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REPORT TO THE COMMITTEE ON GOVERNMENT OPERATIONS UNITED STATES SENATE

The Federal Regulation Of Lobbying Act-- Difficulties In Enforcement And Administration

Department of Justice

Secretary of the Senate

Clerk of the House of Representatives

BY THE COMPTROLLER GENERAL OF THE UNITED STATES

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APRIL 2, 1975

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-129874

The Honorable Abraham Ribicoff
Chairman, Committee on Government
Operations
United States Senate

Dear Mr. Chairman:

In accordance with your request of August 14, 1974, we examined certain enforcement practices under the Federal Regulation of Lobbying Act. This is our report on that examination.

We do not plan to release this report further unless you agree or publicly announce its contents.

Sincerely yours,

Comptroller General
of the United States

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COMPTROLLER GENERAL'S
REPORT TO THE COMMITTEE ON
GOVERNMENT OPERATIONS
UNITED STATES SENATE

THE FEDERAL REGULATION OF LOBBYING ACT--DIFFICULTIES IN ENFORCEMENT AND ADMINISTRATION

Department of Justice
Secretary of the Senate
Clerk of the House of
Representatives

D I G E S T

WHY THE REVIEW WAS MADE

Senator Abraham A. Ribicoff, Chairman of the Senate Committee on Government Operations, asked GAO to review certain enforcement practices under the Federal Regulation of Lobbying Act. This report covers:

--Enforcement practices of the Department of Justice since 1972.

--Administration of the act by the Secretary of the Senate and Clerk of the House of Representatives.

FINDINGS AND CONCLUSIONS

The Federal Regulation of Lobbying Act was enacted as part of the Legislative Reorganization Act of 1946. The act seeks to insure--through registration, reporting, and recordkeeping requirements--public disclosure of the identity and financial interests of persons engaged in lobbying.

The act was not intended to regulate lobbying or to restrict legislative activities of particular individuals. (See p. 1.)

Lobbying activities have been the subject of continual congressional scrutiny and, generally, the act has been found ineffective. Much of the criticism relates to the difficulty of determining whether a person is principally engaged in lobbying activities and the narrow definition given "lobbying." (See p. 2.)

Although the Clerk of the House and Secretary of the Senate have responsibility for administering the act, they do not have investigative authority, the right to inspect records, or enforcement power. (See pp. 1, 4, 5, and 6.)

Criminal sanctions authorized by the act are the responsibility of the Department of Justice. However, the act does not specifically authorize Justice to monitor lobbying activities. (See pp. 9 and 10.)

Clerk of the House of Representatives

Efforts to review the Clerk's administration of the act were limited to his public records. (See p. 5.)

GAO compared 50 quarterly reports filed with the Secretary of the Senate that were incomplete, including some which were received late, with corresponding reports filed with the Clerk. In most instances, reports filed with the Clerk were also incomplete and/or filed late. A review of prior quarterly submissions for the same 50 registrants generally showed the same incomplete reporting. (See p. 5.)

A check of 50 respondents' quarterly reports, randomly selected, determined that they were printed in the Congressional Record as required by the act. (See p. 6.)

Secretary of the Senate

The Superintendent of the Office of Public Records, Secretary of the Senate, deals with lobbying matters. The Superintendent said he is responsible for

--receiving lobbyists' registrations and quarterly financial reports and

--compiling a list of these reports, in coordination with the Clerk of the House, for printing in the Congressional Record. (See p. 6.)

The Superintendent does not monitor violations of the act. Incomplete reports are not returned to the lobbyists for completion, and there are no penalties for late filings. Although the act does not specifically grant authority to reject incomplete reports or penalize late reporting, acceptance of such reports negates the reporting requirements. (See pp. 7 and 9.)

In a review of 1,920 quarterly lobbying reports filed for the third quarter of 1974, GAO found that 48 percent were incomplete and 61 percent were received late. (See pp. 7 and 9.)

All 100 quarterly reports randomly selected by GAO had been included in the Congressional Record as required by the act. (See p. 9.)

Department of Justice

Justice's involvement begins once complaints are received. It does not consider itself responsible for actively seeking potential violators. (See p. 10.)

Since March 1972 only five matters have been referred to Justice. One matter has been closed; the other four are still under investigation. Meaningful statistics before 1972 cannot be determined. GAO was able to identify one other closed lobbying case reported between January 1968 and March 1972. (See p. 10.)

Justice does not monitor the act's registration or disclosure requirements or evaluate effectiveness or compliance with the act. A Justice official told GAO that the determination of whether a complaint should be investigated is based on the complaint's merit and the experience of the attorney

handling it. Justice has no specific written criteria on whether a complaint should be investigated. (See pp. 10 and 11.)

The only instance where Justice will request an individual or organization to register as a lobbyist is when an investigation shows that lobbying activities were engaged in. Justice advises prospective lobbyists who inquire about registration requirements to register. (See p. 11.)

MATTERS FOR CONSIDERATION BY THE COMMITTEE

Much of the past criticism of the act concerns the difficulty of determining whether a person is principally engaged in lobbying activities and the narrow definition given "lobbying." The Clerk of the House and the Secretary of the Senate do not have investigative authority, the right to inspect records, or enforcement power and therefore do not monitor the registration and reporting requirements.

If the Committee believes there is a need for stronger administration of the act, it may wish to pursue, with the Clerk of the House and Secretary of the Senate, the lack of (1) investigative authority, (2) the right to inspect records, and (3) enforcement power to determine whether the act should be strengthened. The Committee may also want to discuss with the Office of the Secretary and Clerk of the House followup efforts necessary to encourage complete and timely reporting.

CHAPTER 1

INTRODUCTION

On August 14, 1974, Senator Abraham A. Ribicoff, Chairman of the Senate Committee on Government Operations, requested that we review certain practices under the Federal Regulation of Lobbying Act. Specifically, we were to determine:

--The extent that filing requirements are met and the extent that reports are examined under the act. (See ch. 2.)

--The number of lobbying violations that have been reported to the Department of Justice. (See p. 10.)

--The extent that the Department of Justice enforces the act. (See p. 10.)

--The Department of Justice's efforts to evaluate the effectiveness of and compliance with the act. (See p. 11.)

--The criteria used by the Department of Justice to determine what organizations should be investigated. (See p. 10.)

--Whether the Department of Justice's criteria for requiring registration as a lobbyist are consistent. (See p. 11.)

The matters in this report have been discussed with Office of the Secretary of the Senate and Department of Justice officials who generally agreed with them.

