



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

22007
118520

COMMUNITY AND ECONOMIC
DEVELOPMENT DIVISION

B-204752

JUNE 3, 1982

The Honorable Anne M. Gorsuch
Administrator, Environmental
Protection Agency



118520

Dear Ms. Gorsuch:

Subject: The Environmental Protection Agency Should
Collect Overdue Industrial Cost Recovery
Payments (GAO/CED-82-92)

The industrial cost recovery (ICR) program was set up by the Congress in 1972 to require industrial users of publicly owned sewage treatment plants to reimburse the Federal Government's share of construction costs. The Environmental Protection Agency (EPA) has made a relatively limited effort to recover the Federal share of the ICR funds that grantees collected from industrial users before the program's repeal on December 27, 1977. We identified six grantees in EPA's Boston region that had collected but had not yet paid EPA the Federal share amounting to \$17,365. The region had no record of the names of the grantees that owed ICR funds or the amounts owed.

The Boston region has accounted for only 6 percent of construction grant funds nationwide since the program began. Because the potential exists for collections in other EPA regions, we believe the EPA regional offices need to identify the grantees that have collected ICR payments from industrial users and require the grantees to remit the Federal share of the collections to EPA.

OBJECTIVE, SCOPE, AND METHODOLOGY

We performed this review to determine the extent of EPA's control over collections of ICR payments which municipalities had collected from industrial users before December 27, 1977. Information we obtained during our review of a small treatment facility in Wyoming ("Wyoming Wastewater Treatment Facility Proves Unsuccessful," CED-81-94, dated June 15, 1981) showed that EPA's Denver regional office did not keep track of the municipalities which did or did not remit ICR payments. Our specific objectives were to (1) identify the grantees that might have collected ICR payments, (2) determine the amounts due the Federal Government from these grantees, (3) suggest procedures to collect the Federal share, and (4) determine if EPA has the authority to collect ICR payments from grantees that either had received payments from industrial users or had not received payments owed by industrial users.

(089178)

002299

We performed the review principally in EPA Region I and EPA headquarters. We selected the Boston region because it had a large number of completed construction projects which might have involved uncollected ICR payments. To determine the municipalities in region I which might have collected ICR payments, we used an EPA Grants Information Control System listing of grants awarded under Public Law 92-500. To make sure we included all construction grant projects on which ICR payments could possibly be owed, we included (1) grants awarded after March 1, 1973, the effective date of ICR, and (2) grants where the initial contract was awarded before June 27, 1977. For the 191 projects that fit these criteria, we examined the ICR and/or project files and contacted State and local officials involved in the projects that might have owed ICR payments.

We interviewed the Acting Director of the Water Programs Division and ICR Coordinator at EPA Region I, and the nationwide ICR Coordinator at EPA headquarters.

We examined Federal laws and regulations and EPA guidelines, procedures, and reports and reviewed the legislative history of the various water pollution acts to determine EPA's authority to retroactively collect ICR payments after the ICR provision was repealed.

We performed our review in accordance with our current "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions."

HISTORY OF ICR

The Federal Water Pollution Control Act Amendments (Public Law 92-500) of 1972 authorized EPA to make grants to municipalities for 75 percent of the eligible costs to construct publicly owned sewage treatment plants. The act also required industrial users of these publicly owned treatment plants to pay back their portion of the Federal share of the construction cost. Such payments were to be based on the users' discharge of industrial process wastewater to the treatment plants. This payback requirement, known as ICR, applied to all construction grants awarded after March 1, 1973. The purposes of this requirement were to (1) prevent an industrial user of a municipal system from gaining a competitive advantage over an industry that constructed its own treatment plants and (2) generate revenue for the reconstruction and expansion of the treatment plants.

The grant recipient was required to recover industry's share of the Federal construction costs over a period not to exceed 30 years. Annually the grantee was required to return to EPA 50 percent of the amount collected plus interest. The EPA Administrator, in turn, would deposit this money in the U.S. Treasury as miscellaneous receipts. In accordance with regulations in effect at that time, the remaining 50 percent was to be used by the

grantee, primarily for future expansion or reconstruction of the project, but 20 percent of this portion could be used as the grantee saw fit, subject to certain exceptions.

The Clean Water Act of 1977 (Public Law 95-217) modified the ICR program. The act (1) exempted from the ICR requirements industrial users not discharging more than 25,000 gallons per day of domestic wastewater, (2) ordered EPA to study the need for and efficiency of the ICR program, and (3) imposed an 18-month moratorium (through June 30, 1979) on payment of ICR charges by industrial users.

EPA engaged the firm of Coopers & Lybrand to conduct the congressionally ordered study. The report, issued in December 1978, concluded that ICR was not effective in accomplishing its legislative purposes. EPA did not entirely agree with the study's basic conclusion because ICR was in the early stages of implementation and only limited data was available.

Because of the differences of opinion which continued to surround ICR, the Congress extended the moratorium until June 30, 1980, and ordered EPA to conduct another study. EPA's report, contrary to the Coopers & Lybrand report, recommended that ICR be continued with some changes designed to make the program more efficient and less burdensome to grantees. The Congress, however, did not believe the program could be corrected to effectively accomplish its original intent and in the October 1980 amendments to the Clean Water Act (Public Law 96-483) repealed the ICR provisions retroactive to December 27, 1977. If grantees had collected ICR payments after March 1, 1973, and before December 27, 1977, these payments had to be used in accordance with regulations in effect at that time.

