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HEARINGS

BEFORE THE

SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION

OF THE

COMMITTEE ON RONMENT AND PUBLIC WORKS

UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

MARCH 18, 30, AND 31, 1980

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INDUSTRIAL COST RECOVERY

TUESDAY, MARCH 18, 1980

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION,
Washington, D.C.

The subcommittee met at 10:43 a.m., in room 4200, Dirksen Senate Office Building, Hon. Edmund S. Muskie (chairman of the subcommittee) presiding.

Present: Senator Muskie.

OPENING STATEMENT OF HON. EDMUND S. MUSKIE, U.S. SENATOR FROM THE STATE OF MAINE

Senator MUSKIE. The committee will be in order.

I would like to welcome all of you to the first of 3 days of hearings that this subcommittee will hold on the Clean Water Act.

Today, Douglas Costle and other EPA witnesses will help us take a look at programs that need reauthorizing this year. Most important among these programs are manpower training grants, the State program grants and the section 208 areawide waste treatment management program.

Our primary focus today and on Thursday will be the industrial cost recovery program. The administration will present its views on whether provisions of the Clean Water Act should be retained or amended. On Thursday we will hear the views of local officials and affected industries.

There has been a moratorium on the collection of cost recovery payment since 1977. This moratorium will expire in July and the payments to the U.S. Treasury will resume. The Environmental Protection Agency may have some suggestions to improve the program.

In the year of great fiscal concern and budgetary cuts, I believe the Congress will see the wisdom of the principle we wrote into the Clean Water Act in 1972 that the Federal Government should ask industries that receive a benefit from municipal sewage systems pay back the subsidy that they have. The program of industrial cost recovery is important because it is a way to protect Federal investments.

The construction grant program is struggling to meet its goals. We need to establish mechanisms for stable local financing of local sewage treatment project so 10 or 20 years after the construction of a plant more Federal dollars won't be needed.

I look forward to the testimony today and Thursday.

I apologize, Mr. Costle, for being late, but I was spending my time usefully with constituents. It is a pleasure to welcome you this morning. I think we will have time to cover your testimony.

STATEMENT OF HON. DOUGLAS M. COSTLE, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY CHRIS BECK, ASSISTANT ADMINISTRATOR FOR WATER AND WASTE MANAGEMENT

Mr. COSTLE. Thank you, Mr. Chairman. I am sorry that I will have to leave early.

Senator MUSKIE. What are your time constraints?

Mr. COSTLE. I can stay for about a half hour now, but I think I can get through the key comments I want to make. I have asked Chris to follow up in considerable detail, particularly on the ICR issue.

I would like to at least introduce this morning our preliminary thoughts resulting from the ongoing study of the industrial cost recovery program. But if I may have your permission, Mr. Chairman, what I would like to do is submit my prepared statement for the record and summarize it. (See p. 21.)

Senator MUSKIE. I think you are going to have to. Without objection, of course.

Mr. COSTLE. Thank you.

I would like to note at the outset for the record that we believe the funding levels we requested in connection with these reauthorizations are appropriate to permit us to carry out the present program responsibilities. The requested amounts also represent, I think, sensible budget policy in light of our present economic situation. For this reason, we urge the committee to adopt our appropriations reauthorization levels.

These reauthorizations cover several major sections of the Clean Water Act, specifically, reauthorizations for sections 104 and 106, section 208, section 314 and section 517. The testimony I have submitted for the record describes those functions and activities in considerable detail.

If I may, Mr. Chairman, I would like to leave two major points with the committee this morning. The first is related to the construction grants program and its funding structure, and the second is related to the issue of industrial cost recovery.

Mr. Chairman, I have become increasingly concerned, and we have shared with the committee staff our concern, that section 201 of the Clean Water Act, which provides construction grants to States for publicly owned treatment facilities, is in serious difficulty. The impacts of inflation have eroded dangerously into that program. What was perceived in 1972 and later in 1977 as sufficient assistance to accomplish the major objectives has, over a period of time, become seriously diminished. So we are learning that there is simply not going to be enough money available to accomplish all of the several functions associated with water pollution control that are now eligible for funding under the Clean Water Act. The latest needs survey identifies in excess of $107 billion of needs which are grant eligible. Clearly, this indicates that we need to sharpen our priorities and perhaps limit the eligibility categories if we are to avoid dissipating available grants across the

several categories and as a result accomplishing very little in terms of measurable results toward achievement of the objectives of the act.

Finally, the allocation formula for distributing money to the States is creating maldistributions, at least in terms of getting the grants. States with good projects which are ready to go are unable to move forward because opf lack of funds, while some States are unable to move forward because of lack of readiness. We need to redress this problem of allocation and better define our funding priorities. I am not prepared this morning to suggest a set of recommendations to accomplish this, but I do want to apprise you that I am concerned about the situation, and I have underway in the Agency an assessment of funding needs and strategies for meeting those needs. Our assessment should be finished by early summer, in time to provide this committee with recommendations and suggestions for certain fundamental changes in the construction grants program, which I understand will be the subject of hearings to be scheduled by the committee during the summer period. I know, Mr. Chairman, that you and the members of this committee also share these concerns, and I look forward to working closely with you to develop appropriate, fair and effective formulas for funding distribution.

The second issue I would like to briefly address before turning the testimony over to Mr. Beck is the industrial cost recovery issue. We have done an intensive examination of the history and the legislative intent of the ICR provisions, and, for the record, I am convinced Congress primary objective in legislating ICR was to remove the implicit subsidy provided to industries that discharge into publicly owned treatment works. In some cases this subsidy is substantial. Dischargers into municipal systems enjoy the benefits of not having to go to the capital market to finance new plant facilities. They have interest-free loans. They have no additional land requirements. They have no zoning hassles or building permit problems. They avoid many administrative and management problems such as self-monitoring, operation and maintenance, and acquiring and meeting permit requirements.

In many cases we believe that ICR revenue can constitute an important part of a grantee's revenue for operational improvement, facility replacements and upgrading and expansion of treatment facilities. Indeed, there are many communities that will be in serious trouble without the industrial payback for their share of the treatment capacity.

On the basis of these conclusions, we recommend if Congress still wishes to retain its original intent of removing the subsidy to the industrial users, then ICR collections should resume when the moratorium expires this June. If the Congress decides to maintain the ICR program, we have a couple of additional suggestions which we think will simplify collection.

We would increase the flow exemption from 25,000 gallons per day to 50,000 gallons per day of equivalent sanitary waste. This would exclude roughly 83 percent of industry from ICR requirements, while retaining 87 percent of the potential ICR revenues.

We would also recommend administrative discretion to allow individual grantees exemption when a grantee can show that, one,

it has an existing mechanism to provide for future capital expenditures, two, ICR would be an insignificant contribution to the grantee's funding program, and three, relief from ICR would not place an inordinate burden on the domestic users of the system.

Additionally, Congress may want to consider providing the grantee an option of not having to institute an ICR system and collect such revenues. In such circumstances no portion of the proposed plant's industrial capacity would be eligible for Federal funding. If the grantee wanted to accommodate industrial users, the users would contract with the grantee to purchase a portion of the facility's capacity. Presumably, municipal bonding would be used to finance this, and the Securities and Exchange Commission's disclosure requirements would assure that the grantees and industrial users develop a user charge program that would generate revenues to be used for O. & M. and future rehabilitation.

These are the several thoughts I wanted to leave with the committee this morning. Chris Beck, the assistant administrator for Water and Waste Management, is prepared to discuss these measures with you in some detail. I think that concludes my prepared remarks, Mr. Chairman.

Senator MUSKIE. Could I ask with respect to the authorization levels, including the construction grant program, have you had any indication as to whether or not the reassessment of the administration's budget would result in further pressure on these grants?

Mr. COSTLE. I would like to respond, Mr. Chairman. OMB has instructed EPA to reduce fiscal year 1981 outlays by $102 million, $7 million of which was earmarked against salaries. EPA has proposed and OMB has agreed that the balance of the reduction—that is, $95 million—will be taken in the construction grants program. In a related but separate action, OMB also plans to reduce our fiscal year 1980 supplemental of $14 million to cover part of pay raise costs. Since the President has announced a hiring freeze, $14 million in payroll supplemental, my budget people tell me, probably won't be required by the Agency, and the same holds true for the $7 million reduction in 1981. In our fiscal year 1981 budget, $357 million is for payroll. This amount will fully fund approved work years. We would only need, in fact, the full amount if we used all the workyears. As you know, we have not been able to do this in the past, so at this point we are not terribly concerned about the salary portion of the cut, given the circumstances of the freeze.

Now we are going to appeal elements of that freeze, particularly in the area of hazardous wastes and toxic substances, but we are still getting the ground rules for exemptions, and we don't know what those finally are.

In order to achieve the $95 million outlay reduction for construction grants, we would have to delay obligation of certain of the fiscal year 1980 moneys, which again are eligible for obligation in 1981 as well. We plan to delay roughly $480 million in obligations until the start of fiscal year 1981. We are currently not planning to delay any of the $3.5 billion in fiscal year 1979 funds simply because the reallotment date for these funds will occur on September 30, 1980, and we don't want to force reallotment by delaying

the obligation of these funds. Also, we do not plan to delay section 205(g) money, the State delegation fund.

But in order to achieve these reductions under the Budget Control Act, OMB will submit a deferral request to the Congress. The details of that deferral request are still being worked out with OMB. Also, we will be asking congressional approval for an extension of the reallotment date for the 1979 appropriations, which would allow us thereby to slow the obligation of 1979 funds without fear of losing them and allowing us to obligate the deferred 1980 funds earlier than we might otherwise have in larger amounts to meet the needs of the faster moving States. My principal concern is that there are a lot of cities under consent decrees; also, there are a lot of States moving faster than others. There is a certain automatic character to the program that will make it difficult to slow down. Some projects can clearly wait another 3 or 4 months; others shouldn't have to wait. What we are trying to do is explore within the framework of the act how much legal flexibility we have to manage this slowdown in a sensible way.

I think, by and large, Mr. Chairman, we were pretty fairly treated. I think OMB's response to us is a reflection of their feeling that the authorization and appropriation levels of this program need to be maintained at a fairly high level because of commitments already made to State and local governments, and their expectations, the complexity of the planning process for these projects, and the fear, if we now suddenly pull the cork, that the momentum we are trying to inject into these programs will be lost. As it is, we are running hard to stay up with inflation, and losing that race.

Senator MUSKIE. So it is a stretchout, not a cutback, that we are talking about.

Mr. COSTLE. That is right.

Senator MUSKIE. And it has to be done on a selective basis for the reasons you are suggesting. I can't really quarrel with it, having been involved in the reality of trying to impose budget restraint. There is no way to do it painlessly, I am afraid.

Mr. COSTLE. This was, as nearly as we could figure out, the least painful way to do it and still be responsible for what we were doing.

Senator MUSKIE. I would like to make this observation. Those in the media who attempted to conclude that the delay in nailing down the details on the budgetary restraints is a political decision, it is clear from what you have said there are substantive problems involved in tailoring the decision to impose restraint into specific details.

Mr. COSTLE. Yes, sir.

Senator MUSKIE. How long will it take you to finally work out the problems associated with EPA's budget?

Mr. COSTLE. I would guess within the next week to week and a half, if not sooner. The part we are involved in now is making sure we understand the Budget Reform Act and procedures in trying to find the right way to bring this up to you.

Senator MUSKIE. Have you time for me to ask you a couple questions about ICR?

Mr. COSTLE. Certainly.

Senator MUSKIE. There are two issues involved here that I would like to get your comment on. One, that the amount of money generated by ICR is unavoidably and will be insignificant in terms of the objective of building up reserves or replacement, expansion, improvement, and so on. Have you reached a conclusion on that? Has there been a sufficient test of ICR to reach a conclusion?

Mr. COSTLE. I don't think there has been a sufficient test. The revenues projected now under some of the studies done for us I think probably underestimate what the numbers would be. The real reason for that is not that the studies are necessarily improperly done, but that we have, in fact, I think only seen about $2 billion worth of treatment plants actually now processing water, and we have another $19 billion in the pipeline in step 3. So what we are seeing in those low estimates is, I think, just the start of that curve, and as of right now the number would look insignificant in a range of $1 to $2 billion.

Isn't that correct?

Mr. BECK. About $2 billion is estimated to be collected under the present systems.

Senator MUSKIE. Now the other question is this: It is argued by some, including industries in my own State, that the tax code provides incentives now that are more attractive than involvement in public treatment plants, and that as a result the benefits of joining a public plant have been sufficiently reduced so that ICR really will not work.

Mr. COSTLE. Mr. Beck is trying to whisper in my ear. I am going to ask him to whisper into the microphone instead.

Mr. BECK. That was one of the contentions that was in the report we submitted to the Congress in the spring of 1979, where the consultant indicated that because of industrial development bonds and also the ability to write off certain amortized cost that, in fact, direct dischargers were getting certain benefits with regard to pollution control expenditures. In our more in-depth analysis, which I am going to talk about, we concluded in some instances that is true. There are some tax benefits associated with pollution control investments. But there are also subsidies that indirect dischargers obtain as a result of Federal grants going to a municipal facility. The tax write-offs do not offset the benefits that would be accrued in certain situations associated with grants.

Let me hasten to add one of the problems is you can't make generalizations about any municipal facility or industry. It is really a function of an industrial facility and what it can particularly get with regard to tax writeoffs. For instance, the consultatants assumed that everybody who put in pollution control equipment would be eligible for those tax incentives. In fact, under more careful evaluation it is only about 40 percent of certain properties that would be eligible for the full range of tax benefits. And so it is important that one not make general assumptions about any of these things as it affects a grantee or industry. That is one of the things that our recommendations are trying to deal with, the specifics or merits or any particular situation.

Senator MUSKIE. Mr. Costle, I know you have to leave, and I can't think of a better point at which to move on to Mr. Beck's testimony.

Mr. COSTLE. Thank you, Mr. Chairman. I look forward to seeing you tomorrow. I think we are going to talk about acid rain.

Senator MUSKIE. We haven't had any acid rain yet here this morning.

Mr. COSTLE. I hope that continues.

Mr. BECK. Mr. Chairman, with your indulgence, I would like to elaborate on a few points the Administrator made and try to deal with some of your questions.

First, I think it would be appropriate for me to indicate, since the Agency submitted the contractor's report last spring, it has been doing additional analysis. What we are going to be saying today and when that report is released by the Office of Management and Budget—and we expect that momentarily—it will differ somewhat from what the contractor has said. That should not be perceived as a reflection on that particular consultant, but rather just our views that some of the assumptions that we gave that consultant to look at were limited. For instance, they looked at parity, and there are other issues of substance that should be discussed. And also, the consultant was dealing with certain limited data. While we will be disagreeing with some of the work we have done heretofore, I think it is a normal process of learning more about what we are dealing with.

What is it that we have done to refine the data? The report, when it comes up here, will have expanded substantially the amount of industries we will have looked at. Now we will have looked at an additional 277 industrial facilities. Second, we will have increased the number of municipal systems that we have looked at now by an additional 171, which we think typify the range of municipal systems. And we have expanded substantially the issues we wanted to analyze as we looked at the industries in those municipalities.

We now, as the Administrator has indicated, have begun to look a little more carefully at the subsidy issue as it manifests itself in any municipal system or how it may manifest itself in any industrial situation. We have begun to look much more carefully at what I think is the emerging issue around industrial cost recovery, and that is the financial integrity of the municipal plant. If one takes away industrial cost recovery, or any financing system, what is it we have done to insure adequate maintenance, replacement and operation costs for the system, which I think is more the issue we should deal with than industrial cost recovery.

Senator MUSKIE. Could I at this point emphasize that. I know I have read all the criticism of the ICR, and I have raised a couple question that they raised for me. But I haven't yet heard from those source any alternative, positive suggestion to deal with the question you have just identified: How do we assure these plants meet future needs, are kept up to standard, respond to changing circumstances, including population growth, economic pressures? What will the source of funding be? Is there implicit in that criticism the conclusion that the Federal Government ought to make this a permanent Federal program at a cost of $4 to $5 billion a year? And those numbers are going to rise as inflation comes. Is this an indefinite and permanent budget commitment, in their judgment, or do they have suggestions—and I am putting this

question to them—do they have suggestions for insuring the fiscal viability of these plants, including their ability to sustain themselves into the future? I have not yet heard a proposal by any of the critics of ICR that covers that point. Maybe you have had a different experience.

Mr. BECK. No, Mr. Chairman. I can now cross out one of the points I was going to make, and let me just take your comments and point directly at the proposal we have considered.

Of the things that we have considered as an alternative to the present industrial cost recovery program, first, we have as increased flow exemption, which we don't think eliminates much of the ICR revenues, but does eliminate a lot of administrative hassles, if you will. The second suggestion we have made is if any grantee can demonstrate two things: one, that the costs of generating these ICR revenues are significant compared to the capital that is generated, and, second, that the grantee has a more effective financial system to deal with the operation and maintenance and the replacement cost needs of the system, we would accept that system as a substitute for ICR. We offer that proposal to deal with the very issue that you are suggesting. In certain situations industrial cost recovery may not be the best way to go about generating the replacement cost for a facility. Our feeling is since 1972 many municipal grantees have been developing a financial system of user charges and have been anticipating imposition of industrial cost recovery. If we do away with ICR, we may be losing only $1 or $10 or maybe millions of dollars. If it were to be replaced, then some other system that can be more effective should be put in place. I daresay in many situations that municipalities, when confronted with that issue, will choose to retain industrial cost recovery. I ofter think that one of the things that is really generating willingness on the part of municipalities to get out of industrial cost recovery is the pressure from the industries. I feel it is the Federal Government's role to try to stand on the other side of that pressure to deal with what is the important issue—financing of the system. Our recommendations deal with that.