The Federal Regulation of Lobbying Act (2 U.S.C. 261-70) was enacted as Title III of the Legislative Reorganization Act of 1946 (60 Stat. 812, 839). Despite the implication of its title, the act was not intended to regulate lobbying or restrict the legislative activities of particular individuals or organizations. Rather, through recordkeeping, registration, and reporting requirements, the act seeks public disclosure of the identity and financial interests of persons engaged in lobbying.

The act places its administration under the Clerk of the House of Representatives and the Secretary of the Senate and authorizes criminal sanctions to effect compliance with its provisions.

Violations of the act are misdemeanors punishable by fines of not more than $5,000 or imprisonment for not more than 12 months, or both. Any person convicted is prohibited for a 3-year period from attempting to influence the passage or defeat of any proposed legislation. Violations of this prohibition are felonies punishable by fines of not more than $10,000 or imprisonment for not more than 5 years, or both.

Since passage of the act in 1946, lobbying activities have been the subject of continual congressional scrutiny, and generally the act has been found ineffective. For example, a report by the House Committee on Standards of Official Conduct described the act as a thoroughly deficient law (H. Rept. 91-1803, 91st Cong., 2d sess. 1970). Much of the criticism of the act has focused on two issues affecting the determination of whether a particular individual or organization must comply with the law's disclosure provisions: the vagueness of the principal purpose 1/ requirement of the act and the narrow definition of "lobbying" adopted by the Supreme Court in United States v. Harriss (347 U.S. 612, 620 (1954)), limiting "lobbying" to direct communication with Members of Congress.

SCOPE OF REVIEW

We reviewed records and interviewed officials at the Department of Justice and the Office of the Secretary of the Senate. The Office of the Clerk of the House questioned whether it was authorized to grant us access to the House records related to the administration of the act, and as agreed with your office our review was limited to its public records.

1/The act states that those persons who by themselves or through any agent or employee or other persons directly or indirectly, solicits, collects, or receives money or any other thing of value to be used principally to aid, or the principal purpose of which person is to aid in: (a) the passage or defeat of any legislation by the Congress, (b) to influence, directly or indirectly, the passage or defeat of any legislation by the Congress.

CHAPTER 2

ADMINISTRATION AND ENFORCEMENT UNDER THE ACT

LOBBYISTS

The act imposes three requirements on lobbyists--registration, reporting, and recordkeeping. Registration statements are to be filed in writing and under oath with the Clerk of the House and Secretary of the Senate. A registration filing must include the

--registrant's name and business address,

--name and address of his employer and of the organization or individual on whose behalf he appears or works,

--duration of his employment,

--amount he is paid and is to receive and by whom he is paid or is to be paid, and

--amount allowed for expenses and the types of expenses to be included.

While the registrant's activities as a lobbyist continue, he must file with the Clerk of the House and the Secretary of the Senate a quarterly report, under oath, detailing the money received and spent by him during the preceding quarter in carrying on his work, the recipients and purposes of these expenditures, the names of all publications in which he caused to be published any articles and editorials, and the proposed legislation which he is employed to support or oppose.

The act also imposes reporting requirements upon certain persons 1/ who receive any contributions or expend any money for the purpose of influencing legislation.

Reporting requirements consist of filing a quarterly report with the Clerk of the House. These reports should contain

--the name and address of each person not mentioned in a previous report who contributed $500 or more;

--the total sum of the contributions made to or for such person during the calendar year;

1/Includes an individual, partnership, committee, association, corporation, and any other organization or group of persons.

--the name and address of each person to whom an expenditure of $10 or more has been made during the calendar year by or on behalf of such person and the amount, date, and purpose of the expenditure;

--the total sum of all expenditures by or for such person during the previous quarters of the calendar year; and

--the total sum of all expenditures by or for such person during the calendar year.

Certain persons who solicit and receive contributions are required to maintain records. Such recordkeeping should include

--a detailed and exact account of each contribution received,

--the name and address of each person making a contribution of $500 or more and the date of the contribution,

--each expenditure made by or for the organization or fund,

--the name and address of each person to whom an expenditure is made and the date of the expenditure, and

--the maintenance of detailed receipts for each expenditure from these funds exceeding $10 in amount.

These receipts must be kept for at least 2 years from the date the statement containing these expenditures is filed.

CLERK OF THE HOUSE OF REPRESENTATIVES

The act assigns the Clerk of the House of Representatives the greatest number of administrative responsibilities. Paid lobbyists and those who receive or spend funds for lobbying purposes must register and file quarterly reports with him. The act specifically provides that the Clerk must keep all statements filed for 2 years from the date of filing and that those statements must be made available for public inspection. It directs the Clerk to compile, jointly with the Secretary of the Senate, all information filed by lobbyists who register, as soon as practicable after the close of the calendar quarter to which the information relates. Once this information is compiled it is to be printed in the Congressional Record.

These are the only responsibilities or duties expressly imposed upon the Clerk of the House of Representatives. It seems reasonable to conclude that the Congress did not intend

to grant certain powers to the Clerk, based on their omission from the act. For example, the Clerk apparently has no responsibility or power to investigate potential violations of the act's registration, recordkeeping, or reporting requirements.

As a general rule, when the Congress intends to grant an official or an agency investigative authority, a specific provision is enacted granting it. The act does not contain such a provision.

The act similarly imposes recordkeeping requirements, but the Clerk of the House has no right of access to these records. In most instances the right to inspect records required to be maintained under a statute is contained either in a general access-to-records provision in an agency's enabling legislation or in a specific provision in the legislation that requires the records to be maintained. The Clerk of the House has no general authority to inspect records, and the act contains no access-to-records provision. However, since a criminal penalty is authorized for failing to comply with the act, the records would be available for inspection by Department of Justice or Federal Bureau of Investigation officials incident to investigations of potential violations of the act.

The Clerk has no enforcement powers, civil or criminal, under the act. Enforcement of the Federal criminal laws is a function of the executive branch lodged with the Attorney General and the Department of Justice, not with nonexecutive agencies. The Clerk may refer a case to the Department of Justice when he believes a person has violated one of the act's provisions. No specific statutory authorization is necessary for the Clerk to carry out this responsibility. However, the Clerk has no other criminal law enforcement responsibilities.

The Clerk cannot file a civil action in Federal court to compel compliance with the act. As a general rule, such authority is specifically authorized in legislation, but the act does not provide the Clerk this authority.

