimates for employment generated by the program used by EPA would probably hold true in the State of Maine with the exception that employment might be above that estimated by EPA due to the large amount of work included in each project which is ineligible for federal funds.

The current rate of inflation is about 8% per year for materials. However, recent bids on sewer contracts have been less than engineers estimates because of the economic climate in the country at the present time. The treatment plants and pump stations bids have been close to the engineers estimate. We have no idea how long the present bid results will continue. If the economy improves the bids may not be as favorable in the future.

2. ISSUE: Allotment of \$5 billion based on needs, population, or combination of needs and population.

It is our view that of all of the formulae proposed for distribution of the funds the formula based strictly on basic needs is most equitable on a nationwide basis.

We believe that the numbers submitted by us to EPA are very reliable. The numbers submitted by the State of Maine were generated from preliminary engineering reports on file in our office.

We were not able to submit only actual needs which necessarily met the criteria for costs effectiveness of Section 201 of the Act as many of the preliminary reports used had been completed prior to October 1972.

We believe that the allotment of funds based upon population is unfair and inequitable to states like Maine. We believe that needs is the only equitable way to provide funds to clean up the nations' waterways by basing the needs formula upon categories I, II, and IVB. We do not believe that the needs surveys that have been done are as unreliable as EPA, Washington would have Congress believe.

Our percentage of the national allotment has decreased each time a needs survey was done. Maine's percentage of the national allotment in FY 73 and 74 was 0.9675 percent and in FY 75 was 0.6870 percent. The FY 73 allotment was \$19,350,000; the FY 74 allotment was \$29,025,000; FY 75 allotment was \$26,227,000; and the release of the impounded funds provided \$78,495,000. The changes have been caused by President Nixon's impoundment and the results of the 1973 and 1974 needs survey.

3. ISSUE: Reallotment of funds.

If no authorization is made available, we would favor a reallotment among the states. We propose that the needs formula for categories I, II, and IVB, be used for the reallotment. We would not prefer the unobligated money to be used for specific projects on a first come, first serve basis, because it would be hard to convince municipalities to appropriate their share of the project costs unless they were assured they would receive the Federal funds. States also would not be able to plan their projects ahead on a haphazard basis.

4. ISSUE: Outlay funds.

We have not experienced a shortage of funds to make payments to contractors.

EPA has not contacted cities in our State to ask them to withhold making payments or to tell us that they are going to withhold making payments to contracts.

We have no indication that the outlay figures suggested by EPA will not be adequate between now and October 1.

The "partial needs" concept is not an equitable method of controlling the compilation and use of stated needs. Total needs should not be used in allotment formulas. Categories I, II, and IVB needs would be more equitable.

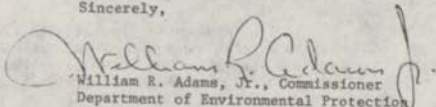
It would be feasible to allot further construction grant funding on the basis of obtaining the 1983 "fishable--swimmable" standard.

- (a) Such an approach may better focus the municipal sewage construction effort toward the goal of improving water quality.
- (b) Section 208 planning could be used as a basis for determining the water quality needs over the long--range.

Land treatment as an alternative to a lake discharge is being given more consideration by our State.

Again, let me thank you for the opportunity to testify and answer your questions. Should you have any further questions, please feel free to call.

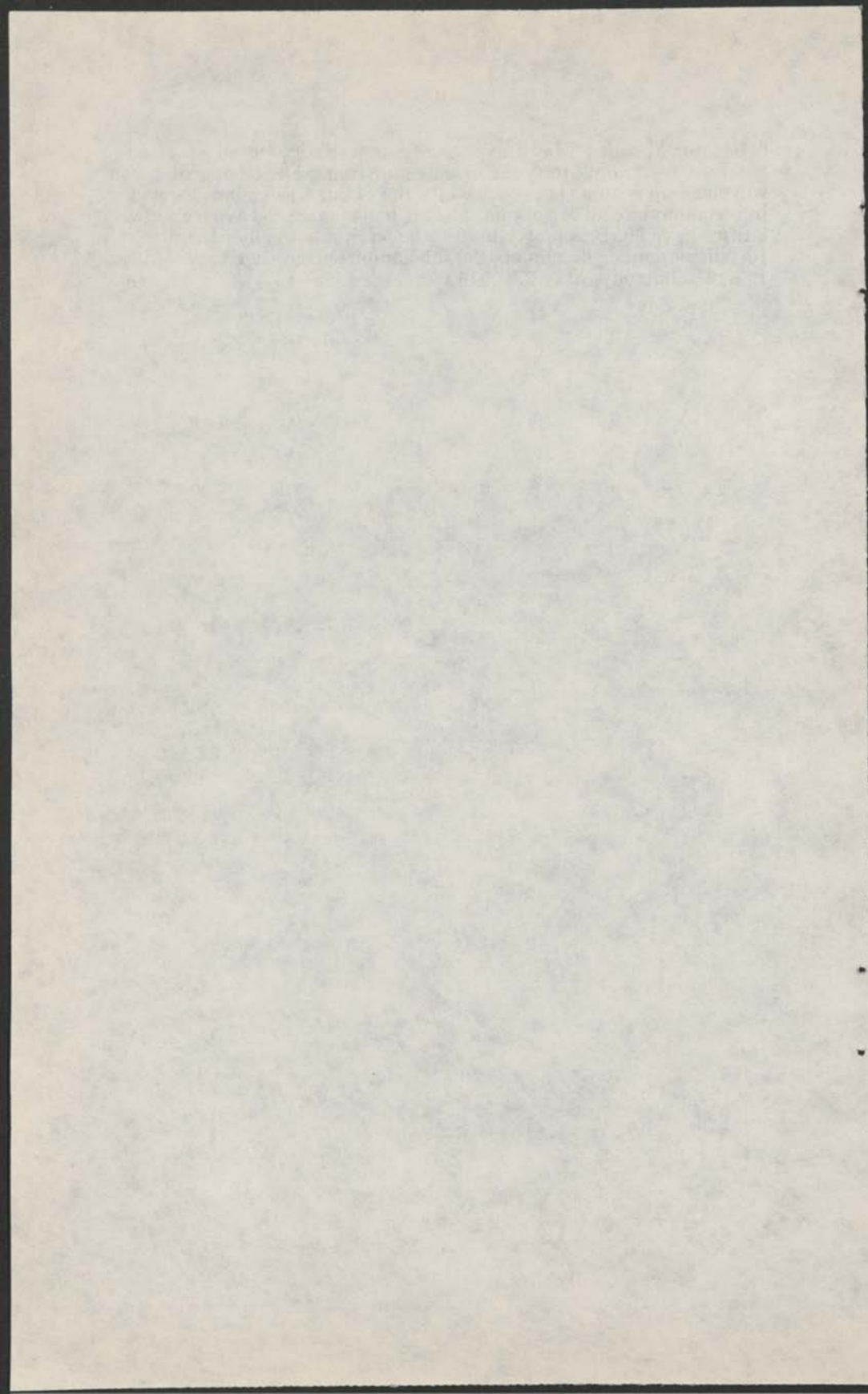
Sincerely,


William R. Adams, Jr., Commissioner
Department of Environmental Protection

WRA:rlc

Senator MUSKIE. May I express my appreciation to all of you for excellent testimony, for your candor and frankness. I hope that you will come up with a clearer view of some of our frustrations as we try to accommodate all of your needs. It is bad enough to have 5 children, but we have 50. It is pretty hard to be equitable to all of them.

[Whereupon, at 12:20 p.m., the subcommittee recessed, to reconvene 10 a.m. Thursday, May 27, 1976:]



ALLOTMENT OF WATER POLLUTION CONTROL CONSTRUCTION GRANT FUNDS

THURSDAY, MAY 27, 1976

U.S. SENATE,
COMMITTEE ON PUBLIC WORKS,
SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 4200, Dirksen Senate Office Building, Hon. Edmund S. Muskie (chairman of the subcommittee), presiding.

Present: Senators Muskie, Buckley, and Domenici.

OPENING STATEMENT OF HON. EDMUND S. MUSKIE, U.S. SENATOR FROM THE STATE OF MAINE

Senator MUSKIE. The committee will be in order.

I have a brief opening statement.

Two weeks ago this committee reported legislation authorizing \$5 billion in construction grant money for fiscal year 1977. On Tuesday, we heard testimony from five State water pollution control officials on the adequacy of this amount and on alternative methods of distributing these funds among the States.

Today, Administrator Train will discuss these same issues. This committee is faced with a difficult problem. We need to establish a formula for allocating construction grant funds which represents sound public policy and assures program continuity.

Our job is to resolve competing interests. The divergence of opinions expressed by our witnesses on Tuesday precisely illustrates the problem we face.

While the scope of these hearings is necessarily limited, there are other water pollution issues which have been raised in the Congress. These include the administration's proposed amendments, the recommendations of the National Commission on Water Quality, and legislation reported by the House Public Works Committee.

The specific issues include amendment of section 404, the dredge-and-fill permit program administered by the Army Corps of Engineers; restriction of eligibility and reduction of Federal share for construction grants; reduction of the hazardous spills liability and delaying of the toxic pollutant control program; assumption by certain States of the construction grant program; and extension of the 1977-78 time requirements for secondary treatment for municipalities.

The subcommittee has not had an opportunity to investigate these issues. So we need to know whether it is essential that we deal with any of these issues this year.

The situation, of course, is complicated by the fact that we are now approaching the first of June. We are also approaching the summer when legislative time will be substantially reduced by two political conventions and the fall which will be preoccupied with the election itself.

So we have to be, I think, realistic about gaging the legislative possibilities of dealing with a fairly wide range of controversial issues.

Frankly, it is my own instinct to do nothing more than to provide a 1-year extension of the construction grant money on some basis and postpone the consideration of the other issues. I am sure we will be more thorough and comprehensive next year.

As you gentlemen know, the committee has been preoccupied for over a year with the Clean Air Act amendments and we are going to continue to be preoccupied with floor action on those, on the Senate side, and on the House side, presumably, following the Senate action, and then conference.

So the time available for us to do a really comprehensive reexamination of all the issues related to the Water Pollution Act is very limited. That is the problem I want to present to you, get your reaction to, and ask specific questions as we get into this.

I have also explained to Mr. Train that I may be drawn out of the hearing at 11 o'clock hopefully for a brief time. I am delighted to have Senator Domenici here to continue the hearing until I can get back because I doubt very much that 45 minutes is sufficient time for me to explore all the questions that I would like to explore.

With that, Mr. Train, it is a pleasure to welcome you again before the committee as a longstanding friend, with the same commitment that we have, with the objectives which we are trying to advance with these major programs.

STATEMENT OF HON. RUSSELL E. TRAIN, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY JOHN R. QUARLES, DEPUTY ADMINISTRATOR; DR. ANDREW W. BREIDENBACH, ASSISTANT ADMINISTRATOR FOR WATER AND HAZARDOUS MATERIALS; ECKARDT C. BECK, DEPUTY ASSISTANT ADMINISTRATOR FOR WATER PLANNING AND STANDARDS; AND JOHN T. RHETT, DEPUTY ASSISTANT ADMINISTRATOR FOR WATER PROGRAM OPERATIONS

Mr. TRAIN. Thank you, Mr. Chairman, and Senator Domenici. I am accompanied by Mr. John Quarles, Deputy Administrator at EPA; I might add, Mr. Quarles has been following many of these issues very closely and I think between us and the others with me, we can address most of the issues that the committee will be interested in.

On my left is Dr. Andy Breidenbach, the Assistant Administrator for Water and Hazardous Materials; and Deputy Assistant Administrator Chris Beck, and Deputy Assistant Administrator Jack Rhett.

I have a fairly short statement, Mr. Chairman, which I will read. It is directed particularly to the allocation formula issue which you raised in your letter of invitation to testify, but I know the committee wishes to get into the kind of broader questions which you mentioned in your opening statement.

Thank you for the opportunity to appear before the committee to discuss allocation formulas for the municipal construction grant program under the Federal Water Pollution Control Act as well as the question of additional funding for fiscal year 1977.

Although allocation of funds is largely a matter for Congress, we believe that the allocation formula should in general distribute funds in accordance with priority needs.

We further believe that some stability should be built into the formula from year to year so that States have an idea in advance of how much money they can anticipate receiving from future authorizations.

Under the Federal Water Pollution Control Act of 1972, Congress authorized \$18 billion in contract authority to municipalities to construct publicly owned treatment works for fiscal years 1973, 1974 and 1975.

These funds were to be allotted to the States on the basis of "needs," as defined in estimates prepared by the Environmental Protection Agency. For the first 2 years of the act, fiscal year 1973 and fiscal year 1974, \$11 billion was authorized.

Following the issuance of regulations on February 25, 1975, allocation of that amount was completed in accordance with the 1971 needs estimate.

A new needs estimate was required by the act to distribute funds to the States in fiscal year 1975. In Public Law 93-243, Congress directed that the remaining \$7 billion be allocated according to the 1973 "needs" survey.

The formula used for allocating these funds provided that 50 percent of each State's share was based on the ratio of the individual State's total construction needs to the total of all States determined in the 1973 survey, and 50 percent on the basis of needs for treatment plants and interceptors only [categories I, II and part of category IV].

The formula also stipulated that no State would receive less than it received in fiscal year 1972.

Besides providing an allocation formula for fiscal year 1975 funds, Public Law 93-243 also directed that EPA conduct the 1974 needs survey to obtain new estimates from the States as a possible basis for allocation of construction grant funds beyond the current \$18 billion authorization.

The results of that survey were submitted to the Congress on February 10, 1975, along with several conclusions and recommendations.

First, the costs reported were of limited value for allocation purposes because the assumptions, the levels of effort, and the quality of data used in preparing these estimates varied widely from State to State.

Second, if the 1974 needs estimates were to be used to allocate funds, they should be tempered with population data. EPA recommended the allocation formula be based 50 percent on population and 50 percent on needs. Population would add an element of stability and predictability.

And third, we recommended in the 1974 survey report that only needs reported for treatment plants and interceptors—categories I, II and IVB—should be used in the allocation formula. Needs reported

for other categories were considered less comparable and would in general result in less pollution reduction per dollar expended than categories I, II and IVB.

The formulas used for fiscal years 1973, 1974 and 1975 have enabled us to allot the entire \$18 billion among the States. Over \$9 billion has been obligated to date. In light of this, Mr. Chairman, one final point made in the 1974 needs survey cannot be ignored.

The needs survey estimated the cost of needed treatment works at \$444 billion—1975. While we think this estimate is high, the costs of needed facilities currently eligible under the law is nonetheless considerably larger than the current authorization of \$18 billion.

I guess that is rather an extreme understatement.

Senator MUSKIE. I notice you gulped that when you said that.

Mr. TRAIN. Without the future alteration of eligibilities and priorities in the construction grants program the needs reported will clearly exceed any future funding capacity. And, as you may know, the administration has indicated that it will oppose any extension of the grants program without changes in either eligibilities or priorities.

I must, therefore, respectfully urge consideration of the program changes proposed in the draft bill submitted with my letter to the committee on January 29, 1976, and introduced as S. 3038.

The purpose of the proposed amendments was to bring the ultimate Federal cost of the construction grants program within reasonable reach of Federal budgetary resources by reducing or eliminating the Federal share for certain categories of facilities.

The amendments proposed in my letter would also insure that grant funds are used for facilities most critical to reducing pollutant discharges from municipal wastewater systems. A hard look at the percent of Federal share and eligibilities along the lines we have suggested will facilitate decisions on the amount of additional funding appropriate for the grants program.

This concludes my prepared remarks. I will be pleased to answer any questions the committee may have.

Senator MUSKIE. Is the estimate of \$444 billion related to categories I, II and IVB?

Mr. TRAIN. The \$444 billion goes well beyond those three categories. It includes all of the various categories, including storm water runoff.

Senator MUSKIE. What would the estimates be for categories I, II and IVB?

Mr. TRAIN. I believe, subject to correction here at the table, that the total is something in the neighborhood of \$44 billion.

Mr. RHETT. In 1975 dollars, it would come up to about \$65 billion.

Senator MUSKIE. What are the major items in addition to that which are included in the \$444 billion?

Mr. RHETT. Mr. Chairman, \$305 billion is for storm water and is the major element.

Senator DOMENICI. You said \$305?

Mr. RHETT. Yes, out of the \$444. The needs survey figures have been escalated to 1975 dollars, Senator Domenici.

Senator DOMENICI. We had \$200 and something when you testified before.

Mr. RHETT. That was in the 1973 dollars. What we have done and what the Administrator was talking about is using 1975 dollars.

Senator MUSKIE. So \$305 is the first?

Mr. RHETT. \$305 billion is for storm water, collector sewers is \$22 billion and \$9.2 billion is for major sewer rehabilitation.

The base figures that we were talking about referred to categories I, II and IVB. Basic treatment plants was \$37.8 billion.

Senator MUSKIE. Basic treatment plants?

Mr. RHETT. Right. We have included infiltration inflow in this since it is an integral part, a tradeoff with the treatment plants which is \$6.7 billion; and the interceptor sewers are \$22.6 billion.

We can furnish you a table for the record on this, with the escalated figures.

[The table referred to follows:]

IMPACT OF PROPOSED AMENDMENTS TO PUBLIC LAW 92-500 ON FEDERAL SHARE OF ESTIMATED COSTS OF PUBLICLY OWNED TREATMENT WORKS

[In billions of dollars]

	Total needs ¹	Federal share (×0.75)	Anticipated obligation of currently available funds ²	75 percent Federal share remaining after obligation of currently available funds	Reduction due to proposed amendments ³	Federal share remaining
I and II. Treatment plants.....	\$37.8	\$28.4	\$8.0	\$20.4	\$6.6	\$13.8
III-A. Correction of infiltration inflow.....	6.7	5.0	.5	4.5		4.5
III-B. Major sewer rehabilitation.....	9.2	6.9	.1	6.8	\$6.8	
IV-A. Collector sewers.....	22.1	16.6	1.0	15.6	\$15.6	
IV-B. Interceptor sewers.....	22.6	16.9	4.5	12.4	\$4.2	8.2
V. Control of combined sewer overflows.....	40.4	30.3	1.7	29.3	\$5.8	23.5
VI. Control of discharges from separate storm sewers.....	305.5	229.1	0	229.1	\$229.1	
Total.....	444.3	333.2	15.0	318.1	268.1	50.0

¹ From 1974 needs survey in 1975 dollars.

² \$18,000,000,000 current authorization minus \$3,000,000,000 obligated as of July 1, 1974 (the time of the 1974 needs survey).

³ Amendment allowing case-by-case extension of the July 1, 1977, deadline for publicly owned works is not expected to affect the Federal share required in constant (1975).

⁴ Includes \$2,500,000,000 reduction for amendment limiting funding of stringent treatment levels, and \$4,100,000,000 for amendment eliminating eligibility of reserve capacity for future population.

⁵ Amendment reducing or eliminating eligibility for Federal funding.

⁶ Amendment eliminating eligibility of reserve capacity for future population.

⁷ The total needs estimate, and therefore the reduction in Federal share due to the proposed amendments, is overstated. Estimates in categories I, II, III, and IV may be somewhat high because of the incentive to report high costs in the needs survey. The accuracy of category V is difficult to assess, but the category VI estimate is thought to be high. The estimates in category VI are based on capital-intensive control techniques, whereas noncapital intensive techniques will probably be more cost effective in many cases.

Senator MUSKIE. Focusing on the—we appreciate that table—focusing on that \$65 billion, does that represent the same capacity that was to deal with the backlog that was assumed in the 1972 law?

In other words, does this figure have growth in needs beyond 1972?

Mr. RHETT. Yes. This includes growth. The growth reduction as proposed in the amendment that the administration has offered would reduce these figures down to about \$50 billion for the Federal share.

The administration amendments limit the growth factor, cut the combined sewers to 60 percent, and eliminate the Federal share for collectors and storm water.

Senator MUSKIE. The 1972 act makes the assumption that it is projected to deal with the backlog then, not growth. Now what you are telling me, I want to be sure, is you are telling me the \$65 billion figure represents not only increases due to inflation or other reasons in cost, but also growth in capacity beyond what was assumed as backlog in 1972.

Mr. RHETT. Yes, sir. But, Mr. Chairman, there is a provision in the act that shifted funding from straight backlog to consideration of a reasonable growth projection. That is the provision in the law which says that adequate reserve capacity must be considered. That, I believe, was added in conference. So the ground rules have really not been changed here.

Mr. TRAIN. Mr. Chairman, if I could interject here, I think you have called attention to an important conceptual concern here and it is one of the foundations, rational, for the administration's eligibility proposals to the Congress.

On the basis that the program was conceived and really should be conceived and carried out from the standpoint of correcting a backlog problem, that has grown up over many years, and that if the program is rationalized in that way, that it becomes a manageable program in terms of available resources and that it is important that the Congress address the problem of eligibilities that go beyond the backlog rationale. I just wanted to make that point.

Senator MUSKIE. How much reserve is assumed in the \$65 billion?

Mr. RHETT. The figure is \$4.1 billion; the reduction in just reserve capacity would be \$4.1 billion.

Senator MUSKIE. Is that geared to some date in the future?

Mr. RHETT. That is geared to the population at the time the plant would come on line.

Senator MUSKIE. It is a difference?

Mr. RHETT. Yes, sir, rather than projecting up to 1990, the 20-year life or something of that nature.

Senator MUSKIE. You would make the date nearer to 1980 than 1990?

Mr. RHETT. Under the proposed amendment, it would be about 1980.

In fact, that would be a good average.

Senator MUSKIE. The \$65 billion, if we would get the \$65 billion, would it take us beyond 1980?

Mr. RHETT. Yes, it would take us up to projections for 20 years.

Senator DOMENICI. Mr. Chairman, could I clarify a figure? Where do you put the combination sewer system, storm and sewer, in those figures you gave us? Where are combined sewers?

Mr. RHETT. The combined sewers. There was some \$40.4 billion in combined sewer, category V, which under the proposed administration amendments we would fund at 60 percent rather than 75 percent.

Senator DOMENICI. When you were breaking down the last needs survey, where you gave us 305 and 22, what did you do with combined storm sewer and regular sewer in that summation?

Mr. RHETT. The \$305 billion figure is strictly storm water, not combined.

Senator DOMENICI. Not combined?