I might add a few more points, then we can deal with whatever issues you deem appropriate.

Another thing that we have tried to do in this report is to take a look at the distinction between flow, 25,000 gallons per day or 50,000 gallons per day, and to understand a little bit more about the problems of strength associated with that flow. In other words, how much pollution needs to be treated at the municipal plant and what does that do in terms of cost of the facilities. That raises certain interesting financial implications also, because in the draft report we speak of anecdotal examples of where a small town, for instance, attracts an industry into its municipal system and because of that, while it is not taking a large amount of flow, the grantee may be changing rather significantly the treatment configuration it needs, in essence, to service that industrial plant because of the heavy pollution demands from it. That places a substantial financial burden on the municipality, and thus there needs to be some additional participation with regard to the industry, in our judgment, to deal with the financial aspects of that municipal plant.

Finally, in the report that will be forthcoming, we have tried to deal with what I think has been a problem that we have had in the debates around industrial cost recovery, particularly within the Agency, and that is, we have tried to make generalizations. We have tried to assume industrial cost recovery is the same in a big system and in a little system and haven't tried to deal with the distinction in terms of size of facility and even the distinction within the facility with regard to the types of industry and how much demand they are putting on a particular system. I think we have come to understand that the distinctions may be more important than the similarities as we approach any municipality, and hopefully the report deals with that.

Another issue that I think is important, and it goes to the question—and I will elaborate—that you asked Administrator Costle, and that is what is the difference between the projections of revenues associated with industrial cost recovery. The numbers that I think were talked about in 1972 for total return of ICR revenues to either the municipality or the Federal Treasury were in the neighborhood of $4.5 to $7 billion. Since that time there have been certain changes that have been imposed by the law which should reduce those estimates somewhat. We have put a 25,000 gallon per day flow exemption on ICR, so most of those below that level would be out of it. We have had certain amounts of water conservation from industrial facilities, primarily because of them having to pay proportional user charges based on flow and strength. There has been a conservation effort that will, in essence, reduce somewhat the amount of revenues being generated. We have excluded certain industries which are commercial establishments. They do not have to participate in industrial cost recovery. So that should be some reduction in the early estimates in terms of total revenues generated by industrial cost recovery.

It is my personal belief, without data, that the revenues that will be returned by ICR will be greater than the $1 to $2 billion estimated in the Coopers & Lybrand Report. I honestly believe when we really do get hard numbers on industrial cost recovery for all these systems we are going to see it is a larger amount. That is a kind of instinctive look at it. Mr. Chairman, I have to indicate that is a personal opinion and opinions of those who work for me in terms of their judgments at this point.

So at any rate our point is we think that the focus really with regard to industrial cost recovery has to be changed on what are the real issues, and they go to the financial burden faced by a particular municipality. If we replace industrial cost recovery, there needs to be a conscious policy decision to come up with an alternative. We need to do this because in certain instances the pressure will be intense on municipalities if we take away industrial cost recovery in a blanket form. There will be a lot of pressure on the municipalities in certain instances, to do away with this revenue generating device. We may have the effect of creating pollution havens, in effect an industry moving to a better financial situation in a municipality that is not thinking about its future, that mortgages its future, and thus destroys the financial integrity of its system. Whether we do away with industrial cost recovery or now create alternatives, we think that needs to be addressed. That,

in my judgment, is a very important role for national policy to speak to.

So our recommendations are, again, to retain industrial cost recovery, but to offer several administrative vehicles by which we can deal with what we think are the problems. One, increase the flow, retaining most of the capital and at the same time doing away with most of the administrative problems. Offer the opportunities for grantees to demonstrate ICR is insignificant in terms of total capital return to the municipal system, but still put the burden on the grantee to come up with an alternative system. Finally, if any municipality does not want Federal grant money for industry capacity it can develop its own financing arrangements with industry for treatment, and in that case industrial cost recovery would not be needed. We are basically speaking in favor of industrial cost recovery, with some recommendations that we offer for your consideration.

Senator MUSKIE. I would like to expand on one point a little bit to argue that the cost of administering industrial cost recovery more than offsets, in many cases, the benefits in the form of revenues that would be gained. Is that simply a rhetorical argument or is it based on any facts at all?

Mr. BECK. Mr. Chairman, the initial report that was done suggests on average it would cost a grantee roughly $15,000 a year to administer the industrial cost recovery system, and that on average—again, these are generalizations—the revenues that would be generated from industrial cost recovery would be roughly $101,000. Now from my point of view that is a pretty good return on investment. You are getting roughly $86,000 back above the $15,000 investment. The problem that was behind that was the perception by a lot of municipalities that they would only get 10 percent of that $101,000 back in discretionary money, and so that when one looked at $10,000 of discretionary money against $15,000 of administrative cost, it didn't look cost effective; in fact, it looks like the system was costing more to administer than revenues generated. My point is you can't discount the $86,000 going back both to the Federal Treasury and the municipalities for the purposes of helping retire the debt and deal with the future rehabilitation cost. Those things need to be accounted for. In the report that will be forthcoming, I think we are willing to acknowledge that there are certain—I'll give you generalizations—I think we are willing to acknowledge that there are certain situations where the administrative costs really do outweigh the return on investments because of the low number of industries and large residential users and what have you. In some situations we would acknowledge it doesn't make sense to have this administrative burden. But just as there are some grantee-industry relationships at that end of the continuum, at the other end of the continuum there are situations where a lot of capital comes back through industrial cost recovery. I think the Passaic Valley system in New Jersey is a prime example. They generate approximately $2.8 million a year back to the authority—that doesn't include the other half that goes to the Federal Treasury—for the purpose of replacement costs. While that may not be an adequate amount of money to offset that total replacement needs of the facility, there is $2.8 million going in that direction,

and compared to the very slight administrative costs we think it would be absurd to get rid of ICR because we are seriously interested in the financial integrity of that facility. There may be some systems where we would say we should have municipalities make local arrangements, but in others we think industrial cost recovery needs to be retained.

Senator MUSKIE. I hesitate to throw out this next suggestion for reasons that will be obvious, but it makes sense. Have you thought about a policy that would enable the municipality to recover the total grant, including the Federal grant, and retain the total? In other words, the return to the municipalities would be larger. In a sense the intial Federal contribution is a grant—it is not a loan—to the municipality. So would it make sense then to allow the municipality to retain the full benefit of industrial cost recovery if the result is to reduce future demands upon the Federal Treasury to continue a permanent program? You may not be in a position to make that policy judgment.

Mr. BECK. I will tell you our position. Before I say that, let me just give you what I am interested in. I am interested in what I am in, which is environmental protection, and so the more money I can legitimately get directed toward protecting the environment, the better I perceive I am doing my job. Now I understand there are many others who have broader public policy views concerning the importance of running Government in the total sense, so there are some then that would say the 50 percent share coming back to the Federal Treasury is important to pay back a loan that was, in essence, given to municipalities. Obviously the 50 percent coming back to the Federal Treasury may or may not go for pollution protection. So in a selfish sense I woul like as much as I can directed at environmental protection.

The second thing we mentioned in our testimony was that any municipality that could demonstrate the administrative costs were significant and they had another financial system of generating revenue, we would allow them—and I raised this very consciously to the Office of Management and Budget—we would allow that municipality to retain 100 percent of the money. In other words, if they can find some other financing system that made more sense, we would give the municipal system the opportunity to retain all revenue. The benefit from the invironmental standpoint is the alternative system would likely have more money dedicated to rehabilitation, which is important, especially when we are staring at startling numbers of noncompliance related to poor operation and maintenance. So the second option does speak to that opportunity.

The problem is there is a broader public policy issue which is more appropriately addressed by the Congress and other branches of the Federal Government in terms of how much of that grant money should be returned to the Federal Government. But this is the administration's position, and OMB is prepared to let us suggest this as an opportunity for resolving the conflict around industrial cost recovery.

Senator MUSKIE. Of course, the choice might be, from looking at the pragmatic, legislative perspective, the choice really might be between that option and having no industrial cost recovery pro-

gram at all, in which case the Federal Treasury would have lost nothing by the more flexible and generous policy to the local communities. And there is considerable pressure up here to end industrial cost recovery, as you know.

Mr. BECK. That is correct. I am very concerned about the future of the municipal construction grants program, looking another 10 years from now, and unless we start addressing the future funding needs today, we are going to have some very tough public policy choices 10 years from now because we will have mortgaged our future. So I do think it is sound policy to try to get as much money dedicated up front by the users of the system to deal with the future replacement costs of the system. I think that is the most important statement, that we retain industrial cost recovery, and if we can find some ways of dealing with the administrative problems associated with it that is all well and good.

Senator MUSKIE. I address these comments to people in industry who resist industrial cost recovery. It seems to me it is a very businesslike objective to assure the future financial viability of the systems. And second, I am constantly reminded by my friends in the business community that once you put a program into effect in the Federal budget you can never end it. Well, the whole objective here was to put in place a program that would then sustain itself and would not be a permanent drain on the Federal budget. Now this argument is made by my business friends constantly with respect to the rest of the Federal budget. I don't know why it shouldn't apply to this part of the Federal budget as well. I don't ask you to comment on that. I am trying to get these points in the record so they won't be overlooked.

Let me ask you this. Is the Agency fully prepared to begin collecting ICR payment in July if Congress takes no further action? Have you notified the grantees that you are ready to do so?

Mr. BECK. Mr. Chairman, we are prepared to fully implement industrial cost recovery if there is no action on the part of the Congress of the United States.

Senator MUSKIE. Let me ask now some specific questions. Incidentally, getting back to the other point that Administrator Costle addressed, and that is the question of outlay reductions, you were given no choice as between construction grants and other parts of your program.

Mr. BECK. Well, I think that when we were faced with outlay reductions of $102 million, given the relationship of our public works program to the rest of our budget, it de facto took away any choice we may have. It was just a problem of what we could influence within our operating programs, and it would be the choice of putting up the entire resource conservation and recovery effort, the effluent guidelines, and so forth. So it was de facto a nonoption.

Senator MUSKIE. With respect to the numbers Mr. Costle referred to, those numbers do not mean no new starts in 1981.

Mr. BECK. No; they do not. They in fact mean new starts in 1981.

Senator MUSKIE. At a lower level, at a stretched out level?

Mr. BECK. Well, delayed starts in 1981. As we presently understand it, during fiscal year 1981 we would stick with our requested amount and be recouping during that fiscal year the moneys that

were in essence deferred. So in essence it means a slowup of starts, but it does mean new starts.

Senator MUSKIE. To get back to ICR, do you have an estimate of the industrial treatment capacity served by municipal systems?

Mr. BECK. Well, the numbers we have historically used—and again this is where I think case-by-case evaluation will really give us the true numbers—the numbers we have historically used are: 55 percent of the flow is industrial or commercial and 45 percent is residential. Now not all of that 55 percent of the flow is subject to industrial cost recovery because of the 25,000-gallon-per-day exclusion, as well as the way industries are defined. There are many commercial establishments that would not be included in ICR, but are included in that 55 percent. But we are talking about somewhere, with those exclusions, probably in the neighborhood of 30 to 55 percent of capacity attributable to industries subject to industrial cost recovery.

Senator MUSKIE. Now there are some comments, so-called one-horse towns in which there is a single sizable industry and a relatively small community by these standards. Is there a case for treating them differently because of that one factor?

Mr. BECK. As we indicated, anybody, to get out of industrial cost recovery, would have to come in and demonstrate they have an alternative financing situation, and that proposal is in part intended to deal with the one-industry town that has one sizable contributor to the financing of that municipality.

One of the problems that industrial cost recovery does not resolve is the problem of long-term contracting with an industry. And one of the things we do talk about in the report but did not today—and I will use this as an opportunity to elaborate—is our concern that many municipalities have constructed, particularly in the one-industry town, a rather elaborate treatment facility to serve an industry, and that while the industry is obligated during its time that it is hooked up to that facility to basically participate with user charges, if that industry leaves, the portion of debt and maintenance financing that the industry has contributed would be shifted to the non-industry-related contributors to the financial system. We have very great concern about that. We talk about the need for long-term contractual arrangements with industries that demand long-term capital outlays from our grantees.

In Congressman Johnson's area there is a very large plant being built. The grantee, Sacramento, expected two large food processing industries to contribute rather substantially to system costs and payment. The problem that exists now is one of those industries has shut down and the other is threatening to leave, thus causing great concern associated with the financial stability of that plant. So overall, there is the one-industry-town problem, but there is also the long-term contractual relationship problem that we are quite concerned about and we speak to that in our report.

Senator MUSKIE. Incidentally, it strikes me that another option that ought to be examined—and I have no judgment—is to require that cases where both industry and municipal wastes are treated in the same facility, to require industry to raise the capital at that time to fund its portion of the plant.

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Mr. BECK. In fact, the third area of discussion that we offered in our testimony envisioned, in essence, that if any municipality wanted, through whatever bonding mechanism or financing arrangements they so choose, to work out a financial arrangement with that industry, in that situation we wouldn't see the need for industrial cost recovery. But we think there still would be a responsibility on municipalities to demonstrate they have an alternative financing system so we have some confidence in the integrity of the plant.

Senator MUSKIE. I assume, if it chose to go that route, it would get the benefit of the tax incentives that are included in the Internal Revenue Code.

Mr. BECK. I think that is true. To the extent they would be eligible under the tax laws, I would imagine they would get those benefits.

Senator MUSKIE. And they would also buy a piece of the control of the plant, I would think.

Mr. BECK. And have some concern about its long-term reliability, that is true.

Senator MUSKIE. So general taxpayers in the community would benefit from more efficient, businesslike management of the system.

Mr. BECK. That is correct. And that was, in part, some of our thinking that was associated with making that recommendation.

It would also be a function, I think, of how the IRS were to define "purchase." I understand that that is the operative word in our tax laws. But conceptually it sounds as if it might work.

Senator MUSKIE. Of the money made available since 1973, when industrial cost recovery was imposed, how much has been intended for industrial waste treatment?

Mr. BECK. I have to submit that for the record. I don't know whether we even have that number broken out. But if we do, I will submit it for the record. If not, we can probably provide some estimates.

Senator MUSKIE. You may not have this next one either. How much of a backlog of industrial cost recovery payments have built up since the moratorium was imposed in late 1977?

Mr. BECK. The total premoratorium receipts that the Federal Government had received were $595,536. The postmoratorium receipts that have been set aside are roughly $1.2 million, but that is an estimate. So we think that premoratorium we collected revenues of about $550,000, and what has been set aside in the interim is $1.2 million.

One thing I want to explain with regard to these numbers: Many of the plants in which we have invested our public works money are not operational and, accordingly, one would expect that the revenues that will be set aside through industrial cost recovery at this point in time would be low. We anticipate as these plants start to become operational and start to offer the treatment necessary, that those numbers will go up rather significantly.

Senator MUSKIE. I suppose you couldn't give us the estimated annual revenues if industrial cost recovery is fully implemented.

Mr. BECK. I could for the record, I believe. Again, that would be an estimate. The numbers in the Coopers and Lybrand report are

$1 billion to $2 billion. That is a wide range. As I indicated, I suspect that is an underestimate of what the total revenues would be if fully implemented.

The problem associated with this, Mr. Chairman, is we just, as an agency, have really not spent an awful lot of time looking at user charges or at industrial cost recovery in a very precise way. And one of the things I hope to accomplish over the next year or so is, as we get States delegated under the 205(g) program to operate the more day-to-day aspects of the municipal construction grant program, that we are going to be able to devote more of our resources and time and attention to understand the financing of municipal systems. My statement as to what the estimated cost recovery amounts are do not reflect the full attention of our Agency over the last decade to this important aspect of municipal program viability.

Senator MUSKIE. With respect to your proposal to raise the flow exemption from 25,000 gallons to 50,000 gallons a day, could you tell us what types of discharges are already covered by the 25,000-gallon-per-day sanitary waste equivalent?

Mr. BECK. Yes, I can. There is a rather long list of those. We have broken them out in terms of what would happen. We have a list of which ones of those industries are subject first to pretreatment, which of those industries would be excluded—are greater than 50,000—and which of those industries are greater than 25,000. And we can provide that for the record or I can read it.

Senator MUSKIE. No, it will be fine to have it in the record. That will identify those now covered by the 25,000 gallon per day and those that would be added by the 50,000 gallon per day?

Mr. BECK. It would include estimates of those that would be added; yes. It will also speak to which of those industries would be subject to our pretreatment regulations, which is also an important dimension to understand the economics of a particular industry.

Senator MUSKIE. Do conversions of waste loading dramatically increase as flow increases?

Mr. BECK. In certain industries they do. In other industries they do not. There are certain industries which are just water intensive industries, and with them you don't get concentrated pollution loadings. There are others, for instance electraplators where an increase in flow proportionately increases total loading on the system. So again what one has to come to understand is the distinction between flow and pollution loading. Only with that understanding can one begin to make decisions on who should participate in what amounts with regard to the treatment costs.

Senator MUSKIE. By raising the exemption to 50,000, how many dischargers are you potentially letting off the hook?

Mr. BECK. I can give that number to you by percentages. It is an increase above those excluded by the 25,000 gallons of roughly 6 percent. The Treasury and grantees would lose about 4 percent of potential ICR revenues. That is our best estimate. I can provide for you how that translates in terms of total number of industries. I just don't have that with me at the moment. But our feeling is it is a very small percentage number of increase. We don't envision a large population of particular industries getting out by that flow increase.