Efforts to review the Clerk's administration of the act were limited to his public records. We selected 50 quarterly reports filed with the Secretary of the Senate that were incomplete, including some which were received late, and compared them to the corresponding reports filed with the Clerk. In most instances the reports were comparable. We reviewed the quarterly reports submitted by the same 50 registrants for prior quarters and found that, of the 184 reports submitted, 143 were incomplete. The respondents generally failed to complete the same questions on each report filed.

We also randomly selected a sample of 50 respondents' quarterly reports from the Clerk's public records for the second quarter of 1974 and determined that they were printed in the Congressional Record listing as the act directed.

In 1970 the Clerk testified before the House Committee on Standards of Official Conduct. He reported that his office had conducted an in-depth review of second quarter 1970 lobbying reports. Of the 1,331 reports received during that quarter, 705 or 53 percent were returned for revision or resubmission. His testimony later disclosed that because he had no power to enforce the act his office was merely a depository for information for anyone who wanted to file. He added that he did not have the authority to question an individual who did not file and that the criteria in the act used to determine who should file was too vague.

The Clerk proposed 13 recommendations he believed would clarify or strengthen the act. The Legal Counsel to the Clerk told us that the Clerk's 1970 recommendations were still applicable.

SECRETARY OF THE SENATE

Persons who engage in lobbying for pay or for any consideration must register and file quarterly reports with the Secretary of the Senate. The Secretary compiles jointly with the Clerk of the House of Representatives the statements filed by these lobbyists; the compilation is then published in the Congressional Record. In these respects, the responsibilities of the Clerk and the Secretary are identical. However, the Secretary has no responsibilities requiring those who receive or expend money for the purpose of influencing legislation to file quarterly reports.

These are the only responsibilities the act specifically imposed on the Secretary of the Senate. The Secretary of the Senate, like the Clerk of the House, has no investigative and enforcement powers and has no authority to inspect records.

The Superintendent of the Office of Public Records, Secretary of the Senate, said he was responsible for (1) receiving lobbyists' registrations and quarterly financial reports and (2) compiling a list of these reports, in coordination with the Clerk of the House, for printing in the Congressional Record.

The Superintendent stated that his primary function is to act as a depository for filed reports so that inquiries can be answered. He said that no Senator has complained to the Office about illegal lobbying in the 5 years he has been

there but that, if such complaints were received, he would advise the Senator to contact the Department of Justice.

Lobbyists are considered active by the Superintendent if they filed a quarterly report during any of the previous four filing periods. As of January 28, 1975, there were 1,773 active lobbyists registered with the Secretary of the Senate. Of these, 131 lobbyists represented more than one employer while one lobbyist, a law firm, represented 25 employers.

The Superintendent does not monitor for any aspect of possible violations of the act. Registration or quarterly financial reports are returned if not properly notarized or signed. However, no effort is made to insure that corrective action has been taken. From the first quarter of 1971 through the second quarter of 1974, 26 quarterly reports that were sent back to lobbyists were not returned to the Secretary.

Incomplete quarterly financial reports, other than those not properly notarized or signed, are not returned to the lobbyists for completion. We reviewed 1,920 quarterly lobbying reports for the third quarter of 1974 and found that 917 quarterly reports, or 48 percent, were insufficiently completed. The following table shows the breakdown of the deficient reports.

Incomplete Responses to Third Quarter

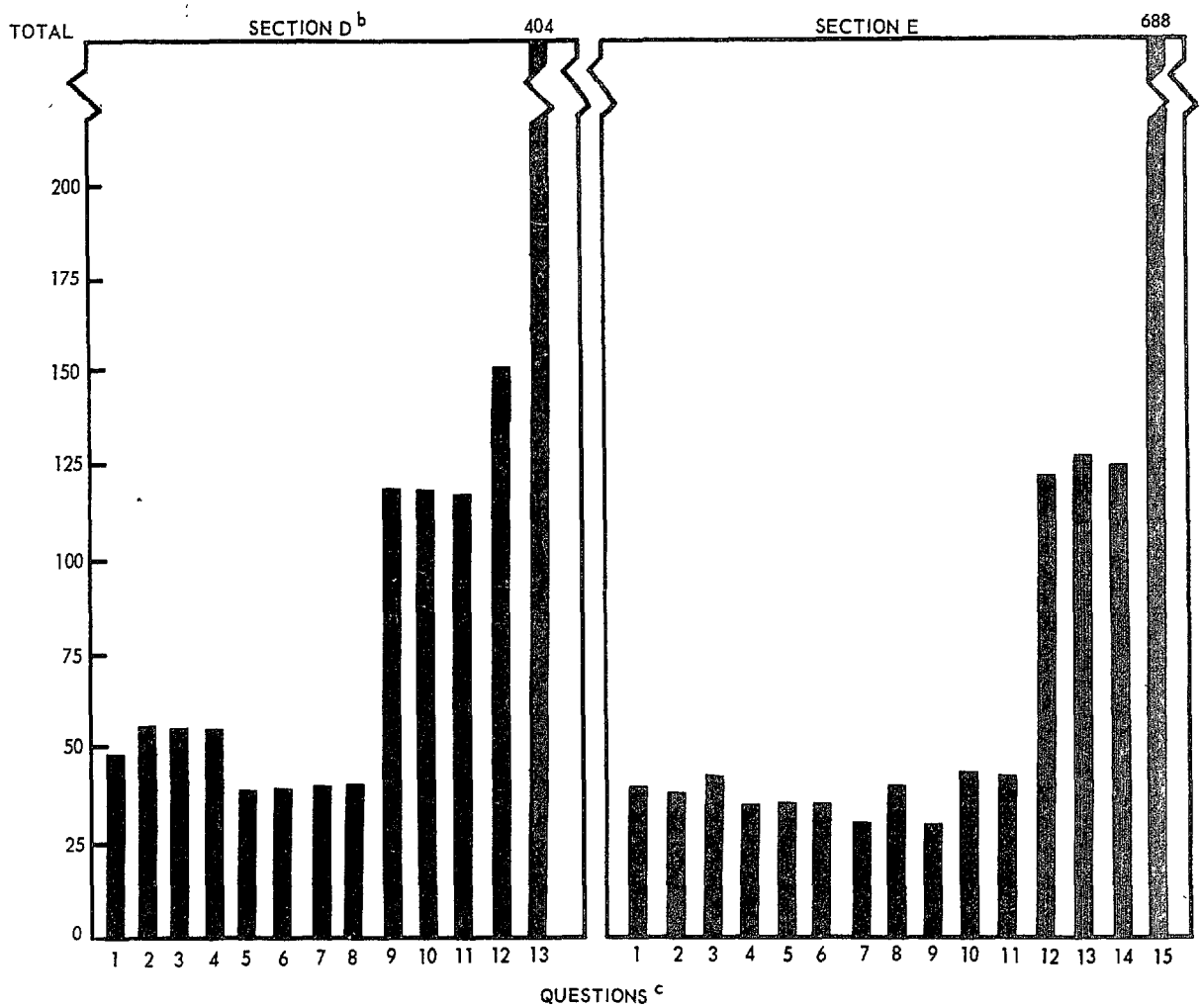
1974 Lobbying Reports

Range of incomplete questions per report	Number of reports incomplete
1 - 5	788
6 - 10	73
11 - 20	23
21 - 28	33
Total	917

The quarterly report is composed of two financial sections; one deals with receipts (section D) and one with expenditures (section E). (See app. II.)

