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B-166506

AUG 23 1975



The Honorable William S. Moorhead  
 Chairman, Subcommittee on Conservation,  
 Energy, and Natural Resources  
 Committee on Government Operations  
 House of Representatives

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Dear Mr. Chairman:  
*[Environmental Protection Agency Compliance With GAO Decision on User Charge Systems]*

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In a letter dated January 14, 1975, the Honorable Henry S. Reuss, former Chairman of the Subcommittee, asked us to determine whether the Environmental Protection Agency was fully complying with our decision of July 2, 1974 (B-166506), which stated that ad valorem tax systems did not meet the statutory requirements for user charge systems. The law requires each recipient (or user) of waste treatment services to pay its proportionate share of the costs to operate, maintain, and replace facilities constructed with Federal grants awarded after March 1, 1973. Ad valorem tax systems are based on property values rather than on the recipients' use of the treatment facilities.

In a subsequent meeting, we agreed to determine whether grant conditions requiring grantees to develop user charge systems were in compliance with the law and whether the Agency was complying with its user charge regulations. We also agreed to make our review at region V headquarters, Chicago, Illinois, and Agency headquarters, Washington, D.C.

We reviewed 45 of the 166 construction grants awarded in region V between March 2, 1973, and March 15, 1975. Before awarding the grants, region V required grantees to ensure that an acceptable user charge system would be developed in compliance with the law.

We found that region V had complied with our decision in that

- grants awarded before the decision were amended to prohibit the use of ad valorem tax systems,
- grants awarded after the decision contained the same prohibition, and
- user charge systems the Agency approved were not based on ad valorem taxes.

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Region V, however, had not enforced the Agency's requirement that grantees submit a plan and schedule of implementation of the user charge system resulting in the Agency's inability to determine whether grantees were proceeding toward development of user charge systems in a prompt manner.

#### BACKGROUND

Under section 204(b)(1) of the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500), the Agency Administrator shall not approve any grant for any treatment facility after March 1, 1973,

"\* \* \* Unless he shall first have determined that the applicant (A) has adopted or will adopt a system of charges to assure that each recipient of waste treatment services \* \* \* will pay its proportionate share of the costs of operation and maintenance (including replacement) of any waste treatment services provided by the applicant\* \* \*."

Historically, municipalities, districts, and counties have funded operation and maintenance costs of sewage treatment facilities from either ad valorem tax revenues or utility charges.

Local governments traditionally obtain revenues to finance public services through ad valorem tax levies, that is, levies based on the assessed valuation of property within their jurisdictions. In many cases, the costs of operating and maintaining treatment facilities were funded with these revenues.

Utility charges, on the other hand, are usually not taxes but are separate charges levied on users of treatment facilities.

Before April 1974, the Agency would not accept a user charge system that was based on ad valorem taxes. Because many grantees were already using ad valorem tax systems, however, the Agency in April 1974, made a major policy change and permitted under certain conditions the use of an ad valorem tax system.

On July 2, 1974, we ruled that the ad valorem tax method did not comply with the act in that

"\* \* \* the ad valorem system is clearly a tax based on the value of the property and, conceptually at least, the Congress did not intend that a tax be used to obtain

the user charges. In addition, the ad valorem system will not reach tax-exempt property and the users of waste treatment services could constitute a relatively significant segment of the users of sewage systems. This omission is, in our view, one of the major failings of an ad valorem system. Moreover, ad valorem taxes will reach industrial operations and others that do not discharge into a public sewage system. Of major importance also is the fact that the ad valorem tax does not in any way reward conservation of water and this was clearly an important factor in the congressional adoption of the user charge."

We said that, if the Agency believed that an ad valorem system would be appropriate in certain circumstances, it should seek to obtain statutory authority therefor.

Many bills have been introduced in the Congress to allow the use of the ad valorem system, but, as of July 1975, none have been acted upon.

COMPLIANCE WITH STATUTORY REQUIREMENTS FOR USER CHARGE SYSTEMS

From March 1973 to March 1975, region V awarded 166 construction grants. (User charge requirements apply to all grants approved after Mar. 1, 1973.) We reviewed 45 of these grants, awarded to 27 grantees. Nineteen grants had been awarded to the Metropolitan Sanitary District of Greater Chicago. As of March 31, 1975, 9 user charge systems had been approved in region V, and as of June 30, 1975, 11 additional systems had been approved.