Mr. RHETT. That is right. For combined sewers, you add another \$40 billion. I need to clarify one thing with regard to growth. The \$4

billion that I was talking about is for treatment plants. There is another \$4 billion of reserve capacity for interceptors. So in total, there is an \$8 billion potential savings in Federal funds by cutting back the Federal funding of reserve capacity under the administration's amendments, and by just picking up the backlog.

Senator MUSKIE. One further question on reserve capacity. I think what the Congress had in mind in the revision which was deferred is provide reserve capacity in existing plants and not for new growth in new areas of the country and so on.

Do you make a distinction in your analysis based upon that? In other words, what we intend to say was that as you built the plants to meet the backlog that you should build in some reasonable reserve capacity in those plants for the future.

That is something different than programing that would respond to the growth of the country generally.

Mr. TRAIN. We have in practice built in a reserve capacity factor as the chairman suggests. The administration is now proposing, in order to bring the program again into a more manageable condition budgetwise, that that reserve capacity be limited to the population need as estimated as of the time that the plant would come on line; in other words, not at the time of the design getting underway, but as of the time it is projected to be completed and on line.

That is the amendment which has been submitted.

Mr. RHETT. Mr. Chairman, one addition. We figure reserve capacity now by taking the existing population and adding the population projections into the future. These population figures are then related to the other provision of the act which deals with the most cost-effective way to build and to structure the project. In some cases this might project reserve capacity further out, and in some cases it might bring it in.

So the two provisions of the act—the most cost effective solution and adequate reserve capacity—are tied together to make sure that the overall dollars going into the plant are the most efficient use for those dollars.

Senator MUSKIE. With respect to the legislative program as it relates to this particular problem, what would be your feeling if we were to provide the \$5 billion additional authority with no change at this point on eligibility criteria or the standard Federal role pending a more comprehensive review of the questions we have been discussing and others?

Mr. TRAIN. I think the administration's position is very clear on this, Mr. Chairman. The administration strongly recommended that there be no additional authorization until such time as the Congress addressed and acted on the problem of eligibility.

So to specifically answer your question, I feel certain that the administration would oppose a straight authorization without consideration of the eligibility issues.

Senator MUSKIE. As a practical matter with respect to the \$9 billion that has already been obligated, have the eligibilities gone beyond I, II, and IVB to any major extent? Has the program gone beyond that, the project gone beyond that, to what extent?

Mr. TRAIN. I don't believe to any significant extent, Mr. Chairman.

Mr. RHETT. Except in one area. In funding combined sewers where the problem has been more critical than, let's say, a treatment plant

one—there has been some funding of collectors. When you look at the overall program, however there have been very few instances.

Senator MUSKIE. Would you exclude that kind of exception in the future on the present policy change proposals?

Mr. RHETT. No. For combined sewers, the administration recommends 60 percent rather than 75 percent funding. This was done not only to reduce Federal costs, but also to force the priorities to where we feel the greatest needs are normally—the treatment plants and interceptors.

Funding of combined sewers has an extremely high priority at 60 percent. The better projects will bubble up anyway, but the ones on the margin will drop out and come behind the treatment plant.

Mr. QUARLES. One of the problems is that in the earlier days of the program the basic treatment facilities were the obvious first needs and that has been what the States and municipalities have addressed.

As time has gone along, some of those first needs have been met or are being met. Other needs in these other categories are coming to the surface and the danger is that pressures are building to move the funding into these other categories.

Senator MUSKIE. The question I want to put is this: Making a distinction between the policy changes as it would affect future programs and as it would effect, or as it would have changed programing up to now, if the \$5 billion additional authorization is provided on the basis of simply continuing the program assumptions that have been put in place, put in practice and have been funded, without changing in the law for the moment the other eligibilities which we are concerned about and which produce this \$444 billion figure, is that an option that the administration would be inclined to look at favorably?

Mr. TRAIN. I think the administration would be of the view that it isn't simply a matter of limiting the eligibilities to categories I, II, and IVB. There are other issues that are addressed by the administration's amendments such as the reserve capacity for future growth problems. The administration feels very strongly that they should be addressed and these are the issues which cut across all of the various categories.

Senator MUSKIE. Could I ask you at this point without asking for a commitment to look at the possibility—I am trying to minimize legislative hurdles—look at the possibility of continuing the present program at its present level, with the practical application that it has had, for the next year under the \$5 billion additional authorization in order to minimize the budgetary levels that might be represented by some of the other aspects of your recommendation without prejudicing them?

Mr. TRAIN. I certainly appreciate that suggestion. I can assure you that the administration will look at it, certainly.

Senator MUSKIE. I don't know its implication myself. I am simply probing for some practical way to get this, keep this thing on track without prejudicing the administration's recommendations and without making final commitments that are unrealistic.

Senator DOMENICI. Mr. Chairman, would you yield on that point?

Senator MUSKIE. Yes.

Senator DOMENICI. Mr. Train, I join the chairman in asking serious thought be given to that. I have one question with reference

to it that I think yesterday's experts, those from the States that run the program, lodged in my mind.

I think as you analyzed the relevancy of continuing for an additional year with the \$5 billion authorization, that you ought to also analyze what the States have pending by way of their applications as those pending requests might change the amount of money that is in I, II, and IVB, because I gather that many of them are waiting for funding for things beyond that, and that might very well even change our thinking as to whether the \$5 billion with a continuation based on partial needs is the best approach.

I think what we are groping for is a clean approach and to the extent that a maximum of the \$5 billion would be within the I, II, and IVB, categories, we would like to know that.

I think that would be relevant to the administration because we might be fighting a ghost if as a matter of fact we are really going to be spending most of the money on a 1-year extension in the way that you are recommending in your amendment anyway.

Then I think we have to consider the political ramifications of not going with a 1-year extension because we are apt to get something far different.

I think also the amount of money, the \$5 billion, is a relevant figure.

You have not indicated whether the level of funding at \$5 billion is significantly objectionable to the administration, but you have indicated that the overall failure to address the eligibility issue is as significant as the dollar figure as I understand it.

Is that correct?

Mr. TRAIN. I think that is correct. I am not in the position to say at this time that assuming the Congress addressed the eligibility question so that it was no longer an issue with the administration, that \$5 billion is acceptable or \$3 billion or \$7 billion or whatever.

But I do agree, Senator Domenici, with your suggestion that we look at the real world, so to speak, and evaluate what is involved in the pending applications that would be funded by an extended authorization. The suggestion is a good one and we will do that.

While I certainly recognize that the chairman can't give any indication of what congressional action on these various issues might be in the future, I think it might be helpful in the consideration of this issue to know what the committee's plans are in terms of consideration of these eligibility matters as well as other water quality issues in the next Congress.

Senator MUSKIE. It is our plan to give the Water Act as high a priority in the next session as we have given the Clean Air Act in the last year and this year; comprehensive in view of all of the issues that have been raised and there are many and consideration and resolution will take that kind of attention on the part of the committee, as the Clean Air Act will be behind us, hopefully.

Mr. TRAIN. I share that hope.

Senator MUSKIE. At least as a legislative problem and we can address it and we intend to. If we can to any extent resolve this funding question relatively soon in this session, we might even be able to begin hearings on the broad questions in this session.

This, of course, depends upon what the House insists upon. We may not be able to get this limited and clean legislative package this year,

but we think that the desire is to do a comprehensive job next year. I will commit myself right now to that.

Mr. TRAIN. That would include consideration of the Administration's proposals?

Senator MUSKIE. Yes; no question.

Mr. TRAIN. Thank you, Mr. Chairman.

You have just raised another point by reference to the pending legislation in the House, H.R. 9560. Since you have raised it, I will take the occasion to point out that some elements that are included in that bill in its present form raise very substantial questions that bear upon the matters we have been discussing. The so-called Roe amendment would give States complete control over priorities and as I understand it, little or no review on the part of EPA. This would really exacerbate the kinds of problems we have been talking about.

As I see it, the Roe amendment would eliminate the kind of assurance which the committee appears to be seeking. If there were an extension of the authorization or a new authorization, it would be used along the lines of present practice and present policy. As I read that particular amendment in the House bill, that would pretty well remove all of the underpinning for our present priority system; making the construction grants program a public works program rather than an environmental program.

Senator MUSKIE. Yes. As a matter of fact, that was going to be my next question. Let me ask you this. Over \$9 billion has been obligated, all \$18 billion has been allotted. With that as background, the fact is that States are running out of their allotments at different rates.

Do you have an analysis of that? We have been saying lately that 22 States are about to run out of their share of the \$18 billion.

Do you have an analysis which confirms or modifies that and do you have an analysis that further flags the rate at which other States would begin to run out?

I would like to see how this thing is moving down the road; \$9 billion is left unobligated.

Does that mean that there are some funds that are likely to lie idle for a considerable period in the future because States would not be able to meet their program needs up to their full share of the \$18 billion?

I would like to have some kind of analysis of that sort so we can follow it. We have got to get votes for whatever we report out.

At this point, 22 States clearly would like to see some more legislation and maybe others will be around next year. Others will be around 2 years from now and we don't have any clear picture, I don't think, at this point in the committee of what that is.

Mr. TRAIN. I believe that we can confirm the committee analysis as to the 22 States. That is our best analysis of the numbers of States which will be running out. We can provide a list of those States to the committee, if we haven't already done so. This analysis is based on the assumption, of course, that the States would continue to submit applications as presently planned and as they have been doing. Obviously, if they don't submit applications they won't run out. But 22 States is our best picture at the present time.

[The list of States referred to follows:]

STATES WHICH MAY RUN OUT OF FUNDS

Twenty-two States are in this category of probably running out of funds from their allotment of the \$18 billion. These are listed in the attachment. The Talmadge/Nunn Amendment, if passed, would help many of these States. However, even with these funds, six States would still run out of funds.

Following is Attachment I which lists States which will run out of FY 76 funds six months prior to the end of FY 77. Also is Attachment II, a listing of States which will run out of FY 76 funds early even with the proposed \$1.4 billion Talmadge/Nunn increases. Also is a list of States and the amounts that they will gain if the Talmadge/Nunn Amendment becomes law.

Maine, Delaware, and Virginia are due to run out of funds before September 1977, and would not be benefited by Talmadge/Nunn. In addition, Hawaii, Nevada and Oregon would receive funds under Talmadge/Nunn but would still run out of funds early.

STATES WHICH WILL RUN OUT OF FISCAL YEAR 1976 FUNDS 6 MO. PRIOR TO THE END OF FISCAL YEAR 1977¹

Fiscal year 1976, January to June	Transition quarter, July to September	Fiscal year 1977, October to March
Region I.....		Maine.
Region II.....		Delaware, Virginia.
Region III.....		Alabama, Florida, Mississippi,
Region IV.....		North Carolina.
Region V.....		Texas.
Region VI.....		Missouri.
Region VII.....		Colorado.
Region VIII.....	North Dakota, Wyoming.....	Montana, South Dakota, Utah.....
Region IX.....	Hawaii, Nevada.....	Arizona, Pacific Islands.
Region X.....		Alaska, Idaho, Oregon.

¹ Estimates based on most recent project development information obtainable from State priority lists. Above list may change depending on future project estimates received.

Senator MUSKIE. The States are going to run out in this calendar year?

Mr. TRAIN. Fiscal year.

Mr. RHETT. Four of them this calendar year, two during the transition quarter and the rest of them during 1977 or from October to March of 1977. As of September 30, 1977, under the law there is an automatic reallocation of the moneys that are not expended by then.

The bulk of the States will be running out during the October to March period, although six of them will run out of funds by the end of the summer.

Senator MUSKIE. So as a practical political matter, we face the problems of the 22 who are going to run out, plus a number whose allotments may be reallocated if they haven't obligated their allotments by September of 1977.

So those States, too, presumably will be interested in anything we do this year to protect their interests. Do you have any idea how many of those there are?

Mr. RHETT. There is somewhat a difficult one. It varies.

Senator MUSKIE. I won't ask you to identify the States.

Mr. RHETT. Under those conditions probably seven or eight States are pretty critical and some of these look almost impossible right now.

Having identified these, our regions are working directly with them now to try to assure that they do not lose money by September 30, 1977. But there are really anywhere from 5 to 10 States that are on the wire.

Senator MUSKIE. Certainly there is going to be pressure from the 22, to get some of that money for the 7 or 8 and I know there will be pressure from the 7 or 8 to protect their future eligibility. So now we have 50 Senators who ought to be able to get some legislation this year.

Let me ask you this: I gather we are actually spending out now at the rate of about \$3.5 billion a year.

Mr. TRAIN. I think that is correct. It may be a little bit higher than that by the end of this particular fiscal year, closer to \$4 billion.

Mr. RHETT. \$4 billion. I guess part of the question is, Are we talking about obligations or outlays—paying bills or obligating?

Senator MUSKIE. I guess we need both figures.

Mr. RHETT. Obligations this year will be in the neighborhood of about \$4 billion while outlays this year will be in the neighborhood of about \$2.5 billion.

Senator MUSKIE. Are those likely—are either or both of those figures likely to rise?

Mr. RHETT. The outlays will go up considerably, because construction is on an S curve and we have passed the knee of the curve. The outlays are beginning to rise very, very rapidly. The obligations are dependent upon the local situation, the ability to generate the local share and other factors, obligations are somewhere in the \$4 or \$5 billion range. It could probably go; from \$4 to \$6 billion.

Senator MUSKIE. A lot of the States, I think all of the States, testified, and I gather others have also testified that they have complained about administrative lag and administrative delay.

Have we reached the point where that has been smoothed out where the administrative process consumes less time? Could you give us a picture of what has happened there?

I would think initially there might be more of that kind of thing than later. I wonder if we are at the later stage and if there can be some reassurance?

Mr. TRAIN. I think we have made, if I may say so, a very substantial improvement in the administrative picture as far as the program is concerned.

In part, this is attributable to the fact that the program has matured and experience has been gained. But the flow of funds has been very substantially improved from the obligations over recent months.

I think this does speak to improved administration and improved relationships with the States. My own impression is—I won't say the complaints have all gone away, I don't suppose they ever will, but I hear a good deal less now than a year ago or two years ago. I think the program really is going quite well.

Jack, can you add?

Mr. RHETT. There has been considerable reduction of time for administrative processing. Not only has EPA been maturing and learning and getting all the regulations but the municipalities and the consultant engineers have also been improving their skills and understanding. Understanding of the new law, 92-500 has improved. It is a very complex law and the water programs are moving, in my opinion, very, very smoothly, considering the amount of money that is going out.

Obviously, we can't afford to hastily obligate funds. Physical and fiscal integrity have to be watched.

So I personally think that it is in very, very good shape now.

Senator MUSKIE. I have used my time. Senator Domenici will have questions. But let me ask just a few more questions.

But pursuing the same question, we have been told that many cities have been requested by EPA regional offices to hold off from liquidating the contracts on large projects that they have underway until the beginning of the next fiscal year because of outlay ceilings that were set by the Appropriations Committee.

Is that actually happening? Is that a real problem? If so, are you still experiencing a shortage of funds with which to liquidate contracts?

Mr. TRAIN. I think it is fair to say that we have been experiencing a tight situation on outlays. We have had the outlay ceiling on old law expenditures lifted completely. So there is no problem there at the present time.

As to the 92-500 outlays, that is tight, but we don't see any hardship cases at the present time. I don't believe I could have made that statement several weeks ago. I think this is the reason for the work of the regional offices that you referred to. They have tried to assure that there were no real hardship cases arising.

Jack, do you want to give any fuller picture on the outlay situation?

Senator MUSKIE. I understand that the Appropriations Committee has raised the outlay ceiling by \$300 million. Is that not true?

Mr. RHETT. That is the liquidation authority under Public Law 92-500. That was done about a month ago, and it relieved the situation under new law projects very, very much.

The reason why we are tight in liquidation authority is we have had a run on the bank. All of a sudden the bank looked like it was running out of money and everybody came rushing in to put in their bill to make sure they got paid first.

So we do have between now and June 30 a tight situation in 92-500. Projects like the New Orleans one that have had much publicity, are no longer problems. They have been paid. They are old projects. As of July 1, another \$600 million worth of liquidating authority will be made available. So we will be able to pay everything off.

In addition, there is no real ceiling. OMB has offered no ceiling during the transition quarter on all old law projects. We will probably come in for another supplemental of liquidating authority during the transition quarter, just to assure that there are no problems.

Once we get into 1977 there is adequate liquidation authority. The problem has been the 1976 transition quarter.

Senator MUSKIE. One further question and then I will yield to Senator Domenici. With respect to the reimbursement to the States in the 1966 law, what is the status of that program? There are still outstanding obligations, I gather.

Mr. RHETT. That one is almost wrapped up except for projects that are under construction that we are reimbursing as they go along. The obligation portion of it is about 1.8 out of the \$1.9 billion. The payment portion—I may be off \$100 billion here or there—is somewhere maybe \$1.2 billion to \$1.4 billion. But the rest of these are under construction, being paid as the brick and mortar go into the ground.

That program is in very, very good shape.

Senator MUSKIE. Senator Buckley has arrived and I will yield to him first.

Mr. TRAIN. I assure the committee we don't round off our programs in the \$100 billion lots.

Senator BUCKLEY. Thank you, Mr. Chairman.

I am sorry I couldn't have been here at the outset of your presentation, but there is one area that I am terribly concerned about. Presumably, it is our national purpose to see that the funds that can be mobilized to clean up our waters are focused where they will do the most good, where we get the most pollution abatement per dollar expended.

Past recommendations that your agency has made on allocation formula has used needs as the major component. The needs used in computations with these formula were assessed in needs surveys conducted by your agency.

These surveys have been criticized in many circles for leading to inequitable allocation for the construction grant funds.

Do you feel that the criticism has been justified?

Mr. TRAIN. To some extent, yes. I think to some extent the criticisms were inevitable. We have had to rely upon State assessments of fairly open ended eligibility. So you have a problem coming from two directions.

While we have tried to do a close analytical job on the reports that we have received from the States, there is a limit to our ability to clean, launder, if you will, the estimates satisfactorily.

Senator BUCKLEY. Do you believe that you are improving your capacity to do so?

Mr. TRAIN. Yes. That is correct.

Senator BUCKLEY. I ask that because to the extent that you are able to foreclose these criticisms or at least keep them at bay, to that extent we are less apt to have floor action that will turn these surveys upside down and come up with a misallocation of funds.

Mr. TRAIN. I am not sure I would share that opinion. I would presume that it would improve the situation in the Congress, but no matter how you design a needs survey, some States are going to get more and others are going to get less and some are going to get more or less than they got previously.

Those responsible for representing those States are apt to have some concern about any allocation formula, I believe.

Senator BUCKLEY. Presumably as we clean up the waters in any given area, there should be a scaling down. But is it your belief that the needs approach continues to represent the most equitable and effective means of allocation funds?

Mr. TRAIN. With some qualification, yes. Certainly, it is hard to argue with the concept of need as the basic foundation for the allocation of funds. I would say particularly if the eligible needs can be kept in manageable dimensions, but I would say that it has been our experience that a population factor provides a stabilizing influence with which to temper an allocation formula otherwise based entirely upon need.

We know for a fact that human populations are in terms of numbers very much proportional to pollution problems in terms of water pollution.

So a population factor with a 50 percent or something of that sort, can, as I said, introduce an important stabilizing effect.

Senator BUCKLEY. Would it also be accurate to say that pollution is more the result of the concentration of population than the population itself?

Mr. TRAIN. Yes; I think that is probably true.

Senator BUCKLEY. Thank you very much.

Senator DOMENICI. Thank you, Senator Buckley.

I don't think we are going to be very long, Mr. Train. We have some written questions that I am going to submit for you to answer in the record.

Senator DOMENICI. Let me explore with you a few thoughts based on the assumption that we are talking about a 1-year extension at \$5 billion.

The thing that concerns me most about that approach is that hearing from the States yesterday, they all want continuity, they all want longevity, and that puts me to speculating that out in the field the States have some very grandiose plans that they are in the process of developing; I use the word not by way of criticism, but really using the broadest scope of what their expectations might have been.

It seems to me that we might consider the \$5 billion, 1-year extension with a requirement that the moneys be used only for I, II and IVB type projects.

The reason I suggest that is because it seems to me that if we are going to commit to the American people, the taxpayer, that we are going to redo the eligibility then we have to minimize the momentum of what we have set in motion in previous years; the funding of projects that we ought to continue and thereby prejudicing any real needs eligibility study because we started in motion those that are well beyond what we might have envisioned.

Could you discuss with me what you people feel the impact of not only the \$5 billion 1-year extension but of limiting it to types of improvements included within I, II, and IVb, might be on the States?

Mr. TRAIN. I believe you would agree that a specific limitation on the allocation of a new authorization to categories I, II and IVb, would substantially maintain the continuity of the present program.

It would provide for allocation substantially along the line that the program is presently following. It would have the advantage, therefore, of not changing the rules, so to speak, and it would have the advantage of maintaining continuity in the program, both in terms of funding and in terms of eligibility or, priorities.

I share with you the concern expressed by the States for the need for continuity in this program. I think we all, no matter what our particular point of view may be, agree that stability is a very important factor here and rapid changes in either funding or the rules can be very counterproductive in achieving the environmental goals that the program is designed to meet.

The disadvantage—and I would have to say a strong disadvantage from the administration's standpoint, is the continued authorization at a very substantial level without in fact facing up to the issue of eligibility; the broader issues submitted by the administration.

Mr. QUARLES. Senator Domenici, I wonder if I could clarify at least in my own mind what may be an ambiguity here. I think we have to keep clear in our minds the distinction between the categories upon which the allocation is made among the States and the eligibilities

for which projects can be approved for grants after allotments have been made.

And in the past the Congress has directed the Agency to allot the funds among the States based on certain categories. But that has not curtailed the eligibilities.

Do I understand that you are suggesting that if an additional \$5 billion were to be authorized that an additional new type of restriction would be imposed upon those funds so that they could only be used for projects in the categories I, II and IVB?

Senator DOMENICI. That is what I am suggesting. What I am trying to find out is what kind of a reaction would we get from the field if that occurred based upon what they are planning as their eligible projects.

I think that would be very relevant to us. Are there out there pending for eligibility some projects that are well beyond that?

I think we need that information in any event and if you can supply it to us, it would be very relevant because I think it bears heavily not only on the practicality of the limitation, but it bears very heavily on the relevancy of the administration's concern because what we are setting in motion by the broadened eligibility as compared with the allocation that is out there is going to be dictating the future almost by pressure.

