

**ANALYSIS OF 40 CFR PART 130, 33 CFR CHAPTER 26 et. seq., AAC, R18-5-301 and 1993 CPP**

**40 CFR §130.5 Continuing planning process.**

(a) *General.* Each State shall establish and maintain a continuing planning process (CPP) as described under section 303(e)(3)(A)-(H) of the Act. Each State is responsible for managing its water quality program to implement the processes specified in the continuing planning process. EPA is responsible for periodically reviewing the adequacy of the State's CPP.

(b) *Content.* The State may determine the format of its CPP as long as the minimum requirements of the CWA and this regulation are met. The following processes must be described in each State CPP, and the State may include other processes at its discretion.

**[NOTE: For purposes of brevity, paragraphs (b)(1) – (b)(3), paragraphs (b)(6) – (b)(9), and subsection (c) are not included. Only the applicable portions of 40 CFR Part 130.5 are pasted below.]**

(4) The process for updating and maintaining Water Quality Management (WQM) plans, including schedules for revision.

(5) The process for assuring adequate authority for intergovernmental cooperation in the implementation of the State WQM program.

**CWA SEC. 303** [33 U.S.C. 1313] Water Quality Standards and Implementation Plans

**[NOTE: For purposes of brevity, subsections (a) – (d), (f) – (h), and subsections (e)(3)(A), (e)(3)(C) - (D), and (e)(3)(F) – (H) are not included. Only the applicable portions of Section 303 of the Act are pasted below.]**

(e) (1) Each State shall have a continuing planning process approved under paragraph (2) of this subsection which is consistent with this Act.

(2) Each State shall submit not later than 120 days after the date of the enactment of the Water Pollution Control Amendments of 1972 to the Administrator for his approval a proposed continuing planning process which is consistent with this Act. Not later than thirty days after the date of submission of such a process the Administrator shall either approve or disapprove such process. **The Administrator shall [emphasis added] from time to time review each State's approved planning process for the purpose of insuring that such planning process is at all times consistent with this Act.** The Administrator shall not approve any State permit program under title IV of this Act for any State which does not have an approved continuing planning process under this section.

**[NOTE: ADEQ's CPP was last updated in 1993 (25 years ago), and the State's WQMP was last updated in 1979 (almost 40 years ago). CPPs are required to be based on WQMPs and the latest biennial 305(b) reports. 40 CFR Part 130.6(e) requires State and/or areawide agency WQM plans be updated as needed to reflect changing water quality conditions, results of implementation actions, new requirements, or to remove conditions in prior conditional or partial plan approvals.]**

(3) The Administrator shall approve any continuing planning process submitted to him under this section which will result in plans for all navigable waters within such State, which include, but are not limited to, the following:

(B) the incorporation of all elements of any applicable areawide waste management plans under section 208, and applicable basin plans under section 209 of this Act;

(E) adequate authority for intergovernmental cooperation;

**EXCERPT FROM THE ADEQ 1993 CPP CHAPTER II, PAGE 9:**

**“The State WQM Plan**

**The Environmental Quality Act (A.R.S. §49-203.B.4) authorizes the Director of ADEQ to develop, implement and administer a water quality planning process. The State Water Quality Management Plan, for current purposes, consists of the following components: 1) federal/state approved areawide and other regional WQM plans and amendments thereto (see Appendix VII for a current listing of areawide and other regional WQM Plans); 2) all final WQM rules and programs implemented pursuant to state rules and law; 3) all final plans, reports and strategies, as listed in "State WQM Planning Activities and Priorities" (Chapter II); 4) final TMDLs and WQLS (see Chapter III and IV); 5) intergovernmental agreements between ADEQ and any designated planning agency (DPA) or designated management agency (DMA); and 6) ADWR Active Management Area Second Management Plans, 1991. The State WQM, Plan is updated with the enactment of each newly adopted state plan component, rule, agreement, or strategy.”**

**POSSIBLE QUESTIONS:**

**WHEN WAS THE LAST TIME THE EPA REVIEWED AND DETERMINED THE STATE'S CPP WAS CONSISTENT WITH THE CWA?**

**IS IT REASONABLE TO CONCLUDE THAT CONDITIONS HAVE CHANGED SUBSTANTIALLY SINCE THE TIME THE CPP AND WQMP DOCUMENTS WERE LAST REVIEWED AND APPROVED BY EPA?**