[The information referred to follows:]

Industry	Total	Indirect Discharges: Total number to be regulated by Pretreatment Regs.	Indirect Discharges: Est. number discharge >50,000 GPD
Timber Products	189	49	0
Steam Electric	150	150	150
Leather	170	170	100
Iron & Steel	238	237	200
Petroleum Manufacturing	48	48	40
Nonferrous Metals	79	57	40
Paving & Roofing	138	0	-
Paint & Ink	1,600	460	0
Printing & Publishing	63,000	2,300	0
Ore Mining	0	0	-
Coal Mining	0	0	-
Organic Chemicals	900	320	200
Inorganic Chemicals	120	108	30
Textile Mills	1,700	915	500
Plastics & Synthetics	160	128	20
Pulp & Paper	260	50	30
Rubber	537	9	0
Soaps & Detergents	450	-	0
Auto & Other Laundries	90,000	1,500	100
Pesticides Manufacturing	46	37	7
Gum & Wood Chemicals	7	6	0
Pharmaceuticals	200	160	150
Explosives	0	0	-
Adhesives & Sealants	500	-	-
Carbon Black	1	-	-
Mechanical Products	71,000	3,000	400
Battery Manufacturing	170	170	100
Plastics Processing	2,700	1,350	100
Foundries	880	880	0
Coil Coating	50	50	30
Porcelain Enameling	138	138	70
Aluminum Forming	70	70	40
Copper Products	57	57	30
Electric & Electronics	8,000	500	50
Electroplating	16,086	6,000	150
Photographic Supplies	110	110	10

Senator MUSKIE. Do many of them involve toxic discharges?

Mr. BECK. We have done a quick look at that, we think we are able to retain most of those that are contributing significant pollution loadings. Again, it is a problem of generalization. There may be exceptions. We think going up to 50,000 gallons doesn't really influence the total pollution loading. But there are exceptions. That is one of the problems. There are uniquenesses with regard to particular industry and flow and their relationship to the treatment facility.

Senator MUSKIE. I understand that some of the systems which have been developed by communities to carry out ICR are quite efficient and impose only a minimal increase in the operating costs, on the order of 1 percent; others impose operating expenses increases of 90 percent or more. Is that true? If so, why?

Mr. BECK. That is correct. In the report we will be having a series of case studies where we have tried to understand the total revenues and administrative costs and how the percentages vary from municipality to municipality. Differences in administrative cost depend on how effective a grantee is in user-charge management. It goes to how good they have been in the financial management aspects of their particular plant operation. Another consideration is, of course, the relationship of the administrative costs to the total revenues that are being recaptured. You might see certain instances where the administrative costs exceed retained revenues.

Senator MUSKIE. With reference to your suggestion that industrial users sign binding contracts to maintain their participation, doesn't EPA have the authority to impose such a requirement as part of permits under 402(b) now?

Mr. BECK. Just off the top of my head—of course, this shouldn't be a binding position—I don't quite understand how. Section 402 of the act basically requires that any permittee has to meet effluent limitations, during the time period they are discharging from a specified location. That means if a business moves out of an existing plant, they would need a permit to discharge someplace else. I don't know how that could be interpreted to bind an industry under a long-term contract with a municipality. Again, that is just a very casual response.

Senator MUSKIE. Well, let's see, the language of section 402(b)(9) gives authority to impose a requirement "to insure that any industrial user of any publicly owned treatment works will comply with sections 204(b), 307, and 308(b)." Section 204(b) is the test of the requirement for user charges in the industrial cost recovery and it contains a requirement that the applicant has made provision that the payment to such applicant by the industrial user treatment is for that portion of the cost of construction and such treatment work that is allocable to treatment of industrial waste to the extent attributable to the cost of construction.

Mr. BECK. Again, it seems to me that could be read to be for the period in which the industry is discharging into the municipal system. It doesn't provide authority to require long-term repayment of debt or repayment of the capital part of that plant financed by the Federal Government for providing industrial capacity.

Senator MUSKIE. Well, it says that portion of the cost of construction not the cost of operation, the cost of construction. If a contract provided an industry to bear its proportionate share of construction, that obligation wouldn't end when it moved.

Mr. BECK. As I say, our report deals with the problem of long-term financial indebtness, where there has been a sizable part of a plant designed and constructed for an industry. I think we ought to go back and read that section a little more carefully and hopefully, Mr. Chairman, as you read our report, maybe that point is something that needs clarifying in the act. Maybe some clarifying language, if needed, might deal with that particular problem. Again, I don't want to give a casual response because I think it deserves a more careful analysis.

Senator MUSKIE. I think it is fair to make the observation that your proposals are in a different context than that provision of the law. You are trying to frame options and conditions for avoiding industrial cost recovery.

Mr. BECK. That is correct, but contractual arrangements relating to more than the local share of construction costs should be required under the existing system, too.

Senator MUSKIE. And it might be in that context that conditions might be more attractive and persuasive than the present state of the law.

Mr. BECK. That is correct. And it might be more attractive when one looks at the specifics of any particular municipal system, where one can see more clearly the financial relationship between the discharger and the grantee, because there it takes on greater meaning and greater understanding.

Senator MUSKIE. With respect to those systems in which industrial users are complying with ICR, is that done through the user charge in all cases or is it done in some other way?

Mr. BECK. My understanding is that the administrative way that the revenues are apportioned is a function of a similar administrative mechanism associated with user charges. The fixed administrative costs associated with going from a user-charge system to the industrial cost recovery system are not all that great. ICR differs from user charges because ICR requires that there be some initial apportionment of capital cost related to a specific industry is treatment capacity needs. Once an ICR charge is established, a bill reflecting that charge is sent to industrial user's throughout a grantee's recovery period. There are variable administrative costs associated with billing and account maintenance, but the major yearly effort involves sending a bill with a fixed charge to industry. It is my understanding that this committee is going to be having witnesses tomorrow who have actually been in the business of developing industrial cost and user-charge systems, and they will be much more familiar with the details of how they do that. It has been characterized to me as just a simple kind of addition with regard to the mechanics of it.

Senator MUSKIE. Have you had experience with communities which have offset ICR charges with reductions in the industry's property taxes?

Mr. BECK. Mr. Chairman, I have, particularly in my experience as a regional commissioner, seen all sorts of special discussions

that have gone on between municipalities and industries around the issue of taxing. I must acknowledge to you I have never really pursued them to the nth degree to see the ultimate solution. I know there are active discussions going on between industry and municipalities with regard to staying viable and being retained in particular areas.

As a person who is interested in the environment, I have sometimes been a little paranoid in thinking potentially there are discussions going on to retain an industry in a particular municipality that may result in the long-term injury to the environment. And particularly, industrial cost recovery strikes me that way because in certain situations, in order to maintain the financial integrity of a POTW and thus the operation and maintenance of that system to meet environmental standards, you can't give up on some part of the financing. I have often though eliminating revenues obtained through industrial cost recovery will lead to inadequate plant maintenance and degradation of the environment.

Senator MUSKIE. In the case of industries which build their own treatment facilities, are those facilities treated for local tax purposes on a par with, say, productive facilities of an industry? To what extent is there a local subsidy for treatment facilities built by industry?

Mr. BECK. I really can't speak to that, Mr. Chairman. That is something that would be more appropriately addressed to municipalities. From our standpoint though, there is an environmental advantage to the effluent limitation process, applied to direct dischargers that cannot be duplicated with industries which are discharging into a municipal system. Again, this is a generalization, not always true, but generally true, because traditionally indirect dischargers are more economically deprived, and taking into account some of the economic hardship the urban area industries have it sometimes results in a lower technology being installed, if you will, on a municipal system, and a higher technology, a more costly technology, on direct dischargers. So there is that kind of favoritism through national standards that potentially can be seen. But I can't speak to just what are the different municipal taxing benefits offered to direct versus indirect dischargers.

Senator MUSKIE. One final question. I gather there is something of a problem between IRS and EPA, a difference of opinion as to whether or not process changes which reduce pollution loads are eligible for the tax incentives that are available for treatment facilities. I wondered if I have stated the problem corrected, and if I have what is your view of that difference? I gather IRS has become, or at least taken unto itself the mantle of expertise in pollution treatment and has defined it so that the tax incentives are more limited than maybe some of us in Congress thought they were intended to be.

Mr. BECK. Mr. Chairman, the IRS does limit the tax incentives to end of pipe treatment as opposed to process changes. In fact, that was one of the reasons why we felt that the consultant's report that we submitted last spring misstated some of the benefits that might be accrued to direct dischargers, because in most instances they would not get the benefit of those tax incentives for process changes.

With regard to our position with how broadly investment incentives should be applied, obviously tax incentives should be given for things that would improve the environment. The agency would like incentives for pollution control to be as aggressive and far-reaching as possible. But again there are others within the executive branch who have certain other factors that they need to balance. I, quite frankly, do not know what the administration's position is on that particular aspect. However, I will go back and explore it more fully.

Senator MUSKIE. Well, it ought not be a unilateral IRS decision.

Mr. BECK. That is true.

Senator MUSKIE. Do they consult with EPA on such things?

Mr. BECK. I am sure they did. They did not consult with me.

Senator MUSKIE. Why are you sure? You would like to think they did.

Mr. BECK. I would like to think they did.

Senator MUSKIE. You know it is almost like the problem that President Bani-sadr has in Iran with the militants. It is hard to establish communication and it is hard to determine who has the authority to act. In any case, I ran into that issue this past week and I thought I would put the question to you. It is one we have to explore.

Well, I expected this morning's session would be longer and more controversial because, as you know, there are several members of this subcommittee opposed to ICR. I would hope they would take advantage of this hearing to raise the issues which trouble them, and for reasons which are I am sure are sound they are not here. I have tried to raise some of the questions I thought they might raise, but I probably didn't do it with the vigor or enthusiasm they may have. So we may not have as good a record on both sides of the issues which might be more useful to those who are more objective.

In any case, local officials and affected industries will testify on Thursday at 10 a.m. Thank you very much for the testimony this morning.

Mr. BECK. Thank you, Mr. Chairman.

[Whereupon, at 11:55 a.m., the subcommittee recessed, to reconvene subject to call of the Chair.]

[Mr. Costle's prepared statement follows:]

STATEMENT OF
DOUGLAS M. COSTLE
ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION
U.S. SENATE
MARCH 18, 1980

Mr. Chairman and Members of the Subcommittee, I am pleased to be here this morning to discuss with you pending reauthorizations of the Clean Water Act as well as the status of the ICR program, specifically some preliminary thoughts from EPA's on-going evaluation of that program. Accompanying me this morning is Chris Beck, Assistant Administrator for Water and Waste Management.

I would like to begin by addressing the Clean Water Act reauthorization request which was submitted earlier this month to the Congress. Before turning to the specific programs, I would like to note at the outset that we believe the funding levels we have requested are appropriate to permit EPA to carry out its present program responsibilities. The requested amounts also represent sound budgetary policy in light of our present economic situation. For this reason, we urge the Committee to adopt our appropriation reauthorization levels.

Section 104

Reauthorization is requested for section 104 totalling $23.2 million, of which $20.7 million is for section 104(u)(1) and $2.5 million is for section 104(u)(2).

The appropriation reauthorization request for section 104(a)(1) is $20.7 million for salaries and expenses, and abatement, control and compliance for the following program areas: Water Quality Monitoring ($10,645,000); Great Lakes program ($6,529,000); Chesapeake Bay program ($2,009,000); and manpower training ($1,514,000).

- Included under the water quality monitoring and analysis program operations are efforts to manage toxic pollutants and continued implementation of toxic water monitoring strategy. This includes providing pollutant control strategies based on assessments of environmental distribution and exposure/risk analysis; assisting in establishing the basis for the section 307(a) toxic list;

assisting States to define areas where BAT may not be adequate to control pollution; and assessing the sources of toxic pollutants entering POTWs and developing recommendations for appropriate regulatory strategies. The program also includes: toxic pollutant data collection and analysis; guidance and direction for State water quality monitoring programs; guidance and review for water-quality-based controls and wasteload allocations; operation of national monitoring networks, including the National Water Quality Surveillance System; operation of water quality data management and information systems; and development and implementation of a water monitoring strategy to collect and analyze data to support EPA management.

- Under the Great Lakes water quality program, State water quality standards and management plans receive special attention to insure that both are supportive of the

objectives contained in the international Great Lakes and toxic and hazardous material control programs as well as airborne pollutants programs. We plan an increased emphasis on translating pollutant source data into implementable regulatory programs. Certain surveillance programs will concentrate on Lake Ontario and on increasing quality control and data interpretation for the fish and sediment analyses programs.

- The Chesapeake Bay Program will continue to conduct the final integration of the research in the development of a predictive capacity to assess the effects of pollutant loadings to the system. The environment management study will assess the existing management structure and propose viable control alternatives to achieve effective management of the Bay, its uses and resources. Reports for toxics, submerged aquatic vegetation, eutrophication, and environmental management will be produced and integrated into information useful to Bay region decisionmakers.

- Certain technical training efforts are carried out under section 104(g)(3) of the Act. Although the program will continue to provide specialized technical training, we plan, over the next few years, to place a greater emphasis

on training programs to assist State assumption of construction grants management responsibilities under the 205(g) program.

In addition to the request for section 104(u)(1) reauthorization, we have requested an appropriation reauthorization of $2,524,000 under section 104(u)(2) of the Act which authorizes section 104(g)(1) support for manpower training efforts associated with publicly owned wastewater treatment works. The focus of the Federal effort at present is training instructors and developing curricula to provide States with support for actual operation of training programs.

I would like to briefly mention one other related program for which EPA has not requested reauthorization. Under Section 104(g)(2), EPA has in the past accomplished water quality related manpower forecasting. This function in recent years has been integrated into an overall program in our Research and Development Office. For this reason, we are not requesting reauthorization of this program under section 104(u)(3).

SECTION 106

The section 106 program is an integral part of the water pollution control program providing funds to assist the

States in carrying out and administering a wide variety of pollution control activities under the Clean Water Act.

Traditionally, the States have used section 106 funds to supplement State resources devoted to monitoring, enforcement, section 402 permit activities under the National Pollutant Discharge Elimination System (NPDES), municipal operations and maintenance and training, and a limited number of individual State activities. In addition, section 106 funds have been utilized by States to implement the construction grants program management. As States move toward delegation under section 205(g) of the Act, some of the section 106 funds previously used for that program administration have been directed to meeting new environmental program efforts such as quality assurance for monitoring, toxic problem identification, and best available technology (BAT) requirements. This has required relatively constant Federal funding under section 106.

At present, Federal funds compose about one-third of the total monies used to support administration of pollution control activities under section 106. For Fiscal Year 1981, we have requested an authorization appropriation of $48.7 million which we believe will provide necessary program

assistance to the States. Currently, the States are contributing approximately $100 million annually to administer and implement 106 programs.

State efforts funded under section 106 are crucial to the operation and administration of effective State water pollution control programs. The activities discussed below complement one another and must be managed in concert for the States to effectively benefit from the already limited available resources. The existing State levels of effort among these diverse but complementary program activities provide an excellent basis from which to move closer toward the integrated State environmental management plans being developed through the State/EPA Agreement process.

Since 1976 the Regional Offices have been primarily responsible for managing and monitoring the State 106 grants. We are currently involved in a major effort to evaluate and upgrade management of 106 grant funds in an effort to ensure that States and EPA agree upon cost-effective and timely use of the funds in all program activities.

Primary pollution control efforts under section 106 include:

General Planning: Includes water qualilty standards,

municipal facililty planning not funded under 201, wasteload allocation development for water quality based limitations beyond CWA minimum requirements, and 208 dredge and fill programs. Nonpoint source planning is supported by 208 funding.

Permits, Compliance, and Enforcement: Includes municipal and industrial permit issuance, compliance evaluation and enforcement of 404, and NPDES and State permit programs. Thirty-three States have accepted delegation. Additional States are seeking delegation which requires substantial improvements in the entire water quality management program (e.g., monitoring and water quality standards). EPA, in administering the program in non-delegated States, is assisted by those States, particularly in the areas of compliance and enforcement.

Most permits will be due to be reissued by 1982. This is a substantial workload. Permits will be revised for conventional and non-toxic pollutants under the 1977 Amendments. Toxic pollution control (best available technology (BAT) or equivalent) and pretreatment provisions must also be incorporated as required by the 1977 Amendments. This represents a substantial shift in the program from conventional polutants (e.g., biological oxygen demand and fecal coliform) to toxics.

Under section 404, a new provision under the 1977 Amendments authorizes State delegation of the permit program for dredged material. Such delegations generally will require new programs at the State level similar to NPDES.

Monitoring: Includes ambient monitoring for general determination of water quality for ambient waters, and intensive surveys for general problem identification and determination of industrial and municipal wasteload allocations for permits. In addition, monitoring must support NPDES and pretreatment regulatory programs for compliance and enforcement. As the water program focuses on toxics, monitoring will be increasingly complex and resource intensive requiring more sophisticated equipment and operator personnel.

Operation and Maintenance: Includes State programs to improve operation and maintenance of sewage treatment plants and operator training. This area is of paramount importance to assure the billions invested in construction sewage treatment plants result in improved water quality and facilities which are operated up to design levels.

Emergency Response: Includes program administration and emergency response to spills threatening water quality. Clean-Up costs are not eligible.

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Pretreatment: Includes development and operation of State pretreatment programs as required by the 1977 Amendments for industries which discharge toxics into municipal treatment plants. This program impacts the NPDES program, which must incorporate pretreatment requirements into municipal permits, and monitoring to support the NPDES program.

An agencywide work group will be formed soon to develop and implement ways to assure that 106 funds are effectively utilized and managed at the State and EPA Regional levels. The group will be guided by the following assumptions:

- Integrated priorities, across traditional program lines, on an annual and long-range basis, must be established.
- Improved program evaluation and accountability are essential.
- Improved procedures for management and fiscal accountability are needed.
- Any changes in 106 management must be approached in recognition of State concerns and the need for program stability.

Guidelines for program implementation resulting from this work group effort will be an important component of the section 106 state administration grants.