So if you can get those for us, I think it would be extremely helpful, a very practical tool for us in what analysis we can do.

Mr. TRAIN. I think we can take a pretty good cut at that.

Mr. RHETT. There are two items in the administration proposal that we really have not discussed. Even if you limit funding to I, II and IVB, you still have the growth problem, and the reserve capacity question. And you still have the problem of some States being able to set a higher water quality standard than other States, and being able to collect 75 percent for a project.

Senator DOMENICI. I understand that. But that is really a very acid issue in terms of what the Federal Government's role is going to be.

It seems to me that it is almost inconsistent for us in considering just a 1-year extension to try to address that problem.

We might consider, however, as suggested by one of the staff people, what the effect would be to use the 1975 population figure instead of the 1990 in that analysis.

I have no way of knowing whether we can get that information, but that would address the issue in another way. I don't know that we can limit it that much in the 1-year, but certainly it would be a relevant sort of exercise.

Do you have information on that, Mr. Quarles?

Mr. RHETT. We can furnish it.

Senator DOMENICI. Why don't you furnish that?

[The information requested follows:]

[Dollar amounts in thousands]

	$\frac{1}{2}$ -I, II, IVB; $\frac{1}{4}$ -I-V; $\frac{1}{4}$ -1975 population		$\frac{1}{2}$ -I, II, IVB; $\frac{1}{4}$ -I-V; $\frac{1}{4}$ -1975 population	
	Percent	Amount	Percent	Amount
Total.....	1.0000	\$5,000,000		
Region I:			Region V—Continued	
Connecticut.....	.0124	62,000	Minnesota.....	.0153 76,500
Maine.....	.0055	27,500	Ohio.....	.0560 280,000
Massachusetts.....	.0279	139,500	Wisconsin.....	.0202 101,000
New Hampshire.....	.0068	34,000	Region VI:	
Rhode Island.....	.0041	20,500	Arkansas.....	.0109 54,500
Vermont.....	.0024	12,000	Louisiana.....	.0127 63,500
Region II:			New Mexico.....	.0027 13,500
New Jersey.....	.0480	240,000	Oklahoma.....	.0137 68,500
New York.....	.1062	531,000	Texas.....	.0435 217,500
Puerto Rico.....	.0089	44,500	Region VII:	
Virgin Islands.....	.0006	3,000	Iowa.....	.0112 56,000
Region III:			Kansas.....	.0124 62,000
Delaware.....	.0041	20,500	Missouri.....	.0200 100,000
Maryland.....	.0383	191,500	Nebraska.....	.0064 32,000
Pennsylvania.....	.0439	219,500	Region VIII:	
Virginia.....	.0223	111,500	Colorado.....	.0082 41,000
West Virginia.....	.0218	109,000	Montana.....	.0021 10,500
District of Columbia.....	.0040	20,000	North Dakota.....	.0019 9,500
Region IV:			South Dakota.....	.0017 8,500
Alabama.....	.0111	55,500	Utah.....	.0044 22,000
Florida.....	.0362	181,000	Wyoming.....	.0012 6,000
Georgia.....	.0202	101,000	Region IX:	
Kentucky.....	.0152	76,000	Arizona.....	.0066 33,000
Mississippi.....	.0077	38,500	California.....	.0832 416,000
North Carolina.....	.0210	105,000	Hawaii.....	.0070 35,000
South Carolina.....	.0134	67,000	Nevada.....	.0031 15,500
Tennessee.....	.0149	74,500	American Samoa.....	.0004 2,000
Region V:			Trust Territory.....	.0020 10,000
Illinois.....	.0527	263,500	Guam.....	.0010 5,000
Indiana.....	.0219	109,500	Region X:	
Michigan.....	.0475	237,500	Alaska.....	.0048 24,000
			Idaho.....	.0042 21,000
			Oregon.....	.0085 42,500
			Washington.....	.0157 78,500

[In thousands of dollars]

	50 percent 1975 population; 50 percent I, II, IVB		$\frac{1}{2}$ -I, II, IVB; $\frac{1}{4}$ -I-V; $\frac{1}{4}$ -1975 population		50 percent 1975 population; 50 percent I, II, IVB		$\frac{1}{2}$ -I, II, IVB; $\frac{1}{4}$ -I-V; $\frac{1}{4}$ -1975 population	
Total.....	4,000,000	4,000,000						
Region I:			Region V—Continued					
Connecticut.....	49,200	49,600	Minnesota.....	66,800	61,200			
Maine.....	21,600	22,000	Ohio.....	201,600	224,000			
Massachusetts.....	110,800	111,600	Wisconsin.....	82,800	80,800			
New Hampshire.....	24,400	27,200	Region VI:					
Rhode Island.....	16,400	16,400	Arkansas.....	44,800	43,600			
Vermont.....	10,000	9,600	Louisiana.....	56,400	50,800			
Region II:			New Mexico.....	14,800	10,800			
New Jersey.....	180,000	192,000	Oklahoma.....	53,600	54,800			
New York.....	365,000	424,800	Texas.....	200,400	174,000			
Puerto Rico.....	44,000	35,600	Region VII:					
Virgin Islands.....	2,400	2,400	Iowa.....	49,600	44,800			
Region III:			Kansas.....	43,600	49,600			
Delaware.....	14,000	16,400	Missouri.....	80,400	80,000			
Maryland.....	138,000	153,200	Nebraska.....	24,000	25,600			
Pennsylvania.....	179,600	175,600	Region VIII:					
Virginia.....	94,800	89,200	Colorado.....	39,600	32,800			
West Virginia.....	73,600	87,200	Montana.....	10,800	8,400			
District of Columbia.....	9,600	16,000	North Dakota.....	8,800	7,600			
Region IV:			South Dakota.....	9,200	6,800			
Alabama.....	54,000	44,400	Utah.....	20,400	17,600			
Florida.....	158,000	144,800	Wyoming.....	6,000	4,800			
Georgia.....	89,200	80,800	Region IX:					
Kentucky.....	59,600	60,800	Arizona.....	32,000	26,400			
Mississippi.....	37,200	30,800	California.....	372,800	332,800			
North Carolina.....	95,600	84,000	Hawaii.....	27,200	28,000			
South Carolina.....	57,200	53,600	Nevada.....	13,200	12,400			
Tennessee.....	67,600	59,600	American Samoa.....	1,200	1,600			
Region V:			Trust Territory.....	6,800	8,000			
Illinois.....	204,000	210,800	Guam.....	3,600	4,000			
Indiana.....	85,200	87,600	Region X:					
Michigan.....	156,800	190,000	Alaska.....	17,200	19,200			
			Idaho.....	17,200	16,800			
			Oregon.....	34,400	34,000			
			Washington.....	62,000	62,800			

[Dollar amounts in thousands]

	50 percent 1975 population; 50 percent I, II, IVB		50 percent 1975, population; 50 percent I, II, IVB	
	Percent	Amount	Percent	Amount
Total.....	1.0000	\$5,000,000		
Region I:			Region V-Continued	
Connecticut.....	.0123	61,500	Ohio.....	0.0504 \$252,000
Maine.....	.0054	27,000	Wisconsin.....	.0207 103,500
Massachusetts.....	.0277	138,500	Region VI:	
New Hampshire.....	.0061	30,500	Arkansas.....	.0112 56,000
Rhode Island.....	.0041	20,500	Louisiana.....	.0141 70,500
Vermont.....	.0025	12,500	New Mexico.....	.0037 18,500
Region II:			Oklahoma.....	.0134 67,000
New Jersey.....	.0450	225,000	Texas.....	.0501 250,500
New York.....	.0915	457,500	Region VII:	
Puerto Rico.....	.0110	55,000	Iowa.....	.0124 62,000
Virgin Islands.....	.0006	3,000	Kansas.....	.0109 54,500
Region III:			Missouri.....	.0201 100,500
Delaware.....	.0035	17,500	Nebraska.....	.0060 30,000
Maryland.....	.0345	172,500	Region VIII:	
Pennsylvania.....	.0449	224,500	Colorado.....	.0099 49,500
Virginia.....	.0237	118,500	Montana.....	.0027 13,500
West Virginia.....	.0184	92,000	North Dakota.....	.0022 11,000
District of Columbia.....	.0024	12,000	South Dakota.....	.0023 11,500
Region IV:			Utah.....	.0051 25,500
Alabama.....	.0135	67,500	Wyoming.....	.0015 7,500
Florida.....	.0395	197,500	Region IX:	
Georgia.....	.0223	111,500	Arizona.....	.0080 40,000
Kentucky.....	.0149	74,500	California.....	.0932 466,000
Mississippi.....	.0093	46,500	Hawaii.....	.0068 34,000
North Carolina.....	.0239	119,500	Nevada.....	.0033 16,500
South Carolina.....	.0143	71,500	American Samoa.....	.0003 1,500
Tennessee.....	.0169	84,500	Truck Territory.....	.0017 8,500
Region V:			Guam.....	.0009 4,500
Illinois.....	.0510	255,000	Region X:	
Indiana.....	.0213	106,500	Alaska.....	.0043 21,500
Michigan.....	.0392	196,000	Idaho.....	.0043 21,500
Minnesota.....	.0167	83,500	Oregon.....	.0086 43,000
			Washington.....	.0155 77,500

Senator DOMENICI. Let me ask a couple of questions on a side issue. It wouldn't be relevant to the 1-year extension. But it is applicable to the overall hearings.

We heard some testimony yesterday from the States in response to my questions about section 208 planning. There was some serious concern on the part of the States as to whether or not that planning approach could be relevant to our assessment of the needs and priorities because it is not far enough along due to some delays in the funding and the like.

Let me ask two questions. What is the possibility from the EPA standpoint of expediting the 208 planning approach and what would your thoughts be on the relevancy of that mechanism as part of the assessment of priorities and needs in the States?

Mr. TRAIN. Let me ask Mr. Beck to address that, please.

Mr. BECK. We have achieved the approval of most of the work plans for the 149 agencies that were designated prior to June 30th, 1975.

Many of those, but not all of them, are doing elements of areawide sewage treatment plant, facility-type planning. We are now in the process of approving the State for 208 nondesignated areas. They should all be approved and the funds obligated by June 30th.

The period of time that it is going to take before we get any results that would be useful in terms of determining overall national needs will probably run up until November 1978.

So it is questionable whether section 208 could be a vehicle to be used to define national needs at this time. However, we are expecting some interim output from these 208 agencies that will give us some indications of the facility moneys needed in different geographic areas before that.

Senator DOMENICI. You indicated it would not be a significant tool. Is that just because of the date?

Mr. BECK. Yes, Senator, it is going to take some time.

The States are saying, that it is going to take some time under 208 to develop the relevant information for us to make determinations with regard to need. I concur with that. But I would like to say that some of the areas in terms of State areas may be able to fast track that in the course of developing the early outputs from these plans.

It may be possible in certain areas for us to get a fix on the finances needed for the facility planning.

Senator DOMENICI. Would you have sufficient conclusive information from some of these to determine whether that mechanism might be an effective approach when we began to look at long-term eligibility and perhaps even a formula?

Mr. BECK. Yes.

Senator DOMENICI. By what time do you think you would begin to have some samples?

Mr. BECK. I would suspect that a good time to pass judgment on this as a vehicle will be when we finally adopt those States work plans which will be in midfall of this year. We will then have a pretty good opportunity to determine whether that is a worthwhile vehicle for needs service.

Senator DOMENICI. One last question and before I forget the other item, I assume that some of the other Senators might want to submit questions to Mr. Train. We have a fairly difficult schedule around here. The staff will inquire. If they do, they will submit them in writing and hopefully you will get them in as soon as possible in this record.

On a separate subject, as you know, I have been generally concerned about the status of research and development in the area of innovative technology for cleaning up waters and cleaning up our sewers.

Do you find any relevancy to perhaps tapping construction grant moneys for R. & D. projects and making some percentage of them as available for ongoing R. & D. efforts and demonstration thrusts; or do you favor maintaining a separate demonstration R. & D. pot of money?

Mr. TRAIN. I am shooting a little bit from the hip on this. I have no doubt that we could effectively utilize more resources for research and development in this area.

I would, I think, have some concern about any kind of an automatic allocation of funds for particularly demonstration projects unless EPA maintained a tight control over priorities and decisions as to what research projects would go forward.

If it became sort of automatic entitlement to research and development funds on the part of individual States, I would have considerable concern over a research program that was so designed.

Andy, could you add anything to that?

Dr. BREIDENBACH. Yes. When you have a multibillion-dollar construction program which has as its objective to put into place

very complex technology there has to be some consideration given to the question of how much research and development should be supported so that the best technology is applied.

I agree with Mr. Train that these would be national research programs, and any demonstrations that will support a better construction grants program would have to have national overview and control to assure that what was done in one place was indeed applicable to the other place.

Senator DOMENICI. I guess what bothers me is I don't know whose responsibility it is as a matter of policy, to assess whether or not there is adequate research and development thrust in a national endeavor of this size.

As you look at the marketplace, whenever there is an expenditure of the type that we are contemplating here, private industry spends a much larger percent of its funds on research and development.

What we have got here in this big program is we have got principally bureaucrats and engineers. We have some companies on the outside that are exploring here and there. But the extent to which they will do this is rather directly related to their expectation of resources to do it.

It is not like a typical marketplace proposition because almost the entire multibillion-dollar thrust is governmental and controlled basically by engineers. Engineers are busy drawing the plans for the very perpetuation of the system that they are trying to get funds for.

I am concerned as to who is going to put the thrust for the brain-power and innovation that is American with sufficient resources in it to make sure we aren't building the same kind of thing 15 years from now as if there is another way.

I don't know where we are going to find that change in direction. Maybe it is our job. But I think it ought to concern you, too, in evaluating whether there is enough going on at that end.

My thought would be to let 1 or 2 percent of the grant program be used for research and development, subject to approval, that it is a relevant project by the EPA.

That is the kind of bill I am envisioning. I don't know whether it belongs on this continuation or a separate thrust. That is what I am talking about. Mr. Train.

Mr. TRAIN. In response to this may I say that: first, undoubtedly we could use and we need more research funds in this area. I have always thought given the billions that we are putting up of public money for this program, the research and development effort is really all out of proportion. It is so small.

On that I am in complete accord. Second, I think that there is a need to have a driving force as you have described it.

Perhaps from that standpoint the best kind of thrust could be generated by the sort of program you suggest.

I think that it would be a mistake to have this allocated on a State-by-State basis. I think that a percentage of the total taken off the top and set aside as a research and demonstration program under the full control of the Environmental Protection Agency would be preferable.

There are some disadvantages in that such a procedure utilizes an arbitrary percentage basis for determining the amount of research and

development funds which may or may not be justified at any particular time.

It also has the disadvantage of removing budgetary control, which I would normally consider desirable, from the research and development funding.

There are some advantages, but there are also clearly some disadvantages in an approach such as this. I would say that the overall desirable way to handle this problem would not be by allocation, but by increasing the research and development authorizations and appropriations specifically.

Senator DOMENICI. I don't agree with the last part of your statement. I do the first. I don't intend in my approach for it to be a State-by-State allocation. But up to a percent that you have the authority to approve research and development efforts or demonstration projects and we have to figure out what that does to the States' normal allocation. And it is in that area that we have got to do some thinking because to the extent that you are too rigid they won't try.

If you have got some flexibility to not necessarily penalize them for the excess costs as it goes into a demonstration project, or perhaps given credit only if it works or the like. That is generally the thought.

I don't think we have any other questions. We thank you all very much. We await the inserts that you are going to prepare for us. Thank you.

We are adjourned.

[Whereupon, at 11:30 a.m., the subcommittee recessed, to reconvene subject to the call of the Chair.]

[Response from EPA to additional written questions and statements submitted for inclusion in the record follow:]

Question 1. If the \$5 billion were authorized, how much of it would go to projects from categories other than I, II, and IVb?

Answer. Our best estimate is that about 29 percent or about \$1.5 billion of an assumed \$5 billion authorization would go to projects other than I, II, and IVb. An approximate distribution of the 29 percent follows:

[Dollar amounts in billions]

Category	Percent	Amount
IIIA	4.0	\$0.20
IIIB	2.6	.13
IVA	12.9	.65
V	9.4	.47
VI		0
Total	28.9	1.45

Funds would be obligated on projects other than categories I, II and IVB in all States, although the proportion would vary. Available data is not adequate to project a detailed State-by-State breakdown.

Question 2. How much of the presently unobligated funds are scheduled to go to projects from categories other than I, II, and IVB?

Answer. Of the approximate \$8.6 billion remaining to be obligated, about 20 percent or \$1.7 billion would go to categories other than I, II, and IVB.

Question 3. What do you project the savings to be to the Federal government if the Administration's amendments (S. 3038) were enacted?

Answer. The 1974 needs survey produced an estimate of needs totaling \$444 billion (\$1975). The savings in Federal share resulting from the Administration's amendments would be as much as \$268 billion if the 1974 needs survey results

are accepted (see attached table for the details of this calculation). However, the total needs estimate, and therefore the reduction in Federal share due to the proposed amendments, are considered to be overstated. In particular the \$305.5 billion reported for Category VI in the Survey is considered high. The estimates in Category VI are based on capital intensive control techniques, whereas non-capital intensive techniques will probably be more cost-effective in most cases.

Question 4. How reliable do you consider the figures that were transmitted to Congress in the 1974 Needs Survey.

Answer. The costs reported in the 1974 Needs Survey are of limited value both for allocation purposes and for determining the full costs of providing municipal facilities to meet the requirements of P.L. 92-500. The assumptions, the levels of effort and the quality of data used in preparing these estimates varied widely from State to State.

Question 5. Is there any difference between the reliability of the figures for categories 1, 2 and 4B, so-called partial needs, and the reliability of the other categories?

Answer. Yes, needs reported in categories 1, 2 and 4B are generally considered more comparable from State to State. The Agency adjusted the figures in categories 1, 2 and 4B on the basis of an independent review of estimates submitted by the States. These adjustments were necessarily somewhat subjective, but resulted in some improvement on comparability of estimates in these categories, as indicated in the report to Congress on the 1974 survey. No such adjustments were possible for the other categories because the assumptions and approaches varied more widely from State to State than for categories 1, 2 and 4B.

Question 6. Do you feel that in responding to the 1974 Needs Survey the States made an effort to submit only actual needs which met the full criteria for cost-effectiveness of Section 201 of the Act.

Answer. No, States did not have the time or resources to undertake the detailed analysis necessary to determine needs which met the criteria of Section 201. The extent to which State estimates approach this standard varied from facility-to-facility, category-to-category and State to State depending on the amount of planning information available at the time of the Survey, and the approach and assumptions used by the State.

Question 7. Do you feel that allotment of the funds on the basis of population would provide some States with more money than they either need or could use?

Answer. Yes, because current pollution control needs relate to population density, receiving water characteristics, State standards, previous level of effort and other factors in addition to State-wide population. A formula based strictly on population would provide some States with more money than they need or could use, assuming a continuing program of Federal assistance.

Question 8. Do you feel that allotment on the basis solely of needs as expressed in the 1974 Survey would provide some States with more money than they need or could use? Partial needs? All needs?

Answer. Yes, we feel that, because of the shortcomings of the 1974 Needs Survey, an allotment based solely on needs would provide some States with more money than they need or can use. This is for a formula based on all needs but less so for a formula based on partial needs (Categories 1, 2 and 4B).

Question 9. If, in fact, the Needs Surveys that have been done appear to be unreliable, how could a formula which uses them even in part be justified?

Answer. A formula based 50% on Categories 1, 2 and 4B, and 50% on population has fewer shortcomings, in our view, than alternative formulae, even though it may be far from completely satisfactory. Such a formula would minimize the shortcomings of both the needs and the population approach.

Question 10. Is the Agency still experiencing a shortage of funds with which to liquidate the contracts under the construction grants program?

Answer. Yes.

Question 11. What are the reasons for the shortage?

Answer. The funding shortage was caused primarily by an increase in payment frequency rates in recent months to aid communities with cash flow problems. This caused a greater "catch up" demand than had been expected. Also, the publicity surrounding EPA's request for additional appropriations in the March/April period and the stopping of payments in some cases pending the enactment of supplemental appropriations bill created a "run on the bank" atmosphere which added to FY 1976 outlay demand.

Question 12. Has the Agency contacted individual cities or individual States to ask them to withhold making payments on contracts or to tell them that the Agency is going to require that they withhold those payments?

Answer. EPA has not advised grant recipients to withhold making payment to their contractors. EPA has contacted certain cities and States and explained that we will not have sufficient appropriations to cover all payment demand through June 30. EPA has asked certain cities if they could wait until July 1 for the next payment. In those cases where these cities can wait until July 1 Federal payments will be held until that date, and payments made to cities where there is a more urgent demand.

Question 13. Now that the Appropriations Committee has increased the outlay ceiling by \$300 million will that figure be adequate to liquidate contracts in the months between now and June 30?

Answer. No. As noted above, the increased rate of payments and "run on the bank" atmosphere created in April have led to demands in excess of that \$300 million.

Question 14. Will that outlay ceiling requested for the Transition quarter be adequate to liquidate contracts?

Answer. A supplemental appropriation request is currently being prepared for the transition quarter which would provide sufficient appropriations to cover all outlay demand.

Question 15. Will the outlay ceiling for the next fiscal year be adequate to liquidate contracts?

Answer. Yes, if current projections prove to be accurate.

Question 16. How can similar problems be prevented in the future?

Answer. Since projections are made so far in advance, a factor should be included for error or other changes in the situations between projection and payment. Therefore, it would be wise to request more liquidation authority than anticipated demand for cash to avoid unforeseen shortages.

Question 17. You have advanced a formula based 50% on population and 50% on limited needs. It was originally intended to be applied to a three year authorization at \$7 billion per year. Concomitantly, you are conducting a new needs survey which we understand will be ready in January of 1977. Do you feel that the allotment formula settled on by this Committee should be temporary until the information from that new needs survey can be evaluated?

Answer. No, we do not. The possible advantages of later adjusting the allotment formula are heavily outweighed by the disruptive impact on the program of a temporary formula. The uncertainty would make short-run program planning and management very difficult. Obligations would likely be slowed as a result.

Question 18. Is there a way to develop a formula which can respond to the new survey without having to drastically change?

Answer. Yes, it is possible, but we would recommend against it for the reasons discussed in the response to the previous question.