**WHEN WAS THE LAST TIME THE STATE WQM PLAN WAS REVIEWED IN LIGHT OF CHANGING WATER QUALITY CONDITIONS, RESULTS OF IMPLEMENTATION ACTIONS, NEW REQUIREMENTS OR TO REMOVE PREVIOUS CONDITIONS?**

**HOW CAN THE CPP BE CONSIDERED CURRENT WHEN THERE HAVE BEEN NUMEROUS NEW RULES AND AGREEMENTS ADOPTED SINCE 1993?**

**WHY IS ADEQ SEEKING PRIMACY FOR THE 404 PERMIT PROGRAM WHEN BOTH THE CPP AND WQMP ARE SO DATED? WHY NOT UPDATE THE CCP AND WQMP FIRST?**

**HOW WILL ADEQ BE ABLE TO ENSURE THE ONGOING MAINTAINANCE OF REGIONAL WQM PLANS IF A BASE LEVEL OF FUNDING IS NO LONGER AVAILABLE TO THE DPAs TO UPDATE THEIR WQM PLANS?**

**HOW WILL ADEQ BE ABLE TO ASSURE ADEQUATE AUTHORITY FOR INTERGOVERNMENTAL COOPERATION IN IMPLEMENTING THE STATE WQM PROGRAM IF A BASE LEVEL OF FUNDING IS UNAVAILABLE TO THE DPAs?**

CWA SEC. 208 [33 U.S.C. 1288] Areawide Waste Treatment Management

**[NOTE: For purposes of brevity, subsections (a)(1), (a)(3) – (a)(4), (a)(6) – (a)(7), and subsections (b) – (j) are not included below. Only the applicable portions of Section 208 of the Act are pasted below.]**

(a) For the purpose of encouraging and facilitating the development and implementation of area wide waste treatment management plans--

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

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

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

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

**POSSIBLE QUESTION:**

**GIVEN THAT THE COGS AND CERTAIN COUNTIES HAVE BEEN DESIGNATED TO DEVELOP AREA WIDE WATER QUALITY MANAGEMENT PLANS, HOW DOES ADEQ JUSTIFY INCLUDING AGENCIES THAT ARE NOT DPAs IN A COMPETITIVE PROCESS FOR 604(b) FUNDING?**

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**AAC R18-5-301. Definitions**

**[NOTE: For purposes of brevity, only the applicable portions of AAC R18-5-301 are pasted below.]**

In addition to the definitions established in R18-9-101, the following terms apply to this Article:

7. "State water quality management plan" means the following elements:

a. Certified Areawide Water Quality Management Plans and amendments;

e. Intergovernmental agreements between the Department and a designated water quality planning agency or a designated management agency;

**[NOTE: The elements above are also set forth in ADEQ's CPP, Chapter 2, which discusses components of the State WQM plan.]**

**POSSIBLE QUESTIONS:**

**HOW WILL ADEQ REQUIRE DPAs TO PERFORM CONSISTENCY REVIEWS OR PLAN AMENDMENTS ABSENT IGAs REQUIRING US TO DO SO?**

**HOW WILL ADEQ MAINTAIN THE STATE PLAN WITHOUT CONSISTENCY REVIEWS AND/OR PLAN AMENDMENTS PROCESSED BY THE DPAs?**

**HAS ADEQ SUBMITTED AN AMMENDMENT TO THE CPP OR A WQM PLAN AMENDMENT TO EPA FOR APPROVAL THAT REMOVES REFERENCE TO IGAs WITH DPAs?**

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**40 CFR §130.11 Program management.**

**[NOTE: For purposes of brevity, only the applicable portions of Section 130.11 are pasted below.]**

(a) State agencies may apply for grants under sections 106, 205(j) and 205(g) to carry out water quality planning and management activities. Interstate agencies may apply for grants under section 106 to carry out water quality planning and management activities. **Local or regional planning organizations may request 106 and 205(j) funds from a State for planning and management activities.** Grant administrative requirements for these funds appear in 40 CFR parts 25, 29, 30, 33 and 35, subparts A and J.

