



UNITED STATES GENERAL ACCOUNTING OFFICE
REGIONAL OFFICE
434 WALNUT STREET - ELEVENTH FLOOR
PHILADELPHIA PENNSYLVANIA 19106

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August 5, 1977

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Dr. Alvin R. Morris
Acting Regional Administrator
United States Environmental
Protection Agency
Region III
6th and Walnut Streets
Philadelphia, Pennsylvania 19106

Dear Dr. Morris

We have completed a review of allegations made by two citizens concerning an Environmental Protection Agency (EPA) grant for construction of a sewer system in York County, Virginia.

On February 25, 1977, a York County, Virginia resident wrote the Comptroller General and asked that he stop payment on grant C510405 because of alleged improprieties in the grant process. On March 2, 1977, the complainant sent a second letter to the Comptroller General, and since then five more letters have been received by us from the original complainant and a second complainant. The letters contained numerous charges about the justification and actual purpose of the project as well as the grantee's and EPA's compliance with Federal regulations.

The first grant for the project was awarded to York County on November 4, 1974, for \$270,370. It was for development of plans and specifications for interceptors, force mains, and pumping stations in Sanitary District No. 2. This was followed on June 27, 1975, by a grant of \$2,929,650, for the construction of those items. The grant was increased on March 4, 1977, by \$540,600 and again on April 13, 1977, by \$3,204,750, bringing the total construction grant award to \$6,675,000. The last increase provided Federal funds for the construction of a sewage collection system which would tie into the other parts of the project. Original plans were that the collection sewer portion of the project was to be financed with local funds. This last increase was the subject of several of the charges in the letters we received on the project.

We made our review at EPA Headquarters and Region III and in Virginia at the State Water Control Board and the Department of Health, Richmond, Virginia. We examined pertinent records,

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grant files, and regulations and held discussions with various EPA and State officials. For purposes of our review, we consolidated the various complaints and charges into five basic issues. These issues and our findings and conclusions are as follows.

Issue I. A public hearing on the project was never held, therefore, the public did not have an opportunity to voice their objections to the project.

We could find no evidence that a public hearing was held. Furthermore, we found no evidence that the applicant had requested a waiver of the hearing or that the Regional Administrator had granted a waiver as required by Federal regulations. Responsible regional officials acknowledged that a public hearing was not held on the project as required

The National Environmental Policy Act of 1969 and Federal implementing regulations in effect before the first grant was awarded require that a public hearing be held for all waste treatment grants concurrently with the development of the project design and the environmental assessment. The purpose of the hearing is to allow the public an opportunity to assist the grant applicant in identifying valid environmental issues which must be considered in the development stage to avoid possible major modifications at a later date.

Related to this issue of public participation were certain petitions containing the signatures of more than 2,500 individuals opposed to the collector system. Copies of these petitions were sent to Region III by the complainants before the grant increase for the collectors was awarded. The EPA engineer responsible for the project who received the petitions told us that the petitions had been filed with a bill of injunction by a York County citizens group in an effort to halt the sewer project but that a local court had ruled against the citizens group. He further stated that, because of the court's ruling, he felt that the petitions were not relevant.

The fact that the petitioner's case was turned down by a local court should not have had a bearing on what action Region III should have taken concerning the petitions. The local court's action was not related to the Federal requirements for public participation. We believe that the petitions represented evidence of substantial public dissatisfaction with the project and that Region III should have taken action to determine their validity.

Issue 2. The Environmental Assessment Statement prepared for project C510465 did not give adequate coverage to project C510405. There was no Environmental Impact Statement prepared despite the public controversy. Thus, project C510405 was not fully evaluated as regards its environmental impact.

We found that a separate Environmental Assessment Statement was not prepared by the grantee for project C510405. An Environmental Assessment Statement was prepared for a related project, C510465, and the title page for that document was annotated to add project C510405.

The combined Environmental Assessment Statement was primarily directed to project C510465 and included only minor references to project C510405. In our view, it did not comply with the regulation requirements. Both Region III and Virginia Water Control Board officials concurred that the Environmental Assessment Statement did not adequately cover project C510405. Region III officials told us, however, that the statement was submitted in April 1974 and that it was quite common for EPA to receive inadequate Environmental Assessment Statements from grantees at that time. They said it was their practice at the time not to reject them and send them back to the grantees. Instead, Region III personnel would obtain the additional information necessary to adequately assess the environmental impacts of the project and continue to process the grant applications.

In this regard, we were informed that 12 other documents, including various studies of the county, were used by Region III in its environmental review of project C510405. This review indicated that the project would not cause any significant adverse impact on the environment and, consequently, a "Negative Declaration" was issued. These 12 other documents had not been referenced in support of the "Negative Declaration" in the project file. In view of the inadequacies in the Environmental Assessment Statement, we believe a clear record should have been established as to how they were used to form the basis for Region III's decision.

Issue 3 The project did not address the significant health problem areas of the county and it was being placed in undeveloped or underdeveloped areas to promote growth and development. The project did not meet the "2/3 rule" for grant eligibility contained in 40 C.F.R. 35.925-13.

Our review disclosed that as a result of failing septic systems and shellfish area condemnations, a potential health problem does exist in the areas that will be served by the sewage collection system being constructed under project C510405. However, other areas in Sanitary District No. 2 that will not be served by project C510405, had a greater number of failing septic systems. Thus, this project does not address the major health problems areas as claimed.

