

2004

PROGRAMMATIC AGREEMENT  
AMONG  
THE ENVIRONMENTAL PROTECTION AGENCY,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND  
THE NATIONAL CONFERENCE OF STATE HISTORIC  
PRESERVATION OFFICERS  
CONCERNING COMPLIANCE WITH  
THE NATIONAL HISTORIC PRESERVATION ACT  
UNDER  
EPA's STATE WATER POLLUTION CONTROL REVOLVING FUND PROGRAM

WHEREAS, the U.S. Environmental Protection Agency (EPA) awards capitalization grants to States to establish State Revolving Fund (SRF) programs within State Agencies (each hereinafter referred to as "SRF Agency") authorized under the Clean Water Act (CWA) (33 U.S.C. 1251 et. seq., as amended); and

WHEREAS, the EPA has issued Initial Guidance for the SRF program (January 1988), Appendix D of which (Attachment 1) contains criteria for approval of State Environmental Review Processes (SERPs); and

WHEREAS, Sections 106 and 110(b), (d) and (f) of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f and 470h-2(b), (d), and (f)) apply to all SRF assistance directly made available to States by federal capitalization grants (EPA federal assistance); and

WHEREAS, projects carried out with EPA federal assistance may have effects on properties included in, or eligible for inclusion in, the National Register of Historic Places (historic properties); and

WHEREAS, the EPA has consulted with the Advisory Council on Historic Preservation (Council) and the National Conference of State Historic Preservation Officers (NCSHPO) pursuant to Section 800.13 of the regulations (36 CFR Part 800, et seq.) implementing Sections 106 and 110(f) of the NHPA;

NOW, THEREFORE, the EPA, the Council, and the NCSHPO agree that the SRF program shall be administered in accordance with the following stipulations, which will be deemed to satisfy EPA's Section 106 and 110(f) responsibilities for all EPA SRF program actions and SRF Agency program actions undertaken with EPA federal assistance.

### Stipulations

EPA will ensure that the following measures are carried out:

#### 1. Purpose and Applicability.

(a) This Programmatic Agreement [PA] sets forth the process by which EPA will meet its responsibilities under Sections 106 and 110(d) and 110(f) of the NHPA with the assistance of SRF agencies. As such, it sets forth the basis for SRF Agency review of individual projects that may affect historic properties, and establishes how EPA will be involved in such review.

(b) This PA is applicable to the review of CWA Section 212 (wastewater treatment facilities), 319 (non-point source pollution control) and 320 (estuary protection) projects that receive EPA federal assistance under an SRF Agency's program.

#### 2. Responsibilities of EPA and SRF Agencies.

In compliance with its responsibilities under the NHPA and as a condition of its award of any capitalization grant to a State, EPA shall require that the SRF Agency or another designated State agency carry out the requirements of 36 CFR 800.4 through 800.6, with reference to 36 CFR 800.1, 800.2, 800.3, 800.8, 800.9, 800.10, 800.11, 800.12 and 800.14 (see 36 CFR Part 800, Attachment 2) and applicable Council standards and guidelines for all SRF Agency actions that receive EPA federal assistance. EPA will participate in the process to the extent mutually agreed upon by the EPA Regional Administrator and the SRF Agency, but at a minimum, EPA must be notified by the SRF Agency if after routine consultation or coordination with the State Historic Preservation Officer (SHPO) disputes remain pursuant to stipulation #5.

3. Use of SRF Certification Reviews and Annual Reviews.

(a) Certification reviews. EPA will review, or re-review as may be necessary, the certification each State is required to provide as a part of its initial application for SRF capitalization grant funding to ensure that:

(1) The State has the authority and capability to carry out the responsibilities assigned to the SRF Agency as described in this PA; and

(2) The SRF Agency will carry out such responsibilities.

(b) Programmatic coordination and consultation. Whenever an EPA Regional Administrator prepares for an annual review of an SRF Agency's program, the EPA Regional Administrator will afford the appropriate SHPO and the Council the opportunity to comment on their experiences with EPA's and the SRF Agency's execution of their respective responsibilities assigned under this PA and the SRF capitalization grant agreement, and shall consider such comments in the conduct of its annual review. If problems are reported with the execution of responsibilities under this PA, the EPA will consult with the SHPO or the Council and other interested persons if appropriate, and if mutually agreed that participation is necessary, the EPA will invite the SHPO or the Council to participate directly in the EPA's annual review on SRF program matters involving their jurisdiction or expertise.