**[NOTE: Section 106 funds are granted for administering programs for the prevention, reduction, and elimination of pollution, including enforcement. To the best of my knowledge, DPAs have never requested nor have we been granted Section 106 funds. Grants under section 205(j) are used to fund water quality management (WQM) planning activities but may not be used to fund implementation of control measures.]**

(e) EPA, States, areawide agencies, interstate agencies, local and Regional governments, and designated management agencies (DMAs) are joint participants in the water pollution control program. States may enter into contractual arrangements or intergovernmental agreements with other agencies concerning the performance of water quality planning and management tasks. Such arrangements shall reflect the capabilities of the respective agencies and shall efficiently utilize available funds and funding eligibilities to meet Federal requirements commensurate with State and local priorities. **State work programs under section 205(j) shall [emphasis added] be developed jointly with local, Regional and other comprehensive planning organizations.**

CWA SEC. 205 [33 U.S.C. 1285] Allotment

**[NOTE: For purposes of brevity, only the applicable portions of Section 205(j) are pasted below.]**

(j) (1) The Administrator shall reserve each fiscal year not to exceed 1 per centum of the sums allotted and available for obligation to each State under this section for each fiscal year beginning on or after October 1, 1981, or \$100,000, whichever amount is the greater.

(2) Such sums shall be used by the Administrator to make grants to the States to carry out water quality management planning.....

(3) **In carrying out planning with grants made under paragraph (2) of this subsection, a State shall [emphasis added] develop jointly with local, regional, and interstate entities, a plan for carrying out the program and give funding priority to such entities and designated or undesignated public comprehensive planning organizations to carry out the purposes of this subsection. In giving such priority, the State shall [emphasis added] allocate at least 40 percent of the amount granted to such State for a fiscal year under paragraph (2) of this subsection to regional public comprehensive planning organizations in such State and appropriate interstate organizations for the development and implementation of the plan described in this paragraph. In any fiscal year for which the Governor, in consultation with such organizations and with the approval of the Administrator, [emphasis added] determines that allocation of at least 40 percent of such amount to such organizations will not result in significant participation by such organizations in water quality management planning and not significantly assist in development and implementation of the plan described in this paragraph and achieving the goals of this Act, the allocation to such organization may be less than 40 percent of such amount.**

**EXERPT FROM ADEQ 1993 CPP APPENDIX III, PAGE III-8:**

**"The COGs and ADEQ have a unique and very valuable relationship in WQM planning, starting with the WQM planning partnership role established by CWA Section 208 (see Appendix V). The COGs provide a vehicle through which local governments may participate in the WQM planning process. They provide technical assistance to local entities in the preparation, amendment and update of Areawide WQM Plans, including promoting and ensuring adequate public participation in plan development and adequacy of plan amendments.**

The COGs assist the local/state agency information exchange, public participation processes, and help elevate local needs and priorities to ADEQ's attention for consideration in its statewide WOM program efforts. All major regional policy decisions are reviewed and approved by the COG decision making bodies, or regional boards, which are comprised of local elected officials. The boundaries of the six COGs and the counties served are shown in Figure 3 on page III-10."

**EXERPT FROM ADEQ 1993 CPP APPENDIX IV, PAGE IV-2:**

**"Water Quality Management Working Group (WQMWG)**

The Water Quality Management Working Group is a voluntary advisory body that meets quarterly, or as necessary, to consider and make recommendations to ADEQ regarding matters of statewide WQM policy and program implementation. The WQMWG is instrumental in the review and revision of state WQM programs, as it assists the Department in developing an integrated WQM program, from both a regional and statewide perspective.

Voting members include representatives from the six Councils of Governments (COGs), Arizona's Game and Fish Department, State Land Department, Department of Commerce and Department of Water Resources."