The following graph shows the number of incomplete responses to questions in these sections for the quarter ending September 30, 1974.

INCOMPLETE RESPONSES TO QUARTERLY LOBBYING REPORT FOR THE PERIOD ENDING SEPTEMBER 30, 1974 (Note a)



a 917 OF 1920 REPORTS EXAMINED WERE INCOMPLETE

b THE ANSWER TO QUESTION 14 IS DEPENDENT ON THE RESPONSE TO QUESTION 13. DUE TO THE NUMBER OF INCOMPLETE QUESTION 13 ANSWERS, WE WERE UNABLE TO DETERMINE THE INCOMPLETENESS OF QUESTION 14

c SEE APPENDIX II

Although the act requires that quarterly reports be submitted by the 10th day of the following quarter, the Office of Public Records has no authority to assess penalties for late filings. The only consequence of late filing is that the quarterly financial report will not be reflected in the listing published in the Congressional Record until the following quarter. The Secretary of the Senate and the Clerk of the House of Representatives have agreed to consider all reports received by the 20th day of the following quarter for inclusion in the Congressional Record.

We also reviewed the 1,920 third quarter reports for late filings and found that 1,175 reports, or 61 percent, were received at the Office of Public Records after the 10th day of the following quarter. The following table shows the degree of timeliness of those reports.

Timeliness of Third Quarter

1974 Lobbying Reports

Range of days late	Number of late reports	Average number of days late
1 - 10	654	4
11 - 20	194	14
Over 20	327	41
Total	1,175	

If a quarterly report was received too late to be included in the following two quarters' Congressional Record listings, it is not listed at all. According to the Clerk who is responsible for maintaining lobbying records, the number not included in the Congressional Record has averaged about 50 reports each quarter.

We randomly selected one hundred 1974 second quarter lobbying reports (including 25 reports received 20 or more days after the end of the quarter) to see whether they were included in the Congressional Record listings. All had been included.

We believe that although the act does not grant specific authority to reject incomplete quarterly financial reports or penalize late reporting, acceptance of such reports negates the reporting requirements.

DEPARTMENT OF JUSTICE

Any person who is convicted for violating the provisions of the act may be punished by fines of not more than $5,000

or by imprisonment for not more than 12 months, or by both. As the agency created by the Congress to enforce the Federal criminal laws, the Department of Justice is responsible for investigating and bringing to trial violators of the act.

The Department of Justice may proceed on the basis of referrals and complaints from the officials responsible for administering the act or from private citizens. The Department may also initiate action on its own authority. The decision whether to investigate or prosecute a violation of the act is largely within the discretion of the Department of Justice. The act does not specifically authorize the Department of Justice to monitor lobbying activities.

The Department of Justice's Criminal Division's Fraud Section has the responsibility for lobbying matters. Its involvement is primarily limited to enforcement of the act on complaints received. The Department does not consider itself responsible for actively seeking out potential violators. It considers that its responsibility is to investigate valid complaints and prosecute violators if necessary.

Records of the Department are not maintained in such a manner that meaningful statistics on lobby violations prior to March 1972 can be obtained. Criminal Division officials stated that, as of February 3, 1975, only five matters had been referred to the Department since March 1972. We were able to identify one other closed lobbying case reported between January 1968 and March 1972.

Of the five matters referred to the Department since 1972, two were initiated by Members of Congress and three were initiated by journalists. One case, initiated by a Senator, has been closed. The other four cases are still under investigation.

Department officials stated that the best sources for reporting violations would be Congressmen who have direct contact with lobbyists and the Clerk of the House and Secretary of the Senate since they receive the lobbyists' registration and financial reports. Neither the Clerk nor the Secretary had referred any violations since March 1972.

A Department of Justice official told us that between March 1972 and February 1975 all lobbying complaints made to the Department warranted and received investigation. He explained that the determination of whether a complaint should be investigated is based on the merit of the complaint and the experience of the attorney handling the matter. The Department has no specific written criteria on whether a complaint should be investigated.

The Department of Justice does not monitor the registration or disclosure requirements of the act or evaluate the effectiveness or compliance with the act. The Department maintains no lobbying forms, filings, or other records beyond those associated with specific alleged violations. When a prospective lobbyist inquires as to whether he should be registered, he is advised that, if his activities raise doubts concerning the applicability of the act, he should probably register. The only other instance where the Department will request an individual or firm to register is when an investigation shows that the individual or firm is engaged in lobbying activities.

MATTERS FOR CONSIDERATION BY THE COMMITTEE

Much of the past criticism of the act concerns the difficulty of determining whether a person is principally engaged in lobbying activities and the narrow definition given "lobbying." The Clerk of the House and the Secretary of the Senate do not have investigative authority, the right to inspect records, or enforcement power and, therefore, do not monitor the registration and reporting requirements.

If the Committee believes that there is a need for stronger administration of the act, the Committee may wish to pursue with the Clerk of the House and Secretary of the Senate the lack of (1) investigative authority, (2) the right to inspect records, and (3) enforcement power to determine whether the act should be strengthened. The Committee may also want to discuss with the Office of the Secretary and Clerk of the House the followup efforts necessary to encourage complete and timely reporting.

APPENDIX I

United States Senate
COMMITTEE ON
GOVERNMENT OPERATIONS
SUBCOMMITTEE ON REORGANIZATION, RESEARCH, AND
INTERNATIONAL ORGANIZATIONS
(202) 225-2308
(PURSUANT TO SEC. 6, S. RES. 269, 83D CONGRESS, 2D SESSION)
WASHINGTON, D.C. 20510

August 14, 1974

Elmer B. Staats, Comptroller General
General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Elmer:

This letter is to request the GAO's assistance in determining and evaluating certain enforcement practices under the Federal Regulation of Lobbying Act of 1946, which has not been amended since enactment.