Section 208

Under section 208, Congress gave EPA a mandate to address water pollution problems. The 208 plans of the States and areawide agencies, when complete, will address both point and nonpoint source controls. States and areawide agencies have now virtually completed the major elements of the point source program which was the initial priority of the section 208 work. We are now turning toward the important nonpoint source needs in the plans.

Development of nonpoint source control strategy began about two years ago when EPA initiated a major overhaul of 208 program management designed to make it more effective. One of the most important changes was a focus on building a technically adequate data base.

A large body of research in the last decade has produced evidence that nonpoint sources contribute a major share of many serious pollutants to our lakes and streams. More than 68 percent of our 246 river basins experience problems from agricultural sources; 52 percent from urban runoff; 43 percent from septic systems; and 30 percent from mining. Studies of individual cities have shown concentrations of certain toxic metals in stormwater runoff many times greater than concentrations in municipal sewage.

Without effective control, nonpoint source pollution will prevent achievement of our 1983 "fishable and

swimmable" goal in parts of the waters of at least 37 States. There is no doubt that nonpoint sources have a direct and serious impact on the uses Americans make of their water. Nonpoint sources provide a pathway for toxic and hazardous pollutants to enter the aquatic environment. We are concerned with the frequent findings of heavy metals in urban and mining runoff, of pesticides and herbicides in agricultural runoff, and of industrial waste and pesticides in our ground water. In many urban areas, nonpoint pollution has raised the cost of providing safe drinking water.

Behind statistics like these, there are also real human impacts -- uses of water denied to individual communities. On Long Island, urban runoff has closed beaches, shellfish areas, and drinking water wells. Urban runoff in the Denver area has rendered much of its water unsuitable for municipal supply, irrigated agriculture, and recreation. Certain Great Lakes fish violate FDA standards for interstate commerce because of PCB contamination attributed to nonpoint sources. Salinity reduces crop production on 25 percent of the irrigated land in the West. And the Nation pays more than 500 million dollars a year to remove sediment from valuable reservoirs, harbors, and channels.

Within the next few years, we expect to have proven the effectiveness and applicability of a broad set of

agricultural, urban stormwater, and ground water controls. By 1983, we will be able to recommend cohesive strategies for urban stormwater control and ground water protection. We will have provided assistance to scores of communities to carry out nonpoint source controls, and will have set the stage for wide implementation.

Our strategy has both technical and managerial aspects. Our technical strategy is to test the cost-effectiveness of urban, agricultural, and ground water controls by applying them under controlled conditions in prototype projects. These projects represent a range of climatic, hydrologic, and physiographic conditions. In-depth water quality monitoring -- before and after controls -- will improve our understanding of the cause-effect relationships between pollution controls and stream water quality. These prototype projects will develop data not currently available. Having tested nonpoint source control technologies in the field, we will transfer proven, cost-effective controls to other communities, saving them considerable time and expense as they develop their own solutions.

For urban runoff, we are implementing non-structural stormwater controls in 30 carefully selected urban areas at a total cost of 20 million dollars through FY 1981. For example, one project in Austin, Texas is protecting a lake from pollution by nutrients, sediment, and heavy metals

through a combination of detention basins and locally developed ordinances. Another project, in Santa Ana, California, is using oil and grease traps and other measures which will reduce bacteria, heavy metals, and sediments now contaminating an estuary. At the end of three years, we will have data to answer most of the critical questions surrounding urban runoff and its control.

For agriculture, we have initiated nearly 30 projects with the Department of Agriculture to test selected controls "on the ground" to determine rancher and farmer attitudes, and to document costs of controls and effects on stream quality.

Farmer participation has been high in one upstate New York project, aimed at keeping barnyard and dairy wastes from degrading the Cannonsville Reservoir, a drinking water source for New York City. Another project in four Texas counties is keeping animal wastes out of streams by constructing settling ponds and lagoons and building diversion channels around feedlots and holding areas. The benefits of these and other 208-funded projects will be widespread and will include better crop yields in some areas. Implementing the Rural Clean Water Program will assist both EPA and the Department of Agriculture in reducing agricultural pollution in problem watersheds as well.

Our strategy also includes prevention for ground water contamination. Nearly 80 percent of our cities, representing 30 percent of our population, rely on underground sources of drinking water and another 10 million families use individual wells. Localized contamination problems are becoming more widespread, often associated with nonpoint sources of pollution and increasing population density. In 1980 and 1981 we are initiating 20 ground water prototype projects to develop and implement control strategies which will be transferable to other parts of the country.

On the management side, one of the largest issues in nonpoint source control is financing. The most practical approach to achieving implementation is to ensure that the plans include fiscal impact analysis and that State and local decisionmakers have the information to make sound choices among alternatives. We have, therefore, initiated a financial management assistance project to increase the capabilities of State and local water quality managers in fiscal policy, financial planning, and management approaches.

Our funding request of $34 million for these nonpoint source activities will be adequate for fiscal year 1981 operations.

Section 314

Section 314 of the Clean Water Act authorizes a program to restore and protect the Nation's estimated 38,000 publicly owned freshwater lakes.

Until recently, the program effort was directed toward developing effective lake restoration methodologies, i.e., the actual prevention and clean-up mechanisms. The program has now attained a level of maturity sufficient to shift administration toward full scale implementation. A range of techniques have been proven as effective lake restoration and protection measures applicable by States and localities in a wide range of site specific problems. In addition, with the recent promulgation of the section 314 cooperative agreement regulations, which require a close working relationship between EPA and the States, State lake restoration programs can be fully incorporated in annual State/EPA Agreements.

With the current thrust of the program shifting toward restoring lake water quality, as opposed to demonstrating clean-up technologies, we anticipate from 30 to 35 projects may be approved for funding during the next year.

To date, grants have been awarded in 36 States to classify lakes according to trophic condition (up to $100,000 per State), analyze pollution problems and design an engineering solution (diagnostic/feasibility studies, up to $100,000 per lake), and implement controls (50% Federal share, no limit).

Under this program, we have also funded diagnostic/feasibility studies as a part of the President's Urban Initiative as well as several projects in conjunction with the Department of Agriculture's Rural Clean Water Program.

The benefits that can be realized as a result of lake restoration projects are many. The most evident are improved fishing and swimming, which are the two basic goals of the Clean Water Act. However, measurable benefits in other areas are also being realized, including:

- improved flood control -- healthy lakes provide better impoundments in controlling wet weather flood waters;
- property value increases and local economic development -- useable lakes serve as recreation and development areas that benefit individuals, municipalities, and industries;

- fish/wildlife preservation -- healthy lakes foster habitats and a better ecological balance for fish and wildlife;
- agricultural productivity -- controls designed to prevent eutrophication of lakes through prevention of soil loss help to maintain agricultural productivity; and
- public health -- in addition to providing improved water quality for recreational activities, clean lakes provide the benefit of reduced drinking water treatment costs.

In order to insure that available funds are directed toward projects that provide the most public benefits, EPA is conducting an intensive evaluation of completed and ongoing lake restoration projects. The first results in a review of some 28 clean lakes projects have indicated that almost all projects accrue benefits in each of the above categories and that over 80% of the projects have accrued direct measurable benefits that are greater than the costs of clean-up and maintenance.

To implement this program for fiscal year 1981, we have requested an appropriation authorization of $13,500,000 which we believe will permit implemention of proposed operations for the coming year.

Section 517

This section of the bill contains general reauthorization of EPA's Clean Water Act efforts which are not specifically authorized under the Act. This covers personnel and administrative related expenses and contract support for most of our water programs. Programs covered in this reauthorization request include the effluent standards and guidelines program, the NPDES permit and enforcement program, management of state program grants, and construction grants program management including resources for the Corps of Engineers/EPA Agreement for construction grant management activities. We have requested an appropriation reauthorization of this section in the amount of $146.4 million for fiscal year 1981.

ICR

Let me now turn to the issue of the Industrial Cost Recovery (ICR) provision of the Clean Water Act.

The congressionally adopted moratorium on ICR charges, in 1977 and then again in 1979, was to permit a review of the effectiveness and workability of the program. EPA contracted for such a study, the results of which were submitted to the Congress in January of 1979. However, neither we, nor the Members, were satisfied with the approach taken in conducting that study and we have since been conducting an in-house review of the program objectives and potential effectiveness. That review is not yet completed, but we would like to provide you with some preliminary thoughts resulting from our on-going evaluation, which we believe are relevant to your current consideration of the appropriate approach to the ICR program. We will be submitting our report and recommendations to the Committee shortly, but I would like to take a few minutes now to indicate some ideas from our preliminary analysis.

First, it may be possible for an industrial cost recovery program to achieve the original intent of Congress - the elimination of a preferential subsidy to industries discharging into publicly owned wastewater treatment systems. Our review makes it appear that industrial users

of POTWs do, indeed, enjoy some degree of subsidy in comparison to similar industries which treat and discharge their own wastes.

The extent and importance of this subsidy is difficult to quantify and depends on a number of factors such as location, type of discharge, flow and loadings, sophistication of the waste treatment process, etc. In some situations individual industries clearly find it economically preferable to stay out of the system and develop their own treatment capacity. Nevertheless, it is fair to assert that indirect dischargers are relieved of the financial burden of raising capital for development of plant facility not directly related to increased production; they are relieved of bearing the full market cost of that money which their counterpart industry has to bear in the financial market; and in many cases they are also spared the substantial management, administrative and legal costs associated with operation and maintenance of a treatment system, as well as the requirements for application of a discharge permit and accompanying monitoring and reporting requirements.

Another consideration which the Agency believes argues persuasively for the maintenance of a system of dedicated revenues, such as ICR, is an increasing apprehension about the financial capacity of municipalities to make necessary

operational improvement, facility replacements and upgradings in the absence of an earmarked pool of revenues.

Most grantee revenue systems now in place are designed only to repay past obligations (debt service) and to provide for actual annual operation and maintenance expenses. Few grantee revenue systems include a charge for major system improvements and rehabilitation that will be required in the future.

This results from a failure on the part of most grantees to have in place revenue programs which forecast long-term capital needs and identify potential financing to cover those needs. The absence of this planning component assumes treatment systems now being constructed will always be adequate to satisfy a grantee's needs and will never require major rehabilitation. This is not a valid assumption unless Congress intends to continue providing municipalities with sewage treatment construction grants after all first-round grant needs have been satisfied. Given the magnitude of present unmet needs for basic treatment facility, EPA could not support expanding grant eligibility for a new category of sewage facility reconstruction. For this reason, we are convinced that economic independence for local sewage treatment programs is essential. ICR is one component, in some cases a small one, in the local sewage treatment revenue programs that can be of assistance in generating

income dedicated exclusively to treatment system improvements.

One thing which is clear in our evaluation of the application of ICR to individual municipal systems and to the participating industrial users is that no one grantee and no one industrial user is alike. Each public system is different with different facilities, different service constraints, and different administrative, management and operational considerations. Likewise, the financial, physical and industrial operations considerations which compel industry to either tie into or stay out of a municipal treatment system are peculiar to that specific industry, its location, market, economic health, tax situation, etc.

For this reason, it is very difficult to generalize about the uniform application or removal of ICR systems across the nation. Some of the options which we have considered attempt to accommodate this situation by providing a proces which permits more flexibility in consideration of the individual circumstances of the grantee and its industrial users.

If Congress decides to retain ICR as an element of the Federal Construction Grants Program, we believe that measures should be considered which will alleviate the

administrative burden imposed on some grantees by allowing more flexibility.

One such potential measure would be to increase the flow exemption from 25,000 gallons per day (GPD) to 50,000 GPD of equivalent sanitary waste. Our preliminary analysis of this level of exclusion indicates that it would exempt 83 percent of industry now using municipal treatment systems from ICR requirements while retaining 87 percent of the potential ICR revenues. As an additional increment to the existing statutory limitation of 25,000 GPD, it would exclude an additional 6 percent of industry while reducing receipts by 4 percent. This would significantly decrease billing and other administrative requirements for grantees.

In addition to lessening the administrative burden on certain grantees, an increase in the GPD flow exemption would benefit a greater number of small firms that in many instances are unable to afford or obtain financing for self-treatment facilities. Many of these firms are "family businesses" in urban areas. A significant number would be considered marginal according to standard profitability indicators and would probably cease operations if required to pay for sewage treatment capacity.

A major disadvantage to this option is that grantees would have less incentive to inventory industrial users and

charcterize process waste streams. This information is important to protect plant performance and sludge.

Another modification EPA is consideraing would be to permit grantees flexibility in application of ICR. Under this approach, grantees could be exempted from ICR program requirements upon a satisfactory showing that ICR revenues are not needed in meeting long-range obligations for treatment system improvement or rehabilitation. In other words, if a grantee can demonstrate its existing funding mechanisms provide for future capital expenditures and ICR insignificantly contributes to the grantee's funding program, ICR program involvement would not be required.

An exempted grantee should be required to demonstrate elimination of ICR will not result in a disproportionate share of current and future treatment system costs being imposed on residential users of the POTW; rather, existing funding mechanisms must require industry to pay its share of future treatment system construction costs. Industry's total share of costs may be retained by the grantee or a portion of the payment could be returned to the Treasury if industry receives significant benefits from the sewage treatment construction grants program. Of necessity, each case would have to be judged individually, and at that time, a determination could be made regarding whether a grantee

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should return a portion of the industry payments to the Federal Government. All revenue collected from industry and retained by the grantee should be dedicated to treatment system improvement, some of which could be tailored to industrial treatment needs.

Although this approach may be appropriate for those municipalities which can make the threshold showing that ICR revenues would not significantly contribute to future capital requirements, we are convinced that in certain instances, ICR program participation probably should be required. There are many grantees, especially small grantees, that reserve up to 90 percent of treatment capacity for one or a few industrial users. In some cases, the system itself was specifically designed to accommodate the particular waste loading of the industry. These grantees could not afford to operate and maintain a treatment system if the primary industrial users withdrew from the facility, and without a mechanism for recouping construction costs from these users, these grantees could not finance system improvements without imposing a significant financial burden on other users.

An additional option for consideration is to permit grantees to avoid ICR requirements if industrial capacity financing is not sought from the Federal Government.

Under this option, grants would encompass only domestic treatment capacity and industrial users meeting the established flow exemption. In new treatment system construction, the grant amount would be based on a model plant designed to serve a specified domestic population. A grantee would be permitted to treat industrial wastes, but the grantee and the future industrial users would be required to arrange private financing to raise funds for constructing capacity reserved for industry's use.

This option has several advantages to the grantees not found in the current ICR program. Industrial users and grantees would have an ongoing financial interest in the treatment system. Industry, by virtue of its bond obligation, would not withdraw from the treatment system without financial liability, and both the grantee and industry would be concerned with treatment system performance and rehabilitation.

The primary advantage to the government under this approach is that it would provide a strong incentive to construct cost-effective treatment processes that are sized according to needs and include a minimum of speculative treatment capacity. Industry has no incentive to accurately project its treatment needs under the existing ICR program. Currently, industry estimates its needs but often uses less than is constructed for its use. In such cases, ICR is charged only for capacity actually used, and

domestic users are required to make debt payments on excess capacity. Requiring industry to share in treatment system financing will encourage proper sizing of treatment facilities and discourage industrial withdrawal.

In addition, Congress might consider a modification to the program in those instances where Federal financing is sought under conditions established in the ICR program. Under the existing requirements, there is no contractual obligation on the part of an industry to remain with a POTW after construction is complete, even though capacity has been incorporated for industrial use. This is not a sound business practice. For this reason, it may be helpful to consider a requirement that industrial users sign binding contracts guaranteeing their participation and obligation to pay for specified treatment capacity. Such "purchases" should include a shorter recovery period and interest charges.

This would offset the present impact of the ICR program under which grantees and the Federal Government receive deflated dollars. If a 5- or 10-year payback period were adopted, the time interval would more closely reflect time frames used by corporate planners and long-term financing practices now being considered by the financial community. Additionally, the interest charged to industry could be geared to the prevailing rate period on Federal securities.

This option also provides industry and grantees with an incentive to manage the treatment system and effectively plan for growth. Most grantees now acquire growth capacity by expanding or constructing new treatment system. If industry "purchases" capacity, industry and grantees can negotiate process changes that result in reduced capacity requirements for an individual industrial discharger. The excess capacity can be sold by industry to the grantee at a cost proportional to the industrial user's actual investment. The grantee can then use the excess capacity to treat domestic flows or to accommodate a new industrial facility, decreasing new construction requirements.

These then are options our analysis is considering. I have gone into these options in some depth because I realize the importance of the future direction of the ICR program not only to this Committee, but also to the municipalities and industries affected by the implementaation of the program. I am sorry that we are not able to submit our final report to the Committee at this time, but I hope this discussion will enhance your understanding of this important issue.

This concludes my prepared statement. I will be happy to answer any questions the Members may have at this time.

INDUSTRIAL COST RECOVERY

THURSDAY, MARCH 20, 1980

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION,
Washington, D.C.

The subcommittee met at 10:05 a.m., 4200 Dirksen Senate Office Building, Hon. Edmund S. Muskie presiding.

Present: Senators Chafee, Stafford, and Burdick.

OPENING STATEMENT OF HON. EDMUND S. MUSKIE, U.S. SENATOR FROM THE STATE OF MAINE

Senator MUSKIE. The committee will be in order. This is the second day of hearings on the industrial cost recovery program of the Clean Water Act.

On Tuesday, we heard from the Environmental Protection Agency. Their testimony revealed some interesting information which provides a very useful counterpoint to the arguments made by those who favor repeal of the industrial cost recovery program.

For example, EPA has found that, as a general rule, the tax advantages gained by self-treaters are usually outweighed by the capital subsidy and administrative simplicity enjoyed by those who discharge through a municipal system; EPA has found that industrial cost recovery revenues returned to the municipalities are an essential step in assuring local self-sufficiency; and EPA has found that, when fully implemented, the industrial cost recovery program will return significant amounts of money to the Federal Treasury.