**POSSIBLE QUESTIONS:**

**HAS ADEQ EVER DEVELOPED JOINTLY WITH LOCAL AND REGIONAL ENTITIES A PLAN FOR CARRYING OUT THE 208 PROGRAM?**

**IF A BASE LEVEL OF FUNDING IS UNAVAILABLE TO THE DPAs AND THE WQMWG IS DISBANDED, HOW WILL ADEQ DEMONSTRATE THAT THEIR WORK PROGRAM IS DEVELOPED JOINTLY WITH DPAs?**

**HAS ADEQ, IN CONSULTATION WITH THE DPAs, DETERMINED THAT THE 40% WILL NOT RESULT IN SIGNIFICANT PARTICIPATION IN WQM PLANNING OR THE DEVELOPMENT AND IMPLEMENTATION OF THE PLAN AND ACHIEVING THE GOALS OF THE CLEAN WATER ACT?**

**HAS ADEQ RECEIVED APPROVAL OF THE EPA ADMINISTRATOR FOR ALLOCATION OF LESS THAN 40% OF THE SECTION 205(j) FUNDS TO THE DPAs?**

**WHAT HAS CHANGED ABOUT THE RELATIONSHIP BETWEEN THE DPAs AND ADEQ THAT IT HAS GONE FROM BEING CONSIDERED "VERY VALUABLE" TO INSIGNIFICANT BASED ON THE DESIRE TO NO LONGER PROVIDE A BASIC LEVEL OF FUNDING FOR PLANNING ACTIVITIES? WHAT STEPS CAN WE TAKE TO BECOME VALUED PLANNING PARTNERS AGAIN?**

**IF NO BASE LEVEL OF FUNDING IS AVAILABLE TO THE COGs ON AN ANNUAL BASIS, HOW WILL LOCAL GOVERNMENTS PARTICIPATE IN THE WQM PLANNING PROCESS, AND HOW WILL PUBLIC PARTICIPATION REQUIREMENTS BE ENSURED? HOW WILL TECHNICAL ASSISTANCE BE PROVIDED IN PLAN DEVELOPMENT AND AMENDMENT?**

**IF NO BASE LEVEL FUNDING IS AVAILABLE TO THE COGs ON AN ANNUAL BASIS, HOW WILL THE WQMWG BE ABLE TO PROVIDE A REGIONAL AND STATEWIDE PERSPECTIVE IN THE REVIEW AND REVISION OF STATE WQM PROGRAMS?**

CWA SEC. 604 [33 U.S.C. 1384] Allotment of Funds.

(a) Formula.--Sums authorized to be appropriated to carry out this section for each of fiscal years 1989 and 1990 shall be allotted by the Administrator in accordance with section 205(c) of this Act.

(b) Reservation of Funds for Planning.--Each State shall reserve each fiscal year 1 percent of the sums allotted to such State under this section for such

fiscal year, or \$100,000, whichever amount is greater, to carry out planning under section 205(j) and 303(e) of this Act.

(c) Allotment Period.--

(1) Period of Availability for Grant Award.--Sums allotted to a State under this section for a fiscal year shall be available for obligation by the State during the fiscal year for which sums are authorized and during the following fiscal year.

(2) Reallotment of Unobligated Funds.--The amount of any allotment not obligated by the State by the last day of the 2-year period of availability established by paragraph (1) shall be immediately reallotted by the Administrator on the basis of the same ratio as is applicable to sums allotted under title II of this Act for the second fiscal year of such 2-year period. **None of the funds reallotted by the Administrator shall be reallotted to any State which has not obligated all sums allotted to such State in the first fiscal year of such 2-year period.**

**NOTE: Apparently, there is \$100K in 604(b) funding available each fiscal year pursuant to Section 205(j). The \$100K is available for two fiscal years – the fiscal year it was awarded in and the following fiscal year. If all the funds from the first fiscal year are not spent, the unspent portion can be carried over to the following fiscal year. If all of the funds from the first fiscal year are not spent in the second fiscal year, then the unspent portion cannot be carried over again, but is reallotted to the states that utilized their full allotments. But the second year has its own allotment of \$100K and those funds are on their own two-year cycle for obligation. Carry over from FY 2016 was around \$10K and FY 2017 was only \$316.**

**POSSIBLE QUESTIONS:**

**WHY ISN'T ADEQ ALLOWING ANY CARRY OVER OF FY 2018 FUNDS TO 2019?**

**WHY DOESN'T ADEQ SPEND DOWN THE FUNDS CARRIED OVER INTO THE SECOND YEAR BEFORE SPENDING ANY OF THE FUNDING ALLOTTED FOR THE SECOND YEAR?**