

## § 6.509

and any other environmental information deemed necessary by the responsible official consistent with the requirements of § 6.506(c). Following the Agency's independent review, the environmental assessment will be finalized and either be incorporated into, or attached to, the FNSI. The FNSI shall list all mitigation measures as defined in § 1508.20 of this title, and specifically identify those mitigation measures necessary to make the recommended alternative environmentally acceptable.

(b) *Proceeding with grant awards.* (1) Once an environmental assessment has been prepared and the issued FNSI becomes effective for the treatment works within the study area, grant awards may proceed without preparation of additional FNSIs, unless the responsible official later determines that the project or environmental conditions have changed significantly from that which underwent environmental review.

(2) For all environmental assessment/FNSI determinations:

(i) That are five or more years old on projects awaiting Step 2+3 or Step 3 grant funding, the responsible official shall re-evaluate the project, environmental conditions and public views and, prior to grant award, either:

(A) *Reaffirm*—issue a public notice reaffirming EPA's decision to proceed with the project without revising the environmental assessment;

(B) *Supplement*—update information and prepare, issue and distribute a revised EA/FNSI in accordance with §§ 6.105(f) and 6.400(d); or

(C) *Reassess*—withdraw the FNSI and publish a notice of intent to produce an EIS followed by the preparation, issuance and distribution of the EIS/ROD.

(ii) That are made on projects that have been awarded a Step 2+3 grant, the responsible official shall, at the time of plans and specifications review under § 35.2202(b) of this title, assess whether the environmental conditions or the project's anticipated impact on the environment have changed and, prior to plans and specifications approval, advise the Regional Adminis-

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trator if additional environmental review is necessary.

[51 FR 32612, Sept. 12, 1986]

### § 6.509 Criteria for initiating Environmental Impact Statements (EIS).

(a) *Conditions requiring EISs.* (1) The responsible official shall assure that an EIS will be prepared and issued when it is determined that the treatment works or collector system will cause any of the conditions under § 6.108 to exist, or when

(2) The treated effluent is being discharged into a body of water where the present classification is too lenient or is being challenged as too low to protect present or recent uses, and the effluent will not be of sufficient quality or quantity to meet the requirements of these uses.

(b) *Other conditions.* The responsible official shall also consider preparing an EIS if: The project is highly controversial; the project in conjunction with related Federal, State, local or tribal resource projects produces significant cumulative impacts; or if it is determined that the treatment works may violate Federal, State, local or tribal laws or requirements imposed for the protection of the environment.

### § 6.510 Environmental Impact Statement (EIS) preparation.

(a) *Steps in preparing EISs.* In addition to the requirements specified in subparts A, B, C, and D of this part, the responsible official will conduct the following activities:

(1) *Notice of intent.* If a determination is made that an EIS will be required, the responsible official shall prepare and distribute a notice of intent as required in § 6.105(e) of this part.

(2) *Scoping.* As soon as possible, after the publication of the notice of intent, the responsible official will convene a meeting of affected Federal, State and local agencies, or affected Indian tribes, the grantee and other interested parties to determine the scope of the EIS. A notice of this scoping meeting must be made in accordance with § 6.400(a) and 40 CFR 1506.6(b). As part of the scoping meeting EPA, in cooperation with any delegated State, will as a minimum:

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(i) Determine the significance of issues for and the scope of those significant issues to be analyzed in depth, in the EIS;

(ii) Identify the preliminary range of alternatives to be considered;

(iii) Identify potential cooperating agencies and determine the information or analyses that may be needed from cooperating agencies or other parties;

(iv) Discuss the method for EIS preparation and the public participation strategy;

(v) Identify consultation requirements of other environmental laws, in accordance with subpart C; and

(vi) Determine the relationship between the EIS and the completion of the facilities plan and any necessary coordination arrangements between the preparers of both documents.

(3) *Identifying and evaluating alternatives.* Immediately following the scoping process, the responsible official shall commence the identification and evaluation of all potentially viable alternatives to adequately address the range of issues identified in the scoping process. Additional issues may be addressed, or others eliminated, during this process and the reasons documented as part of the EIS.

(b) *Methods for preparing EISs.* After EPA determines the need for an EIS, it shall select one of the following methods for its preparation:

(1) Directly by EPA's own staff;

(2) By EPA contracting directly with a qualified consulting firm;

(3) By utilizing a third party method, whereby the responsible official enters into "third party agreements" for the applicant to engage and pay for the services of a third party contractor to prepare the EIS. Such agreement shall not be initiated unless both the applicant and the responsible official agree to its creation. A third party agreement will be established prior to the applicant's EID and eliminate the need for that document. In proceeding under the third party agreement, the responsible official shall carry out the following practices:

(i) In consultation with the applicant, choose the third party contractor and manage that contract;

(ii) Select the consultant based on ability and an absence of conflict of interest. Third party contractors will be required to execute a disclosure statement prepared by the responsible official signifying they have no financial or other conflicting interest in the outcome of the project; and

(iii) Specify the information to be developed and supervise the gathering, analysis and presentation of the information. The responsible official shall have sole authority for approval and modification of the statements, analyses, and conclusions included in the third party EIS; or

(4) By utilizing a joint EPA/State process on projects within States which have requirements and procedures comparable to NEPA, whereby the EPA and the State agree to prepare a single EIS document to fulfill both Federal and State requirements. Both EPA and the State shall sign a Memorandum of Agreement which includes the responsibilities and procedures to be used by both parties for the preparation of the EIS as provided for in 40 CFR 1506.2(c).

### §6.511 Record of Decision (ROD) for EISs and identification of mitigation measures.

(a) *Record of Decision.* After a final EIS has been issued, the responsible official shall prepare and issue a ROD in accordance with 40 CFR 1505.2 prior to, or in conjunction with, the approval of the facilities plan. The ROD shall include identification of mitigation measures derived from the EIS process including grant conditions which are necessary to minimize the adverse impacts of the selected alternative.

(b) *Specific mitigation measures.* Prior to the approval of a facilities plan, the responsible official must ensure that effective mitigation measures identified in the ROD will be implemented by the grantee. This should be done by revising the facilities plan, initiating other steps to mitigate adverse effects, or including conditions in grants requiring actions to minimize effects. Care should be exercised if a condition is to be imposed in a grant document to assure that the applicant possesses the authority to fulfill the conditions.