I am encouraged by these findings. I believe in the wisdom of the principles we wrote into the Clean Water Act in 1972—that the Federal Government should ask industries that receive a benefit from municipal sewage systems to establish mechanisms for stable long-term financing for local sewage treatment projects.

I believe that the industrial cost recovery program is a good way to achieve those goals.

I look forward to hearing from our witnesses this morning, and I hope we will receive a balanced presentation of this issue. For those who endorse the repeal of the industrial cost provision, I would like to hear suggestions for alternative schemes for achieving those goals I have already mentioned. In a year of severe budget cutting, the Congress cannot entertain legislation that will repeal existing law which replenishes the Treasury by recovering a subsidy.

I welcome our witnesses this morning, and may I suggest that we have all of you come forward to the witness table. We will proceed

in a panel format where each of you will make your presentation in turn. The members can then direct their questions to the panel as a whole or to individual members. I would like to ask each of you to keep your oral statements to 10 minutes or less. Additional testimony can, of course, be submitted for the record.

The members of the committee, I hope, will be here to put the questions with which they have belabored you for the last couple of years. They may not have a better opportunity to do so.

This morning we have with us Mr. K. R. Harrington, director, Department of Water and Sewer Services, Nashville, Tenn., who is here on behalf of the Association of Metropolitan Sewage Agencies; Mr. Harold H. Hensold, Jr., national director, State and local government services, Arthur Young and Co. of Newark, N.J., and Harvey Goldman, principal coordinator of services to EPA Grantees, Arthur Young and Co., Newark, N.J.; Donald J. Kirk, manager, environmental engineering, Heinz, U.S.A., Pittsburgh, Pa. On behalf of the National Food Processors Association; Leonard Saulter, president, Guilford Industries, Inc., Guilford, Maine, on behalf of the Northern Textile Association; and Frank Orthmeyer, city engineer and director of public works, Grand Forks, N. Dak.

Gentlemen, the floor is yours. Would you start, Mr. Harrington.

STATEMENT OF K. R. HARRINGTON, PRESIDENT, ASSOCIATION OF METROPOLITAN SEWERAGE AGENCIES

Mr. HARRINGTON. Thank you, Senator Muskie. My name is K. Ray Harrington. I am the director of the Department of Water and Sewerage Services of Nashville, Davidson County, Tenn., and president of the Association of Metropolitan Sewerage Agencies, AMSA.

AMSA is comprised of 75 wastewater treatment agencies of the Nation's major metropolitan areas. Our members provide services to over 60 million people. We are the ones who actually clean up the water, every day, and it is that experience which lies behind our testimony today.

AMSA favors the repeal of ICR. This position was adopted by our members, and a copy of it is attached. There are several very practical and important reasons why repeal is needed.

Many of our members believe the administrative costs associated with the collection of the ICR fees will be a substantial portion of the fees they are able to collect. The city of Dallas, for example, has estimated that it will have to spend $2 for every $1 it collects from ICR.

Other figures, while not as dramatic, indicate that the administrative burdens associated with ICR make it an inefficient way to produce revenue.

AMSA has advised the Congress before that it believes that ICR costs, when added to existing pretreatment costs and user charges already being borne by industry, may force large plants from participation in publicly owned treatment systems. These industries may find that with ICR, it is more cost-effective to provide for their own onsite treatment and disposal than to continue to pay the various costs associated with remaining in a public system. The consequences of such departures is potentially very serious. For one, the operation and maintenance costs for a system whose capacity was designed for the now departed industrial users will now

have to be borne by the remaining users. This means that residential customers will have to pay costs that originally were to be covered by industry. This is precisely the outcome that ICR was supposed to prevent, yet it has already come to pass in the Sacramento area, when a major industrial contributor is pulling out of the system. Here, ICR was not the only factor, but it was a significant factor.

Further, once a plant leaves the system, policing its effluent discharge to insure that it is in compliance with water quality standards becomes considerably more difficult. When unlawful discharges do occur, they will no longer be moderated by the publicly owned treatment facility. Instead, the full impact will be felt by the receiving waters.

Finally, the imposition of ICR will make it harder for communities to attract new industry into their systems. The implications of this are twofold. First, the system may continue to be burdened with excess capacity if it has lost its original industrial users. Second, ICR would be a liability for communities seeking to attract new industries.

AMSA has found that ICR diverts time and resources away from the agency's primary task of cleaning up the water.

Instead, agencies are having to commit themselves to either developing or administering a program which does not help meet environmental quality goals stipulated in the Clean Water Act.

Finally, AMSA agrees with the conclusions reached in the Coopers and Lybrand study, which EPA commissioned and supervised, to evaluate the effectiveness of ICR. The study found that ICR does not meet the four major objectives that it was originally created to achieve. The first is parity in costs to industry of using publicly owned facilities rather than onsite facilities. Changes in tax laws since the original passage of ICR have already achieved comparability of costs for many industries, according to the Coopers and Lybrand report.

Another objective was to encourage more realistic estimates of sewage flows. However, it does not appear that ICR costs are sufficient to have much impact on estimates of plant capacity needs. A third goal which is water conservation was also not much affected by ICR. Rather, reductions in industrial water use, which amounted to 29 percent for the industries surveyed, were largely attributable to the much higher water rates and sewer user fees.

Finally, the fourth objective of enabling agencies to achieve financial self-sufficiency through ICR was also found to be largely overrated, particularly when the impact of inflation is considered. AMSA is currently surveying its membership to obtain additional data on the costs of administering ICR and the revenues that will potentially be collected. The results of this survey should provide additional useful figures on this issue. We, of course, will be happy to share them with the subcommittee.

I would like now to turn briefly to the changes in ICR proposed by EPA in testimony before your committee last Tuesday. While we have circulated these proposals to our membership for their analysis and comment, they have not yet had a chance to fully respond. Nonetheless, from the initial responses it is clear that our members cannot support any changes which fail to significantly

reduce the administrative burden they must carry with the present ICR program. In particular, we would oppose any proposals which would merely substitute one administratively complicated program for another.

The proposal to increase the minimum flow requirement will have varying impact, depending on the circumstances of a particular area. Lifting the floor from 25,000 to 50,000 gallons per day will, in the case of some AMSA members, ease the administrative burden without seriously affecting revenues. In other cities, it would require lifting the floor to 75,000 gallons per day to eliminate those from whom it would be uneconomical to collect.

Exclusion of these additional industries or even total abandonment of ICR will not, as EPA claims, result in a failure to effectively monitor those industries contributing flow to the system. Adequate monitoring is assured by existing pretreatment regulations.

AMSA finds merit conceptually with EPA's proposal to exempt from ICR requirements those agencies which otherwise are making adequate provisions for their future replacement needs. Our membership is understandably concerned about their future replacement needs, and have already taken steps to assure that these needs will be met. AMSA supports the necessity of ensuring that an agency's funding is sufficient to provide the O. & M. and provide for necessary replacement. We have supported provisions in both the law and regulations that call for this funding. The user charge provisions require that the funds be sufficient for O. & M. and replacement and all AMSA members have either approved user charge programs or programs pending for approval by EPA.

However, the EPA exemption proposal is not spelled out enough to determine whether present agency programs would in fact be accepted as substitutes for ICR. It may be that what EPA would utlimately accept as an alternative to ICR would be as administratively burdensome and complex as ICR itself. Nevertheless, we intend to give careful study to this option, and will bring it before our members at next month's general members meeting.

EPA's third proposal would exempt industries from ICR is they are not using sewer capacity paid for in part with Federal funds. This would not help in those situations where industry is already using federally supported facilities, but would only introduce further inequities. Nor do EPA's alternative funding proposals appear to be a viable alternative to continued Federal support of sewage treatment facility construction. This alternative to ICR is in essence an alternative only for future construction projects.

AMSA is committed to the goals and objectives of the Clean Water Act. Its members are striving to meet the enforceable provisions of that act. We realize the scope of national clean water problems, because we are responsible for dealing with them each day. AMSA is in full agreement with the demand of the Congress for adequately maintained and financed facilities, and for a process to fund their timely replacement. Industrial cost recovery, however, does not appear to be a cost-effective means of achieving that objective. I thank the committee for this opportunity to present AMSA's position. I will be glad to respond to any questions you may have.

[Attachments to Mr. Harrington's statement follow:]

17. Elimination of ICR Requirements

Resolution:

"The Association of Metropolitan Sewerage Agencies supports the elimination of ICR provisions from the Clean Water Act of 1977.

"Pending repeal of those provisions, AMSA recommends that the Congressional moratorium on ICR collection to be extended until such time as Congress has considered the recommendations of the ICR feasibility study presented to it by EPA in January 1979.

"AMSA also urges Congress to expand the scope of the moratorium to cover all ICR-related activities conducted at the local level until a final decision has been made on the complete ICR program."

Rationale:

1. AMSA has consistently advocated the elimination of ICR provisions from the Clean Water Act because carrying out an ICR program contributes nothing to water pollution control and simply diverts time and effort away from that end.

2. In advocating the elimination of industrial cost recovery requirements from the Clean Water Act, AMSA is in full support of the first recommendation in the Coopers & Lybrand feasibility study presented to EPA in December 1978.

3. Congress decided to re-examine the need for ICR programs when it modified PL 52-500 to include an ICR feasibility study and a moratorium on the collection of ICR revenues by those treatment authorities that had already put a recovery program into operation. The study has been completed and submitted to Congress for consideration. Its primary conclusion is that ICR has met the objectives for which it was created.

4. In fact, the full findings of the investigation strongly indicate that ICR cannot achieve its goals at all, and that other EPA program requirements currently in force accomplish those ends more effectively.

5. Given the conclusions and findings of the study, Congress will need more than the original six months it had allowed for considering changes in the law. Accordingly, the terms of the original moratorium

on ICR collection should now be changed to permit treatment agencies to stop spending thousands of follars on the development of a program whose value is clearly questionalbe.

Background:

The industrial cost recovery provisions included in PL 92-500 were designed to accomplish three objectives: (1) to ensure that industrial users of publicly-owned treatment work paid an equitable amount for sewage service, when compared with competing industries that discharged directly to receiving waters; (2) to prevent treatment authorities from using federal money to build plants that include excess capacity for future growth; and (3) to encourage water conservation among industrial users of public systems.

While the general concept of ICR is appealing in a simple way, and might be justified in certain limited situations where a small treatment agency receives an unusually high volume of industrial flow, it has proven impractical to execute and operate in almost every case to date. Congress realized that the concept had its deficiencies, reviewed the ICR law, and directed EPA to conduct a study of the concept's feasibility. That study was completed in December 1978 and transmitted to Congress in January 1979.

EPA concluded on the basis of its investigation that ICR programs did not accomplish their goals. Additionally, the findings of the study show that ICR will not generate the large amounts of capital its proponents argued would be needed when replacing the public facilities serving such industries customers became necessary. The Agency's study shows that other programs administered by EPA are more effective in realizing the goals of parity, adequate capacity, and water conservation than ICR programs .... and at a lower cost.

Congress will now consider whether or nor to amend the Clean Water Act, given the results of the study. Until it has decided what to do with the ICR program, local treatment agencies can save federal tax money for badly needed construction by being allowed to suspend their ICR program develop and concentrating on meeting the water pollution control objectives of the Act.

D. W. McKENZIE, Director
DOUGLAS M. FRALEIGH, Deputy Director
W. C. WANDERER, JR., Deputy Director

COUNTY OF SACRAMENTO

DEPARTMENT OF PUBLIC WORKS

COUNTY ADMINISTRATION BUILDING • ROOM 304 • 827 SEVENTH STREET
SACRAMENTO, CALIFORNIA 95814

March 5, 1980

The Honorable Ray Roberts, M.C.
Chairman, Water Resources Sub-Committee
House Public Works & Transportation
Room 2165, Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Roberts:

Subject: Hearing on H.R.6667, March 11, 1980

The recent study by Coopers-Lybrand indicated that Industrial Cost Recovery (ICR) provisions requiring industrial pay-back of federal grant funds was not meeting Congress' intended purposes. In interviews with the Coopers-Lybrand firm, the Sacramento Regional County Sanitation District had indicated that continuation of ICR provisions would probably result in departure of major industrial users from the newly constructed Regional sewerage system. This has in fact now occurred. Libby, McNeill & Libby cannery employs 100 people year round, and 900 people on a seasonal basis and has announced its plant closure effective March, 1980. Campbell Soup, while retaining present cannery facilities, is developing a land disposal site for waste disposal at the urban boundary.

Present sewer service charge structures, with ICR excluded, make joint use of a municipal system by industry marginal at best. With ICR added, joint use of a municipal system is clearly not economical. The continuing uncertainty as to ICR pay-back will preclude significant additional industrial use of the municipal system and will impair this community's ability to broaden its industrial base.

The Board of Directors of the Sacramento Regional County Sanitation District includes the Board of Supervisors of the County of Sacramento, and the Mayors of the Cities of Sacramento and of Folsom. The District serves an urban population of 750,000. The Directors earlier passed the attached resolution recommending that Congress eliminate in their entirety the Industrial Cost Recovery provisions of PL 92-500 and PL 95-217.

This District is strongly supportive of the elimination of ICR as proposed in H.R.6667.

Very truly yours,

D. W. McKenzie
District Engineer

DWM/WSH:cc
Attachment: Resolution No. SR-346
cc: The Honorable Harold T. "Bizz" Johnson
Members of the Board
B. H. Richter, County Executive

RESOLUTION NO. SR-346

RESOLUTION EXPRESSING THE DISTRICT BOARD'S OPPOSITION TO INDUSTRIAL COST RECOVERY

The Congress in Public Law 95-217 ordered EPA "to study the efficiency of, and the need for, the payment by industrial users" of their share of the Federal grants for publicly owned treatment works used by Industry--that is, the Industrial Cost Recovery provisions of the Law, and

WHEREAS, the EPA study has found that the ICR does not substantially satisfy any of the intended purposes of this provision, and

WHEREAS, the EPA study has found "for some medium or large industries... it is least expensive in the long run (for an industry) to self-treat than to pay" a proportionate share of costs in a publicly owned system, and

WHEREAS, the Sacramento Regional County Sanitation District has at least six major industrial plants which have historically utilized the community system, some or all of whom could logically make a decision to withdraw from the regional system if the costs of such system plus Industrial Cost Recovery are not economically competitive, and

WHEREAS, withdrawal of any of the subject industries from the regional system, which entails a $420 million investment, will defeat a major purpose of this effort to eliminate the existing system of twelve dispersed plants by creating new industrial wastewater treatment facilities peripheral to the City, and

WHEREAS, the subject industries have already experienced a major increase in sewer user charges (some in excess of 100%) due to the regionalization project, under fully allocated costs, and the added average 54 percent increase which Industrial Cost Recovery would impose could make the use of individual disposal systems economically attractive, and

WHEREAS, it is desirable to retain all of the industries in the regional system to avoid undesirable changes in the cost distribution to all other users, and,

WHEREAS, the Board of the Sacramento Regional County Sanitation District believes all possible encouragement of municipal wastewater treatment systems should be given to keep alive and vital the industrial employers in developed older City locations;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Sacramento Regional County Sanitation District supports the finding in the EPA study relative to Industrial Cost Recovery and recommends that the Congress eliminate in their entirety the Industrial Cost Recovery provisions of PL 92-500 and PL 95-217.

On a motion by Director Pope, seconded by Director Wade, the foregoing Resolution was passed and adopted by the Board of Directors of the Sacramento Regional County Sanitation District, this 13th day of March, 1979, by the following vote, to wit:

AYES : Directors, Carmody, Collin, Johnson, Pope, Wade, Sheedy

NOES : Directors, None

ABSENT: Directors, Smoley

Joseph E Sheedy
Vice Chairperson of the Board of Directors of the Sacramento Regional County Sanitation District

(SEAL),

ATTEST: Betty D Poohar
Betty D. Poohar, Clerk of the Board of Directors of the Sacramento Regional County Sanitation District

In accordance with Section 25103 of the Government Code of the State of California, a copy of this document has been delivered to the Chairman of the Board of Supervisors, County of Sacramento, and

MAR 13 1979

By _____
Deputy

FILED
MAR 13 1979
BOARD OF DIRECTORS
By Betty D Poohar
Clerk of the Board

OFFICE OF THE MAYOR
CITY OF HOUSTON
TEXAS

JIM MCCONN
MAYOR

June 14, 1979

The Honorable Ray Roberts
Chairman, Subcommittee on Water Resources
House Public Works Committee
House of Representatives
Washington, D.C. 20515

Dear Mr. Roberts:

The City of Houston supports House Bill 4023 to amend the Clean Water Act of 1977 by extending the moratorium on Industrial Cost Recovery. The City strongly feels that this extension is greatly needed by the nation's municipalities and we will support you in any way necessary to secure its expeditious passage.

It is the City's primary position that the requirement for Industrial Cost Recovery should be repealed from the Clean Water Act of 1977. As indicated by the Environmental Protection Agency's report to Congress, Industrial Cost Recovery does not accomplish the intent of Congress when it enacted PL 92-500. The City, as required, has proceeded to develop its Industrial Cost Recovery program at a cost so far of $120,000.00 The development of this program has convinced the City that the administrative cost will offset or exceed any revenues generated, at least for the initial years. It is calculated that during the initial years the City will collect approximately $36,000.00 per year while administrative costs will equal or exceed this amount. Further, in the long run, we do not expect revenues of sufficient magnitude to be of great benefit to the City or to accomplish the purpose of Congress. The City has established a user charge which includes charges to recover bonded indebtedness for capital improvements. This, coupled with ad valorem taxes, we feel collects from industries their appropriate share of costs of the system and no further charges to industries connected to the municipal wastewater system are necessary or appropriate.

Therefore, the City would support the repeal of Industrial Cost Recovery in the future and presently supports passage of an extension of the moratorium.