The major requirements of the Act involve: a) the registration of lobbyists, b) the filing of reports by lobbyists, c) the filing of statements by individuals and organizations which collect or spend money to influence legislation, and d) the keeping of accounts of money received or spent for lobbying.

The absence of revision of the Act and the sparsity of case law in this area have resulted in conflicting views as to whether certain activities are subject to the Act.

Certain comments regarding the difficulty of enforcement of this Act have included the following:

a. Mr. Justice Jackson (Minority view from U.S. v. Harriss, ". . .it (the case) begins with an Act so mischievously vague that the government charged with its enforcement does not understand it, for some of its important assumptions are rejected by the Court's interpretation."
b. 1970, House Committee on Standards of Official Conduct: "(the law) has without exception been described to the Committee as a thoroughly deficient law."
c. 1970, W. Pat Jennings, Clerk of the House, told the House Committee, "I have no enforcement powers." (Nor does he have the authority to question an individual who does not file.)

The following questions I am asking the GAO to investigate are concerned with the extent of enforcement, filing and reporting under the Act:

1. To what extent are the filing requirements met under the Act?
2. How many violations are reported to the Justice Department?
3. To what extent does the Justice Department attempt enforcement of the Federal Regulation of Lobbying Act?
4. To what extent are reports examined under the Act?
5. What reports or determinations does the Justice Department make as to the effectiveness of the Act and compliance with it?

APPENDIX I

Another area of my concern is in regard to the possible use of the Federal Regulation of Lobbying Act for political purposes:

1. What criteria does the Justice Department use to determine which organizations should be investigated for purposes of the lobbying act?
2. Are there consistent standards used by the Justice Department in requiring individuals or organizations to register as lobbyists?

It is my hope that the answers and evaluations to the questions which I have asked the GAO to investigate will serve as a valuable resource for future legislation in efforts to improve lobbying regulations.

Sincerely,

Abe Ribicoff
United States Senate

--EPA had reservations about using extreme measures to make the water suitable for swimming (water circulation systems including chlorination).

--The operation of water cirulation systems would increase public health risks by encouraging swimming in areas not subject to disinfection measures.

--EPA was skeptical about whether such a circulation system could be maintained with a minimum risk of breakdowns, incomplete circulation, and undesirable effects on aquatic life.

EPA concluded that it would be more practical to construct swimming pools as an alternative to the extreme measures proposed by the Corps.

The Corps stated that construction of the project should begin based on assurances from Illinois that it will eliminate pollution in the Sangamon River concurrent with project completion. EPA maintains that construction should not begin until a specific program of water quality improvement (including a commitment of necessary funds, specific actions to be taken, and a demonstration of how these actions will result in water quality improvement) is approved by it.

Because this controversy remains unresolved, we question whether swimming benefits should be included in the project's economic analysis. The absence of swimming may reduce participation in other proposed recreational activities. For example, a family planning to visit a recreational facility may wish to engage in several activities other than swimming but its absence may result in their selecting an alternative recreational facility. In this connection, we noted that within 40 miles of the proposed Springer project there are 18,000 acres of existing public water-based recreational areas, including:

--Lake Decatur with 2,600 acres, directly adjoining the proposed Springer Lake;

--Lake Shelbyville with 11,100 acres, 24 miles away; and

--Lake Springfield with 4,300 acres, 39 miles away.

In addition to these three lakes, two proposed non-Federal lakes and a 2,000-acre State park are tentatively planned for 1980 near the Springer project which, if constructed, will feature many of the same recreational opportunities planned for Springer Lake.

In computing benefits for recreational activities other than swimming, such as picnicking and hiking, the Corps increased their estimated use because of the availability of swimming opportunities. The total benefit for swimming and the associated increased use of other recreational activities was $641,200. Project costs directly related to swimming are $251,600 annually.

FLOOD CONTROL BENEFITS

In general, flood control benefits represent reduced damage in all forms from inundation of property and represent an increase in net returns from higher use of property.

The Corps estimates these benefits for the project at $1.6 million annually. See following table.

Benefit category	Annual benefit	Percent
Flood damage reduction	$ 353,100	22
Intensification of agricultural production	302,700	18
Reduced sedimentation in Lake Decatur	177,000	11
Increase in land values	85,300	5
Illinois River withholding (note a)	249,700	15
Nonstructural function of the greenbelt	477,500	29
Total annual flood control benefits	$1,645,300	100

[a]Reduction in flood losses on the Illinois River, of which the Sangamon is a tributary, due to retention of flood runoff by the Springer project.

The nonstructural flood control benefit of $477,500 annually is for a channelization alternative which is not part of the proposed project and which we believe should not be included in the benefits claimed.

As authorized in 1962, the Springer project included 98 miles of downstream channel improvements calling for dredging the river and building levees which would change the river from a natural flowing stream to a canal. When the project

was redesigned in 1970, this proposed channelization was eliminated from the project in favor of retaining the area in a natural state and utilizing the land as a natural floodway and for recreation. This nonstructural approach is referred to as the greenbelt.

The latest project plan includes $689,200 in recreational benefits for preserving the greenbelt in a natural state. The Corps has also claimed $477,500 in flood control benefits which would have been realized if the channelization alternative had been selected; this alternative is no longer a part of the proposed project. Therefore, we believe the $477,500 benefit for flood control should not be claimed because the greater level of flood protection which was expected from the channelization feature will not be realized.

Senate Document 97 required that induced costs be fully considered and included in a project's evaluation, as follows:

> "Induced costs: All uncompensated adverse effects caused by the construction and operation of a program or project, whether tangible or intangible. These include estimated net increases, if any, in the cost of Government services directly resulting from the project and net adverse effects on the economy such as increased transportation costs. Induced costs may be accounted for either by addition to project economic costs or deduction from primary benefits."

It should be noted that while the planned Springer project is expected to provide flood protection at various times to 25,300 acres of cropland, it will protect only 3,700 acres on an average annual basis. However, acquisition of land for the project would remove 12,350 acres of cropland from production. In other words, the project will remove over 3 acres of cropland from production for each acre it will protect annually.

The Corps told us that the adverse effect of lost future farm production would be reflected in the purchase price of the land. While there may be other induced costs, such as loss of income to farm-dependent businesses and loss of wages for farm workers, we did not find any Corps studies which identified the impact of such potential adverse effects.