The Virginia Department of Health, based on a survey conducted by local units of the Department of Health, designated York County's Sanitary District No. 2 as having a health hazard at the most urgent level. This information was forwarded to the Virginia State Water Control Board on January 29, 1975. On April 10, 1975, the State Water Control Board added Sanitary District No. 2 to the State's fiscal year 1976 priority list for funding of sewer systems.

On January 5, 1977, York County requested the State Water Control Board to reevaluate project C510405 in order to include the sewage collection system as eligible for funding because of the State's health hazard designation and the lack of local funds to finance it based on the bids received. The county also pointed out that without EPA funding, there would be a user fee for the collector lines of \$94.29 per quarter compared to only \$45.97 per quarter with EPA funding.

According to a Region III representative, the State Water Control Board did not originally provide funds for the collector system because of their policy of giving low priority for collector systems. He further stated that the State Water Control Board had revised its policy and would participate in collector systems if the area had been designated as having a health hazard, and there was insufficient local funds to pay for the sewers.

The State Water Control Board decided in early February 1977 that the project for collector lines met the State's criteria for health hazard and financial hardship, and on March 7, 1977, it asked EPA for a grant increase for construction of the collector lines.

The sewage collection system being constructed under project C510405 will cover an area which includes less than 20 percent of the failing septic systems identified by the Department of Health survey in Sanitary District No. 2. However, EPA has also awarded grants to develop facility plans for sewage systems in the remaining areas of Sanitary District No. 2 not served by project C510405. Thus, these other areas are not being ignored.

According to the Virginia State Water Control Board, project C510405 was proposed and approved during the fiscal year 1971 and 1972 time period and was designed to solve problems that were considered most urgent at that time. Also, the fact that additional sewerage problem areas were identified several years later should not prevent the project, which has progressed through the grant stages including construction, from being completed. (As of May 20, 1977, construction work was about 7 percent completed and full completion was scheduled for April 1978.)

The "2/3 rule" contained in 40 C.F.R. 35.925-13 provides that EPA will not make a grant award for a new sewage collection system unless it is determined by the Regional Administrator that the bulk (generally two-thirds) of the flow design capacity through the system will be for waste waters originating from the community in existence on October 18, 1972. Our review showed that project C510405 does meet this requirement of the regulations. However, we found that the documentation supporting this determination was inadequate when we began our review. After we questioned the support for Region III's decision, Region III officials obtained additional supporting documentation to show that the "2/3 rule" was met.

We could not substantiate the claim that the project was being placed in undeveloped or underdeveloped areas expressly for the purpose of promoting growth and development. EPA guidelines and State regulations concerning minimum sizes to be used in constructing interceptors, pumping stations, and collector sewers mean that growth and development can occur in an area as a consequence of those provisions.

Issue 4: The health hazard claim was contrived in order to justify the need and priority for the project.

There was no practicable way we could verify this claim. To do so would have required us to resurvey the area to determine whether the State Department of Health's findings were valid. This would involve visiting each of the areas and contacting each of the persons included in the Department of Health's initial survey.

As stated above, the designation of Sanitary District No. 2 of York County as a health hazard area was made by the Virginia Department of Health on the basis of a survey conducted by local health units. The State Water Control Board did not substantiate the data. The Board relies on such surveys in establishing its priorities for funding sewage projects. The Department of Health survey disclosed that a health hazard existed in all of Sanitary District No. 2 and showed that

the areas that would not be served by project C510405 had more extensive health problems. Based on these findings, the State had obtained a grant from EPA to develop plans for a sewer system in the remaining areas of Sanitary District No. 2.

Issue 5: The project approved by the voters in 1967 was not the same as that for which EPA awarded the grant.

We were unable to determine the validity of this allegation.

One of the complainants sent a letter to EPA which referred to an attached list of significant differences between the project approved by the voters and the project on which EPA based its grant award. However, we could not find the attachment in the EPA files.

A State map showed that there had been some changes to the project but the scope of the project was essentially the same as the project approved by EPA.

We inquired at the State level if there was any State requirement that local governments hold a new referendum if the scope of the project changes. We were informed that there was no such requirement regardless of the significance of the changes and that matters such as that were strictly local issues between the citizens and the responsible local government.

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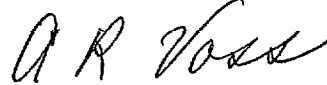
We discussed our findings and conclusions with you and other Region III officials at an exit conference on June 22, 1977. The need for a formal public hearing on the environmental impacts of this project was also discussed based on the deficiencies we had found concerning public participation and the Environmental Assessment Statement. No one present could identify any valid reasons why a public hearing could not be held even at this late date. You advised us you would not wait for our formal recommendation in a report before acting on the matter and would initiate plans to hold a hearing as soon as possible.

On July 21, 1977, you announced that EPA would hold a public hearing on August 9, 1977, in York County, Virginia to consider the environmental effects of project C510405.

Copies of this report are being sent to the two York County complainants, the Executive Secretary, State Water Control Board, the State Health Commissioner, and the York County Administrator

I want to take this opportunity to thank you and your staff for the cooperation and assistance we received in completing this assignment.

Sincerely yours,

A handwritten signature in cursive script that reads "A R Voss".

Allen R. Voss
Regional Manager