Sincerely,

Jim McConn (by Sylvia Lee)
Jim McConn
Mayor

Senator MUSKIE. Mr. Hensold.

STATEMENTS OF HARVEY J. GOLDMAN AND HAROLD H. HENSOLD, JR., ARTHUR YOUNG & CO.

Mr. HENSOLD. I am Harold H. Hensold, a partner in Arthur Young & Co. in Chicago. We have served as auditors and management consultants for a number of members of AMSA and other POTW's around the country, and it is out of that background that we make these remarks today. We will first provide general remarks, and my associate, Harvey J. Goldman will respond to specific questions posed by the committee.

In its administration of the multibillion construction grants program, the U.S. Environmental Protection Agency is directly involved in the creation of a significant new industry; namely, wastewater treatment. Publicly owned treatment works constructed or being constructed in all areas of the country often represent the single largest capital project which the host communities have ever undertaken.

We wish to express our belief that the ultimate test of the construction grants program is composed not just of EPA's ability to distribute funds and monitor the construction of POTW's but must also include evaluation as to how well those facilities will be operated, maintained, and replaced in future periods, regardless of the degree of industrial usage of such facilities. We are concerned that while at the present time the issue of industrial cost recovery is receiving much attention, the broader issue of overall POTW accountability and financial management should also be addressed. Furthermore, recognizing that industrial cost recovery may be viewed as one of the elements of POTW long-range financial planning, it may be that immediate and short-term issues such as uniformity of accounting, financial reporting, and auditing of POTW's deserve equal timely attention.

Construction grants are capital investments and the original legislation addressed the question of capital maintenance by requiring a portion of the Federal capital contribution to be recovered as it is consumed in use through ICR charges. The policy about maintaining the capital not subject to ICR, usually the larger portion, has been left to the local unit. A question to be raised here is whether there should be a policy more broadly addressing POTW capital accountability, and which would disclose the actual results of operation in terms of capital maintenance, as well as in terms of recovery of current operating expenditures.

We believe Government activities which employ large amounts of capital to deliver measurable services to users should be managed and accounted for like a business in order to know the cost of services and to account for results of operations, including increases and decreases in capital. This requires policies and guidance on accounting principles, reporting disclosures and arrangements for audit, among other things.

Our experience as auditors and management consultants to POTW's has indicated that little or no authoritative/regulatory guidance exists as to appropriate recommended accounting, reporting, or financial management for wastewater treatment operations. While the user charge regulations address operations and mainte-

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nance rate setting and billing requirements for POTW's receiving construction grant funds, no standardized guidance documents for user charge systems exist. Moreover, key underlying concepts, such as accounting policy issues and chart of accounts methodologies, are not defined to promote uniformity among POTW's. While the EPA has the responsibility to conduct—or to have conducted—biennial audits of POTW's to insure compliance with user charge system regulations, it should be recognized that this task will undoubtedly be compounded in the absence of key elements of uniformity of accounting systems, financial reporting and auditing standards.

ICR is an important issue which needs resolution. Addressing it from our perspective as auditors and management consultants, it may also be the tip of the iceberg in terms of further evaluation required of the overall accounting and financial management considerations for the emerging wastewater treatment industry.

We are prepared to address some of the specific questions posed to us in advance by the subcommittee, as well as additional questions which may arise. Before commenting upon specific ICR-related questions, however, we believe it important to place the following points on the record:

One, we do not consider it appropriate to comment on the issue of cost parity between industries which are users and nonusers of POTW's. Significant study, which we have not done, would be required to properly address the issue.

Two, we do not believe that we should comment on the public policy issue of requiring only industrial users—as defined by the regulations—of POTW's to pay their proportionate share of the capital costs. Recommendation regarding such a public policy issue is not within the professional scope of our firm.

Three, we are most willing to discuss our experience with ICR; such experience has been gained through our role as auditors and management consultants to a number of POTW's. Our client base includes POTW's whose capacity is significantly utilized by industrial users, as well as POTW's that have little if any industrial usage.

As to the specific questions, I would like to turn it over to my colleague, Harvey Goldman.

Mr. GOLDMAN. My comments relate to five specific questions posed in advance by the subcommittee through its chairman, Senator Edmund S. Muskie.

Question 1 related to comments on the possible effects of the change made to industrial cost recovery by the Congress in 1977, including the 25,000-gallon-per-day, sanitary waste exclusion.

We understand that data recently generated by EPA indicated that in region V the impact of the 25,000-gallon-per-day exclusion is estimated to exclude 77 percent of the industrial users while reducing the expected Federal share of ICR collections by only 9 percent. We do not know if it is valid to interpolate these figures to a nationwide estimate, and we are not aware of any data released to date which indicates the range of percentage decrease in ICR collections among POTW's serving varying concentrations of large and small industrial users. It should be pointed out that while the Federal share of ICR total collections may not decrease significant-

ly due to the 25,000-gallon-per-day exclusion, an individual POTW's share of ICR collections may decrease significantly.

Question No. 2 related to comments regarding continuing the present industrial cost recovery system along with any recommended modifications to make it more efficient.

We do not believe that we should comment on the public policy issue of industrial cost recovery. However, if the policy is to be implemented and enforced, we recommend that consideration be given to the following factors:

One, establishing an appeals and waiver mechanism if an industrial user can demonstrate undue economic hardship caused by industrial cost recovery.

Second, defining minimum amounts below which ICR bills to individual industrial users would not have to be prepared, distributed, and collected. This is important to maintain the credibility of ICR.

Third, defining minimum grant amounts below which ICR would not be required.

And, fourth, we believe if an industry can demonstrate through proper study that investing in a private treatment facility and operating such a facility would cost it less than ICR and user charges from a POTW, consideration should be given to rate adjustments or other incentives to retain the industry in the POTW, especially if the POTW was designed and constructed to accommodate the industrial usage. From our experience with POTW's, total operating costs do not vary significantly with usage levels. Therefore, if industries withdraw from the plant, nonindustrial users from excessive charges due to industrial withdrawal and to promote economies of scale, more advance attention should be directed toward planned and committed industrial usage of POTW's. The regulations currently call for significant industrial users to contractually commit to use of the POTW. Perhaps the definition of significant should be redefined from its current focus on 10 percent of total POTW facility usage to cost impact on nonindustrial users, should that industry decide to self-treat.

The third question addressed comments regarding eliminating industrial cost recovery. For some POTW's, ICR may represent an essential component of a long-range capital financing plan; for others, ICR may be insignificant and/or unnecessary. Whether ICR is eliminated or maintained, the adequacy of POTW long-range capital planning should be addressed.

Again, we do not comment on the public policy issue of industrial cost recovery. We do, however, express our concurrence with one of the underlying concepts of ICR, namely that wastewater treatment facilities constructed with Federal grant assistance should be operated as businesses, to include self-sufficiency planning in terms of their ability to meet future financial requirements for major replacements and rehabilitation.

If it is determined that ICR should be eliminated, or if alternatives to ICR are to be considered, we suggest that POTW's be required to establish and document an approvable plan for the capital refinancing of the facility. That plan should include consideration of likely dates and amounts of periodic refinancing requirements. It should address future replacement cost estimates as well

as realistic evaluations of the sources of future capital funding. Sources of such capital might include funds raised and dedicated for such purposes through user charges, demonstrable bonding capability, ICR or ICR-type assessments upon users, and other factors unique to the circumstances of the POTW. Capital refinancing plans should be presented to the regulatory agency, the public, and be subject to annual review by appropriately qualified engineering personnel and financial personnel. As indicated earlier, annual financial reports of POTW's should reflect activities regarding capital planning and related transactions as well as the results of ongoing operations and maintenance activities.

The fourth item we were asked to address was comments regarding changes to cost-effectiveness guidelines or other existing provisions to further legislative goals if ICR is eliminated.

Responses to questions 1, 2, and 3 above have addressed part of this question. A more elaborate response would require a current definition of legislative goals.

The fifth item we were asked to address was comments regarding the degree to which industry pays its way, the extent to which industrial participation in a municipal treatment system is encouraged or discouraged, and its administrative feasibility. We have several comments:

The user charge regulations are designed to insure that industry pays its way in terms of operations and maintenance expenditures of a POTW. This is accomplished through rate setting factors based on flow and strength of user discharges.

It is difficult to determine whether ICR on a stand-alone basis encourages or discourages use of a POTW compared to private treatment. To properly address the question, one should evaluate the combined impact of ICR, user charges and pretreatment regulations, as these are interrelated matters which may in combination discourage industrial use of municipally owned treatment plants. It should be pointed out that once a POTW is designed and built to accommodate industrial and nonindustrial usage the nonindustrial users typically could face significant economic hardship should the industries pull out, as the operations and maintenance costs are primarily fixed rather than volume dependent.

We appreciate the opportunity to present our comments here and would be glad to respond to any questions.

Senator MUSKIE. Thank you, Mr. Goldman.

Mr. Kirk.

STATEMENT OF DONALD G. KIRK, NATIONAL FOOD PROCESSORS ASSOCIATION

Mr. KIRK. I am Donald G. Kirk, manager of environmental engineering of Heinz, U.S.A., a division of H. J. Heinz Co. I am appearing today on behalf of the National Food Processors Association and as chairman of its POTW subcommittee.

I have with me today some other gentlemen who might be able to assist me in answering questions from the committee. They are Lloyd Hontz, assistant director of environmental affairs; and Jack L. Cooper, consultant, National Food Processors Association.

Mr. Chairman, we have prepared a lengthy written statement which we would like to have submitted for the record, and we would like to summarize that statement.

Senator MUSKIE. Without objection the entire statement will be entered in the record. [See p. 87.]

Mr. KIRK. The National Food Processors Association agrees with the conclusion of the Environmental Protection Agency's January 1979 report to Congress that the industrial cost recovery provisions of the Clean Water Act have not achieved their original legislative purposes. We believe that it is also an unfair penalty on industry. Therefore, we urge repeal of ICR.

In taking this position, the members of the National Food Processors Association assure you that they do not object to fair and equitable user charges on all POTW users for actual operation and maintenance costs and for local debt service. We emphasize that repeal of ICR will have no effect on water quality, water conservation, or any aspect of treatment.

Mr. Chairman, our invitation to testify before your subcommittee requested that we comment on several issues. These issues are separated into two areas: Repeal of ICR and modification of ICR. The majority of our testimony today will cover the issues concerning repeal with some discussion of the four purposes for which Congress originally created ICR. We will then respond to EPA's latest recommendations for modifying the current industrial cost recovery program.

The question has been raised: To what degree does industry pay its way? We should like to assure you that industry does presently pay its share of joint treatment costs. The user charge is utilized by a municipality to recover the costs of operation and maintenance. It includes a fund for equipment replacement needed to keep the facility operating at its intended efficiency. Charges for recovery of local debt obligations may be included in the user charge or assessed separately. These charges are paid by all dischargers, including industry, and discounts to industry are prohibited by law.

ICR is an additional charge to provide for repayment of grant funds imposed solely on industry. There is no sound reason that industry alone should be required to repay its portion of Federal grant funding. Since industry pays a substantial share of Federal revenues, it should be no more obligated to repay Federal grant funds than the residents of a municipality.

Another question deals with the extent to which industrial participation in POTW's is encouraged or discouraged.

Joint treatment of industrial and municipal wastes should be encouraged. Congress, by its past actions, has indicated its concurrence with this principle. Joint treatment should have a number of benefits, including economies of scale, reduction of the number of discharges to waterways, synergistic technical benefits, and consolidation of administrative and staffing requirements. For these reasons, the food processing industry would rather participate in a joint treatment system where economically feasible. Unfortunately, ICR discourages industrial participation in municipal systems.

The Senate report accompanying the Federal Water Pollution Control Act of 1972 makes clear that Congress intended to estab-

lish parity between industrial users of POTW's and those who provide self-treatment.

In actual practice, rather than establishing parity between industrial users of POTW's and those who provide self-treatment, ICR often creates disparity. When ICR was created, Congress did not envision all the extra costs required to construct and operate a POTW. Even without ICR, however, it frequently costs more to participate in POTW's than to self-treat because of imposed administrative costs and higher construction costs.

In addition, the Federal Government provides incentives for self-treatment including the availability of investment tax credits, rapid depreciation for tax purposes and industrial development bonds. Such methods of writeoff and tax free bonding were not available when ICR was mandated.

This lack of parity limits the ability of companies to effectively compete, and we maintain that this is the most negative effect of the ICR provisions. Therefore, the Federal Government should not impose a disincentive such as ICR for joint treatment by industry.

In the face of these adversities, it is perhaps surprising that so many companies continue to utilize POTW's. However, many of these companies had made their joint treatment decisions prior to the establishment of ICR, or have not been able to utilize the recent tax advantages, and are now financially committed to their choices. Others are restricted by location.

Senator MUSKIE. I don't want to interrupt your prepared testimony with a lot of questions, but how did they make joint treatment decisions prior to the establishment of an ICR? You say the law provided for standard support of public waste treatment systems. How did they make their joint treatment decisions before the law was passed?

Mr. KIRK. Many companies in the food industry had already prepared for their equipment needs prior to the act.

Senator MUSKIE. But, how did they make those decisions——

Mr. KIRK. I don't understand your concern.

Senator MUSKIE. It isn't concern. It is curiosity. When you say many of these companies had made a joint-treatment decision, the joint treatment was provided for by Federal law. If that decision was based on considerations for that Federal law, well then, you are not governed by the Federal law until subsequently in order to take advantage of the subsidies of Federal law. Whatever agreement was entered into prior to that time was modified to take advantage of subsidies, and if you took advantage of subsidies in the law, you knew at the same time that the ICR was part of the same law.

Mr. KIRK. I understand your question now. Many of our companies had been already participating in POTW's prior to 1972. Now I agree with you as a participant there is some degree of obligation, and once having agreed to participate in the system, not having treatment facilities, or a plan for an extension of that system further on, it is difficult for a company to make a decision to withdraw.

Senator MUSKIE. The same law would increase the Federal subsidy.

Mr. KIRK. That is correct, Mr. Chairman. There is not argument with that. Our problem is we feel the subsidy bears with it sufficent penalities to offset.

Senator MUSKIE. Maybe we ought to repeal the subsidy.

Mr. KIRK. Another intent of ICR was to crate a fund for local municipalities to finance reconstruction of POTW's at the end of their useful life. Although reconstruction may be a legitmate concern in some cases, ICR is an inappropriate solution for a number of reasons.

First, EPA's report to Congress states that ICR would not make a significant contribution toward the grantees' financial capability to meet the costs for future expansion and upgrading of their wastewater treatment works.

Second, the size of the self-sufficiency fund depends upon the extent of industrial participation in the treatment works. Therefore, it is unrelated to actual needs of a particular POTW. Communities which need replacement funds the most are likely to have no industry involvement and, hence, no ICR-generated funds.

Third, industrial users are paying simultaneously for both original facilites and replacement facilities. A company that must pay into an ICR reserve fund may not be in operation at that location to benefit from the fund in later years., Conversely, industries that join the POTW system at a later date get the free ride which Congress intended to avoid.

Fourth, POTW's should be financed by bonded indebtedness like other public utilities, such as power and water supplies. This links most closely those who pay for a service with those who benefit from that service. Using this system of financing, the bonds are paid off by the users as part of their treatment costs.

Fifth, the concept of useful life is unrealistic, and is, in fact, simply an accounting term. A treatment plant does not wear out and require total replacement. A replacement fund is presently required by law to maintain the plant in a satisfactory condition to insure compliance with discharge limitations.

Finally, establishment of a self-sufficiency fund is contrary to good business practice. It penalizes industry by sequestering capital in an account earning modest interest compared with the normal return on invested capital. Thus, it would be preferable for a company to make payments for future construction when needed, rather than making ICR payments in advance. Industry is willing to pay its fair share of future construction costs when money is needed and due.

The administrative feasibility of ICR has been questioned by the subcommittee. Although a community must develop a user charge program, development of an ICR program frequently does result in additional costs. This extra cost arises because the data bases utilized for user charges and ICR are often different and because ICR requires the maintenance of several special accounts.

The subcommittee has asked for comments on changes in the cost-effectiveness guidelines to further legislative goals. We have not had a chance to thoroughly review these guidelines. However, we will study the guidelines and make any suggestions or comments we have available to this subcommittee.

To answer the subcommittee's concerns about possible modifications of ICR, a brief discussion of EPA's action in evaluating the need for an the effectiveness of ICR is appropriate at this time.

The 1979 EPA Report to Congress concluded that the ICR program has not met its congressional intent. The EPA contractor went further and stated that ICR should be repealed. However, EPA recently has disavowed many of the findings contained in its report, and is now apparently offering, in its place, some preliminary conclusions based upon an in-house review of the ICR program.

EPA, in recent testimony before this subcommittee, expressed concern that the loss of ICR funds would heavily impact some municipalities. We feel that in most situations the funds lost would not be sizable. If there are situations in which such losses are of concern, present institutional controls should provide the necessary remedies. If there is a need for reform in this area, the National Food Processors Association is willing to consider any new alternatives which might be developed. Of greater concern should be the potential impact that the imposition of ICR could have on an industry's decision one way or another.

EPA has stated that industrial users of POTW's do, indeed, enjoy some degree of subsidy in comparison to industries which self-treat. EPA includes in its definition of subsidy, shared management, administrative and legal costs associated with operation and maintenance of a treatment system.

Benefits of joint treatment should not be termed subsidies when, in fact, it is less expensive in most cases for an industry to provide for its own wastewater treatment. A subsidy infers an economic advantage, which is not the case in this situation. It would be easier to rationalize that industrial self-treaters are being subsidized by the various tax writeoff provisions for pollution control equipment which Congress deemed appropriate in the interest of a cleaner environment.

EPA has made four recommendations to modify the present ICR program.