CONCLUSIONS

Based on our review of the Corps' most recent economic analyses and benefit computations for the Springer project we believe that:

--Claimed water supply benefits are overstated by $65,900 because they are based on outdated census data.

--Potential recreational benefits claimed may not be fully realized because poor water quality may prevent swimming. This will result in an annual loss of $641,200 in benefits. Annual costs would also be reduced by $251,600 if swimming is not included in the project's features.

--Flood control benefits valued at $477,500 annually for a channelization alternative are unrealistic because the alternative is not part of the current proposed project, and this benefit will not be realized.

Exclusion of these questionable benefits from the project's economic analysis would reduce the benefit-cost ratio to .91 to 1, meaning costs would exceed benefits, as shown below:

Benefits	Corps' latest economic analysis	Amounts questioned	Remaining benefits and costs
Water supply	$ 877,400	$ 65,900	$ 811,500
Recreation	2,847,900	641,200	2,206,700
Flood control	1,645,300	477,500	1,167,800
Total annual benefits	$5,370,600	$1,184,600	$4,186,000
Total annual costs	$4,856,600	$ [a]251,600	$4,605,000
Benefit-cost ratio	1.11 to 1		.91 to 1

[a]Costs associated with swimming.

RECOMMENDATIONS

The Secretary of the Army should require the Corps to resolve the questions on project benefits raised in this report during its review process for the revised General Design Memorandum, and report its findings to the Congress for evaluating future project appropriation requests. The questions involve the use of outdated demand figures for computing water supply benefits, the effect of expected poor water quality on benefits associated with swimming, and the claiming of flood control benefits which will not be realized.

AGENCY COMMENTS

The Department of the Army told us (see app. II) that the Corps had been asked to carefully consider the points raised in our report as part of its review of the revised General Design Memorandum and that the Congress would be advised of the findings.

CHAPTER 3

ENVIRONMENTAL ASPECTS

EPA has rated the Springer project as environmentally unsatisfactory, based primarily on the poor water quality in the Sangamon River and its expected adverse effect on the project's water supply and swimming benefits.

Another major environmental issue is the potential damage to Allerton Park from the increased depth, duration, and frequency of floods anticipated after construction of the project. The Corps revised the proposed project's development to mitigate the potential damage to the park but the Trustees of the University of Illinois--owner of the park--have withdrawn support for the project because of their belief that the park might be adversely affected by it.

SPRINGER PROJECT MAY NOT SUPPLY ACCEPTABLE DRINKING WATER

The Corps' September 1973 draft Environmental Impact Statement noted that the nitrate content in Lake Decatur several times a year exceeds U.S. Public Health Service recommended limits. The statement also noted it was logical to assume that the project's water supply storage might also have periodic high nitrate concentrations because the water impounded in Springer Lake and the Friends Creek subimpoundment will come from the same source as the water in Lake Decatur.

The draft statement noted that excessive nitrates in drinking water cause a potential threat of methemoglobinemia (blue babies) in young infants. Decatur officials, however, informed us that there has never been a reported case of methemoglobinemia attributable to the city's public water supply. The Corps concluded that "impounded water supplies are generally believed to result in beneficial 'averaging' of the nitrate concentrations," rather than creating nitrate problems.

On March 7, 1974, EPA Region V submitted its comments on the Corps' draft Environmental Impact Statement and rated the project as "Environmentally Unsatisfactory." EPA stated that its primary concerns were related to water quality and made the following statements:

> "As it is today, the water quality of Lake Decatur is marginal for drinking water by public health standards. There is no reason to believe that the proposed surface water supply would be of better quality.

"* * * Prior to 1956, nitrate concentrations in Illinois streams never exceeded the U.S. Public Health Service standards * * *. Since 1956, nitrate levels have steadily risen and have occasionally exceeded the * * * limit in many streams and impoundments throughout Illinois. Affected streams are mainly those whose headwaters drain central and east-central Illinois, including the Sangamon River basin. With the impetus of increased agricultural production in the basin because of national food shortages, more fertilizers will be used and consequently, more nitrates will probably enter the Sangamon River and the proposed impoundments. Therefore, the potential exists for higher nitrate concentrations occurring in Springer Lake and Friends Creek than previously anticipated.

"High nitrate levels can cause methemoglobinemia, a troublesome and occasionally fatal condition in infants caused by interference with the blood's oxygen-carrying capacity. Since nitrate problems in the basin are primarily attributed to nitrates in agricultural runoff, levels exceeding the permissible limit * * * several times a year could cause a serious local health problem. Thus, there appears to be an adequate cause for concern about the apparent increase in potential hazards to humans from the high nitrate bearing waters in the Sangamon basin."

EPA concluded that the expected water quality of the planned reservoir would not improve without a specific program of water quality improvement in the Sangamon River Basin; the project should not be constructed unless it was accompanied by such a program and it could be demonstrated that impoundment of the river would not reduce water quality. EPA stated that the improvement program must include

--availability and commitment of necessary funds,

--specific actions which will be taken, and

--a demonstration of how the specific actions would result in water quality improvement.

It is the objective of the Federal Water Pollution Control Act as amended by the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500, October 18, 1972) to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. One of the act's stated goals was to eliminate discharged pollutants by 1985. Section 303(e) of the act as amended in 1972 provides

for each State to establish a continuing planning process to meet the requirements of the act.

The Corps' updated draft Environmental Impact Statement for the Springer project notes that the planning process provided for under section 303(e) would make it possible for the project's water supply to achieve required standards. A Corps official told us also that Illinois will have to implement a section 303(e) plan for the Sangamon River Basin to meet the requirements of the 1972 amendments even if the Springer project is not built.

The Corps recognizes the water quality problem but stated that project construction should proceed based only on the Governor's assurance that the Illinois Environmental Protection Agency can initiate a program by the time project construction is completed. The Governor gave only a conditional assurance (see pp. 3 and 5) and as of February 26, 1975, Illinois had not provided the Corps with a specific program for improving quality.

POSSIBLE FLOOD DAMAGE TO ALLERTON PARK

Robert Allerton Park was donated to the University of Illinois in 1946. The park consists of 1,500 acres, most of which is woodland. Within the park is a natural forested bottom land area of 600 acres bordering the Sangamon River and about half a mile wide and 2 miles long. These bottom lands are used by the University for scientific research. The higher areas of the park contain a mansion, formal gardens, and statuary which have made the Allerton estate a popular tourist attraction. In recognition of its unique value, on December 10, 1970, the National Park Service of the Department of the Interior designated 1,000 acres of the park for inclusion in the National Registry of Natural Landmarks, to be preserved in its present state as one of the few remaining examples of native Illinois river bottom land forest.