Question 19. Under any circumstances, do you favor limiting allotments under the construction grant program to Categories 1, 2 and 4B?

Answer. We favor an allotment formula based 50 percent on Categories 1, 2 and 4B, and 50% on population.

Question 20. Is that because those categories appear to be the most reliable or because that treatment is highest priority?

Answer. Both considerations have led us to recommend that Categories 1, 2 and 4B serve as a partial basis for the allotment.

Question 21. If the new needs survey were to produce information on the other categories which you felt were reliable, would you support including them in an allotment formula?

Answer. Categories 1, 2 and 4B, in general, provide for more pollution reduction per dollar spent than the other categories. Although we would prefer to await an analysis of the 1976 survey results for a final judgement, right now our feeling is that only Categories 1, 2 and 4B should be used in an allotment formula.

Question 22. What is your rationale for including a 50% population factor?

Answer. Population would add an element of predictability and stability to the allotment formula over time, and serve to temper the more unreliable aspects of the needs survey results. It is in itself a one indicator of needs, though far from ideal.

Question 23. If no new authorization for FY 1977 is made available by the Congress, how would you propose dealing with the problem that between 22 and 28 States will run out of money during FY 1977?

Answer. Although a number of States will "run out of money" before the end of FY 1977, the absence of new funding authority for most of these States will not be for excessive periods. In all cases the States in question will have a significant level of ongoing activity on their funded projects until new funds become available.

Question 24. What formula would you propose for distribution?

Answer. EPA would not support a redistribution of unobligated funds as of the end of the FY 1976/transition quarter period. We believe that this would be unfair to those States which have planned their programs to existing allotment levels.

Question 25. Many States are rightfully concerned that they will be out of money within the next fiscal year. Do you see the possibility of those States slowing down their program in anticipation of running out of money?

Answer. This is possible in some States.

STATEMENT OF ASSOCIATION OF METROPOLITAN SEWERAGE AGENCIES
BEFORE THE SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION
OF THE PUBLIC WORKS COMMITTEE
UNITED STATES SENATE

May 25, 1976

ON FUNDING OF THE WATER POLLUTION CONSTRUCTION GRANT PROGRAM
AND ON ALLOCATION OF FUNDS

The Association of Metropolitan Sewerage Agencies (AMSA) is an organization made up of large metropolitan sewerage agencies throughout the United States. Its membership includes over 50 agencies representing over 60 million people and the large bulk of the sewered population of this country. Appendix A is a list of AMSA members.

GRANT PROGRAM FUNDING LEVELS

It is AMSA's understanding that the Subcommittee is considering an interim solution to the funding requirements for Title II of the Water Pollution Control Act (PL 92-500) which would authorize funding for only one year and at a \$5 billion level. AMSA strongly urges the Subcommittee to enact a three-year program.

This organization came into being in 1970 in large part because of the special needs of large metropolitan sewerage agencies to have funding on a continuing basis and at appropriate levels. Many smaller communities are able to meet their construction needs on a one-year grant; however, this is virtually impossible for projects of the magnitude of those undertaken by AMSA members.

There seems to be universal agreement that the stop-and-start problems inherent in a one-year program, particularly with the need for review by the Budget Committees and the Appropriations Committees of the Congress, would work to create a climate of uncertainty about funding. This can only lead to increased costs and to further delays in accomplishing the objectives of PL 92-500. Even under the existing "contract authority" approach, the failure of the Administration to keep adequate funds in the pipeline has led a number of EPA regions into precarious positions. A recent article in Business Week (copy attached as Appendix B) details some of the communities that have had to suspend construction operations because of EPA "cash flow" problems.

AMSA urges the Committee in the strongest terms that every possible action be taken to avoid this unfortunate kind of situation which is both wasteful and demoralizing.

On the question of the level of appropriations, the \$5 billion amount included in S. 3037, in our judgment, should be raised to \$7 billion for each of the three years. In part, the rationale for a larger appropriation is to ensure that the cash pipeline will be full for, as noted earlier in this statement, failure to have an adequate cash flow can have a devastating impact on operations of major metropolitan agencies. Particularly in light of the Budget and Appropriations process now required, every doubt on the level should

be resolved in favor of a higher figure. The Needs Survey, conducted by EPA and by the National Commission on Water Quality, makes it abundantly clear that there must be an annual level of financing of considerably higher than \$5 billion in order to even be within striking distance of the goals and objectives of PL 92-500. Additionally, the switch to an October 1-September 30 fiscal year means that there will be five quarters of operation in fiscal 1976, and accordingly a level considerably higher than the \$5 billion should be authorized and appropriated for fiscal year 1976. The national commitment to achieving the enormous clean-up job of our waters was made by overwhelming votes in the Congress during 1972 and reflected the willingness of the Congress to make the necessary financial commitments when it overwhelmingly overrode the veto by President Nixon in October 1972 and just before election time made an \$18 billion commitment for the first three years of the program. The point is that this program will not be effective if it is not adequately funded. We urge, therefore, that the \$5 billion figure be reexamined and increased.

ALLOCATION FORMULA

Representing, as it does, the major population centers of the nation, AMSA has consistently recommended that allocations to the states be on the basis of population. It recognizes, however, the political realities of a program that must also take into account the needs of areas more sparsely populated and has understood and accepted the usual compromise of allocation on the basis of 50% for population and 50% for needs.

There is, however, in the implementation of the allocation formula an unfairness in some states that has occurred to the detriment of AMSA's members and, of course, to the millions of citizens that are served by those member agencies. We refer to the fact that, despite the manner in which the allocation of funds is made to the individual states, the states are free to distribute or reallocate funds to its applying municipal systems in any way that the governor or the state water control personnel believe is advantageous to the state. In too many instances, this has taken the form of freezing out metropolitan areas of a particular state because of the greater political benefit, as seen by some governors, in distributing the lion's share of a particular state's entitlement to smaller communities. AMSA believes this is not what was intended by Congress in the past in accepting the compromise formula for allocation to the states and proposes that the legislative mechanism explicitly provide that the states are required to distribute funds within the state on a basis that reflects the formula upon which those funds were obtained by the state. AMSA urges, therefore, that S. 3037 reflect that principle and suggests the following language to be added to S. 3037: "In reallocating funds received by each state in the manner prescribed herein, each such state shall do so in a fashion that reflects the basis upon which those funds were made available to such state. The governor of every state shall submit to the regional administrator by _____ of each year the proposed distribution of

funds within the state. The Administrator is authorized to withhold payments to individual states which do not reallocate funds on a basis approximating that upon which the state allocation was based."

To demonstrate that the problem of inequitable reallocation is not a theoretical or academic concern, attached to this statement for the benefit of the Subcommittee is a petition that was submitted to the Administrator of EPA Region V, seeking an administrative review of the project priority lists made by the State of Illinois in fiscal years 1973/74 and 1975 (Appendix C). The Regional Administrator denied the petitions on the ground that there was no authority under PL 92-500 or any other statute that would permit EPA to question the priority selections made by the State of Illinois. Should the Cleveland-Wright Bill, which would delegate considerable additional authority to the states, be enacted, the problem of inequitable reallocation of funds will undoubtedly be more severe. We believe we have properly interpreted the intention of Congress in the past development of allocation formulas and urge that the intention be turned into reality by a specific statutory requirement.

AMSA takes note of the fact that S. 3037 was reported by the Committee to the full Senate on May 12, 1976, and understands that this was done prior to hearings in accordance with requirements of the Budget Act. AMSA hopes that during the hearings scheduled on May 25 and 27 the Committee will obtain enough information and data upon which to urge an amendment on the floor of the Senate to S. 3037 which will more realistically take into account the requirements of major sewerage agencies of this country. The people of AMSA member cities have made considerable commitments of their own funds and believe that any moratorium or delay in the program can only be a breach of the mutual confidence and trust that, in our view, has been inherent in the formulation of PL 92-500 and in joint efforts by all parties to meet the goals of the act.

Obviously, there will be mid-course refinements, including many of the proposals made by the National Commission on Water Quality, when and if Congress reexamines the basic structure of the act in 1977. We believe, however, it would be a mistake to stop or retard the program while these possible adjustments are being considered.

APPENDIX A

ASSOCIATION OF METROPOLITAN SEWERAGE AGENCIES
Member Agencies, June, 1975

Greater Anchorage Area Borough, Ak.	Metropolitan Waste Control Commission (Twin Cities Area) Mn.
City of Tucson, Az	
City of Los Angeles, Ca.	Western Lake Superior Sanitary District, Mn.
County Sanitation Districts of Los Angeles County, Ca.	City of Kansas City, Mo.
East Bay Municipal Utility District Oakland, Ca.	Metropolitan St. Louis Sewer District, Mo.
County Sanitation Districts of Orange County, Ca.	City of Omaha, Ne.
Sacramento Regional County Sanitation District, Ca.	Bergen County Sewer Authority, NJ
City of San Diego, Ca.	Middlesex County Sewerage Authority, NJ
City & County of San Francisco, Ca.	Passaic Valley Sewerage Commissions, NJ
City of San Jose, Ca.	Albany County Sewer District, NY
Metropolitan Denver Sewage Disposal District No. 1, Co.	County of Monroe, NY
The Metropolitan District (Hartford County), Ct.	City of New York, NY
Miami-Dade Water & Sewer Authority, Fl.	City of Greensboro, NC
City of Atlanta, Ga.	City of Akron, Oh.
City & County of Honolulu, Hi.	Metropolitan Sewer District of Greater Cincinnati, Oh.
Metropolitan Sanitary District of Greater Chicago, Il.	Cleveland Regional Sewer Dist., Oh.
City of Wichita, Ks.	City of Columbus, Oh.
Louisville & Jefferson County Metropolitan Sewer District, Ky.	City of Dayton, Oh.
City of Baltimore, Md.	City of Portland, Or.
Washington (D.C.) Suburban Sanitary Commission, Md.	Allegheny County Sanitary Authority, Pa.
Metropolitan District Commission (Boston), Ma.	City of Philadelphia, Pa.
County of Wayne, Mi.	City of Providence, RI
	Metropolitan Government of Nashville & Davidson Cnty, Tn.

(Continued)

AMSA MEMBER AGENCIES

El Paso Water Utilities
Public Service Board, Tx.

City of Fort Worth, Tx.

City of Houston, Tx.

Trinity River Authority of Texas,
Northern Division, Tx.

Hampton Roads Sanitation District, Va.

Municipality of Metropolitan Seattle, Wa.

City of Charleston, WV

Metropolitan Sewer District
of the County of Milwaukee, Wi.

A cash-flow problem blocks clean water

A temporary but painful cash-flow crunch has hit the construction grants program of the Environmental Protection Agency. Although most projects may be able to squeak by until money comes into the EPA's regional offices again in July, the shortfall has claimed at least one casualty. On May 10, all work was stopped on a \$54.5 million sewage treatment facility in New Orleans because the city's sewerage and water board could not pay its bills.

Under the program, the EPA provides municipalities with funds to build water treatment facilities. In its zeal to get started on needed sewage treatment projects and in its hope to bolster a recession-wracked economy, the agency underestimated the amount of money it would need through July and did not ask for enough from Congress.

In the New Orleans situation, the EPA's Region 6 office, which includes New Mexico, Oklahoma, Arkansas, Texas, and Louisiana, committed itself to some \$34 million in payments until July 1. Now the region finds itself with only \$12.7 million available, and officials there bitterly complain that they are being penalized for being too suc-

cessful. "Last year we were criticized for not getting grant applications processed quickly enough, so we accelerated our efforts," says a Region 6 spokesman. Officials of the sewerage board are angry. "The EPA put the gun to New Orleans' head, and now they're not living up to their obligations," says Stuart H. Brehm, executive director.

Skeleton crew. The first signs of the problem surfaced on Apr. 23 when the EPA could not give the sewerage board the \$817,000 it needed to pay Pittman Construction Co., the general contractor on the treatment plant. The board also told Pittman that it would miss a second payment of \$1,356,000 due on May 21, so the contractor pulled its workers off the job. T. A. Pittman, president of the company, says he and his subcontractors had to lay off 320 employees.

Most other regions have not fared so badly, although all are playing it close to the vest. Congress, in a rider to the swine flu vaccination bill, gave the EPA an additional \$300 million to distribute, and Louis Jefferson, an official for District 9 in San Francisco, points to three projects in California that might have

STATEMENT
ON
ALLOCATION FORMULA
S.3037
FOR
PUBLIC WORKS COMMITTEE
UNITED STATES SENATE
MAY 25 and 27, 1976
BY
COMMISSIONER PETER A. A. BERLE
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
ALBANY, N.Y. 12233

As Commissioner of Environmental Conservation for the State of New York, designated by Governor Hugh L. Carey as the water pollution control agency for administration of the Federal Water Pollution Control Act Amendments of 1972, I wish to present a statement regarding allocation formulas about to be considered by the Senate Committee on Public Works in connection with Senate bill S.3037 recently reported by the Committee.

It is generally accepted that an allocation formula based on needs is the most sound basis for accomplishment of the goals envisioned by the sponsors of the Act, Public Law 92-500. This was clearly indicated in the original reports on the bill before enactment, as for example House Report No. 92-911, 92nd Congress, 2nd Session, March 11, 1972, which on page 93, states:

"This needs formula (i.e. for allotment under Section 209) is a sound basis for allotting funds since our experience to date clearly demonstrates that there is no necessary correlation between the financial assistance needed for waste treatment works in a given State and its population."

This concept was accepted by the full Congress and P.L. 92-500 became law.

Again, when the allocation formula for fiscal year 1975 was being considered, and ultimately was enacted as Public Law 93-243, the Senate Committee on Public Works, in Senate Report No. 93-630, December 13, 1973, reiterated, (page 9)

"The Committee remains firmly committed to the concept of allocating sewage treatment facility construction grant funds on the basis of the needs for such facilities. It is the intention of the Committee to use an estimate of

need for such facilities as the sale basis for allocation as soon as a comprehensive reliable needs survey is available (underlining supplied for emphasis).

Thus, in principle, the allocation formula of P.L. 92-500, i.e. "the ratio that the estimated cost of constructing all needed publicly owned treatment works in each State bears to the estimated cost of construction of all needed publicly owned treatment works in all of the States;" was sustained. The compromise in P.L. 93-243, i.e. the basing of the allocation formula on one half the total needs of all the States (except rehabilitation of collection systems, and treatment and control of stormwater); and one-half of the needs for Categories I, improvement of treatment plants for more stringent than secondary treatment where required by water quality standards requirement; and IVa, new interceptors, force mains and pumping stations; was believed necessary to accommodate alleged shortcomings in the 1973 needs survey.

To rectify this shortcoming, P.L. 93-243 provided explicit instructions for the conduct of the reassessment of needs on an accelerated basis to be used for allocating the fiscal year 1976 grant funds. The P.L. 93-243-mandated 1974 Needs Survey was submitted to Congress by EPA on February 10, 1975 and was subsequently revised on May 6, 1975. Release of the impounded FY 1973, 1974 and 1975 Title II contract authority by the Supreme Court in February 1975 made it unnecessary to use this survey for allocation as the original formulae in P.L. 92-500 and P.L. 93-243 were applicable. However the 1974 survey may be suitable for allocation of the five billion dollars authorized for fiscal year 1977 in S.3037.

There is considerable confusion relative to the respective needs surveys' caused in principal part by the disparagement of State's estimates of needs by the Administrator, U.S. Environmental Protection Agency with each successive report.

The 1971 Study used as the basis for the FY 1973 and 1974 authorizations in accordance with P.L. 92-500 was an EPA estimate of needs to clean up the backlog requirements of P.L. 84-660, expressed in 1971 dollars, amounting to eighteen billion dollars. According to testimony presented by the General Accounting Office at the House oversight hearings February 24-25, 1976, only \$8.2 billion of the \$18 billion authorized had been obligated as of December 31, 1975. Therefore of needs existing prior to P.L. 92-500, less than half the needs for a lesser requirement had been satisfied as of that date.

The 1973 Needs Survey was based on attainment of 1977 goals of P.L. 92-500, a substantial increase in treatment requirements over P.L. 84-660, and estimates were expressed in 1973 dollars. This estimate was used for the allocation of fiscal 1975 contract authority under the formula of P.L. 93-243.

The 1974 Needs Survey prepared in accordance with P.L. 93-243, includes all categories of sewage treatment works eligible under P.L. 92-500 as required to meet 1983 goals for best practicable wastewater technology. Estimates are also in 1973 dollars.

Because of the vast difference between the basic requirements of each study, none are comparable with each other.

Currently EPA is proceeding with a 1976 needs study under ground rules of their own devising pointed to reduction of needs by lessened federal participation. This study, as yet unsanctioned by the Congress, will be based on 1976 dollars.

Summing up, the position of the State of New York on Allocation Formulae is as follows:

1. The allocation formula in P.L. 92-500 arrived at after two years of hearings and deliberations prior to the effective date of October 18, 1972 is the optimum formula for attainment of the goals of the Act.

2. The compromise formula of P.L. 93-243 is acceptable as an interim basis for allocation of F.Y. 1977 authorizations in view of prospective other changes in the Federal Water Pollution Control Act through H.R. 9560, and such actions as may be taken pursuant to the Report of the National Commission on Water Quality.

3. The Senate Public Works Committee should determine the basis for allocation, i.e., either the 1973 needs study estimated to attain 1977 goals; or the 1974 needs study estimate for attainment of 1983 goals.

4. Population should not be an element of the allocation formula as this was conclusively rejected in the Committee reports of 1972 and the detailed analysis contained in Senate Report No. 93-630 of December 13, 1973. It has been thoroughly demonstrated that population is not a measure of needs due to variance between States in degree of industrialization, urbanization and geographic influences.

Surely needs resulting from concentrations of population is important, where three million people in the District of Columbia or 10 million people in the New York City Metropolitan Area, each encompassed within a radius of 20 miles have needs greatly in excess of those equivalent populations spread out over three to five States.

5. Any formula should give major weight to total needs for all categories of eligibility guaranteed by P.L. 92-500, with the exception of storm water control and treatment. Currently, there is an Administration bill before the Senate, S.3038, which seeks to reduce the percentage of federal grants for some categories of sewage treatment works and complete elimination of grants for other categories. The transparent reason behind this bill is to lessen federal participation in water pollution abatement thus by hypothesis reducing needs. The effect of such a bill would relegate the goals of P.L. 92-500 beyond all hope of achievement. Any allocation formula based on less than total needs would be sanctioning the downfall of the Federal Water Pollution Control Act eligibilities.

6. Needs are identifiable. After four years of planning required by the Act, few if any States should not be able to pinpoint their needs with reasonable precision. Thus, use of the "crutch" of population to compensate for lack of identifiable needs can only divert funding away from those State's whose planning has progressed to the point of assembling viable projects.

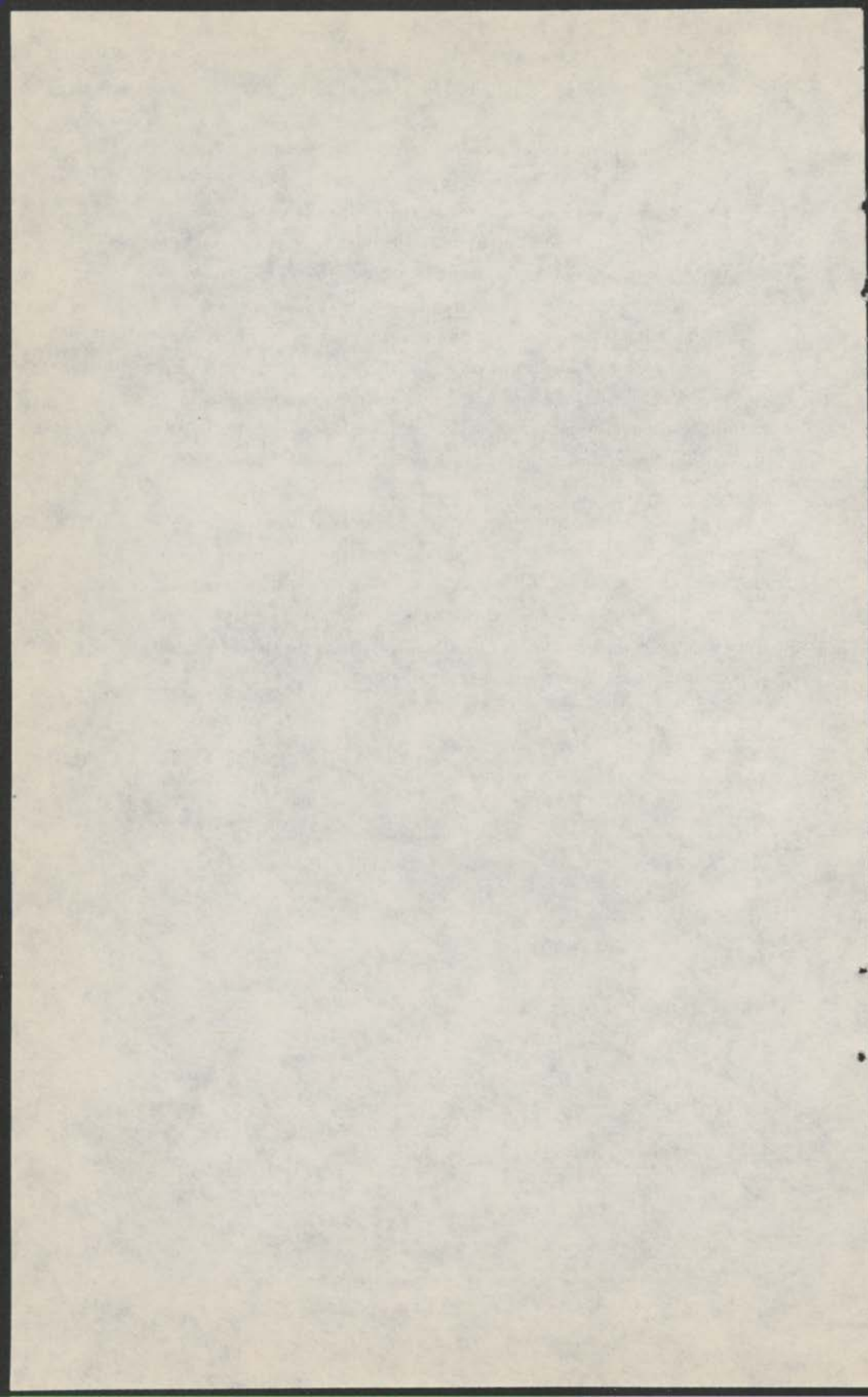
In conclusion, the complaint most heard as regarding full accomplishment of the intent of Congress in implementing the Amendments of 1972 is the instability of the fiscal aspects. This comes about from a variety of reasons beginning with the original impoundments of fund authority; the short period of the original bill covering only three fiscal years, whereas most projects require a gestation period of three to five or more years; the lack of authorizations beyond FY 1976 (except for the single stop-gap authorization of S.3037) which inhibits forward planning; and the fiasco within recent days where owed federal grant payments went unsatisfied due to mal-administration of cashflow by EPA and OMB, leaving contractors unpaid in several areas of the country.

