

LARIMER-WELD REGIONAL COUNCIL OF GOVERNMENTS
208 AREAWIDE WATER QUALITY MANAGEMENT PLAN

PROPOSAL FOR MANAGEMENT
AGENCY REQUIREMENTS
208 PLAN IMPLEMENTATION

Prepared For

Larimer-Weld Regional
Council of Governments

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1.0 MANAGEMENT AGENCY REQUIREMENTS FOR 208 IMPLEMENTATION

Public law 92-500 is clear about the minimum capabilities required of 208 management agencies. There is, however, substantial latitude for 208 agencies to develop locally-tailored arrangements to carry out their responsibilities. By law, the management agency must at least possess the following powers:

- . to assure implementation of an areawide waste treatment management plan;
- . to manage waste treatment works and related facilities serving such areas effectively and in conformance with the plan;
- . to design and construct new works, and to operate and maintain new and existing works as required by the plan, either directly or by contract;
- . to accept and utilize grants or other funds from any source, for waste treatment management purposes;
- . to raise revenues, including the assessment of waste treatment charges;
- . to incur short- and long-term indebtedness;
- . to refuse to receive any wastes from any municipality, or subdivision thereof, which does not comply with any provision of an approved plan under this section applicable to such area;
- . to accept for treatment, industrial wastes; and
- . to assure each participating community pays its proportionate share of treatment costs.

In some cases, the management agency will not need to become directly involved in these activities, but rather will assume a supervisory position in relation to the responsible operating agency. This would be the case, for example, with regard to designing and constructing new treatment works.

The term "management agency" (M.A.) is taken from the law

responsibilities within the urban service area boundaries, but outside of city limits.

By state statute, counties may become operational agencies via the creation of a countywide sanitation district. However, it is strongly recommended that the counties of Larimer and Weld not become involved in the "urban service" business unless it is necessary to correct an existing problem. The counties should resort to providing such service only as a last resort and then only as an interim administrative step. The actual operation should be assumed by some other agency as soon as possible.

2.1 COUNTY RESPONSIBILITY IN UNINCORPORATED AREAS

The county would possess the full legal standing as the management agency for all discharges and operating agencies in unincorporated areas, whether they may be (1) special districts, (2) private parties, or (3) unincorporated communities. The county would pass to these parties as much of the M.A. responsibility as the county judges they can legally, financially, technically and administratively handle in carrying out the 208 plan. This pass-through of M.A. responsibilities would come in the form of intergovernmental contracts when public agencies are involved, and as standard contracts where private parties are dischargers.

The function of an Operational Agency would, in most cases, be directly assigned to the discharger. In other words, the discharger would run its own treatment facility as long as it stayed in conformance with the law and the 208 plan. The discharger would be subject, however, to M.A. overview and support to assure conformance with the law and to assure conformance with the contractual arrangement between the two parties. Management overview and support would include providing:

- . Assistance in seeking grants;
- . Stability of land use and land use controls in compliance with the adopted land use plan which will be part of the 208 plan;
- . Implementation of land use management through regulations affecting grading, drainage, septic tanks, solid waste, erosion, subdivision, and building construction to control or eliminate non-point pollution;
- . Technical advice for legal, financial, engineering or planning as available and as requested; and
- . Coordination of plans between different operational agencies or other management agency area plans (e.g., a district and the service area of a qualified city).

2.2 COUNTY RESPONSIBILITIES INSIDE THE LIMITS OF UNQUALIFIED MUNICIPALITIES

For all dischargers and operating agencies within this category, the county would be assigned M.A. responsibility. Cities, towns or special districts operating treatment facilities within this category would be subject to M.A. direction just as that provided by the county in unincorporated areas (see 2.1 above).

Unqualified cities and towns are eligible to become re-designated as qualified communities (and therefore to be designated as their own M.A.) by demonstrating their ability to perform the functions required in the 208 plan for point and non-point source regulation within their area of responsibility. This re-designation process can occur by the community seeking approval from the county and upon final approval (and 208 plan amendment) from the Larimer-Weld 208 Planning Agency (COG).