First, the flow exemption of 25,000 gallons per day of equivalent sanitary wastes would be increased to 50,000 gallons per day. Neither exemption level is of much value to the members of our association, who by the nature of the industry utilize large quantities of water in order to assure the production of safe and wholesome canned food products. The proposed increase from 25,000 to 50,000 gallons per day would exclude only an additional 6 percent of industry according to EPA. While this is admirable, it falls far short of providing industry and municipalities the needed economic relief.

Second, it the grantee can prove that ICR revenues are not needed in meeting long-range obligations for treatment system improvement or rehabilitation and ICR insignificantly contributes to the grantee's funding program, an ICR program would be required. This could provide needed relief for POTW's with little industry participation but would prove of little benefit in most cases.

Third, grantees could avoid ICR requirements if industrial capacity financing is not sought from the Federal Government. This EPA recommendation has all the inherent problems of the present

ICR system with respect to high construction costs for the municipal portion of a POTW. Federal funding encourages over design, leading to high operation and maintenance costs. What is worse, industry would have to obtain its own funding which in the present economy would be extremely expensive and difficult. Having to seek the necessary funding for industrial capacity, would provide another disincentive for industrial participation in POTW's

Fourth, industrial users should sign binding contracts guaranteeing their participation and obligation to pay for specified treatment capacity. NFPA is opposed to any general modification of the present ICR program in this direction. Continued industry participation in joint treatment works should be based on continued mutual treatment and financial benefit; not contractual obligations. Total elimination of ICR would be a more logical step to discourage industry withdrawal from joint treatment works.

There are many cases in which industry, in good faith, commits itself to discharge into a POTW based upon cost estimates which double, triple, and even quadruple before operation begins. In spite of contractual obligations, some companies are seriously considering self-treatment, with full realization that they must continue to pay for treatment never received.

In conclusion, the National Food Processors Association strongly believes that for the reasons I have discussed with you today, retention of the ICR provision is no longer desirable and would prove detrimental to future joint treatment of wastes by industry and municipalities. We urge quick action by the Senate to repeal the ICR provisions of the Federal Water Pollution Control Act of 1972.

Thank you for the opportunity to testify before this subcommittee and I will be happy to answer any questions you might have.

Senator MUSKIE. Our good friend from Maine.

STATEMENT OF LEONARD SAULTER, NORTHERN TEXTILE ASSOCIATION

Mr. SAULTER. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, I am Leonard Saulter, president of Guilford Industries. I am appearing on behalf of Guilford Industries and the Northern Textile Association.

Guilford Industries is an integrated woolen mill located in Guilford, Maine, producing fabrics for the women's sportwear and home furnishings markets. Appearing with me today is Dr. Robert Culver, vice president of Camp, Dresser & McKee, consulting engineerings in Boston, Mass. Dr. Culver has almost 40 years of environmental consulting experience for both municipalities and industry.

The Northern Textile Association, of which Guilford Industries is a member, is an association of textile manufacturers located primarily in the Northeast, but with members throughout the country. Most members are small and medium-sized manufacturers and many are located in older urban areas, as well as small rural communities. Northern Textile Association members manufacture broadwoven cotton, synthetic and wool fabrics as well as felt and elastic fabrics. Water use is significant, particularly in the dyeing and finishing of fabric. It has been the experience of members of

the Northern Textile Association that the industrial cost recovery program as currently constituted has not accomplished the objectives for which it was intended. The present ICR program does not help to establish parity in pollution abatement costs between companies that self-treat and those that join with a publicly owned treatment works. Instead, it has been our experience that ICR adds to an inequitable cost burden for the discharger to a POTW.

To cite a specific example with which I am familiar, Guilford Industries is currently undergoing cost analyses in preparation for joining with the town of Guilford for the construction of a publicly owned wastewater treatment facility. Guilford is a community of approximately 1,800 people, with Guilford Industries employing about 800. We are the prime employer and taxpayer and we consider our role in the town to be an integral part of the life of the community. We also feel that our relations with the town are an important part of doing business. That is why, when the town of Guilford began to plan its POTW, Guilford Industries assumed that we would participate with and assist the town in the construction of the POTW.

Guilford Industries, like most other members of the Northern Textile Association, believes that municipalities have the primary responsibility for providing for the collection and treatment of the domestic wastewater from its inhabitants. Industry, as a member of the municipal family, pays its share for this service through property taxes. If the municipality agrees to also treat the wastes from its industries, in addition to the sanitary sewage, we feel that the industries should reimburse the municipality for any additional costs incurred for this service.

Although we feel the joint approach is the most practical for the town, industry, and taxpayer, we have been forced to reconsider our role in light of the cost estimates. The town has predicted that Guilford Industries' share of the total costs will amount to $1,059,620, with our share of the costs not subject to ICR equal to $182,520; the costs imposed by the ICR program amount to an additional $877,100.

We estimate that we could build our own treatment plant for approximately $600,000, as opposed to the previously mentioned $1,059,620 which would be Guilford Industries' share of the cost of the municipal plant. The major reasons for the substantial differences in cost are that an industrial plant does not require many of the expensive facilities required by the municipal plant such as an administration building, landscaping and site preparation, or special laboratory facilities. It concerns us that if Guilford Industries cannot participate with the town because of these cost considerations, the community will face a greater per capita burden for wastewater treatment. The town will still face the same costs for administration, personnel, climate control, and laboratory maintenance, whether or not we participate.

Standards for construction are more stringent and operation and maintenance costs higher for municipal facilities than for industrial installations. The industrial cost recovery program as now constituted, requires that Guilford Industries share in the higher total costs of these public requirements and safeguards. The savings resulting from the economies of scale of the joint plant do not

fully offset the lower construction costs realized by a company owned treatment plant.

Our member companies provide us with many similar examples where the ICR system imposes an unfair burden on industry. For example, there are those industries which, due to lack of space or receiving water requirements are not able to self-treat. In some areas, also, a long term commitment to the municipal plant is required, and industries must join early in the design process before costs are known. The members of the Northern Textile feel that the committee should take into consideration special circumstances such as we have found among our membership. The present ICR system should be revised to permit negotiation of the ICR charges on a case-by-case basis.

We would like to suggest one alternative to the current ICR system, which would allow industry to pay its fair share of pollution abatement costs without being unfairly burdened by the higher municipal treatment costs. We would like to see an incremental cost system under which industry would pay back as its share of the construction costs of the POTW those additional costs which result from industry's participation in the facility.

This can be seen by example. Let us use a model city with a population of 20,000, having a flow of 2 million gallons per day of domestic wastewater, and an industrial flow of 1 million gallons per day. Using estimates for treatment provided by the EPA, secondary treatment for the domestic wastewater alone would cost the city about $6.7 million to build. A facility for 3 million gallons per day including the industrial wastes would cost about $9.8 million. Under the current ICR program, the industry would pay about one-third of the cost or $3.26 million. We propose that, with an incremental cost mechanism, the industry would not be charged $3.26 million but only the additional burden their flow imposes on the municipality. This will be less than the $3.26 million, but will not result in costs to the town greater than $6.7 million.

We feel that the incremental method is fairer than the current ICR system because industry will repay what the government spends on its behalf, but will not pay for what industry does not use. Under this system, industrial wastewater treatment imposes no additional financial burden on either the local or the National Government. As a taxpayer, industry already pays its fair share of national and local costs for construction of municipal wastewater treatment plants.

On behalf of the Northern Textile Association and Guilford Industries, we appreciate this opportunity to submit our views to the Subcommittee on Environmental Pollution on modification of the industrial cost recovery provisions of the Clean Water Act.

This concludes my formal statement. Dr. Culver and I would now be happy to answer any questions the members may have.

Senator MUSKIE. Thank you, Mr. Saulter.

I thank you for the first positive alternative that I have heard.

Senator CHAFEE. Mr. Chairman, you have suggested that we will hold our questions until the end of the statements and then ask questions?

Senator MUSKIE. We have only one more to go. The witnesses in many respects are addressing the same points so it would be just as

well to have the points, and then we will have plenty of time for questions.

I always reserve plenty of time for matters that are controversial.

Mr. Orthmeyer.

STATEMENT OF FRANK ORTHMEYER, DIRECTOR OF PUBLIC WORKS AND CITY ENGINEER, CITY OF GRAND FORKS, N. DAK.

Mr. ORTHMEYER. Chairman, Senator Muskie, Senator Burdick and members of the Subcommittee on Environmental Pollution. My name is Frank Orthmeyer. My address is 3106 South 10th Street, Grand Forks, N. Dak. I am a registered professional civil engineer and director of public works and city engineer for the city of Grand Forks, N. Dak. I have held this position since 1970. Before coming to Grand Forks, I was the director of public works and city engineer for Mitchell, S. Dak. for 4 years. During this part of my career, part of my work involved the wastewater treatment facilities and the treatment of industrial and municipal waste in combination.

I appreciate very much the opportunity to appear before you today on the subject of industrial cost recovery.

I am a member of the North Dakota Pollution Control Association and a past member of the Board of Control of the Water Pollution Control Federation. I am not speaking in their behalf today. My remarks have been prepared by myself and they will be brief.

I have supported section 204(b) Industrial Cost Recovery of the Clean Water Act, Public Law 92-500 from its inception. In my opinion the philosphy of that section is good. Some of my reasons for saying this are as follows:

First, it goes a long way toward putting all industry on an equal footing for the wastewater treatment.

Two, the same water pollution regulations will be enforced nationwide.

Three, industry can choose whether or not it prefers to use private treatment or whether it prefers to work in cooperation with a municipality. If the industry chooses the latter, it should be required to pay its fair share of the capital outlay for wastewater treatment just the same as that industry which chooses to treat its wastewater privately. In either case, as with any product, it is the consumer who will end up paying not only for the capital expenditures for wastewater treatment, but also for the cost of raw materials, labor, taxes, profit, and so forth. We all recognize that the cost of wastewater treatment is part of production cost.

I recommend that the industrial cost recovery section remain as part of the law. Since Public Law 92-500 has been on the books, industries and municipalities have had joint planning sessions whenever expansion of a wastewater treatment facility was necessary. We need their cooperative effort in planning. In my experience this was not the case prior to Public Law 92-500.

Grand Forks has recently completed a facilities plan step I, for wastewater treatment plant expansion. We have two potato processing plants in Grand Forks and after several meetings with

them, we received their letters of intent, that is intent to use municipal facilities, and we were able to compute their share of industrial cost recovery (ICR).

In Grand Forks, industry A, says that they expect to treat 1.1 million gallons per day with approximately 12,000 pounds biochemical oxygen demand per day, BOD/D. With this information and knowing the cost of the new facilities, our consultants were able to calculate their industrial cost recovery as $47,200 per year. In the case of industry B, they expect to treat 0.77 million gallons per day with approximately 12,000 pounds BOD/D per day and the industrial cost recovery for that industry will amount to $40,500 per year. As you know, the industrial cost recovery will have been collected over a period of 30 years. This is the type of information that is needed to evaluate proposed projects and I am pleased to say that this type of information has been easier to get since the adoption of Public Law 92-500.

I feel that the industrial cost recovery section of Public Law 92-500 should remain as part of the Clean Water Act. It has already improved the industry versus city cooperation in this matter.

My next remarks will be in regards to the 1977 amendment and regulations defining an industrial user, allowing for an exemption to those industries using under 25,000 gallons per day provided that they fall into certain categories and limits of wastewater strength which may be set by the grantee in accordance with and meeting the approval of the regional administrator.

I feel that this amendment is a good amendment and I would recommend that this provision be retained since it allows some flexibility in administrating Public Law 92-500. And today I learned that it has been suggested that it be extended to 50,000 gallons per day, and that is a step in the right direction.

That ends my testimony. If you have any questions, I will be glad to attempt to answer them.

Senator MUSKIE. Thank you, Mr. Orthmeyer, and I thank all these witnesses.

We will go immediately to Senator Chafee, who has had concern about this issue for the last couple of years. I appreciate the succinctness and brevity of the statements. You all make your points very clear. I have questions about a lot of them, and I am not sure we can cover all the points for which I have questions.

I would like to say at the outset without asking any questions that the problem of keeping this infrastructure going and responding to the growth of the economy once it is put in place is the principal problem that concerns us. And what we are talking about, or what we were talking about in 1966, represented an investment of $6 billion by the Federal Government under the rules and provisions of that law. By 1972 the process is estimated to cost over $20 billion for the Federal share, and the costs are now up over $100 billion.

Well, there are facts of life among the Federal budget which are very disturbing, and they ought to be of concern to you gentlemen as they are to us because of the impact upon our society and your industries as well. If you envision the process of having to repeat that investment periodically in order to keep up with growth, in order to keep up with development of technology, in order to keep

up with new and exotic pollutants that we are hearing more and more about every day, we might find ourselves here in Washington permanently saddled with that kind of commitment in the Federal budget which would be intolerable.

In the 1980 budget 77 percent of mandated expenditures are uncontrollable, leaving us very little margin to respond to the need for increased defense expenditures and offset the impact of inflation upon the various interests throughout the society which in one way or another depend upon the Federal budget, and the uncontrollables are driving us up the wall.

In addition, the Federal, State, and local partnerships in so many areas is growing by leaps and bounds. When I first came to the Senate it represented $5 billion. In the 1981 budget it represents $96 billion. That is more money than for the entire government in the 1950's, and this is part of that, and that troubles us, and I suppose we ought not to think that far, and many times we are not given credit for thinking that far ahead. We are often accused of acting at the present and letting the future take care of itself. That would have been very easy, and we wouldn't have this issue troubling us today.

We dealt with user charges in the same fashion. One of you suggested user charges was a sufficient way to deal with this issue. Well, that is just as controversial as ICR, and only now after great resistance are user charges being accepted. We have put them to the top after proposition 13. As Californians are finding out after proposition 13 they need the user charges in order to maintain local viability in communities. They were among the most vociferous opponents of user charges before proposition 13.

Whether or not user charges are sufficient depends on what they would cover. And I will get into that.

I was interested in the comments on management that you should recreate, in effect, a utility commissioner in Washington in order to control and run the sewage treatment plants across the country. We would have a revolt across this country which would be matched only by the insistence on preserving Federal revenue sharing.

And the idea of a utility commissioner telling everyone how to run their plants, setting up controls and guidelines and money—I am not clear which witness mentioned that, but I don't know how else we would do that.

We assumed that would be taken care of at the State and local levels. Since, in fact, what would have to be created to run these plants would be in the nature of a utility, and either the community or the utility could step into the breach. So I raise these points to give you some clue as to the sort of questions I will ask if we have time to cover everything. I want to be sure that Senator Chafee who has been very vocal and articulate in his opposition to ICR's has an opportunity to ask questions.

Senator Chafee.

Senator CHAFEE. Thank you, Mr. Chairman.

I share your concern. We frequently talk here, and no one is more eloquent than you about their concern for the share of the budget, the untouchable part of the budget, mandated, but those things are really controllable if we want to change the law, but we

don't, and the problem is we are not getting better, we are getting worse.

I have been here only 3 years and they have changed the practice on black lung disease to make it a permanent program, and now it has grown into a scandal. Anyone who has seen a mine can collect black lung payments. Communities in mine areas are living off the black lung payments, and you saw a letter from us on how to cut the budget, and that is one of the things I am going to include although it is one of the uncontrollables in the law.

I would like to ask Mr. Orthmeyer and Mr. Harrington if we could discuss the user charges a bit. I take it you both have user charges, is that correct?

Mr. ORTHMEYER. Yes.

Mr. HARRINGTON. Yes.

Senator CHAFEE. What do you do with the user charges? Are they used for current expenditures? How do you handle that? Let's take Mr. Harrington first.

Mr. HARRINGTON. Under our bond covenants we strictly operate as a revenue department.

Senator CHAFEE. Would you pull the mike closer, please.

Mr. HARRINGTON. Our bond coverage requires the first element of those rates collected to go for operation and maintenance, and also a section for debt service and replacement costs. After operation and maintenance 5 percent goes into a replacement fund and then 5 percent goes in, so in essence a total of 10 percent of our revenues go into replacement of pumping stations, and other facilities.

Senator CHAFEE. So, in effect, you are planning for the future, so it is a depreciation account.

Mr. HARRINGTON. That is correct.

Senator CHAFEE. How about you, Mr. Orthmeyer?

Mr. ORTHMEYER. Grand Forks has had a grant user charge for a long time, and we have always used that for operation and maintenance and retirement of bonds that we had to buy to finance the treatment plants in the first place, and there has not been set aside any money for future expansion.

Senator CHAFEE. Mr Harrington, let me ask you a question about your plant which was built since 1973. What is the effect if you have industrial cost recovery charges on a plant built since 1973 and your competitive position with the older plants?

Mr. HARRINGTON. Senator, right now we are finishing up our major plant expansion. We are using a project-by-project ICR system, and we will go to a systemwide. In essence with the project-by-project basis we collected some 300,000-and-some-odd dollars off of a $3 million project.

Senator CHAFEE. I was thinking of your competitive position with other cities like Chattanooga today, or whoever that have plants prior to 1973. Is there any competitive position they might get into as far as attracting industry?

Mr. HARRINGTON. I would say Chattanooga, Nashville, and Memphis would be all the same. They all have modifications that need to be done.

Senator CHAFEE. They all have to charge the ICR?

Mr. HARRINGTON. That is correct.

Senator CHAFEE. If I might ask Mr. Saulter a question. I couldn't follow your incremental program there. It seems to me, in effect, it was incremental if you built for 2 million gallons and it cost $6 million and takes an additional 3 million gallons; isn't that the incremental share, the extra amount?

Mr. SAULTER. I will ask Dr. Culver to address that.

Dr. CULVER. My name is Robert Culver, and I am employed as a consulting engineer in Boston. I would like to say, however, that the opinions I express here are entirely my own, and I am here at the invitation of the Northern Textile Association. I am on their water pollution committee, and I advised them and helped them in their program.