Because the Sangamon River flows through the Allerton Park bottom lands, they are subject to natural flooding about three times a year. The largest flood on record occurred in October 1926. This flood, at a height of 634 feet above mean sea level, inundated 300 acres or one-half of the bottom lands. The mansion which is at a height of 660 feet and the statuary and formal gardens which are at higher levels have not been known to flood.

The original proposed elevation of the permanent reservoir pool of Springer Lake was 621 feet. The proposed elevation of the permanent pool was raised to 636 feet in

1966 and raised again in 1969 to 640 feet. These increases resulted in a great deal of controversy about the project because the 640-foot height would increase the depth, duration, and frequency of floods in the park and opponents claimed that such floods would destroy the bottom lands for use as a scientific research area.

The Corps considered that its adoption of the Waterways Alternative in 1970 (see p. 1) was a major step in mitigating expected damage to Allerton Park. The Corps adopted the plan with additional modifications that set the permanent pool of Springer Lake at 623 feet, and estimated that the upper end of this pool will be 3 miles downstream from the lower Allerton Park boundary and that no part of Allerton Park would be permanently flooded by the project.

The Board of Trustees of the University of Illinois contracted with the Harza Engineering Company to independently evaluate the potential impacts of the project on Allerton Park. In its report of August 20, 1974, Harza stated:

> "It is our conclusion that the changes in the physical environment of Allerton Park that will result from construction and operation of the Springer Lake Project as presently proposed will be minor and will not result in significant changes in the ecology of the Park. With the exception of possible minor alterations in groundwater levels and in depth and duration of flooding, most changes within the Park, including those associated with the altered groundwater and flooding will not alter the appearance of the Park and will be undetectable except by very detailed investigation."

However, on January 15, 1975, the University's Board of Trustees adopted a resolution withdrawing support for the project. The resolution concluded that the project was not in the interest of the University because of the potential damage to Allerton Park. The Trustees opposed any more appropriations for the project by Illinois or the Federal Government and recommended deauthorization of the project by the Congress. According to Decatur officials and newspaper reports, the Trustees may reconsider their resolution withdrawing their support for the project.

CHAPTER 4

INTEREST RATE USED IN THE PROJECT'S ECONOMIC EVALUATION

Benefit-cost analyses are developed and reported to the Congress by Federal water resource agencies to show the economic feasibility of proposed projects. Such analyses have become an important part of the congressional and agency decisionmaking process.

Construction costs for a project are mostly incurred before the project is put into operation. Benefits, on the other hand, are realized over the operating life of the project. To make a meaningful comparison of benefits and costs, it is necessary to put them on a common time-frame basis. Therefore, an interest (or discount) rate is used to discount future project benefits to present value and to amortize benefits and costs over the expected economic life of the project. The interest rate used has an important impact on a project's benefit-cost ratio because as the interest rate increases, the present value of future benefits decreases and the project's economic costs increase.

The interest rate to be used in formulating and evaluating plans for water resource projects has been set annually since fiscal year 1968 by the Water Resources Council. The formula used to establish the annual rates is based on the average yield (during the preceding fiscal year) of interest-bearing, marketable U.S. securities which have terms of 15 years or more remaining to maturity, provided that in no event shall the rate be raised or lowered by more than one-quarter of 1 percent in any year. The interest rates since fiscal year 1968 have been:

Fiscal year	Rate
1968	3-1/4
1969	(note a)
1970	4-7/8
1971	5-1/8
1972	5-3/8
1973	5-1/2
1974	5-5/8
1975	5-7/8

[a]3-1/4 percent in effect to December 24, 1968; 4-5/8 percent in effect for remainder of fiscal year 1969.

For the Springer project, the Corps used a 3-1/4 percent interest rate--the one in effect for fiscal year 1968--in its benefit-cost analysis. The Corps justified this rate by (1) its usual policy of freezing an interest rate when the construction phase of a project is started, and (2) a clause in the Water Resources Development Act of 1974 (Public Law 93-251, March 7, 1974) concerning the effective date of local assurances.

INITIATION OF CONSTRUCTION PHASE

The Corps' usual policy is to freeze the interest rate for benefit-cost analyses at the effective rate at the time of the initial appropriation of construction funds. The Corps' policy on interest rates states in part:

> "Projects in this category (authorized projects) which already have received an appropriation of construction funds or which will receive an appropriation of funds in * * * [the current fiscal year] to initiate construction may continue to use the interest rates that were used to prepare the supporting economic data presented to Congress in justification of the initial appropriation of construction funds in making any subsequent evaluations, cost allocation studies, and cost sharing determinations. For the purpose of this circular, projects which have or will receive an appropriation for funds for 'land acquisition only' are to be considered the same as construction projects."

The Congress first appropriated funds for land acquisition for the Springer project in fiscal year 1968. However, the report of the House Committee on Appropriations on the Public Works and Atomic Energy Commission Appropriation Bill of 1968 (House Report No. 505, 90th Congress, 1st sess.) established a special land acquisition category for the project stating that "where planning is completed but the initiation of construction should be deferred to a later date * * *, it would be expedient to at least proceed with land acquisition." (Underscoring added.) The report noted that the Committee had previously adhered to a policy of not appropriating funds for land acquisition until it could also fund the actual start of construction.

From fiscal year 1968 through fiscal year 1975, the Springer project has continued to receive appropriations with a notation that it is still in the land acquisition category. No major land acquisition has occurred since fiscal year 1968, and the appropriations since that time have been used for engineering and design work. Actual construction work has not been started and the Corps has not established construction dates for the project. At the time of

our review only 55.5 acres, less than 1 percent of the land needed for the project, had been purchased for an administration building (not yet built) and to relieve hardships of certain landowners.

The Department of the Army informed us that funding for land acquisition was always included as part of the construction phase of a project. The Department also stated that the Corps considered it appropriate to classify appropriations for land acquisition as part of project construction.

EFFECTIVE DATE OF LOCAL ASSURANCES

The Water Resources Development Act of 1974 contains a clause which freezes the interest rate for certain projects when local assurances were furnished before December 31, 1969. Section 80(b) of the act states that:

> "In the case of any project authorized before January 3, 1969, if the appropriate non-Federal interests have, prior to December 31, 1969, given satisfactory assurances to pay the required non-Federal share of project costs, the discount rate to be used in the computation of benefits and costs for such project shall be the rate in effect immediately prior to December 24, 1968, and that rate shall continue to be used for such project until construction has been completed, unless otherwise provided by a statue enacted after the date of enactment of this Act."