We found that none of the nine systems were based on ad valorem taxes. These systems were for relatively small municipalities which had not funded costs of waste treatment services from ad valorem tax revenues.

To insure compliance with the July 2, 1974, decision, the region, in September 1974, amended all construction grants awarded after March 1, 1973, to include the following clause:

"The grantee agrees ad valorem taxes will not be used in the development of the user charge system required pursuant to Section 204(b) of the FWPCA (Federal Water Pollution Control Act Amendments) of 1972, and 40 CFR [Code of Federal Regulations] 35.935-13."

Region V grant files showed that grant conditions for user charges were in compliance with the act. We noted that grants approved after March 1, 1973, contained, in essence, the

following condition:

"\* \* \* the grantee agrees to adopt a system of user charges and to recover from industrial users that portion of the grant amount allocable to the treatment of wastes from such users, pursuant to Section 204(b) of the Federal Water Pollution Control Act\* \* \*."

In addition, each applicant made the following type statement in an attachment to the grant application.

"Therefore, be it resolved by\* \* \* the applicant's governing body, that a plan and schedule of implementation for a system of user charges will be adopted to assure that each recipient of waste treatment services will pay its proportionate share of the costs of operation and maintenance (including replacement) of treatment works provided by the applicant, and that said plan, schedule, and system shall be satisfactory to State and Federal Environmental Protection Agencies."

#### COMPLIANCE WITH AGENCY REGULATIONS

According to Agency regulations, a regional administrator, before awarding a grant for development of plans and specifications for a treatment facility or for its construction, must determine that the grantee has developed "an approvable plan and schedule of implementation" for a system of user charges.

This requirement was inconsistently applied by the region. In our review of selected Ohio and Illinois grant files, we found that generally Ohio files contained implementation schedules for development of user charge systems, whereas, Illinois files did not. An Agency official indicated that this inconsistency was caused by different degrees of appreciation as to the need for such a schedule by Agency grant personnel. Implementation schedules that were submitted in some cases were very brief, that is, indicating only the date of submission of a proposed system to the Agency for approval.

Region V grant files showed that, at the time of grant approval, most grantees had submitted applications agreeing to adopt a plan and a schedule of implementation rather than actually submitting plans and schedules. When grantees requested grant payments, region V requested them to submit information on the status of their development of user charge systems.

We found that grantees were able to comply with this request with little effort. Grantees' actions accepted by

the Agency included (1) hiring a consultant to develop a system, (2) submitting draft ordinances, (3) passing a resolution stating a system would be developed, or (4) meeting with Agency officials to discuss the requirements.

However, because region V did not enforce the requirement that grantees submit plans and implementation schedules as to expected completion of various steps in developing their systems, the Agency had no criteria or timetable to monitor adequately the grantees' progress.

Region V was in compliance with Agency regulations which stated that a regional administrator could not pay more than 80 percent of the Federal share of any construction project unless he had approved the user charge system. As of March 24, 1975, 10 of the 45 grants awarded to 8 of 27 grantees were being held at the 80-percent payment level because the grantees lacked approved user charge systems.<sup>1</sup> Four of the 27 grantees had approved systems. The table below illustrates the status of the remaining grantees.

<u>Status of system</u>	<u>Federal share paid to grantee</u>			<u>Total</u>
	<u>80%</u>	<u>50 to 79%</u>	<u>Under 50%</u>	
Grantee developing user charge system	1	8	3	12
System under Agency review	2	-	3	5
System being revised after Agency review	<u>5</u>	<u>1</u>	<u>-</u>	<u>6</u>
Total	<u>8</u>	<u>9</u>	<u>5</u>	<u>23</u>

Most of the grantees being held at 80 percent had submitted proposed systems to the Agency. The grantee being held at the 80-percent limit but still developing a user charge system was the Metropolitan Sanitary District of Greater Chicago. The District, which covers Chicago, Illinois, and over 100 suburban communities, utilizes an ad valorem tax system to finance its waste treatment services. As of March 1975, the Agency had approved 19 construction grants to the District for \$35.6 million.

<sup>1</sup> As of July 11, 1975, 16 region V grants were being held at the 80-percent payment level.

Before our decision, the District had sought to have the Agency approve its ad valorem system as being in compliance with the 1972 amendments. Since the decision, the District and the Agency are seeking legislative relief from the Congress.

