

New General Conformity Q's & A's (October 19, 1994)

Applicability

State Revolving Fund Actions

1. Is a general conformity determination necessary for EPA State Revolving Fund (SRF) capitalization grants?
 - A. No. Under Title VI of the Clean Water Act, EPA provides each year to states to capitalize their state revolving funds ("capitalization grants"). The SRF, in turn, provides loans and other types of assistance, but not grants, to communities and local agencies for, among other projects, the construction of publicly-owned wastewater treatment facilities. EPA provides capitalization grants based on a state's Intended Use Plan (IUP) which, in part, describes projects eligible for funding under the SRF but which may not actually receive financial assistance from the fund. The project level funding decisions are made at a later time by the state. Consequently, EPA's action to award the SRF capitalization grant is considered a programmatic level decision whose emissions are not reasonably foreseeable. See, Preamble to EPA's Proposed General Conformity Regulation, 48 Federal Register 13840 (March 15, 1993). Therefore, under § 93.153 © (3) of the conformity rule, these capitalization grants do not require a conformity determination.
2. Is a general conformity determination necessary for the award of SRF financial assistance to fund a specific project?
 - A. Yes, if the project is supported with funds "directly made available by" and EPA capitalization grant (see question 1, above). These projects are deemed federally assisted and are subject to certain federal "cross-cutter statutes," including CAA conformity. Under the capitalization grant agreement with EPA, the State funding the specific project is required to do the conformity determination for EPA.
3. Do emissions from growth need to be assessed for conformity determinations for specific SRF projects?
 - A. No, because the EPA does not maintain a "continuing program responsibility" over these indirect emissions. Unlike Title II of the Clean Water Act, which restricts grant funding to only those projects which serve existing capacity, Title VI does not restrict SRF money in this way. Therefore, in SRF funded projects, EPA does not have authority to control or condition emissions resulting from growth, and the emissions from any induced growth are not indirect emissions with respect to conformity and need not be assessed in a required conformity determination.

Bubbling Activities

NOTE: Questions 41 and 42 from the July 13, 1994 Q's and A's should be placed under the criteria section. Bubbling activities for emissions offsets is permitted under the offset criteria to demonstrate conformity. Using emissions offsets form two separate actions is not permitted for applicability purposes.

Criteria

1. Can a state agree to revise a SIP to accommodate a project if EPA has not approved the SIP since 1990?
 - A. Yes, even if the state does not have a post-1990 SIP, under §91.158 (a) (5) (i) (B), the federal agency may be able to demonstrate conformity if the state agrees to revise the SIP to accommodate the project. (There is a requirement for a post-1990 SIP, however, if the federal agency intends to demonstrate conformity by complying with the emissions budget under §91.158 (a) (5) (i) (A).)

Transportation Conformity

1. Are projects that are funded by the National Recreational Trails Funding Program (NRTFP), under Title 23, subject to the transportation conformity rules?
 - A. EPA intended the transportation conformity rule to apply only to projects that involve highway and transit vehicles, not to the types of projects funded by the NRTFP such as, recreational trails for bicycle, pedestrian and motorized vehicle use. Since the general conformity rule applies to federal actions other than those covered by the transportation conformity rule, it is EPA's opinion the NRTFP projects are subject to general conformity requirements. (Letter form Phillip Lorang, OMS to Cindy Burbank, May 31, 1994)