The act provides that the appropriate non-Federal interests must give satisfactory assurances that the non-Federal share will be paid. Neither the act nor its legislative history indicates what assurances are satisfactory.

On June 14, 1968, the Governor of Illinois said that the State would work with the Corps to implement the furnishing of assurances for the project, with the exception of water supply storage for Decatur. The Corps apparently has taken the position that such assurances need not be legally binding and that, in the context of the Springer project, the Governor's letter stating his willingness to provide the necessary elements of non-Federal participation was sufficient to comply with the requirements of section 80(b).

Decatur, the original project sponsor, reaffirmed its assurances to pay the required non-Federal share of the costs attributable to water supply for the project in a resolution dated July 29, 1968. However, the project was redesigned in 1970 with Illinois becoming the new project sponsor.

Consequently, Decatur's assurances are no longer applicable. The State provided formal assurances for the required items of cooperation on May 26, 1971.

CONCLUSIONS

In view of the Corps' continuous practice over the years of freezing interest rates at the rate in effect when the initial construction appropriation is justified, and with the apparent knowledge of the Congress, it is reasonable to assume that had the Congress been dissatisfied with that practice, it would have addressed this problem in a manner similar to its enactment of section 80(a) of the Water Resources Development Act of 1974. This section of the act repealed the interest rate formula promulgated by the Water Resources Council which had resulted in higher interest rates. Rather, in section 80(c) of the act the Congress directed that a Presidential study be made of principles and standards for planning and evaluating water and related resources projects which would include the interest rate formula to be used in evaluating and discounting future benefits for such projects.

Recognizing, among other things, that the Congress had always included land acquisition funds in the initial construction appropriation, the Corps applied its policy of freezing interest rates at the rate used to justify the initial construction appropriation to "land acquisition only" appropriations. This policy, adopted upon the change in appropriation policy, was formalized in a Corps circular issued on August 3, 1970.

We do not feel that the Corps' extension of its policy of freezing interest rates at that rate used to justify the initial construction appropriation (which included land acquisition costs) to that used at the time the initial land acquisition funds are appropriated--based on a change in congressional appropriation policy--is so unwarranted or unreasonable that it may be objected to on a legal basis.

Concerning the matter of local assurances, the original project sponsor had apparently given all requisite assurances of local cooperation, and the Governor agreed in writing to assume the role of project sponsor and to provide the necessary elements of local cooperation under its sponsorship including, if necessary, the enactment of legislation. While the matter is not free from doubt, we are unable to state as a matter of law, that the Corps has misinterpreted the act

or abused its discretion in determining that the State had put forth "satisfactory assurances" that it would pay the non-Federal share of project costs.

In view of the foregoing, we cannot say that the interest rate used to prepare the economic analysis for the William L. Springer project was not in compliance with applicable law.

APPENDIX I

United States Senate
COMMITTEE ON
GOVERNMENT OPERATIONS
WASHINGTON, D.C. 20510

March 11, 1974

Honorable Elmer B. Staats
Comptroller General of the United States
General Accounting Office
441 G Street
Washington, D. C. 20548

Dear Mr. Comptroller General:

Ever since I have been in the Senate I have been involved in the controversy surrounding the Oakley Dam/Springer Lake Army Corps of Engineer project near Decatur, Illinois.

The City of Decatur has favored this project which is designed to increase the city's water supply. The State of Illinois last year conditionally endorsed the project with five conditions that were to be met. This year the Corps has halted further work on the project pending a revised report from the Governor's Office. To date that report has not been submitted. The Corps is also waiting for an interpretation of the recently passed Water Resources Development Act which indicates that projects authorized more than eight years ago and still have not had money appropriated, would be deauthorized. In addition, there is a question on how the new principles and standards for planning water and related land resources passed by the Water Resources Council and modified by the Water Resources Development Act will affect the project. At this point the Corps is waiting for answers to these questions before they proceed further.

The Corps is also receiving increased pressure from environmental groups who are concerned over the effects of the project on Allerton Park. This project has been a very heated topic in Illinois for some time and now environmental groups have labeled it as one of the ten most environmentally destructive in the nation.

In the past, I have supported the Oakly Dam project since the officials of Decatur backed it. However, the arguments have become very emotional. I would like to take a more realistic and rational stand, especially now when I plan to testify before the Senate Appropriations Subcommittee on Public Works on Illinois projects, but feel the information I am receiving from both sides is biased. Now while the project is just simmering, I would like some external, responsible group to survey the entire history, plans and effects of the Oakley Dam Project. Emphasis should be placed on its environmental and economic factors. However, it would be hoped that such a

study could be conducted quickly and not drawn out over years. I would appreciate a member of your staff conducting a preliminary study of the project to see if it would be worthwhile to have the General Accounting Office undertake a full-scale study of this project. Such an outside study I am sure would squelch the controversy. I would be willing to stand by the findings of the General Accounting Office.

I will look forward to hearing from you shortly on this matter. If you desire any specific information, please contact Mary Melrose on my staff.

Sincerely,

Charles H. Percy/mm
United States Senator

APPENDIX II

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20310

14 MAR 1975

Mr. Henry Eschwege
Director, Resources and Economic
Development Division
U. S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Eschwege:

This is in response to your request for comments on a draft report entitled "Economic and Environmental Aspects of the Proposed William L. Springer Project, Illinois," (OSD Case #4028). Your draft report recommends that the Secretary of the Army require the Corps of Engineers to reevaluate its benefit-cost analysis of the project and report its findings to the Congress.

The General Design Memorandum for the Springer Lake project is currently under review in the Office of the Chief of Engineers. The Corps has advised us that some problems which could have an adverse effect on the benefit-cost ratio have already surfaced. We have asked the Corps to carefully consider the points raised in your report regarding the project's water supply, flood control, and recreation benefits as a part of this review. We expect that within the next few months this review will either confirm that the project is viable or reveal that it is not economically feasible and should be placed in the inactive or deferred category.

We will be pleased to advise Congress of our findings upon completion of this review for its use in evaluating appropriation requests for the project.

The opportunity to comment on this draft report is appreciated.

Sincerely,

Charles R. Ford

Charles R. Ford
Deputy Assistant Secretary of the Army
(Civil Works)