Unless communities in this category receive their own M.A. designation, they will be subject to M.A. control by the county. This will be carried out by execution of an intergovernmental contract between the community and/or a special district serving the community, and the county as the M.A. This contract will pass through, to the Operating Agency and/or the community being served, as much of the M.A. responsibility as is deemed appropriate in carrying out the 208 plan. Operating Agency functions will be directly assigned to the community's facility operator in most cases.

The level of county support can vary. For those communities without treatment facilities, the county could provide staff guidance and support in a number of ways such as: the steps to achieve a central treatment facility; how to select and oversee the work of a consultant; where to locate funding support; and the nature and amount of comprehensive planning the community should execute before treatment facility planning should occur. The county might provide over-the-shoulder direction, or if funds were obtainable through a state or federal program or the community itself, the county staff might actually execute some of the work. The determination of what is appropriate in the way of treatment facilities would have to reflect the larger questions of the 208 plan; for example, should a new discharger be created in the area, or should the growth be channelled elsewhere or tied into another system? The county would act as advisor to the Areawide Planning Agency (COG) as to the appropriate direction on such questions as amending the 208 plan. No new system could be created without it being in compliance with the 208 plan.

For those communities with treatment facilities, the county could make available the same advisory services. But, in addition, if the community is in violation of its discharge permit, or expects to be in the future, the county could provide further guidance on the proper steps to correct the situation.

Each county may wish to avoid developing advisory capabilities on their own staff and choose to fund such technical support at the COG which then may serve both counties. This should reduce the total commitment of the two counties. It is a function that is desirable to provide either at the county or COG level if the ability of unqualified communities to achieve the goals of the clean water act are to be assured.

2.3 COUNTY RESPONSIBILITIES INSIDE THE SERVICE AREA BOUNDARIES OF QUALIFIED MUNICIPALITIES

Management agency responsibility in these areas would be assigned to the qualified community. However, because land use and land management-related powers in the portion of the service area outside the city boundaries are not possessed by the city, but rather by the county, a working relationship between the two governments must be developed.

The plan would require the city and county to agree upon land use, public facility requirements, capital facility development phasing and other areas of urban service delivery concerns. Community development in these areas must occur in a planned, sequential fashion in order that point source and non-point source pollutants generated in the area could be efficiently managed. The achievement of the goals of the 208 plan and the federal law, as well as the financial integrity of the local systems, are dependent on this. Intergovernmental agreements would be developed to document and define this city/county relationship.

The specific responsibilities in this area of joint government concern begin with the city. It would be the city's task to define the service area and the basis for its delineation; develop the land use plan for the area; design the wastewater system to serve the land use and associated population; develop phasing for serving the area; and create a capital improvement program for priority and funding purposes.² These plans and programs must be developed with the concurrence and support of the county. However, the county, unless requested to and willing, would not have to participate in developing the plans; they could remain in a review and critique posture.

If the district(s) is also serving in the urban service area, the county would have a role as coordinator between the city and district to see a joint resolution of areas of conflict

² It is recognized that the defining of an urban service area is not totally based on sewer service. Many other factors must be considered, including the wishes of the public. It is not proposed that the service area be defined for or on the basis of sewer service alone.

occurs. The county is the one with the regulatory powers governing the unincorporated areas; therefore, both the city and district must rely on the county. This provides leverage for reasonable resolution of conflict. The county must then support the operating agencies with its regulatory decisions.

If a city has opted to have an area beyond its city limits included as part of its service area, it is assuming certain responsibilities. It should not ask for review and county support over development in that unincorporated area without being willing to develop land use plans, service plans and phasing plans for servicing the area. If it fails to make the necessary studies and efforts in this direction in a reasonable period of time (to be specified), the county as the M.A. should indicate that the city's service area is to coincide with the city limits for the 208 plan purposes.