Added to this is the threat of changes in allocation formulas which has hung over the program for the past year or more.

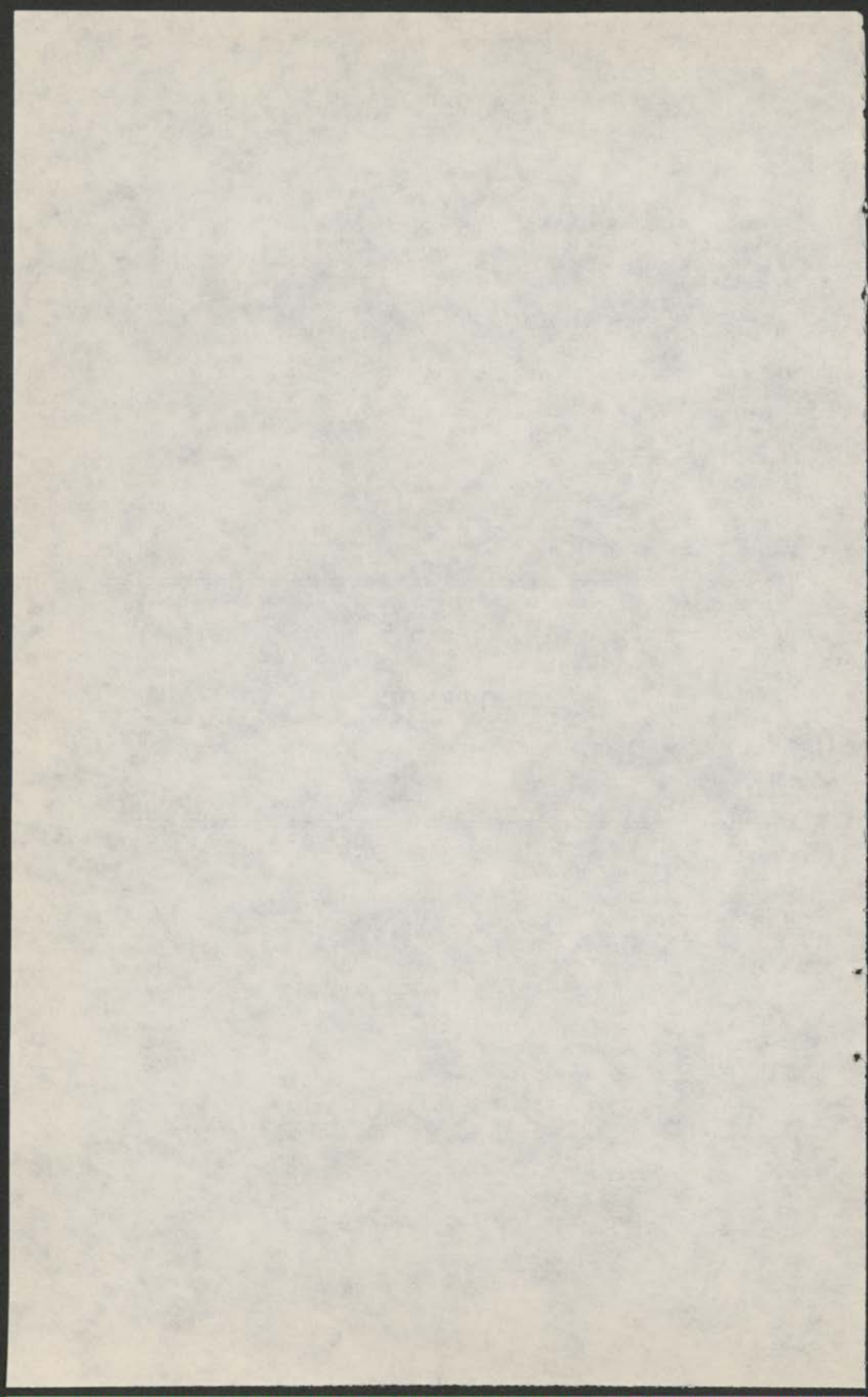
I cannot urge more strongly that the Senate Committee on Public Works address this matter of fiscal stability for effective long range planning.

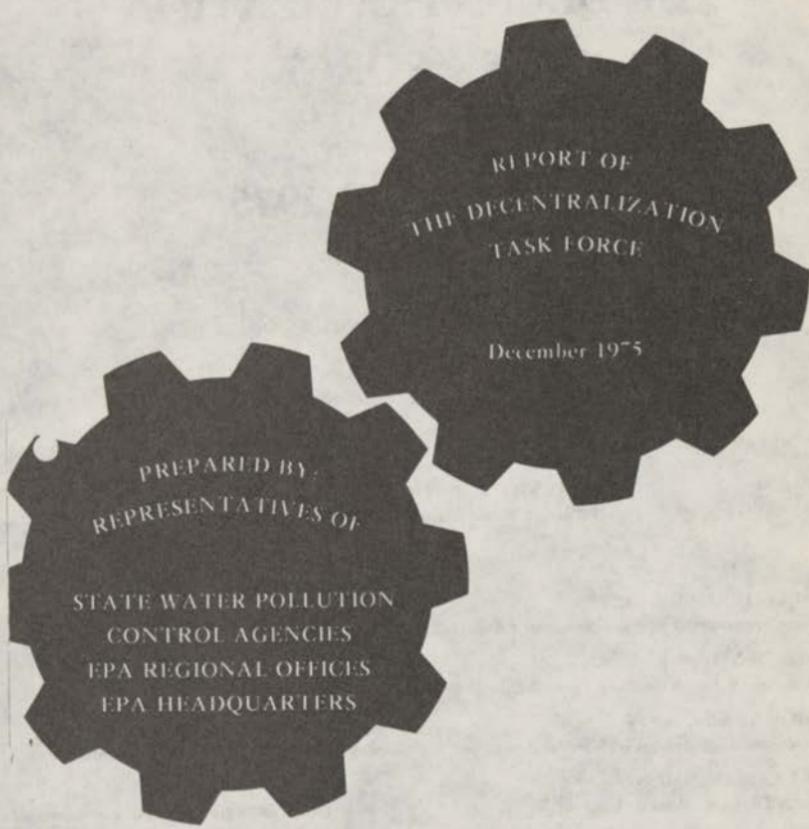
In this regard it may be noted that while the U.S. Supreme Court found that the withholding of allocations to the States by the Executive Branch was illegal, the decision did not abrogate the Executive right to control expenditures through regulation of obligations.

The General Accounting office testimony at the House oversight hearings February 24-25, 1976, revealed that of \$8.2 billion obligated up to December 31, 1975, half was obligated in only four months, i.e. March 1973, June 1973, June 1974 and June 1975. Therefore the remaining four billion dollars required a total of 35 months for obligation. This was accomplished by EPA-OMB policy of rigorous application of stringent regulations and imposing of restrictive quotas to control cashflow. This may not be the forum to present this problem, but I feel it is pertinent, as allocation formulae should not be considered in isolation without some realization that allocation is only the first tentative step in the whole pollution abatement process.



APPENDIX





REPORT OF
THE DECENTRALIZATION
TASK FORCE

December 1975

PREPARED BY:
REPRESENTATIVES OF

STATE WATER POLLUTION
CONTROL AGENCIES
EPA REGIONAL OFFICES
EPA HEADQUARTERS

U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460



REPORT OF THE DECENTRALIZATION TASK FORCE

DECEMBER 1975

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Preface

During the past several years, significant progress has been made toward achievement of the goals and objectives of the Federal Water Pollution Control Act (Public Law 92-500) as a result of the collective efforts of the States and EPA. Not only have many specific water quality problems been solved, but much has been accomplished toward building an effective joint Federal/State program to deal with the difficult and complex challenges which lie ahead.

In establishing the Decentralization Task Force, the Assistant Administrator for Water and Hazardous Materials emphasized the increasingly crucial role which States will play in future years and recognized the potential need for changes in the basic EPA/State relationship as the States incrementally assume the major operational role in carrying out the provisions of P.L. 92-500. To promote the continuing evolution toward increased State participation in the joint EPA/State program, the Task Force was charged with the responsibility for conducting an in-depth evaluation of EPA/State relations and for developing specific recommendations.

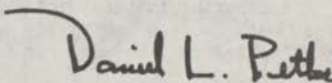
Because our mandate was limited, the Task Force deliberately restricted its efforts to evaluation of the EPA/State relationships in the water pollution control program. Much of what we learned and have to recommend, however, may well apply to other environmental programs and to relationships between other levels of government.

More than 130 interview sessions were conducted with officials in 20 States, 7 EPA Regional Offices and EPA Headquarters as the Task Force gathered the information and insight which provide the basis for the findings and recommendations contained in this report. We were encouraged by the enthusiastic reception of those we interviewed and wish to express our sincere appreciation for the many comments and constructive suggestions which we received.

While the Task Force found evidence of significant progress toward increased State participation in the joint EPA/State water program, we also detected some loss of momentum and relative lack of commitment to further progress on the part of both EPA and the States. Clearly, the full potential of program decentralization has not yet been achieved. And because many additional opportunities exist to build upon past accomplishments, EPA and the States must not allow themselves to become complacent and be satisfied with what has been accomplished thus far.

As might be expected, given the rapid shifts in responsibility which have occurred during the past several years and the dynamic nature of the program which P.L. 92-500 outlines for future years, a need was found for several changes in the ways in which EPA and the States relate to each other. Effecting these necessary changes will continue as a major challenge for each of the participants in the water program. Failure to meet this challenge will result in an unfortunate institutionalization of the remaining inefficiencies in the EPA/State relationship.

Implementation of the Task Force's recommendations will not result in immediate resolution of the problems which impede a more effective Federal/State program. But our proposals, if implemented, will give new impetus to the continuing effort to build more productive relationships which, in turn, will lead to greater results in our combined efforts to protect and enhance our Nation's waters.

A handwritten signature in dark ink, reading "Daniel L. Petke". The signature is written in a cursive style with a large, sweeping initial "D".

Daniel L. Petke
Chairman
Decentralization Task Force

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Executive Summary

Last August, the Assistant Administrator for Water and Hazardous Materials established the Decentralization Task Force, composed of several senior State environmental protection agency officials and representatives of the EPA Regional Offices and Headquarters. In doing so, he stressed the continuing need for increased State participation in the joint EPA/State water pollution control program and recognized the necessity for finding additional means to build State capacity to incrementally assume the major operational role in carrying out the provisions of Public Law 92-500. He specifically charged the Task Force to "conduct an in-depth evaluation of existing EPA/State relations in the water program" and to "develop specific recommendations."

In carrying out these responsibilities, the Task Force visited 20 States, 7 Regional Offices, and most Headquarters Offices and conducted more than 130 interview sessions. Based on the information obtained during these interviews, the Task Force has formulated the findings, conclusions and recommendations which are summarized below.

Major FindingsProgress Toward Decentralization.

1. A great majority of the States have accepted the basic program framework outlined in P.L. 92-500 and are working cooperatively with EPA to achieve the goals of the Act.
2. The administrative structure and management process linking the States, the Regional Offices and EPA Headquarters -- although in need of some improvement -- is in place and is functioning well in most instances.
3. Delegations of program functions have been made to a large number of States, and these are working effectively in a majority of cases.

Obstacles to Further Decentralization.

4. Given the significant variability among State water programs, there is no general agreement regarding specific future decentralization goals, and there is great disparity in opinion concerning the ultimate division of responsibility and labor between EPA and the States.
5. Progress toward decentralization in the form of formal program delegations (e.g., NPDES) has reached a point of diminishing returns, as there are few additional States which have the staff capacity to assume this type of large scale delegation.
6. State and Federal appropriations for support of State water pollution control programs have leveled off and the prospect for significant funding increases from these sources through FY77 is minimal. Indeed, many States are facing the prospect of funding cutbacks and some States stated that any additional Federal funds would be used to supplant State funds if not expressly forbidden.
7. The lack of sufficient funds to increase State staff is viewed by many States as the single most important obstacle to a more effective division of responsibility and labor between EPA and the States.
8. Some Regional Office staff have serious doubts regarding the capacity of many State agencies to operate an effective program, and EPA Headquarters managers, while advocating the need for further decentralization, have not provided realistic, specific policy guidance to achieve that end.
9. Many States view the "partnership" currently offered to them by EPA as an unequal one in which "the States do all of the work and EPA retains all of the authority and takes the credit."
10. EPA and the States, collectively, have failed to establish the necessary program management systems to implement the water program in a decentralized fashion. This failure is the source of many of the attitudinal problems which exist between EPA and the States.

Opportunities for Further Progress.

11. Most State and EPA program managers support an incremental shift of program authority and responsibility to State agencies.
12. The State agencies are prepared, with some reservations, to use additional funds, such as may become available from congressional approval of the Cleveland-Wright concept, to expand their staffs and to build capacity for further decentralization.
13. There is considerable duplication of effort between the Regions and States (e.g., State and EPA review of plans and specifications, EPA review of draft State permits, etc.) which could be greatly reduced, thereby freeing up scarce resources for other tasks.
14. Many States have overlooked opportunities for supplementing their scarce resources by involving other Federal, State and local agencies more directly in their water quality management programs and thus benefiting from the significant technical expertise and forms of technical assistance available to them.
15. With regard to supplementing scarce State resources, EPA itself -- particularly the Regions -- could do much more in terms of making available to the States its considerable technical expertise through various technical assistance mechanisms.
16. Most State officials -- and many EPA staff -- believe that EPA could take better advantage of individual State capabilities, authorities and procedures by modifying its regulations, policies and guidelines to incorporate more flexibility for the States.

Conclusions

1. Despite significant past progress and a general receptivity to decentralization among State and EPA staff, some loss of momentum and a relative lack of commitment to further progress appears to be developing.
2. The States' view of lack of sufficient funds to increase State capacity as being the major obstacle to further progress toward decentralization is only partially valid.

Many opportunities (see findings above) for building additional State capacity to assume a more significant role in the joint EPA/State program exist -- even in the absence of significant increases in funding.

3. The advantages associated with further decentralization of the water program far outweigh the disadvantages, and the potential benefits to both EPA and the States far outweigh the costs associated with further efforts to realize the full potential of program decentralization.
4. Given the developing loss of momentum toward further decentralization, the significant opportunities for further progress and the favorable benefit/cost relationship, what is needed now is "a shot in the arm." New impetus could be given to the continuing effort to build more productive relationships by taking several specific actions designed to overcome many of the problems which impede a more effective Federal/State program (see Task Force recommendations below.)
5. The problems which impede further progress toward decentralization will not be resolved without the cooperation of each of the participants in the water program, nor will they be resolved overnight. It is important, however, that a process be established to deal with these problems and that specific mechanisms for follow-up be built into the process.

Recommendations

1. The Administrator should issue a statement on decentralization to the director of each State water pollution control agency and to all EPA managers and staff associated with the national water pollution control program. The Administrator's statement (see recommended statement in Appendix A) should enunciate clearly the Agency's policy with regard to decentralization of the water program and should include an Agency action program, based on the recommendations of the Task Force which are designed to resolve the problems which impede progress toward further decentralization. The action program should identify specific tasks to be accomplished and should assign specific responsibilities for accomplishing those tasks.

2. A process, which includes State participation, should be established to determine the Agency's policy regarding the current and future EPA overview role. The process should result in Agency policy (and procedures if appropriate) on matters such as:

- * State participation in the development of proposed regulations and guidelines.
- * State authority to make decisions and take actions commensurate with their program responsibilities.
- * Regional Office and State participation in the definition of minimal, essential reporting requirements.
- * Mutual EPA/State accountability in program evaluation.
- * Reprogramming of EPA staff as States assume the major major operational role.

The process should also result in periodic updating of the Agency's action program for decentralization in order to reflect new policies on decentralization and EPA/State experience in dealing with the problems impeding decentralization.

3. EPA should continue, on a high priority basis, to seek additional funding for support of State programs. In doing so, the Agency should emphasize in its relations with the Office of Management and Budget and the Congress the benefits which would accrue with further program decentralization. Primary attention should be focused on measures such as passage of legislation which incorporates the Cleveland-Wright concept, increased Section 106 State program grant funding, and realistic funding under Section 208(f) to support State (and areawide) water quality planning and management programs. In addition, serious consideration should be given to proposing legislative amendments which would inhibit or preclude decreases in State funding as Federal funding is increased.

4. Current EPA policy and program guidance (and possibly some regulations) should be reviewed and modified as necessary to accommodate and promote further incremental delegation of program responsibilities to the States. In doing so, program managers in each water program area should consider matters such as:

- * Ways to take better advantage of individual State capabilities, authorities and procedures by providing additional flexibility to the States for conduct of their programs.
- * Definition of appropriate State and EPA roles and responsibilities which can be tailored to individual State capabilities (rather than national program models).
- * Increased use of program evaluation and spot checking (in place of redundant EPA review of State work) to reduce duplication of effort.
- * Identification of improved output measures, activity indicators and standards of performance (for use in the Agency's MBO-FPRS system) to better reflect the variability among States of water quality problems and approaches for solution of these problems.

5. Each Regional Office and State should be requested to prepare annually a joint EPA/State action plan for decentralization as part of the Regional workplans and Section 106 State program submissions. These action plans should identify joint decentralization objectives and should include items such as:

- * A description of how the Region intends to build additional State capacity to take on additional program responsibilities over time. Financial assistance, improved training programs, EPA technical assistance, and assignment of EPA staff to State agencies through short-term details, IPA assignments, colocation, etc. should be considered.
- * A description of how the Region and States intend to further minimize duplication of effort and determine the proper utilization of joint EPA/State resources. The Regions and States should seek to

establish a clear definition of their respective roles and responsibilities in the conduct of the FY77 water program and should include a listing of the written agreements or memoranda of understanding to be negotiated in each functional area.

- * A description of what the Region and States plan to accomplish in the way of improving their joint program management and reporting systems in order to assure that the water program is implemented effectively and efficiently in future years. Development of performance standards for each functional area of the water program, improved mechanisms for periodic program evaluation, and development of reporting mechanisms which are tailored to the individual procedures and needs should be considered.
6. The Regional Administrators should report semi-annually to the Deputy Administrator on progress achieved in implementing the EPA Region/State decentralization action plans. The Deputy Administrator, in turn, should present a summary of these progress reports to the State/Federal Water Programs Advisory Committee (commonly known as the "Committee of Ten") for their consideration and recommendations.

I. INTRODUCTION

The Decentralization Task Force was established by the Assistant Administrator for Water and Hazardous Materials in August of this year. The Task Force was asked to provide EPA with an assessment of the current state of EPA/State relations in the water pollution control program and to recommend to the managers of the Agency ways to promote a further incremental shift of program authority and responsibility from EPA to the State agencies (see Appendix B for the memorandum establishing the Task Force).

In authorizing the Task Force, the Assistant Administrator stressed the increasingly essential role which the States will play in the control and abatement of water pollution under P. L. 92-500 and recognized the potential need for changes in the basic EPA/State relationship as the States develop the capacity to assume the major operational role in the program. He foresaw the need for EPA to devolve itself of many of these operational responsibilities and to adjust its policies to play an, as yet undefined, overview role.

The shift in responsibilities between EPA and the States has been evolving over the past several years and has now reached a point where basic decisions regarding the future development of the relationship are required. It is important and appropriate that EPA and the States now consider changes in the ways in which they relate to each other.

In order to bring together a group with a wide range of perspectives and experience in management of the water pollution control program, the directors of three State agencies and EPA staff from the Regional Offices and Headquarters were asked to participate as members of the Task Force. The individuals who made up the group were:

Daniel L. Petke, Chairman
Chief, State Management Branch
Office of Water Planning and Standards

William Adams, Jr.
Commissioner
Maine Department of
Environmental Protection

Patrick Harvey
Water Coordinator
Region II

Bill Dendy
Executive Officer
California Water
Resources Control Board

Patricia O'Connell
Special Assistant to the
Deputy Assistant Administrator
Office of Water Enforcement

Thomas Frangos
Assistant Secretary
Wisconsin Department of
Natural Resources

Truman Price
Senior Program Analyst
Office of Planning and Management

Patrick Godsil
Chief, Planning Branch
Water Division
Region VIII

Edward Richards
Chief, State Programs Section
Office of Water Planning and
Standards

Richard Hager
Office of Regional and
Intergovernmental
Operations

Ralph Sullivan
Program Counselor
Office of Water Program Operations

In addition to the efforts of the Task Force members, several other people played important roles in developing the Task Force report. Two State officials, Robert Krim from the Wisconsin Department of Natural Resources and Edward Anton from the California Water Resources Control Board, participated in the interview sessions and made valuable contributions to the drafting of the report. Margaret Davis and Bruce Rosinoff of the State Management Branch did much of the staff work and research for the report. Towana Hill, also of the State Management Branch, typed and proofread the manuscript.

To gather the information and insight required as the basis for its assessment and recommendations, the Task Force was divided into three teams which visited a total of 20 States, 7 of EPA's Regional Offices and EPA Headquarters. More than 130 interview sessions were conducted with State agency officials, State legislators and budget office staff and with EPA officials at all levels.

In selecting the States to be visited, care was taken to include agencies of different size and varying degrees of program responsibility and sophistication. Particular attention was given to inclusion of States which have harmonious relations with the EPA Regional Office and those where significant difficulties have been experienced. California was studied carefully, because its recent assumption of responsibility for virtually all municipal facilities functions qualifies it as a possible prototype for future EPA/State relations, with important implications for other States.