(c) Annual reviews. (1) During each annual review of an SRF Agency's program, the EPA Regional Administrator will ensure that the SRF Agency is using:

(i) adequate expertise to carry out its responsibilities consistent with the professional qualifications standards found in the "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44738-9) (Attachment 3);

(ii) effective mechanisms for carrying out the responsibilities assigned to it under the capitalization grant agreement, in accordance with this PA, including those assigned pursuant to stipulation 2 above;

(iii) effective mechanisms for identifying historic properties subject to potential effect by SRF Agency actions using EPA federal assistance, taking into account the Council's publication: "Identification of Historic Properties: a Decisionmaking Guide for Managers" (1988) (Attachment 4);

(iv) effective procedures for involving interested parties and the public in the review process taking into account the

Council publication: "Public Participation in Section 106 Review: A Guide for Agency Officials" (1989) (Attachment 5); and

(v) effective mechanisms for avoiding, minimizing, or mitigating adverse effects on historic properties.

(2) The EPA will further ensure that deficiencies noted in carrying out of responsibilities under this PA and capitalization grant agreement (including any alternative review process contained in an approved SERP), as a result of oversight provided by the Council, SHPO and EPA's annual reviews, are remedied or effectively rebutted with appropriate documentation. Notification of deficiencies, suggested remedies affecting the work of the SRF Agency, and proposed EPA action (if any), shall be included in the report sent to the SRF Agency at the conclusion of an annual review. If the report identifies deficiencies, remedies or actions concerning NHPA compliance, a copy of those portions of the report will be sent to the appropriate SHPO and the Council.

#### 4. State/SHPO Consultation/Coordination.

The Regional Administrator will ensure that a State's capitalization grant agreement provides consultation and coordination between the SRF Agency and the SHPO that is consistent with 36 CFR 800.4, 800.5, and 800.14, and with the guidance outlined in Attachment 6.

#### 5. Dispute Resolution.

(a) Either the SRF Agency or the SHPO may, at its own discretion, request that the EPA Regional Office and/or the Council participate in the review of individual SRF projects or assist in resolving disputes that may arise between the two State agencies. The EPA and the Council will participate in reviewing and assisting the State agencies if so requested, and may participate at their own discretion, when significant issues are raised from other sources, without such a request.

(b) In situations where disagreements among the SRF Agency and SHPO cannot be resolved in consultation with either the EPA Regional Office or the Council, the EPA will be responsible for resolving the dispute in consultation with the Council in accordance with 36 CFR 800.4 through 800.6 as applicable.

#### 6. Applicable Guidance.

(a) Implementation of this PA will be guided by Attachments 1 through 6 and such program guidance or regulations as EPA may

issue subsequently, and the applicable regulations, standards, guidelines and explanatory bulletins of the Council and the Department of the Interior.

(b) In consultation with SRF Agencies and the NCSHPO, the EPA and Council may from time to time jointly develop and provide SRF Agencies and SHPOs with additional guidance or training.

7. Distribution.

Following the Council's publication of the required notice of an approved PA in the Federal Register, EPA will distribute copies of this PA and its attachments to all EPA Regional SRF and National Environmental Policy Act (NEPA) Coordinators, SRF Agencies, SHPOs, and requesting parties.

8. Amendment.

Any party to this PA may request that it be amended, whereupon the parties will consult pursuant to 36 CFR 800.13 to consider such amendment.

9. Termination.

Any party to this PA may terminate it by providing ninety (90) days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the EPA will ensure compliance with 36 CFR 800.4 through 800.6 with regard to individual undertakings covered by this PA.

Execution of this PA, and carrying out its terms, evidences that the EPA has satisfied its Section 106 and 110(f) responsibilities under the NHPA for Title VI of the CWA.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: [Signature]  
Chairman

Date: March 19, 1980

U.S. ENVIRONMENTAL PROTECTION AGENCY

By: [Signature]  
Director, Office of Federal Activities

Date: 3/21/80

By: [Signature]  
Director, Office of Municipal Pollution Control

Date: 3/23/80

NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

By: [Signature]  
President

Date: 3/25/80