2.4 GENERAL COUNTY RESPONSIBILITIES

In addition to the detailed tasks in each of the geographical areas, the county would have general tasks relating to 208 and their normal functions.

1. The county as the M.A. would represent the collective interests of the area with the Areawide Planning Agency in such matters as funding, priority setting, 208 plan amendments and any issues resulting from state or federal wastewater related actions that affect their constituents.
2. Once the 208 plan is adopted, the counties will have an obligation to the existing permittees to support the implementation of the areawide wastewater plan with land use decisions and decisions on the creation of any new discharge permits. Achievement of the 208 goals with the minimum cost to area users will be dependent on being able to forecast revenues and to know that any growth that does take place will help to amortize the investment in treatment systems. Creation of new systems where there is already excess capacity can only have a detrimental affect on local communities' abilities to meet their financial commitments. The county, under the state's Special District Control Act 31-1-201, is the only entity which can prevent this by discouraging the creation of new districts or incorporations of new cities unless there is a clear need that cannot be met by the existing systems.
3. Once the 208 plan is agreed to, the counties should reevaluate the existing land use plans and zoning in the county. While wastewater treatment is only

one service, it is critical to the growth of the area. If the 208 plan and the county zoning and land use plans are not in accord, one or the other should be amended to bring them into agreement. They must be mutually supportive.

3.0 STAFFING AND BUDGET REQUIREMENTS

Staffing levels to carry out the functions required of the county under this program are difficult to predict until three factors become more clear. One is how much help can be expected from the Planning Agency (COG) in setting up the initial set of intergovernmental contracts? Secondly, how many of the small towns and cities will initially seek their own M.A. status and therefore change the counties' degree of involvement? Lastly, what technical services or advice is the county presently providing for smaller communities and do the counties prefer to have the county or the COG provide local assistance in the future?

The best estimate, at this date, of staff requirements to carry out this task if the counties choose not to pass the responsibility for technical advice to the COG, would be that each county have the following additional staff made available for at least a two-year period to get the program fully operational:

- 1 - Experienced Utility Program Manager -- full time
- 1 - City and Regional Planner -- half time
- 1 - Secretary/Technician -- half time

If the COG becomes responsible for the technical advice, the utility program manager position at the county may not be necessary. This basic responsibility could be assigned to each county's planning department, with staff reporting to the director of the planning department. It is also assumed that the half-time requirements for two of the staff people could be achieved by integrating this program into work activities now going on within each planning department or with new activities as they develop.

Staffing requirements after the initial two-year period, when all the intergovernmental agreements are being initially developed, tested and modified, could possibly be reduced. However, there remain so many unknowns about certain aspects of the program, particularly urban runoff and non-point source activities, that staff reduction decisions cannot be made before the program begins.

The concept of fulfilling this total staff requirement by use of consultants was considered. This approach is not recommended at this stage because of the nature of the task; the need for coordinated action, versus the independent approach of each community doing their own approach. Liason with other levels of

government and their agencies will also be critical, requiring direct local government involvement.

Budget

New funding requirements on an annual basis to finance staffing of each county's programs would appear to be:

Manager	\$18M
Planner (half-time)	7M
Secretary/Technician	4M
Fringe benefits and miscellaneous expenses	<u>10M</u>
ANNUAL TOTAL	\$39M/Year

4.0 SOURCES OF FUNDING

Sources of funds to finance this program by each county could come from many places. The best opportunities would seem to be from one or a combination of the following:

1. Direct grants to the M.A. by the EPA or state from 208 program funds;
2. EPA or state funds granted to the Planning Agency (COG) for 208 planning, in part, passed through to the M.A.;
3. County general funds;
4. County-created sewer district with special ad valorem levy on all properties within each sub-district service area;
5. Surcharge on user fee structure of sewer systems within county M.A. responsibility to be passed through to the county (provided for in intergovernmental contracts between agency and county); and
6. Fees from private dischargers.

Each county would reach its own decision on program funding of its M.A. The Areawide Planning Agency (COG) could provide technical assistance as appropriate and desired by the counties.