The States and EPA Regions visited by the Task Force were:

Massachusetts	Wyoming
Vermont	Utah
Connecticut	Texas
Tennessee	Louisiana
Georgia	New Mexico
Mississippi	Alaska
Illinois	Idaho
Michigan	Washington
Minnesota	Oregon
Montana	California

Region I - Boston	Region VI - Dallas
Region IV - Atlanta	Region VIII - Denver
Region V - Chicago	Region IX - San Francisco
Region X - Seattle	

The Task Force concentrated its assessment on those aspects of EPA/State relations which seemed most pertinent to a determination of the most effective division of responsibility and labor between EPA and the State agencies. Because of time limitations, Task Force attention was directed primarily toward the NPDES and municipal facilities functions and less toward functions such as water quality management planning and ambient monitoring, which are already highly decentralized.

The extensive discussions of Task Force members with a wide selection of State and EPA officials revealed a general consensus that decentralization is essential to the success of the water pollution control program under present conditions of severely limited resources. There was agreement that changes are necessary in the way EPA and the States do business with each other, if the decentralization effort is to move into the additional functional areas and if the shift of major program responsibility and authority is to continue.

The major portion of the report discusses the need for changes in the EPA/State relationship and suggests possible avenues for innovation and modification. The recommendations are a statement of the Task Force's best judgement as to how to set in motion a process which can in the next several months and years result in major improvements in EPA/State relations, which in turn will facilitate the transition to a more effective division of responsibilities between EPA and the State agencies.

II. THE CONCEPT OF DECENTRALIZATION

Early in the course of interviewing State and EPA officials, it became apparent to the Task Force that the term, "decentralization," had many different meanings to different individuals. Specifically, there was uncertainty and confusion regarding the objectives of and methods to achieve decentralization. Consequently, the Task Force felt compelled to develop and present its view as to what the term, "decentralization," means and implies.

This section of the report states the Task Force's view of the decentralization concept and its applicability to the national water pollution control program. The advantages and disadvantages of this approach to managing the national program are then explored.

Background

One of the major challenges of P.L. 92-500 is the management task of administering a State and Federal program to protect and enhance water quality in a manner which is sufficiently consistent nationally to satisfy the provisions of the Federal Act, and yet is flexible enough to adapt to the conditions and programs in 56 different States and territories. Implementation of the Act thus far has demonstrated the difficulty of this task.

Perhaps one way of understanding some of these problems is to recognize that EPA is compelled by the Act to take certain actions -- the issuance of permits and the processing of Federal grants for the construction of municipal waste treatment facilities, for example -- in accordance with specified deadlines and procedures. Furthermore, EPA is compelled by P.L. 92-500 and by resource constraints to carry out many of the specific provisions of the Act by inducing State agencies to assume a major operational role in the joint EPA/State program.

The States, on the other hand, have programs which predate P.L. 92-500, which are governed by State law, and which are affected by the physical, political and institutional circumstances of each State. In this context, and in the eyes of individual States, EPA's priorities may sometimes appear to be incorrect and its procedures may often seem to be inappropriate.

These two perspectives -- the State and the national -- inevitably create tensions and disagreements between EPA and the States. However, through the process of program decentralization, operationally effective program policies can be determined and carried out by both EPA and the States. As a result, friction can be minimized and the improved cooperation can lead to a significant increase in productivity.

The Task Force View of Decentralization

To realize the benefits of program decentralization will require the effective utilization of the staff resources of both EPA and the States through additional dispersion of program functions and authority to the States. Such an approach -- decentralization -- can be employed effectively only in those situations where each unit of government:

- * understands its responsibilities and its relationship with other units;
- * understands and accepts the goals or objectives of P.L. 92-500;
- * has the opportunity to determine the methods by which common goals will be reached (i.e., participation in the determination of needed legislation and drafting of regulations and guidelines);
- * is willing and able to transfer and/or accept responsibility and authority;
- * has adequate resources to carry out its responsibilities;
- * is mutually accountable to other involved governmental units; and
- * maintains a basic level of trust.

In an attempt to apply these principles to the current water pollution control program, the Task Force devised the following statement of the decentralization concept for the purpose of establishing a framework for the remaining portion of the Task Force report:

"Decentralization of administration of the national water pollution control program to the States consists of assigning responsibility and authority for decision-making and circumstantial interpretation of P.L. 92-500 and associated regulations to individual States as rapidly as possible and to the extent that each is ready, willing and able to assume such responsibilities. The purpose of this shift in authority and responsibility is to achieve the most effective division of program functions between EPA and the States. To accomplish this division of functions, EPA recognizes the need to give the States a greater role in determining policy, so as to achieve greater equality and mutual accountability in the Federal/State partnership. Further, EPA recognizes that various elements of the national program can be administered in a non-uniform manner and still accomplish the specific and general objectives of P.L. 92-500. Achieving decentralization will require a substantial reevaluation of regulations, definitions, guidance, etc., which have previously been issued by the Administrator."

This statement is designed to address State concerns that they are doing more and more of the work, while EPA retains most of the authority to make policy decisions. These State concerns, in general, center on the State view that the current "partnership" is unequal, particularly in the area of policy determination.

The statement also calls for decentralization which is as rapid and extensive as State willingness and capacity permit. This interpretation of decentralization implies an EPA commitment to full-scale implementation and gives the States assurance that EPA will not change policy direction at some future date.

The reference to the "most effective division of program functions" implies that there will not be a joint effort to eliminate unnecessary duplication of effort. The point regarding non-uniform administration alludes to the great variety of pollution problems, the varying political and social conditions among the States, and the need to administer pollution control programs in a flexible manner which takes these variations into consideration.

The State role implied in this statement is entirely consistent with Section 101(b) of the Act which says, "It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use including restoration, preservation, and the enhancement of land and water resources, and to consult with the Administrator in the exercise of his authority under this Act."

Advantages and Disadvantages

Because the purpose of the suggested policy toward decentralization is to improve the effectiveness of the water pollution control program, it is important to appreciate the advantages to be derived. Some of the more important advantages are discussed below.

Improved, less arbitrary decisions. State personnel are in a better position to take into consideration the economic, social, environmental and institutional situations within their States when developing solutions to water quality problems.

Increased State commitment. When State officials have more authority and responsibility for the pollution control effort, they will be more accountable to their citizens for the results of their program. This should lead to greater public involvement and support for the pollution control effort in each State.

Greater efficiency. Given the severe resource constraints in the national program and the dim prospect for increased EPA staffing, it is essential that inefficiencies be reduced to the maximum possible extent. By eliminating unnecessary duplication of effort (e.g., Regional Office review of State permits and State-approved plans and specifications), decentralization can result in greatly increased cost-effectiveness.

Increased State cooperation. The transition to a more equal partnership will increase State willingness to assume the responsibility for additional program functions and will result in a more effective division of responsibility and labor between EPA and the States.

Increased output. Expanded State authority, more active involvement of State personnel in the "front line" decisions of water quality management and minimal "second-guessing" by EPA will result in improved morale of State staff which, in turn, will lead to increased output.

These advantages, while not subject to quantitative measurement, could make a major contribution to the overall success of the national water pollution control program. However, a decentralized program will require new administrative mechanisms for policy-making, more effective lines of communication between the States, EPA's Regional Offices and EPA Headquarters, and changed attitudes on the part of EPA and State staff. If the policy suggested by the Task Force is adopted and these necessary changes are not accomplished, serious problems could arise. These are discussed below.

Reduction of management control. If a State receives responsibility for program functions and does not have the right combination of sufficient resources, a cooperative attitude and clear lines of authority to EPA, the result could be an ineffective program which would be difficult for EPA to improve or control.

Insufficient program information. A decentralized program, if not carefully coordinated, could result in a variety of different management information systems and inability on the part of EPA to obtain consistent program statistics and information needed for reports to Congress and the Executive Branch and for program planning.

Additional program coordination. Measures to increase the State role in policy determination -- for example, State participation in the development of proposed regulations and guidelines -- will require additional program coordination and an increased time period for policy determination. The offsetting benefits, however, will be realized through more realistic policies which are more acceptable to the State agencies.

In summary, the Task Force concluded that program decentralization -- as defined in this section of the report -- has much to offer as the management approach for effective implementation of P.L. 92-500. The basis for our conclusion is provided in subsequent sections of the report.

III. POLICY EVOLUTION AND PROGRESS TOWARD DECENTRALIZATION

For several years EPA has been pursuing a policy which calls for the transfer of functions of the water pollution control program from EPA to State agencies. However, this policy, which in this report is termed "decentralization," has never been defined well by EPA nor has progress toward implementing the policy been evaluated in an organized manner. In this section the actions which, taken together, constitute decentralization are discussed, and progress toward the goals of decentralization is assessed.

The Current Policy

Progress toward decentralization of the water pollution control program, as pursued by EPA since the passage of P.L. 92-500, has been made because of many individual decisions and actions which have resulted in the shift of program responsibilities from EPA to the States. This progress was achieved in the absence of any comprehensive policy statement which clearly established objectives and milestones. Rather, it occurred as a pragmatic response to the requirements of the pollution control effort outlined in P.L. 92-500 and was achieved under demanding timing pressures caused by the deadlines contained in the Act.

Responsibilities for some specific program functions (e.g., issuance of NPDES permits, review of plans and specifications of municipal waste treatment facilities, etc.), which were initially carried out by EPA, have been transferred to State agencies. These responsibilities (mostly in the municipal facilities and NPDES programs) are now distributed unevenly between the States and EPA. Some State agencies are carrying out a large majority of these operational functions, while EPA continues to have the major responsibility for program activities in other States.

Determinations regarding which program responsibilities to shift to which State agencies have been determined, largely in an ad hoc fashion, depending on such factors as State willingness and capacity. Similarly, authority to decide which functions to decentralize and when and how to transfer specific functions has been divided between several program offices in Washington and EPA's ten Regional Offices. Consequently, there is no central office in EPA Headquarters which determines decentralization policies and oversees their execution. Coordination and

general policy directives are provided in part by EPA's annual Operating Guidance, and evaluation is made possible by information obtained periodically through EPA's Formal Program Reporting System (FPRS).

Even though the Agency has not specifically defined the goals and methods of decentralization, it has made a firm -- although general -- commitment to such a policy. For example, the memorandum transmitting the FY 76 Operating Guidance said, under the heading "Partnership with State and Local Governments":

"We at EPA are committed to ensuring that the State and local governments are able and willing to accept a larger responsibility for publication control problems, especially those best handled by the governments closest to the problems.

We are committed to providing financial and technical assistance to help in achieving this objective. Our goal in FY 76 is to significantly increase the role of the States in our regulatory and construction grant programs. The Agency's environmental objectives are not secondary to this goal -- they are the results we seek from the partnership."

Left unanswered as yet, however, are important questions concerning the future extent of decentralization, EPA's willingness to transfer authority along with responsibility, and the nature of EPA's overview role in future years.

Progress to Date

Program decentralization to the States has occurred in a variety of areas. And it is important to recognize that significant progress has been made toward building the institutional foundations necessary for program decentralization as well as to recognize the magnitude of functions which have been transferred.

Institutional progress. Since passage of P.L. 92-500, EPA has expanded its water pollution control staff in its ten Regional Offices. State agencies have also greatly increased their staffing. Policy is determined primarily in EPA Headquarters and is transmitted in the form of regulations and guidance to the Regional Offices and, through them, to the States. Linkage between the States and the Regional Offices is

established by the annual process of joint EPA/State program planning and funding Section 106 grants to State agencies. In the course of this process, funding is provided to the State agencies in return for State commitments to carry out specific functions and to produce specified outputs which are essential to the national water pollution control program.

This administrative structure and the authorities and procedures by which it operates are now functioning effectively. The combined efforts of EPA and the States have accomplished the tasks required in the implementation of PL 92-500. But new and heavier requirements are now called for, particularly in the areas of permit compliance and enforcement, construction and maintenance of municipal facilities and control of nonpoint source pollution.

To meet these requirements, all remaining inefficiencies (e.g., duplication of effort) in the EPA/State system must be eliminated or drastically reduced, thereby making staff available to work on other tasks. At the time, modifications must be made in EPA administrative authorities and procedures to provide the States authority commensurate with their assumed operational responsibilities within the limits of the Act. If these modifications are responsive to the State concerns, then the continuing transfer of program functions to the States will be greatly facilitated.

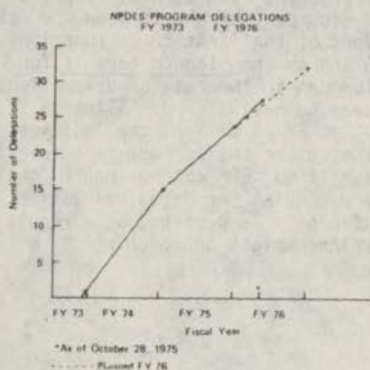
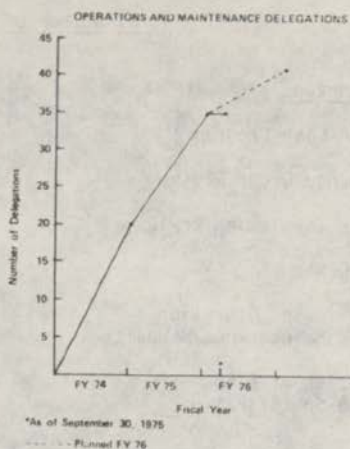
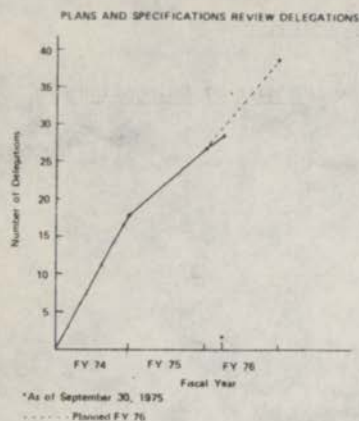
Transfer of functions. Since the passage of P.L. 92-500, EPA has sought to shift responsibility for discrete functions (e.g., operation and maintenance manual review) or sets of functions (e.g., NPDES) to State agencies through formal delegation agreements. This was an effective way of matching existing State staff capacity to program functions in the municipal facilities and NPDES areas. In other areas, such as planning and ambient monitoring, where States were given primary responsibility in the Act and had relatively effective existing programs, EPA deliberately refrained from developing a separate capacity and concentrated instead on improving State efforts through use of informal agreements and coordinating actions.

The total number of formal delegations to date are listed in the following table. These figures represent substantial progress toward decentralization, particularly when the scope of the NPDES delegations are considered.

Total Number of Programs Delegated

<u>Function</u>	<u>Number of Delegations</u>
SBA Loan Program	2
Change Order Review	29
Bid Tabulation Review	5
NPDES	27
Review of Operation and Maintenance Manuals	35
Review of Plans and Specifications	29

The Task Force found in the 20 States visited that virtually all of the States with sufficient staff to assume the major functions, identified by EPA as delegable, have already accepted most of these responsibilities. The accompanying charts show the rate of delegation from FY 74 to the present of the first three functions which EPA sought to delegate. Although the planned targets for FY76 do not indicate a dramatic slowdown in the rate of delegation, actual accomplishments do appear to have slowed. Although it may be too early to state conclusively that FY 76 will be the last year of rapid formal delegation to the States, given the current resource situation, this appears to be the case. If so, EPA can no longer continue to rely heavily on this administrative mechanism for decentralization, until State capacity expands significantly -- perhaps, as a result of new legislation incorporating the Cleveland-Wright approach.



In addition to formal delegations, many Regional Offices and States have agreed to informal or partial delegation. For example, a number of "agreements" have been reached whereby a State may draft and certify permits, while EPA formally issues them. Or, a State may conduct the technical review of plans and specifications, while EPA assumes the responsibility for so-called "Federal" review requirements.

These informal or partial delegations constitute an important aspect of the division of responsibility and labor between EPA and the States. If they were extended to all functional areas and were formalized in writing, they would serve as a basis for clearly defining the respective EPA and State roles and responsibilities. Increased emphasis on clear delineation of responsibilities, identification of redundant functions between the States and the Regional Offices, and elimination or reduction of such redundancy through spot-checking and more effective program evaluation could lead to significant reductions in staff which are performing redundant functions. These staff could be redirected to other priority tasks. At the same time, relations with the States would improve, as a result of resolution of existing areas of conflict and reduction of the "big brother" review role of EPA.

A new dimension to the current program of formal and informal delegations is represented by the current effort to transfer responsibility for virtually all municipal facilities functions to California. This effort, if it succeeds, would place virtually all operational program responsibility in the hands of a State.

Particularly if the Cleveland-Wright approach is enacted by the Congress, the California experience should be extremely valuable as a test case which illustrates the problems and opportunities inherent in "full scale" decentralization. The careful development of a new overview role for EPA, which recognizes the increased State role and which develops new forms of program reporting and evaluation will be an important aspect of this effort.

As the foregoing discussion indicates, EPA currently has the opportunity to shift the emphasis of its decentralization effort from formal delegations of entire functions to the development of a series of written agreements which are tailored to the individual capabilities of each State. At the same time, if additional funding becomes available, "full scale" delegations can again become an important additional avenue toward decentralization. On the other hand, if these opportunities are not acted upon, the result will probably be an institutionalization of the current inefficiencies in the EPA/State relationship.

IV. ATTITUDES TOWARD DECENTRALIZATION

The ability of EPA and the State agencies to carry out effectively a joint program is strongly influenced--both positively and negatively--by the attitudes of participants in the State agencies, in EPA's Regional Offices and in EPA Headquarters. These attitudes are particularly crucial to the success of decentralization, and they must be recognized and appreciated in order to understand many of the programmatic issues associated with decentralization. For this reason, the Task Force's perception of the attitudes encountered in our interviews is described in this section.

The State Agencies

State officials almost invariably referred to the 1972-73 period as the source of many negative attitudes toward EPA which are still held today. The passage of P. L. 92-500 seemed to many to imply a lack of recognition of and confidence in State efforts to control water pollution. Many State officials who had worked most of their careers in this field and who had developed programs which they felt were tailored to the particular conditions of their States, found the standardized, national program and the strong Federal role implied by P. L. 92-500 to be offensive.

This impression of the Act was strongly reinforced by EPA's initial method of implementation. In the words of one person interviewed, EPA proceeded "as if the States didn't exist." Previous efforts and accomplishments of the States tended to be ignored, while newcomers--many without previous experience in the field--designed and imposed from Washington a national blueprint based on the new Act.

This State perspective of the 1972-73 period still colors the attitude of many of the State officials who were interviewed. However, there is general agreement that events of the past year or so have resulted in a considerable change in attitudes. Virtually all (18 of 20) of the State agencies visited appeared to have made the decision to accept the provisions of P. L. 92-500 and to cooperate (with varying degrees of enthusiasm) with EPA in its implementation. Two States expressed very limited willingness to operate a joint program, exhibited considerable resentment or hostility toward EPA, and appeared to want to remain as autonomous as possible.

Specific programmatic issues have also influenced State attitudes. Virtually all persons interviewed complained about the excessive length, complexity and inflexibility of EPA regulations and guidance. Concern was also expressed regarding the lack of program stability, reflected by the constant issuance of new guidance which often contradicted or modified previous guidance and required new procedures and program directions. Remarks on this issue were usually linked to a discussion of excessive requirements for paper work and reporting, although there was general agreement that changes in reporting requirements over the last year have made them more palatable.

Of even more concern to State officials is the deeply felt belief that the "joint State/EPA partnership," which is often cited in EPA program documents, is little more than a slogan. The use of the term, "partnership," by EPA is seen by many States to be somewhat self-serving since EPA defines the terms of the partnership and appears to reserve to itself the role of "senior partner." Several State officials referred to program delegation as a system in which, "the States do all the work and EPA retains the authority and takes the credit." The implications of this attitude for future decentralization efforts are obvious.

The Task Force encountered in several Regions a specific program issue which illustrates the differences in attitude between EPA and State officials and which, if not resolved, may exacerbate these differences. The EPA enforcement philosophy as expressed by some Regional Office staff is that an unknown, but significant, percentage of industrial dischargers are not convinced that their permit conditions will be enforced and must therefore be shown that EPA "means business" if the program is to have credibility. The number of formal enforcement actions, particularly court suits, were pointed to with pride. State officials, on the other hand, had much more confidence that industrial dischargers in their States intended to comply with permit conditions. They advocated a cooperative approach, which takes into consideration the particular difficulties which a discharger might be having with equipment deliveries or other problems. These State officials stated that the doctrinaire, "strict" EPA approach, if continued, would be counter-productive, because it would convince industry that EPA was being unreasonable and had no real desire to seek sensible solutions. In their view, the result would be a concerted attempt by industry to modify and weaken environmental legislation.

The foregoing description of the enforcement philosophy issue is oversimplified for the sake of brevity; actually, the situation varies considerably from Region to Region and State to State. The illustration is important, however, and leaving aside any judgement as to

which of these two approaches is the most realistic, it is apparent that the State's perception of EPA's enforcement policy could hinder EPA cooperation with NPDES States and may tend to discourage NPDES assumption by other States.

Several other programmatic conflicts were frequently cited as adversely affecting State attitudes regarding cooperation with EPA. For example, the management by objective (MBO) approach was generally viewed as being potentially useful, if administered in a more reasonable manner. However, State officials generally believe that Headquarters pressure on the Regional Offices to produce numbers, with little or no consideration of the meaning or effect of these numbers, causes more problems than it solves. Of particular concern is the inappropriateness of some output measures and how they are used. Tracking the number of permits issued, enforcement actions taken, or plans and specifications reviewed without regard to size of the project or its environmental importance seems nonsensical to many States. In effect, these officials are saying that if they take considerable time and effort to issue a high quality permit or to informally persuade a discharger to come into compliance or if they review ten major projects rather than twenty small ones, they are penalized or viewed unfavorably under the current MBO approach to program evaluation. The net result is an unintended reflection on the professional judgement and effectiveness of State program managers.

Another area of State concern is the perception of EPA Headquarters. In general, the State staff interviewed tended to view Headquarters' officials with a certain amount of distrust and suspicion. These officials are viewed as having little or no experience at the operating program level and appear aloof and out of touch with the "real world." This concern regarding Headquarters officials is compounded by the rapid turnover rate in many of the senior level positions in Washington. Because of these perceptions, EPA's capacity to effectively manage and administer the national water program is called into question.

In contrast to this perception of Headquarters, attitudes toward the Regional Offices were generally favorable. Although there are frequent disagreements over specific program issues, these disputes generally occur in the context of a genuine, joint effort to move the program forward. On the whole, personal relations between State and Regional Office staff appear good, and there was little State criticism of counterparts in the Regional Offices.