In August 1974, the District's board of trustees passed a resolution (1) stating its intent to adopt an acceptable user charge system and (2) directing the superintendent to report to the board within 180 days with

- a formula for the imposition of user charges,
- methods of collection and enforcement,
- legislation necessary to implement a user charge system, and
- the system's impact on the District's total revenue system.

The resolution did not contain a timetable for developing a system or for submitting the system to the Agency. In September 1974 region V advised the District that the board's resolution constituted an approvable plan and schedule of implementation to develop a user charge system. However, the Agency did not enforce the requirement that the District submit an implementation schedule showing the steps and dates in developing such a system.

Since the board's resolution, the District has taken some steps to develop an approvable system. (See enc. I for a chronology of events.) As of July 1975, the District had 7 of its 19 grants held at the 80-percent payment level. The District has continued to receive payments on its other grants even though the 80-percent limitation has been met on seven of its grants. Region V also made eight additional awards of \$203.7 million to the District from April 1975 to June 30, 1975.

Region V officials have told us that the District is making adequate progress in developing an acceptable system. Region V officials said that, if it ever became obvious that the District, or any other grantee, was not going to comply, payments would be stopped on all grants, new awards would not be made, and/or legal action would be taken.

However, without an implementation schedule the Agency cannot adequately monitor a grantee's progress and cannot determine whether timely development has been achieved. Agency headquarters officials agreed that plans and schedules of implementation would provide the Agency with a better tool to monitor grantees' progress. Region V officials told us that they planned

to require the submission of plans and schedules of implementation when additional staff becomes available.

RECOMMENDATION TO THE ADMINISTRATOR  
ENVIRONMENTAL PROTECTION AGENCY

We recommend that the Agency require the submission of plans and schedules of implementation from the grantees at the time of grant approval, sufficient detail to provide the Agency with enforceable compliance schedules.

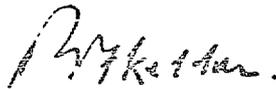
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As requested by your office, we did not give the Agency an opportunity to formally review and comment on the matters discussed in this report. We have, however, discussed these matters with Agency officials and have incorporated their views where appropriate.

We want to invite your attention to the fact that this report contains a recommendation to the Administrator. As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions he has taken on our recommendations to the House and Senate Committees on Government Operations not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the Agency's first request for appropriations made more than 60 days after the date of the report. We shall be in touch with your office in the near future to arrange for the release of the report so that the requirements of section 236 can be set in motion.

We are sending a copy of this report to Congressman Reuss.

Sincerely yours,



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Comptroller General  
of the United States

Enclosure

CHRONOLOGICAL OF EVENTS RELATED TO  
METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO  
USER CHARGE SYSTEM SINCE OUR DECISION

<u>Date</u>	<u>Action</u>
July 1974	We issued a decision which stated that a user charge system based on an ad valorem tax would not satisfy statutory requirements.
July 1974	The District's legal department, in commenting on the Comptroller General's decision, stated that the District would certainly join the Agency or lobby on its own to seek legislative authority to approve an ad valorem tax system.
August 1974	The District's board of trustees passed a resolution (1) stating its intent to adopt an acceptable user charge system and (2) directing the superintendent to report to the board within 180 days with <ul style="list-style-type: none"> <li>--a formula for imposing user charges,</li> <li>--methods of collection and enforcement,</li> <li>--legislation necessary to implement a user charge system, and</li> <li>--the system's impact on the District's total revenue system.</li> </ul>
September 1974	Region V advised the District that the board resolution constituted an approvable plan and schedule of implementation to develop a user charge system.
September 1974	A consultant for the District submitted a draft of "Outline of a system of charges for collection and treatment of wastewater" to the District.
October and November 1974	District departments reviewed the consultant's report.

<u>Date</u>	<u>Action</u>
February 1975	In response to the District's request, a major accounting firm submitted a proposal to the District for (1) evaluating and selecting a user charge and an industrial cost recovery system which would meet the Agency requirements, (2) determining the cost of implementing such a system, and (3) developing an implementation work plan.
March 1975	The District reported on exploratory efforts made regarding user charge systems and recommended that the proposal submitted by the accounting firm be accepted.
April 1975	The board approved the proposal and authorized \$30,000 for the work.
June 1975	Accounting firm preliminary study was completed and submitted to the board.
July 1975	The board requests additional Agency funding of \$230,000 for a consultant proposal to develop alternative system concepts, economic impact of user charges, detail design of industrial cost recovery system, and further studies on user charge concepts.