ICR FUNDS COLLECTED BY REGION I GRANTEEES
HAVE NOT BEEN REMITTED TO EPA

Not all grantees that collected ICR payments from industries have remitted the 50 percent Federal share to EPA as required. Since the ICR program began, EPA Region I has received about \$11,000 from four grantees. But six grantees that collected ICR payments from their industrial users failed to remit to EPA the \$17,365 Federal share of these collections. Officials in four of these towns indicated that they were waiting for EPA to tell them what they should do with their collections, even though the ICR manual specifically stated that at least annually, "the grantee shall submit to the Regional Administrator's Financial Management Office a check for the annual ICR payment to the Federal Government." Officials in Lincoln, Rhode Island, and Southwest Harbor, Maine, offered no explanation as to why the money was not remitted. The six grantees and the amounts owed to the Federal Government are:

<u>Grantee</u>	<u>Estimated amount due to EPA</u>
Winslow, Maine	\$ 7,607
Middleborough, Mass.	7,205
Southwest Harbor, Maine	1,789
Greater Lawrence Sanitary District, Mass.	500
Lincoln, R.I.	138
Enosburg Falls, Vt.	<u>126</u>
Total	<u>\$17,365</u>

Since the inception of ICR, EPA has relied heavily upon grantees to implement the ICR program. Region I assigned one individual to serve as its ICR Coordinator, but he had other responsibilities, including serving as a project engineer for some EPA grants. His ICR responsibilities were to assure that the systems complied with EPA guidelines and to maintain liaison with headquarters on ICR matters.

The Acting Director of the Water Programs Division and the ICR Coordinator in region I did not know the amount of ICR payments owed for grant projects in region I. In 1977 region I started to develop a system to track ICR collections but never completed it because of the 1977 moratorium.

Regional officials made two attempts to determine the amount of ICR payments owed. EPA headquarters in January 1977 identified 26 grantees that had constructed projects and might owe ICR payments. Region I officials contacted these grantees and found that 25 had no industries on their systems and the one that had an industry did not yet have its ICR payment system approved by EPA as required by regulation. In the second attempt in May 1981, region I sent questionnaires to 66 grantees that had approved ICR systems. Four grantees responded that they owed ICR payments, but the region did not request these grantees to send their payments. The ICR Coordinator told us that the questionnaire was intended only to get a rough idea of the ICR payments owed to EPA and that he had other, higher priority work. Two of these grantees subsequently remitted their ICR payments to EPA; one did not actually owe ICR payments; and the fourth, Winslow, Maine, still owes \$7,607 in ICR payments as indicated above.

The lack of control over ICR payments which we discovered in region I may exist in other EPA regions. Our preliminary contacts in region II (New York), region III (Philadelphia), region V (Chicago), and region VII (Kansas City), as well as the situation we noted in a related review in region VIII (Denver), indicated that none of these regions had set up accounting entries for ICR payments due and amounts collected.

We discussed the issues with the Deputy Director of the Municipal Construction Division; the Chiefs of the Fiscal Policies and Procedures Branch and the Financial Reports and Analysis

Branch, Financial Management Division; and the Assistant General Counsel, Grants, Contracts and General Administration Division. The program officials generally agreed with the report's conclusions and recommendations. These officials were unsure about the magnitude of the problem since EPA has not conducted a nationwide survey to identify the extent of ICR payments due to the Federal Government. They did say, however, that based on our review they are considering sending a memorandum to regional administrators instructing them to conduct such a survey.

EPA Region I officials believe that it would be inequitable to now pursue the collection of ICR payments from the grantees that had collected from the industrial users and ignore those grantees that should have collected from their industrial users but did not. They suggested that all the ICR funds EPA collected should be given back to the grantees for the operation and maintenance or upgrading of the treatment systems.

We disagree. Every grantee signed an agreement to collect ICR payments and remit 50 percent of the collections to EPA. If allowed to keep the 50 percent Federal share, grantees that made the collections would be unjustly enriched.

With regard to giving the ICR funds back to the grantees, EPA has no authority to do so and legislation would be required.

While we believe that the EPA Administrator has the authority to collect the Federal share of ICR payments that grantees have already received from industrial users, we believe EPA no longer has the authority to require grantees to collect ICR payments from industries which had not made such payments to the grantees before the program's repeal on December 27, 1977.

An EPA Office of General Counsel official said that he disagreed with our position that EPA does not have the authority to require grantees to collect ICR payments from industries which have not yet made such payments to the grantees. He said that he was in the process of drafting an opinion on this issue.

CONCLUSIONS

Some grantees in EPA's Region I collected ICR payments from industrial users. Although some sent the Federal share of this money to EPA, others kept the money. EPA has the authority and responsibility to collect the Federal share from these grantees. Our preliminary contacts in several other EPA regional offices indicate that the situation we identified in the Boston region may be occurring in other EPA regions. Since the Boston region accounts for only a small percentage of the construction grants issued since the program's inception, the potential exists for collecting unremitted ICR payments in other regions.

Grantees owing ICR payments could be identified rather quickly by using the Grants Information Control System to get a list of grantees that have an approved ICR system. ICR coordinators and the project engineers with knowledge of when the treatment facilities began functioning could then contact those grantees that are likely to have collected ICR payments from industrial users. Minimal cost should be involved to collect these funds.

RECOMMENDATION

We recommend that the EPA Administrator require the regional administrators to identify those grantees that have collected ICR payments from industrial users and require the grantees to remit the Federal share of these collections to EPA.

- - - -

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 taken on our recommendations to the Senate Committee on Governmental Affairs and the House Committee 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 are providing copies of this report to the Chairmen, House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works; other congressional committees and individual Members of Congress; the Director, Office of Management and Budget; and your acting Assistant Administrator for Water.

Sincerely yours,



for Henry Eschwege
Director