One criticism was made on several occasions: Nowhere in the Regional Office, short of the Regional Administrator, can the State find an individual with authority who can address an issue which cuts across functional program lines. For example, during the program

planning period in February and March, issues such as division of incentive grant funds, additional staffing needs and reporting requirements cannot be resolved by the functional program managers in the Regional Office. And the EPA State Programs staff, while having the necessary information and perspective, usually do not have the authority to do so. However, despite this and other programmatic problems, State staff generally viewed the Regional Offices as doing as effective job under difficult circumstances.

Balanced against the somewhat negative State attitudes described above, the Task Force found several strong, positive attitudes which tend to promote the viability of efforts to decentralize. There is a strong sense of professional pride which, combined with a general desire to "run the show" in each State, leads to a desire in almost every State for minimal Federal presence and strong State management of the abatement program. Where this tendency is combined with State acceptance of P. L. 92-500 as the basic program framework, it provides a powerful motivating force toward decentralization.

About half of the States interviewed said that they wanted to assume full responsibility for the water program and cited lack of resources as the only major barrier to such assumption. These States also expressed optimism regarding the future and said they believed that the pollution control effort and relations with EPA had improved significantly in the last eighteen months.

There was also a general desire to reduce or eliminate much of the duplication of effort now present in such functions as the review of plans and specifications and the processing of permits. This attitude toward duplication of effort was indicative of a strong desire on the part of the States to make the program work and to be a part of a successful and cost-effective national water pollution control program.

Thus, residual resentments and doubts regarding the EPA "partner" are mingled with a growing State sense of accomplishment and professionalism. The Task Force found that on balance a large majority of the State agencies have accepted the provisions of P. L. 92-500 and are prepared to work toward full program delegation.

The Regional Offices

Sentiment in the Regional Offices regarding decentralization was mixed, both within a given Region and between Regions. However, there was general agreement that some decentralization was necessary, given that EPA does not have sufficient resources to manage the entire program. Discussion of the feasibility and desirability of decentralization centered around the question of State will and management

capacity. Although it is difficult to generalize regarding remarks concerning 20 State agencies, some general observations are possible in those cases where lack of confidence in the States was expressed.

The vulnerability of State pollution control programs to political pressure was advanced as an argument against reliance on State agencies. State agencies are viewed as sometimes being influenced either by the Governor or the State legislature regarding its budget or regarding individual program actions such as issuance of permits or the funding of treatment plants. Thus, the Federal authority is viewed as necessary to back up the State agency. One Water Division Director stated this viewpoint bluntly when he said, "No State (in his Region) could produce an honest project priority list without EPA pressure."

An Enforcement Division Director sounded the same theme when he said that he would be unwilling to relinquish enforcement authority to the States in his Region until perhaps 1977, by which time EPA would have made believers out of the Region's dischargers and the States could then take over. Regional Office distrust of State capacity was particularly strong with regard to those States which give economic development a high priority and which, for that reason, might be more susceptible to pressure from industry.

Regarding the issue of program quality in cases where functions have been turned over to the States, a majority of Regional Office staff said that State work was generally as good as that of EPA and pointed out that State staff were usually as well qualified from a technical standpoint as were those of EPA. In contrast to this judgement was the statement of one Enforcement Division Director to the effect that the States in his Region were performing inadequately in the NPDES program and could not be entrusted with full program responsibilities during the next several years--and only then when they had acquired considerable additional staff.

Also related to the question of State program quality is the issue of EPA sanctions. One Regional Office official pointed out that in his Region the Regional Administrator would not invoke sanctions in instances where States did not live up to the commitments made by them in the annual program plan. He felt that such inaction made a mockery of decentralization and would have a negative effect on the quality of performance of other States in the Region, because they too would feel that they could "get by" with ignoring commitments. In effect, he believed that some States were accepting "paper" delegations, but were not producing the volume and quality of product which would be expected if EPA retained the responsibility for the delegated functions.

This concern regarding the EPA overview role was shared by several of the Regional Office staff. The division of responsibility and labor between EPA and the States ranges from the "California type" delegation, through delegation of NPDES and the lesser municipal facilities functions, to informal agreements. The Regional Office concern is focused primarily on those situations where States have formal, written delegations but fail by a substantial measure to fulfill the commitments in the delegation agreements and/or in the annual State program plan. The issue is a complex and difficult one and involves the manner in which delegation agreements are written, the monitoring of State performance and EPA use of sanctions in the case of substantial nonperformance.

Some Regional Office staff felt that EPA must be prepared to exercise the ultimate sanction and withdraw delegated authority from States which fail to produce, if the circumstances warrant such action. Others felt that it was unrealistic to expect EPA to withdraw delegated authority and pointed out that in such a case there would be a residue of resentment which would persist for years. Without attempting to resolve these differences in this report, the Task Force believes that this issue is a major one which should be addressed in the near future, before the delegation process proceeds much further.

EPA Headquarters

The most striking feature of the Headquarters interviews was the enthusiasm expressed over the notion of decentralization. However, equally striking was the general lack of a specific conceptual approach to achieving decentralization. It was also apparent that few of the program managers give program decentralization a high priority among their activities, nor have they instilled in their staffs any real sense of urgency in this regard.

Headquarters program managers appear to have fully recognized that success in the water program requires greater reliance on the States. But they have not thought through in detail how to shift greater authority and responsibility to the States. For example, the Task Force was told of no staff efforts to evaluate State performance where delegation has occurred, as compared to States where EPA still performs the major role. One Headquarters staffer brought up the example of the draft FY76 Operating Guidance, in which the Regional Offices were instructed in general terms to achieve more delegations. The Regional Office replies stressed the lack of realism in the guidance and pointed out that without a large increase in resources, significant additional delegations could not be achieved. This

example was pointed out as an illustration that Headquarters program managers have not yet devised a realistic decentralization strategy which addresses the key management issues which face EPA and the States.

One such issue which arose was the question of consistency versus flexibility in program operations. EPA has generally approached this issue by devising a national model for program delegation (e.g., the NPDES delegation agreement), which mandates consistency, yet gives the Regional Offices authority to administer the delegations with some flexibility. However, the Task Force found that Regional Office staff, because they fear a loss of consistency from State to State, have tended not to take advantage of the flexibility in the decentralization process. The State agencies, of course, then complain of a lack of flexibility in EPA's management.

Certainly, this is an issue which requires guidance from the national level. However, with regard to this and other major issues, the Task Force found a general lack of appreciation of the need for guidance and direction on the part of the responsible program managers.

Any successful effort to promote decentralization must address the attitudinal issues described in this section. The actions which are taken as part of this effort must attempt to address attitudinal problems and to build on the positive attitudes which exist. The recommendations of the Task Force are designed to accomplish these ends.

V. CONSTRAINTS AND OPPORTUNITIES

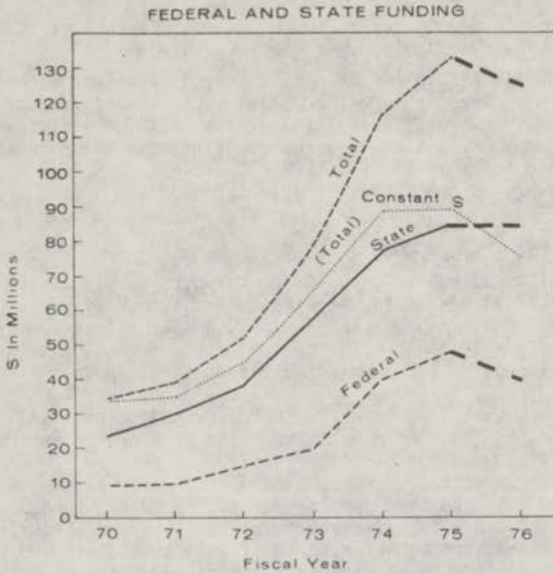
The Task Force recommendations to improve and expand decentralization relate directly to either problems to be resolved or opportunities to be realized. This section contains a discussion of the problems, or constraints, and opportunities which the task Force heard in its interviews with the State and EPA Officials who deal daily with the issues of decentralization.

Constraints

Constraints have been grouped for purposes of discussion into three categories: resources, attitudes, and authority and procedures. Although these groupings overlap -- for example, EPA actions regarding resources, authority and procedures invariably affect State attitudes -- they provide a convenient division for purposes of discussion.

Resources. The Task Force found that insufficient funding for State agencies is the single most important obstacle to a more effective division of responsibility and labor between EPA and the States. In spite of the unprecedented increases in funding which have occurred over the last several years, the current and projected levels of funding are insufficient to permit large additional transfers of functions to occur, even if all attitudinal and procedural constraints were eliminated. For example, in the case of the recent delegation of virtually all municipal facilities functions in California, a 92% (76 to 146) increase in the municipal facilities staff was required. No current source of funding (fees, State appropriations or Section 106 funds) can be expected to provide for staff increases of this magnitude.

A brief examination of these funding sources indicates that recent increases have, at least temporarily, leveled off and that little or no growth can be anticipated for the next year or two (see chart below). Looking first at State appropriations, these rose from a FY72 level of \$42.3 million to a FY75 total of \$76.6 million. However, of the 20 States visited, 15 expected FY76 appropriations to decline or remain static and 5 expected increases. This anticipation of a generally flat level of State appropriations is supported by an examination of the FY76 State program plans which have been received in Headquarters.



The total expected State appropriations in the first 34 program plans received was one percent below the State appropriations expected in the same States in FY75. Thus, based on information gathered on the 20 States visited, as well as on data from 34 State program plans, it is realistic to expect approximately the same level of State appropriations in FY76 as in FY75. Looking beyond FY76, several States expressed the concern that their appropriations may be reduced more than 10% from the FY75 level.

Additionally, the continuing effects of inflation in FY76 and beyond will reduce the level of real resources, as measured in constant dollars, which will be available in the next year or two (See chart for impact of inflation).

The reasons for the leveling off of State appropriations, given by the States during the Task Force interviews, were inflation and recession. Inflation has caused an increase in the dollar cost of

State goods and services, and recession has reduced revenues. State agency officials, legislators and budget office staff who were interviewed generally agreed that the fiscal crunch caused by inflation and recession has led to freezes or reductions in State budget expenditures in order to maintain balanced budgets. It can be expected that these measures will be continued until substantial growth in the economy, and consequently in State revenues, occurs. Such growth is not anticipated in the near future.

One positive conclusion emerged from the interviews, however. The unanimous judgment of the State officials was that spending ceilings and cutbacks for State water pollution control agencies are not the result of backlash against environmental programs. Rather, they are the result of fiscal belt-tightening.

With regard to Section 106 funds, the President's budgets for fiscal years 1974-1976 have contained an identical \$40 million level each year. The Congress has appropriated the following amounts: FY74 - \$50 million, FY75 - \$45.6 million and FY76 - \$50 million. Discussions with the senior EPA Headquarters officials who are involved in preparing budget requests indicate that the prospects for increases in Section 106 funding for State programs remain dim -- unless the Congress acts to retain the FY76 \$50 million level by overriding the President.

Thus, the trend of both budget requests and appropriations for Section 106 funds is relatively flat, and there is little reason at present to anticipate future rises.

The future prospects for generating additional State revenues through the use of State fees (excluding the so-called "California fee") is also dim. EPA conducted a study of this question in 1974 and arrived at the conclusion that State agencies did not favor this approach. The States felt that such an approach would be generally unproductive and concluded that fees were an inappropriate revenue device for a governmental function which benefits such a broad segment of the population.

Given the bleak prospects for increases in current means of funding, the Task Force explored two other promising revenue sources: the "California fee" system and the Cleveland-Wright approach. The "California fee" system, by which the State charges municipalities a percentage of each grant for construction of waste treatment facilities, has great potential as a revenue source in an unknown number of States. California, which is the only State thus far to use this mechanism, provides a good example of this potential. However, legislative changes to establish the fee mechanism are required in each State, and in the States visited by the Task Force, there was a general reluctance to take this step until the Congress acts on the Cleveland - Wright approach which is contained in Section 8 of H.R. 9560.

This Amendment, which would allow EPA to grant up to two percent of the total State construction grant allocation to State agencies for administrative costs, has the potential to fund virtually all foreseeable decentralization costs (\$100 million out of the FY76 allocation of \$5 billion). The bill is now in the House, where hearings were completed in October. The outlook for passage is unclear at this time. However, it is apparent that the approach in H.R. 9560 has great potential for decentralization.

The reaction of the States visited to the Cleveland-Wright approach was generally quite favorable (9 were enthusiastic, 1 was opposed and 10 were generally in favor, but with some reservations). However, many State officials expressed the concern that if the Amendment passes, their legislatures may subsequently reduce State appropriations, thereby at least partially negating the benefits of the Amendment. Most of these States advocate the addition of a clause in H.R. 9560 and in other sections of P.L. 92-500 (such as Section 106) which penalize States for reducing State funding and thereby inhibit States from making such reductions.

Another aspect of the resource picture is the State staffing situation. Low State salaries, among other factors, have resulted in vacancy rates of 10% to 30% in perhaps half of all State programs. Although the extent of the problem varies from State to State, it was apparent to the Task Force that in the State agencies visited, staffing difficulties represented a significant obstacle to building more effective programs. Vacant positions are only one manifestation of this problem. High turnover, particularly in key positions, also can severely reduce effectiveness.

In summary, resource constraints are the single greatest barrier to decentralization. Funding is the major constraining factor, but staffing problems are also an important barrier.

Attitudes. The three sets of attitudes described in Section IV have both positive and negative effects on the decentralization process. In this section, the negative attitudes are summarized in an attempt to show how they adversely affect the effort to shift more program responsibility and authority to the State agencies.

The resource situation discussed earlier in this section and the State perception of this situation has a powerful effect on State willingness to accept more responsibility. The current fiscal crisis in the vast majority of States, and the accompanying hiring freezes and budget reductions in some State agencies, have created an atmosphere in which the State agencies are reluctant to assume responsibility for major program functions.

And the memory of the Malek-Train correspondence concerning Section 106 funds and current efforts by the Administration to hold down Federal expenditures, when combined with the static level of Section 106 budget requests, are enough to convince the States that this source of funds will not increase.

As stated earlier, virtually all States are reluctant to move to obtain legislative authority for implementing the "California fee" concept until they see what happens to the Cleveland-Wright approach. Several States pointed out that there are no future year authorizations for construction grant funds and that prospective administrative funds for State agencies under H.R. 9560 depend on continuing construction grant funding. However, if the authorizations are voted, it is probable that State reservations about Cleveland-Wright funding will, in most cases, disappear.

The net effect of the future funding prospects on State attitudes is to cause the State agencies, in virtually all cases, to be extremely cautious with regard to assumption of new responsibilities, particularly those which require additional staff. Either the passage of H.R. 9560, a reversal of State fiscal prospects, or both will be necessary before State attitudes change sufficiently to permit a significant number of additional large-scale delegations. Additional partial delegations or informal delegations, however, will be possible at the present level of funding by elimination of duplication of effort between EPA and the States.

Turning to the State attitudes described in Section IV, a fairly strong residue of resentment of EPA continues. But in almost all of the States visited by the Task Force, there was a counterbalancing viewpoint. Most States felt that previous problems were water over the dam, that EPA was making a reasonable effort to change onerous procedures and that relations have been improving. Thus, State attitudes can be a major constraint to new EPA initiatives (e.g., 208 water quality management and nonpoint source programs) if EPA proceeds unilaterally or -- in the State view -- unreasonably, and the States are not fully consulted or involved in the program planning phase. On the other hand, State attitudes can be turned to an attribute in most cases where such consultation and involvement does occur.

A judgment regarding the effect of Regional Office attitudes is much more difficult to make. Regional Office staff have played a major role in the progress toward decentralization which has occurred during the past several years. It is the face-to-face contact between Regional Office staff and State officials which has done much to dissipate ill-feeling over past months. It was also in the Regional Offices that the Task Force found much of the genuine enthusiasm for decentralization in EPA.

However, the Task Force was also told by Regional Office staff that some division directors and branch chiefs did not favor further decentralization -- partly because they did not wish to lose program control and authority and partly because of a genuine belief that the States could not do as good a job as the Regional staff. This was a very difficult area for the Task Force to explore, because an accurate assessment requires insight into the subjective views of the principal actors. However, the Task Force concluded that reluctance on the part of program directors in the Regional Offices to relinquish authority is at least a potential problem, but one which is manageable if Regional Administrators are alert to the problem.

Another set of attitudes expressed by some Regional Office staff is distrust of State capability and/or genuine intention to implement the control program outlined in P.L. 92-500 and EPA regulations. Although the Task Force found there was ample justification for these attitudes in several cases, the Task Force concluded that State capability and willingness were greater than some Regional Office staff believed in other cases. The danger in this type of situation is that Regional Office attitudes will become self-fulfilling, as State staff recognize the lack of trust and react by limiting their cooperativeness.

It is difficult to explore these situations in any depth in the course of one-day visits. But the contrast between State-Regional Office relations which were close and based on trust, and other State-Regional Office relations where these qualities were weak, enabled the Task Force to make the judgment that some of these situations where distrust exists could be attributed in large part to Regional Office staff. Obviously, where these conditions exist, it is difficult to negotiate the transfer of functions to the States involved.

Several Regional Office staff stated that where formal delegations had occurred, Headquarters preferred to deal directly with the States and bypass the Regional Office. These situations clearly act as a disincentive for Regional Office staff to promote decentralization. Since this type of problem is directly related to the issue of a well-conceived EPA overview policy, it will be discussed as part of the procedures topic below.

The Headquarters' attitudes, discussed in Section IV, also constitute an impediment to further decentralization as defined in this report. Although the top-level program managers in Headquarters expressed a clear commitment to the general concept of decentralization, they -- perhaps unconsciously -- give little priority to this commitment in their day-to-day activities and have not transmitted to their staffs a sense of priority regarding decentralization.

Some significant progress has been made under Headquarters direction, however, through the establishment of the "Committee of Ten,"

and through development of mechanisms to obtain State comment on the Operating Guidance and State participation in the drafting of regulations. Strong pressure has been brought to bear on the Regional Offices to make formal delegations. However, as will be discussed later in the Task Force recommendations, stronger Headquarters leadership will be required if there is to be significant additional progress in the decentralization process.

Authority and Procedures. This portion of the report discusses the constraining influences on the decentralization process resulting from regulations, guidance, operating procedures and the division of authority between Headquarters, the Regional Offices and the States. This is a difficult area to analyze because of its complexity and because the judgments regarding questions -- for example, on the appropriate degree of authority given to the Regional Offices on a specific program issue or the number of outputs or activity indicators to be reported by a State -- are necessarily subjective ones which vary from individual to individual.

However, the net result of the decisions made on authorities and procedures, as well as the process by which the decisions are made, are extremely important. For example, if acceptance of very detailed and cumbersome procedural requirements is made a prerequisite to State assumption of a particular program function, States may find reasons to let EPA continue to bear that responsibility. Similarly, if a State believes that policy decisions regarding major program areas (e.g., municipal facilities) will continue to be made unilaterally by EPA, even after the State has assumed the operational responsibility, then it may be unwilling to give up its relative autonomy to become enmeshed in an administrative system which requires the State to do the work, but gives it little or no voice in the decisions governing how the work is to be performed.

Thus, EPA actions with regard to procedures and authority have a direct and major impact on State attitudes regarding assumption of additional program responsibilities. They also affect the effectiveness of coordination and cooperation of the current division of functions in each program area.

One of the criticisms of EPA voiced most frequently by State agency staff was that regulations and guidance were too lengthy, too complex and too detailed. The characteristics criticized appear to be due in large measure to Headquarters concern that P.L. 92-500 be implemented rapidly and consistently and that regulations be sufficiently detailed so that the Regional Offices would have little doubt regarding what was to be done and how it was to be done.

The era in which that degree of detail may have been necessary is past. The Task Force found, with few exceptions, that both the

Regional Offices and the States are willing and capable of operating in a manner which requires responsibility, initiative and imagination on their part. Consequently, the Task Force concluded that Headquarters guidance which is concise, is flexible and emphasizes objectives rather than procedures is more appropriate to current and future operations of the water pollution control program. Although exceptions to this general rule may be necessary in the case of highly technical guidance, it is generally preferable to risk error on the side of flexibility than on the side of rigidity and detail. The basis for this conclusion lies in the Task Force's belief that the States and Regional Offices are generally staffed with capable, highly motivated professionals who can be relied upon to manage more effectively without detailed guidance. Any discrepancies in performance resulting from this mode of operation can be revealed and subsequently corrected by appropriate program monitoring and evaluation.

Consistent with these findings regarding regulations and guidance is the Task Force's judgment regarding use of the national program model concept in delegation. The term national program model refers to a discrete set of program functions (e.g., NPDES, plan and specification review, etc.) which EPA defines, along with accompanying written agreements and/or checklists, and offers to a State as a delegation package. Such delegation models are very useful in achieving program consistency in cases where States have the existing staff capacity to assume the responsibility for an entire set of program functions. However, at present and in the foreseeable future (unless a bill such as H.R. 9560 passes or a similar source of funding is found), there are few remaining States with such capacity.

In the many cases where States have limited capacity, the national program model approach may actually discourage a more rational division of responsibility and labor because this approach implies that a State must assume an entire set of functions. Lacking this capacity, a State may feel comfortable in having EPA perform all or virtually all functions in a given program area.

The Task Force concluded that a change of emphasis by EPA in these circumstances may be productive in encouraging States to assume additional responsibilities. By deemphasizing delegation of an entire set of functions (i.e., a program model or package) and instead stressing a division of functions tailored to each State's willingness and capabilities, EPA may help to create a climate which is more conducive to cooperative sharing of program responsibility.

In adopting this approach, both EPA and the States would jointly determine how a set of program functions would be divided between them. For example, a State could choose to perform the technical review of plans and specifications, while EPA would continue to carry out the so called "Federal requirements" such as the EEO and Davis-Bacon responsibilities. Regional Offices and States would be encouraged to take the initiative in dividing responsibility for as yet undelegated (except in the case of California) functions such as Step I municipal facilities planning.

It would be appropriate for Headquarters to create a segmented delegation package containing all potentially delegable functions for those States having sufficient staff capacity to perform the entire set of functions. Then, where State capacity is insufficient to assume all of these functions, the States and Regional Offices could negotiate a variety of different agreements which match each State's capabilities.

It is important to point out that these kinds of arrangements have already been negotiated in many cases in the form of "partial" or informal delegations. A large number of these agreements are written. However, the Task Force believes that the approach represented by these agreements deserves much greater emphasis, and that all such arrangements should be described in brief written agreements which resolve all ambiguity concerning mutual obligations and authorities.

One potential way to institutionalize this approach would be to incorporate into the Agency's MBO-FPRS system a means of recognizing agreements, short of "delegations" as currently defined. This would be more difficult than the present reporting of formal delegations, since all written agreements would be recognized. One possible method of dealing with this difficulty would be to classify agreements as class one, two and three; with class one representing "full" delegation of set of functions, class three representing State assumption of something less than 50% of full responsibility and class two indicating an intermediate assumption of responsibility. Irregardless of the method employed, however, the concept of a division of responsibility and labor, based on the current capability of each State, should be recognized and stressed.

Another set of criticisms which were frequently expressed by State officials relate to program reporting and evaluation. These procedural concerns, in turn, are associated with concerns expressed by Regional Office staff that EPA has no coherent, effective overview policy with regard to issues presented by the increasing State assumption of responsibility.

The term, "overview policy," is used here to include procedures for reporting and evaluating State performance, as well as policies for taking remedial actions where State performance falls substantially short of mutually agreed goals. To take an extreme example, what sanctions or leverage can and should EPA use if a new administration comes into office in a State with formal NPDES and municipal facilities delegations and deliberately discourages additional permit issuance, or uses blatant political criteria for rankings in a State's project priority list, or simply slows program activity to a virtual standstill?

The concerns on the State side are with unnecessary and overly frequent reporting and with evaluation which seems to imply a superior/subordinate relationship and which seems more concerned with numbers than with an accurate appraisal of the quality and effectiveness of program performance. The Regional Office concerns are related to the insuring of effective State performance, both now and in the future when most of the operational responsibility passes to the State agencies.

There is also considerable uncertainty in the Regional Offices regarding the practical and legal limits of decentralization. At what point in the shift of the division of functions with the States might EPA lose management control of programs and find itself unable to insure that national policies are carried out by State agencies? And, as the recent experience with the delegation of municipal facilities functions to California illustrates, can "full delegation" take place under current provisions of P. L. 92-500 or are legislative changes required?

Both sets of concerns are deeply felt and directly affect State and Regional Office willingness to proceed further with decentralization. Failure to address these concerns will severely impede any future effort to extend decentralization.

Opportunities

Program constraints have been discussed in great detail because of the belief that a thorough understanding of a problem can lead to a more effective solution. The opportunities discussed in this section, in most cases, relate to the identified constraints and offer a way to overcome current difficulties. Because of this relationship, opportunities are grouped in the same three categories as are constraints.

Resources

The first point to be made with regard to additional funding is that there are opportunities to obtain new revenue sources. Both the Cleveland-Wright approach and the so called "California fee" approach have great potential.

These opportunities relate directly to the finding that State agencies are generally willing to use additional funds to expand their capacity to assume more program responsibility. This willingness can be enhanced, if EPA will adopt the measures discussed under procedures and authority and give the States a more equal partnership role. The willingness discussed here is crucial to a further shift of responsibility and authority to the States, because without it additional funding may not result in much additional decentralization.

However, even without any additional resources, there are significant opportunities to eliminate duplication of effort between State and Regional Office staff. For example, in cases where the plans and specifications review function has been delegated to States, the Task Force found that some Regional Office staff were still "double-checking" every set of plans and specifications reviewed by the States. If an agreement could be reached whereby the Regional Office reviewed perhaps 10% of the plans and specifications, or conducted post audit reviews, significant staff could be made available for other tasks.

As States assume more of the operational tasks, Regional Offices have increasing opportunities to shift their staff from those tasks (e.g., issuing permits) and to use them in a technical assistance role to support and build the capacity for States to play a more significant operational role. One Region has successfully employed the approach of relying primarily on the State agencies for the operational role, but of supplementing the State staff with EPA personnel located in the State agency. This approach has worked well and is clearly more cost-effective than the alternative approach of dividing functions between two units of government.

Additionally, many States have overlooked opportunities to supplement their scarce resources by involving other Federal, State and local agencies more directly in their water quality management programs. For example, areawide planning agencies have the potential to do much of the planning regarding complex water quality problems, if the State and areawide agencies effectively coordinate their activities. Furthermore, as local and areawide water quality management agencies are designated to implement the areawide "208 plans,"

additional resources can be brought to bear on many of the problems which the States have traditionally attempted to handle themselves. Indeed, these forms of State/local decentralization of the water program may well be the solution to overcoming many of the State resource problems in the future.

Attitudes

The overwhelming majority of State and EPA program managers support an incremental shift of program authority and responsibility to State agencies. If EPA makes the changes in policy and procedures which are recommended in this report, it will be possible to build on the existing positive attitudes toward decentralization and to further shift authority and responsibility to the States.

Authority and Procedures

Most State officials and many EPA staff believe that EPA could take better advantage of individual State capabilities, circumstances and procedures. If EPA were to modify its policies and procedures in order to better take advantage of each State's unique capabilities, a more effective division of functions could be achieved and States would be more willing to assume responsibility for that portion of functions consistent with their staff capabilities.

Similarly, if EPA regulations and guidance were written in a manner which places decision-making and authority in the hands of State officials where they have the operational responsibility, better decisions would be made. A significant additional benefit of these actions would be to convince other States that the "partnership" with EPA is a reasonable one and that decentralization has real benefits for them.

VI. THE NEED FOR ORGANIZED FOLLOW-UP

Because the responsibility in EPA Headquarters for water program decentralization is divided between three Assistant Administrators and because there is no single staff office to develop policy for and monitor progress toward decentralization, there is need to systematically follow up those Task Force recommendations which are accepted. One means of periodically monitoring decentralization actions is proposed as the last recommendation of the Task Force. If this recommendation is accepted, the Regional Administrators will report annually to the Deputy Administrator on the progress which has been achieved toward implementation of Regional/State decentralization action plans. The Deputy Administrator would then submit a summary of these reports to the State/Federal Water Programs Advisory Committee (commonly known as the Committee of Ten). Such a procedure would encourage top management discussion and evaluation of the decentralization efforts of the States and Regional Offices at least twice a year.

However, other actions proposed by the Task Force in its recommendations, such as issuance of policy guidance and defining the overview role of EPA, are primarily the responsibility of EPA Headquarters. After much discussion, the Task Force refrained from identifying precisely who should be assigned responsibility for implementing and following up its recommendations on the grounds that only top management of EPA could effectively address this issue.

Given the diffusion of responsibility for decentralization within EPA and the competing program priorities which face Agency managers, the Task Force is convinced, that there must be continuing or periodic follow-up on the actions required by those recommendations which are accepted. After all, one of the primary messages throughout this report is that EPA has set the decentralization process in motion, but has generally failed to follow up in an organized way. The time to do so is now.

Finally, it is important to recognize that the States must be involved in the process of follow-up. Through this mechanism, EPA will receive the feedback it needs as the Agency proceeds to take additional actions to promote and accommodate program decentralization.

VII. RECOMMENDATIONS

Based on the findings and conclusions contained in the previous sections of the report, the Task Force offers the following recommendations which, if accepted and implemented, will initiate a process of change and improvement in the EPA/State relationship:

1. The Administrator should issue a statement on decentralization to the director of each State water pollution control agency and to all EPA managers and staff associated with the national water pollution control program. The Administrator's statement (see recommended statement in Appendix A) should enunciate clearly the Agency's policy with regard to decentralization of the water program and should include an Agency action program, based on the recommendations of the Task Force which are designed to resolve the problems which impede progress toward further decentralization. The action program should identify specific tasks to be accomplished and should assign specific responsibilities for accomplishing those tasks.

Rationale. As is pointed out in the preceding sections of the report, opinions differ within EPA and among the States as to the objectives and methods of decentralization. The purpose of the recommended Administrator's statement is to define the goals of decentralization and to emphasize the importance of this process to the success of the water pollution control program. A statement, such as the one recommended, should resolve many of the ambiguities and uncertainties in the minds of State and EPA officials. The statement should result in a clear sense of direction for all concerned.

2. A process, which includes State participation, should be established to determine the Agency's policy regarding the current and future EPA overview role. The process should result in Agency policy (and procedures if appropriate) on matters such as:
 - * State participation in the development of proposed regulations and guidelines.
 - * State authority to make decisions and take actions commensurate with their program responsibilities.

- * Regional Office and State participation in the definition of minimal, essential reporting requirements.
- * Mutual EPA/State accountability in program evaluation.
- * Reprogramming of EPA staff as States assume the major operational role.

The process should also result in periodic updating of the Agency's action program for decentralization in order to reflect new policies on decentralization and EPA/State experience in dealing with the problems impeding decentralization.

Rationale. As was pointed out, particularly in the section on constraints and opportunities, the increasing State assumption of responsibilities has not been matched by increased delegation of decision-making authority to the States, additionally, States resent aspects of the current relationship which imply a superior/subordinate relationship. This recommendation is designed to initiate a process which will result in a rethinking and modification of the procedures and authorities which constitute the EPA/State relationship. The California/Region IX relationship, which is currently being modified, may provide a new basis from which EPA can tailor its relations with all States.

3. EPA should continue, on a high priority basis, to seek additional funding for support of State programs. In doing so, the Agency should emphasize in its relations with the Office of Management and Budget and the Congress the benefits which would accrue with further program decentralization. Primary attention should be focused on measures such as passage of legislation which incorporates the Cleveland-Wright concept, increased Section 106 State program grant funding, and realistic funding under Section 208(f) to support State (and areawide) water quality planning and management programs. In addition, serious consideration should be given to proposing legislative amendments which would inhibit or preclude decreases in State funding as Federal funding is increased.

Rationale. The discussion in the section on constraints and opportunities pointed out the limits of decentralization imposed by funding constraints and the resulting limitations on State staffing.

Much can be done within those limits to reduce duplication of effort and to develop more productive EPA/State relations. However, a large scale transfer of additional functions to the States depends on increased resources.

To meet the problems discussed in Section V concerning the prospect that a significant number of States may decrease their appropriations for water pollution control if given the opportunity, it is important that EPA give serious consideration to legislative amendments which would prevent States from using increases in Federal funds to supplant State funds. Failure to do so, could result in a net decrease -- rather than an increase -- in total program resources.

4. Current EPA policy and program guidance (and possibly some regulations) should be reviewed and modified as necessary to accomodate and promote further incremental delegation of program responsibilities to the States. In doing so, program managers in each water program area should consider matters such as:
 - * Ways to take better advantage of individual State capabilities, authorities and procedures by providing additional flexibility to the States for conduct of their programs.
 - * Definition of appropriate State and EPA roles and responsibilities which can be tailored to individual State capabilities (rather than national program models).
 - * Increased use of program evaluation and spot checking (in place of redundant EPA review of State work) to reduce duplication of effort.
 - * Identification of improved output measures, activity indicators and standards of performance (for use in the Agency's MBO-FPRS system) to better reflect the variability among States of water quality problems and approaches for solution of these problems.

Rationale. The thrust of this recommendation is to tailor the division of program functions between EPA and each State in a manner which recognizes and takes advantage of each State's unique capabilities and weaknesses. EPA's management procedures, such as

reporting systems and program evaluation, should be modified to recognize and promote this altered way of conducting business with the States.

5. Each Regional Office and State should be requested to prepare annually a joint EPA/State action plan for decentralization as part of the Regional workplans and Section 106 State program submissions. These action plans should identify joint decentralization objectives and should include items such as:
 - * A description of how the Region intends to build additional State capacity to take on additional program responsibilities over time. Financial assistance, improved training programs, EPA technical assistance, and assignment of EPA staff to State agencies through short-term details, IPA assignments, colocation, etc. should be considered.
 - * A description of how Region and States intend to further minimize duplication of effort and determine the proper utilization of joint EPA/State resources. The Regions and States should seek to establish a clear definition of their respective roles and responsibilities in the conduct of the FY 77 water program and should include a listing of the written agreements of memoranda of understanding to be negotiated in each functional area.
 - * A description of what the Region and States plan to accomplish in the way of improving their joint program management and reporting systems in order to assure that the water program is implemented effectively and efficiently in future years. Development of performance standards for each functional area of the water program, improved mechanisms for periodic program evaluation, and development of reporting mechanisms which are tailored to the individual procedures and needs should be considered.

Rationale. This recommendation is closely related to recommendations #2 and #4. It provides for a process by which EPA and the States annually determine to what extent and how decentralization can take place in each State during that fiscal year. In

the opinion of the Task Force, this recommendation may well be the one which results in the most specific accomplishment because it is the one recommendation which impacts the States directly.

The development of Regional/State decentralization action plans is envisioned to take place during the annual Section 106 program planning cycle and, as such, should be accomplished without undue effort or new procedures on the part of either the States or Regional Offices. The Task Force (with the unanimous support of its State and Regional Office representatives) is convinced that the potential benefits to be realized more than justify the effort involved and that the concept be built into the program planning process now -- even in the absence of significantly increased funding for the States. Furthermore, the Task Force believes that the process must be established before new funds become available (e.g., as a result of congressional action on the Cleveland-Wright concept or on increased Section 106 or 208(f) appropriations) so that EPA and the States will be in a position to act quickly and effectively toward further decentralization in the event new funds are provided.

6. The Regional Administrators should report semi-annually to the Deputy Administrator on progress achieved in implementing the EPA/State decentralization action plans. The Deputy Administrator, in turn, should present a summary of these progress reports to the State/Federal Water Programs Advisory Committee (commonly known as the "Committee of Ten") for their consideration and recommendations.

Rationale. The need to evaluate progress toward decentralization and to take follow up actions as required was discussed in Section VI. This recommendation would establish one of the primary mechanisms for follow up and would provide a key role for the States in that process.

APPENDIX A

The recommended statement which follows was designed to be included in a letter from the Administrator to the directors of State water pollution control agencies and to all EPA managers and staff concerned with the national water pollution control program. The specific language of the statement should be modified before its issuance to reflect the personal views of the Administrator and comments received from the States, the Regional Administrators and the Assistant Administrators of EPA. In addition, the action program portion of the statement should incorporate those portions of the Task Force recommendations (Numbers 2 through 6) which are accepted by the Agency and should be made more specific to incorporate the Administrator's assignment of specific implementing responsibilities.

Recommended Administrator's Statement
and Action Program Regarding
Decentralization of the Water Pollution
Control Program

Passage of the Federal Water Pollution Control Act Amendments of 1972 signaled a sharp redirection in the Nation's efforts to clean up its waters and to restore and preserve their usefulness for all its citizens. The Environmental Protection Agency was given a mandate to lead and coordinate existing State programs in implementing the Act, while the States retained their primary responsibility for specific pollution control programs. The Act introduced a comprehensive, nationally-consistent permit system for industrial and municipal waste dischargers, authorized substantial sums for the construction of municipal waste water treatment facilities, and established other aspects of a balanced program, including water quality management planning, ambient and pollutant source monitoring, and training. An ambitious timetable for implementation was specified.

All of us who have participated in the execution of these far-reaching responsibilities should be proud of the accomplishments thus far. During the past several years, the combined efforts of EPA and the States have laid the foundation for a successful long-term program. Over 97% of all waste dischargers are either now in compliance with pollution control standards or on definite water clean-up schedules. More than 4,000 individual construction projects which were funded under P. L. 92-500 are now underway. The administrative framework for a comprehensive Federal/State effort has been put in place.

However, these very real gains were accomplished at a breakneck pace, as we sought to initiate new and greatly expanded programs in time to meet the deadlines set in the Act. In the process, regulations, grants and permits were issued rapidly under pressing time constraints. There was too little time and opportunity to consider carefully the institutional implications of our programs and crash effort. Unfortunately, in spite of sincere attempts to develop a well-coordinated Federal/State partnership, strains did occur in that relationship.

Our successful efforts to lay the foundations of a comprehensive, enduring water pollution control program provide us now with time to reflect and to rethink our essential relationship with the States. Recognizing this, the Agency invited the directors of three State agencies to join with EPA Regional and Headquarters staff in an attempt to identify problems in EPA/State relations, to review objectives and

to develop recommendations leading to a more fruitful partnership. The EPA/State group, which was designated the Decentralization Task Force, visited 20 States, 7 EPA Regional Offices and EPA Headquarters to gather information and suggestions from State and EPA staff at all levels.

The Task Force found many positive aspects in EPA/State relations. There is general recognition of the mutual dependence between EPA and the States, and Regional Office/State ties are in most cases strong. Experience of the past several years has resulted in many close personal working relationships, and there is a firm, mutual sense of professionalism and common purpose shared by State and EPA staff.

On the other hand, there are many additional opportunities for building upon these past accomplishments in order to achieve a more effective division of responsibility and labor between EPA and the States, which is essential to the achievement of the goals of P. L. 92-500 at a time when resources are particularly scarce. There exists a need to clarify the nature of EPA's overview role to be assumed in those situations where States have assumed virtually all major functions in the NPDES and municipal facilities programs. Second, new sources of funds must be developed to augment traditional funding of State programs, so that necessary additional State staff may be hired to permit expansion of the State role. Third, duplication of effort must be greatly reduced or eliminated, and mutual accountability in program evaluation must be expanded. Fourth, changes in program guidance, reporting and management procedures must be made which will foster an attitude of genuine equality between EPA and the State agencies.

In order to bring about these and other improvements toward a more decentralized mode of management, the Task Force has provided me with specific recommendations. I have reviewed these suggestions, along with the comments provided by the appropriate Assistant Administrators, Regional Administrators and State officials, and have incorporated them into an "Action Program for Decentralization." I am assigning to the Deputy Administrator the overall management responsibility for implementing the action program and have requested him to periodically report progress to me as we move forward in carrying out the program.

The background and rationale for the individual items in the action program are contained in the "Report of the Decentralization Task Force," which has been distributed to all States and Regional Offices. I urge all EPA staff concerned with the water pollution control program to read and discuss with your colleagues the findings and recommendations of the report. Many of the issues raised cannot be resolved by new program guidance or additional resources, but can be dealt with only by day-to-day actions which we all take in our joint

efforts with the States. These actions, and the spirit and attitudes with which they are carried out, can take us a long way down the road toward significant improvement in our relations with the States.

I think it is particularly important to emphasize the general goal of decentralization: to shift the operational programs and the corresponding authority and responsibility to the States as rapidly as State capacity and willingness permit. At present, this goal is defined in rather vague terms. But the purpose of the specific items in the action program is to initiate a process which will lead to decisions and policy determinations necessary to clarify and give concrete substance to the general goal. Thus, I expect that in the next three to six months the action responsibilities will be assigned and implementation will be underway.

The "Action Program for Decentralization" of the Environmental Protection Agency is as follows:

Those portions of the Task Force recommendations (Numbers 2 through 6) which are accepted by the Agency, in addition to other items which might be added to reflect the personal views of the Administrator and the comments received from others, are to be incorporated here along with the Administrator's assignment of implementing responsibilities.

APPENDIX B

Memorandum of August 4, 1975
Establishing the Decentralization Task Force

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

SUBJECT: Establishment of a Task Force on Decentralization DATE: AUG 4 1975
of Water Program Functions to the States

FROM: *James L. Speer*
Assistant Administrator for Water and Hazardous Materials (WH-556)

TO: Assistant Administrator for Planning and Management (PM-208)
Acting Assistant Administrator for Enforcement (EG-329)
Director, Office of Regional and Intergovernmental Operations (A-101)
Deputy Assistant Administrator for Water Program Operations (WH-446)
Deputy Assistant Administrator for Water Planning and Standards (WH-451)
All Regional Administrators

Since the passage of PL92-500, we have intensified our efforts to create a genuine Federal/State partnership in the water program. Utilizing the Section 106 State program grants mechanism and frequent direct contact with State counterparts, the Regional offices have built effective working relationships with the State agencies. Although there remains considerable room for improvement, much has been accomplished--including a functioning annual program cycle, establishment of MBO, and incentive funding of priority program areas. The States have gradually accepted increased responsibility for NPDES permits and for delegated functions in the municipal facilities program, although until now EPA has carried the primary burden in these two major programs.

However, as we look ahead over the next two to five years, it is apparent that our success or failure depends in large measure on the performance of the States. In program areas such as compliance assurance, enforcement, processing of construction grants, and management of nonpoint source programs, the States will have to assume the major role, if the goals of the Act are to be achieved.

To enable the States to play this role, at least two changes will have to occur. First, substantial additional State resources will be required. We will continue to seek additional State financial support and to advocate new State program revenue sources as may be appropriate. In addition, we have recently initiated efforts to assist the States in assessing their manpower needs and in upgrading their salary structures to at least partially alleviate the serious staffing problem which now exists in many States. The second change must occur in the basic EPA/State relationship, as the States incrementally take on most of the operational and administrative tasks while EPA concentrates on an overview role of establishing policy and ensuring that the State programs are carried out effectively.

In order to accelerate the evolution toward this altered EPA/State relationship, I am establishing a task force to conduct an in-depth evaluation of existing EPA/State relations in the water program and to develop specific recommendations to be incorporated in the FY77 Operating Guidance. A general timetable for the group's activities and a list of some of the basic questions to be answered are attached to this memorandum.

I am appointing Dan Petke of the Water Planning Division as chairman of the Decentralization Task Force and request that you make available the following individuals to serve as members of the task force: Patricia O'Connell (OE), Dick Hager (ORIO), Bruce Engelbert (PM), Ralph Sullivan (Municipal Construction), Ed Richards (State Programs), Pat Godsil (Region VIII), Tom Frangos, (Wisconsin), and Bill Adams (Maine). The appointment of an additional Regional task force member is planned. An initial meeting in Washington, D.C. has been scheduled for August 13. The primary purpose of this meeting will be to decide on a work plan which includes a detailed timetable and a systematic methodology to obtain the information required to answer the attached questions.

It is essential that the general focus of the task force's activities be on the EPA/State relationship in the broadest sense, and that examination of individual program areas be conducted in this context. I expect the task force to include in their final report a summary of the State perspective on the issues which are raised in the course of the task force's activities.

In order to achieve its objectives, I expect the task force to visit representative Regions and State agencies. Regional Office cooperation in making appropriate staff available for interviews with members of the task force and Regional Office assistance with arranging interviews with appropriate State agency staff will be necessary and appreciated.

I have asked Mr. Petke to report to me periodically on the progress of the group, and I look forward to the group's final report which I expect will provide us with policy recommendations which will lead to substantial improvements in EPA/State relations in the water program.

Attachments