The basis for those estimates were the EPA cost curves for the different kinds of treatment plants or different size treatment plants. Now if facilities were constructed only for a particular industry, they may or may not cost as much as the increment so that the facilities that would be built at the public plants would be site specific and the proposal we are making is that the industry be charged for these facilities that are built to accommodate the facilities.

Senator CHAFEE. I think I understand what you are saying. In other words, if you have to build a plant and they are going to have a management control house, administration building, this and that, then you reach the cost of it and take just the additional cost it would take to accommodate industry instead of taking industries' share of the total. And in other words you are going to have an administration building anyway——

Dr. CULVER. Yes.

Senator CHAFEE. I was surprised at both the figures that Mr. Kirk and Mr. Saulter had about the inexpensiveness of building your own treatment facility. For instance, in your case, Mr. Saulter, you estimated you could get it built for, I think $600,000.

Mr. SAULTER. Right.

Senator CHAFEE. And it certainly seems to be a tragedy if you pulled out of an existing facility and built your own. Is that a pretty accurate figure?

Mr. SAULTER. This figure is approximately a year old and does need refinement.

Senator CHAFEE. I suppose the other figures are equally old?

Mr. SAULTER. Right. But we feel they are reliable figures.

Senator CHAFEE. And, Mr. Kirk, you were strong in suggesting that people go their own way and build their own facility. Is that actually happening? I see it happening in my State, but I thought it was for other reasons.

Mr. KIRK. I believe, Senator, it has not happened to a great degree as one might think simply because many of the commitments were already made before the present tax incentives and industrial revenue bonds could be utilized by industry to finance their own systems. In other words, in the 1972 contest this issue of parity was a pretty fair battle, and perhaps ICR had some merit in establishing parity between POTW users and those who self-treat their waste. I believe now that has reversed itself, and we base that on the Coopers and Lybrand report and the feedback from our members.

Senator CHAFEE. I am sure one of the advantages is if you do it yourself you can move much quicker. You can get an estimate and go ahead, whereas municipal plants get bogged down into redtape and Davis-Bacon, and all sorts of things that increase costs. Is that true, Mr. Saulter?

Mr. SAULTER. To a degree. It is our hope and intention that some modification could be made as we think we should go with the municipality. It doesn't make any sense to have two facilities in a community of 1800. We must take a hard look at the figures to substantiate the figures that we have come up with.

Senator CHAFEE. I must say it would seem to me that whatever we do around here we should do everything to prevent a duplication along that line because it doesn't make sense for the Nation as a whole to have duplicate facilities like that.

Mr. Chairman, I have other questions, but why don't the others go ahead. I can pick up later.

Senator MUSKIE. Senator Stafford.

Senator STAFFORD. Mr. Chairman, I am sorry to say I had other commitments earlier this morning. I didn't hear most of the statements. I tried to make up some lost time by reading the statements while I have been sitting here. I have a few questions.

Let me direct this to Mr. Kirk and Mr. Saulter, and this question is, given the enormous cost of borrowing money for any capital project, why isn't it always to your firm's advantage to participate in your community's public treatment work rather than constructing your own with or without industrial cost recovery payments? Would you care to respond, Mr. Kirk?

Mr. KIRK. Yes, Senator Stafford.

I might point out first that the cost of borrowing money has now become less with the advent of the Industrial Revenue Bonds. I believe they are not economical for small projects and companies intending to use these have some limitations placed on them. I don't know enough about the subject to comment intelligently about the limitations. Obviously, the availability of low-cost municipal financing should be a plus. Even if ICR is imposed it is for all practical purposes an interest free loan. In many cases, even though the POTW was shared so an industry might have costs a good deal higher than industry self-treatment capital costs, the industry would choose to stay with the POTW. Those POTW costs to industry are always much greater than industry self-treatment costs.

We find that people who make their financing choice now and could use the industrial bonds would almost certainly build their own systems, but even without the availability of the industrial bonds, quite often the capital share for the POTW is so much greater than industry costs of self-treatment systems that it would choose self-treatment anyway.

I could give you one example that I looked at recently in one of the communities in which we operate, and this is based on hindsight. Some years ago there was a choice made in which the company share of a POTW, that is the percent of the total capital cost of the project which the company would have to contract, was approximately $5.6 million. The company, having an option on

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nearby land, could probably have built a land disposal treatment system for $1.6 million, so that is more than a 3 to 1 difference.

At that time, since there was no low cost financing available to the company and the company earned extremely high rates on its capital, the company still chose to go into the POTW and take advantage of the very low-interest long-term financing.

Senator STAFFORD. Mr. Saulter, do you have anything to add?

Mr. SAULTER. I don't think so. It is a good question, and it would depend on the economics of it. It depends on the spread between the POTW or do it ourselves.

Senator STAFFORD. The same two gentlemen, let me ask this question. Either or both of you, would you describe the process by which your firm decides to join a publicly owned treatment work rather than construct your own, and indicate how important has capital cost been. Has it been a critical factor in the matter? How does your firm and host community go about negotiating a POTW, and what is the legal obligation? Do you have to continue to use a POTW? Would you care to comment on those questions?

Mr. SAULTER. From the beginning, as far as our negotiation with the District is concerned, it was done prior to my joining Guilford. Since I have been there, and I think the practice prior to that, it was understood as the town decided what kind of a facility it was going to have and when it would be built we, as good citizens, being the No. 1 employer in the community, we would do it together and those discussions have gone on continuously. I think there has been some feeling that the moratorium on ICR was going to continue and it would be in existence and not as much time would be spent on looking into the cost of going it alone. As far as the legal obligation goes, we do not have any, but we have a strong moral one.

Mr. KIRK. I am not sure if I can get all of your question in this statement. You can ask more questions if I don't get it all.

Senator STAFFORD. I never liked the multiquestions either when I was on the other side.

Mr. KIRK. First, let me say that for my particular company, in virtually every case we had been involved in POTW's for many, many years before the need to expand or upgrade came about following the passage of the 1972 act. In virtually every case we have been faced with a decision that upgrading is necessary because of more stringent water quality standards, growth of the community or company, or some other reason. We have long had a position that we would much rather have the community treat it for us. They know how to do it, and we don't. We would rather have them worry about it.

That particular picture is also changing somewhat. We must now be more careful. At some point the POTW would tell us what our cost is going to be in year such and such when upgrading is completed. They would ask if we are willing to sign a contract saying we will pay the ICR as long as we are in the system and pay our share of the local debt obligation, and in some cases we would be contracted for the entire lifetime of that debt obligation. In some cases they would simply tell us that would be built into the rate. We would have to agree to pay our share of the operation and maintenance costs which includes, a sizable replacement fund.

At that point if we had any other option we would look at it. In some cases we were located in the middle of town and had no room for building our own treatment plant. Even in those cases we often explored the possibility of piping wastes to a remote rural location. The cost of self treatment would then be compared with the POTW costs using a discounted cash flow analysis, which takes into account the normal investment value of our capital. If self-treatment did not appear feasible, we could only look over the community's shoulder and hope that they were building the POTW in the most cost-effective manner.

So for that reason even though the POTW share of capital costs is much greater than the cost of self-treatment, in many cases the company would still elect to stay with the POTW situation.

However, following such decisions, I believe in each case except one we have decided to stay with the POTW. We are in one system that we wish we weren't in. It was in a place where there was a fair amount of land available, and we wish now that we had gone ahead and built our own system. Unfortunately, we are committed for 25 of the 30 years of local debt repayment, so based on the contract we have we must pay for 60 percent of that POTW for twenty-five thirtieths of our share whether or not we stay in it, and, facing that kind of a payment, which you have to make whether you use it or don't, it makes it impossible to get out and build your own system.

That POTW was designed in such a way that it didn't meet the permit requirement based on the water quality standards. We will be faced with an additional commitment, and we may see fit to build our own system. The numbers haven't descended on us, so we can't make that judgment at this time. When that happens we will ask the municipality how much of this obligation they will assume for us or how many tenants they could get to utilize the capacity. There could be a number of other industrial tenants to help remove the burden from us. But we have 60 percent of the plant. The consequence of selling the majority back is very unlikely.

Senator STAFFORD. Thank you very much.

Senator CHAFEE. On this same thing, is the charge that you are concerned about—I will ask this of Mr. Saulter and Mr. Kirk—is the charge you are concerned about from the POTW, the public works treatment facility, the industrial cost recovery, is that the thing that is driving you to make your decision as to whether to get out of the onerous burden placed on you?

Mr. KIRK. The total cost is the problem. ICR is only part of that cost. We don't see a definite need for it, and feel that something could be done about the ICR portion.

Senator CHAFEE. If you went to a user charge the new figure, that would be contributed equally and fairly and wouldn't be as onerous?

Mr. KIRK. Anything funded by Public Law 92-500 has to have a user charge. Even places funded prior to that law have one. Certainly we have a user charge, and these are based primarily on the Public Law 92-500 pattern.

Mr. SAULTER. The cost as far as the user charges are concerned, we would have that anyway. On the other hand, if ICR—if the cost there should make us come to the conclusion that we would have

to go on our own, that would make the user charge that much greater for the citizens in the community.

Senator CHAFEE. One other question. It seems to me one of the problems you are discussing here, particularly where it might be a small community, is your fate is left to a great deal in the hands of the municipality as to how wise they are and frugal they are in the design of their plants. The example you gave of being slow and not moving and yet you are carried along like somebody on the end of a slag, you are trailing along, and whatever happens you are stuck with it. Is it a dollar or a percent amount you are caught with when you go into the public works facility? Do you sign for a contract for dollars or a percent of the total?

Mr. KIRK. The contract has to be for a percent amount in most cases because the municipality has not completed the project, so they cannot tell what the final costs will be and they will be held to the requirements of the bonding agency taking care of the local financing.

Senator CHAFEE. Thus you sign up for a percent of the total?

Mr. KIRK. All of ours have been for a percent. Sometimes dollars appear in the contract. But one is not bound to it. At one time we attempted to work into the contract a maximum share above which we would not be willing to pay, and if it were found that it would exceed that value, we could pay off our share of any obligations to date and get out of the project. The bonding agent would not allow that to go into the contract.

Senator CHAFEE. I understand.

Senator MUSKIE. Mr. Kirk, in your testimony, you say that the benefits of joint treatment should not be subsidized, when, in fact, it is less expensive in most cases for an industry to provide for its own waste water treatment. And then later on you say:

> Federal funding encourages over design leading to high operation and maintenance cost. While this works, industry would have to obtain its own funding which in the present economy would be extremely expensive and difficult.

How do you reconcile those two sentences?

Mr. KIRK. I am not certain if I have your question firmly in my mind.

Senator MUSKIE. It is less expensive than—presently it can't be true if the POTW option is not available to you, it would be worse because industry would have to obtain its own funding which in the present economy would be extremely difficult and expensive.

Mr. KIRK. The problem is that, if industry were forced to use POTW's, that means the industry has to go out and secure its own financing for its share of the POTW, and as I pointed out earlier the cost of industry's share of a POTW may be several times the cost of industry's self-treatment systems. The industry is going to have to use the more expensive system. Industry needs the advantage of low-cost financing and the advantages of interest-free loans which the ICR provides if it is to use the more expensive POTW's.

Senator MUSKIE. Is there something in the law that compels industry to a POTW?

Mr. KIRK. Location of industry.

Senator MUSKIE. That has nothing to do with the law. If we eliminated the industrial part of the 1972 law, you would still have the problem of having to build those treatment plants.

Mr. KIRK. Absolutely. There is no argument about that.

Senator MUSKIE. What in the law compels you to join a POTW? The circumstances of a situation might, but those circumstances would be present if the 1972 law made no provisions for industrial participation in POTW's.

Mr. KIRK. We are assuming you would like to encourage industry participation, and the law does speak to that matter. The other thing is industry is often bound——

Senator MUSKIE. That has nothing to do with the law.

Mr. KIRK. I believe the law is designed to try to smooth out a series of impacts because of the need to clean up waste water and I am trying to speak to how that affects us.

Senator MUSKIE. It is not the intent of the ICR provision to encourage every industry to be part of POTW's. Not at all. If we conceived the results of that, that would mean that all of American industry would become part of POTW's. We would have to escalate our cost figures enormously. We wrote ICR into the law to accommodate those situations where it would be to the mutual advantage of the community and industry to build a joint facility, and we assumed the parties would be sufficiently protective of their self-interest to make the right decision either to create a joint treatment facility or not. We had no desire to encourage communities to go the POTW route. I don't think the Congress would ever pass a law with that kind of a price tag. Now what you are asking us to do by repealing ICR is, in effect, to encourage all industry to join POTW's, and why shouldn't they if the Federal Government is to pick up the total cost of building the facilities, the industry's portion as well as the community? Why should any industry not take advantage of the tax incentives that have been created? Why should any industry, unless it is in a community totally irresponsible, why should any industry not join a POTW?

Mr. KIRK. We simply found the advantages which you have described do not always show up in terms of economics to industry.

Senator MUSKIE. Then you don't have to join.

Mr. KIRK. In fact, most effectively, they don't show you——

Senator MUSKIE. Then you don't have to join.

Mr. KIRK. I do believe that Congress intended to produce a law which would encourage those industries which were firmly a part of communities and already using a community's facility to stay in it.

Senator MUSKIE. To the extent of that, I am a Member of Congress, and I had a part in writing the law. I am trying to clarify what the objective was. The objective was to encourage communities to do whatever was best in their own interest. We have a lot of complaints from business that we are always telling you what to do. In this case we offered you an opportunity to do what was useful to you, and now to have you come here and convert that into something different, a mandate to force you to do something economically unjustifiable, I find incredible. I understand the causes, and I think we did then, that it wouldn't always be to the mutual interest of the community to have an industry join. What happens in a community, an industry which is a little shaky joins a joint-treatment facility, and then after it is built and designed for the additional capacity, the industry for one reason or another goes

under or moves south which often happens in the north, then the community is saddled with a facility beyond its capability of handling and it has to carry the burden without any help.

There is testimony here objecting to the contractual arrangements that would protect the community in those situations. The community side of that isn't recognized. It isn't always to the advantage of the industry or the community. We understand that. We assumed it wouldn't always be to the interest of industry to join these joint facilities, and if industry has made the decision which now puts it in an untenable situation, it seems to me that is its responsibility.

With respect to the sight availability we can't make decisions here in Washington writing laws about any assumptions on site availability, all of the 90,000 local communities of this country, but that is a circumstance which the companies and communities are in a position to take into consideration. I simply want to clarify that in all of this testimony. It was our intention to push this position. If the tax incentives are on the other side I certainly don't resist the notion that industry goes the other route, but if it goes this route and that is what repealing ICR would be, then we have to measure the monetary consequences of it, and I don't know whether or not in this day and age if we can afford that.

Having said that, I would like to explore some of the alternatives and I am open to those. I am interested in knowing——

Senator CHAFEE. could I ask one question in connection with what you are saying?

Senator MUSKIE. I yield to Senator Chafee.

Senator CHAFEE. I agree it seems to me we are confronted with a problem here where Mr. Saulter says the economics may very well justify us setting up our own plant, and as I got your statement you were indicating where the economics are best for you. That is what you seem to be suggesting in your statement. Mr. Saulter is saying if we go where the economics are best for us we don't feel we are being the best citizens as the biggest user in our town. The cost is so high that the charges left on the town are going to be very, very steep. He is saying that we would like to go into the towns, but as good citizens it is not good for us, but there are other factors that are involved. So therefore there is a motivation for an industry to go into a municipality even though dollars and cents aren't the best.

Senator MUSKIE. I understand that. It is true of every taxpayer in the community. Often taxpayers support community projects that don't benefit them. Some families without children have to support public schools.

Senator CHAFEE. Those are by law; they have no choice.

Senator MUSKIE. This is by law too. They are complaining this law does that too. But in addition there are two points I want to make. In response to your question, first, there are considerations other than pure economic interest that I am sure would enter into the analysis of both the community and industry. Guilford Industries is not the only employer of any consequence, and the largest taxpayer, so the health of the community as a whole must be taken into account, and I am sure Guilford Industries does that. It is a responsible citizen, and I know a lot of other towns in Main that

would fit the description, and I am sure there are towns like that in Rhode Island, and it is because of the existence of such industries that we have left it to the goodwill and self-interest and good citizenship of the parties to make those decisions. And let me say this to John, there wasn't all that much enthusiasm when we wrote the law for any joint-treatment facilities, any at all. Even this, there is an interest subsidy at the very least although Mr. Kirk doesn't like the use of the word subsidy. I often find among businessmen they don't like to hear that they are recipients of subsidies. But in any case, if you don't want to call it a subsidy I won't call it a subsidy, but I assume you wouldn't take advantage of it unless you thought it would do you some good. We didn't call it a subsidy in the law. Obviously there is a problem here generated by the Guilford kind of situations and others and if there is a way to accommodate that without creating an incentive for every industry in America to go the POTW route, I am interested in examining it.

I have the same puzzlement about what incremental means. But in your case, Mr. Saulter, the law doesn't mandate how you measure the cost of industrial capacity. It simply says it should be recovered. So how you measure the industrial share of the cost is recoverable, and that is what your proposal goes too.

Mr. SAULTER. What we think would be feasible, if there was a way to rewrite the law, amend or change it, where the EPA and the community and industry in a given area could sit down and decide how this could be worked out so industry does pay its fair share—I am not requesting any type of subsidy.

Senator MUSKIE. Suppose we were to write that the cost of industrial capacity could be recovered, should be no higher than it would cost the industry to build its own treatment facility; would that do what you were talking about?

Mr. SAULTER. I would say it would. It is going to cost us a certain amount of money, and if it costs the same or slightly more to go with a municipal treatment center, we should do it.

Senator MUSKIE. I can see a rationale for that approach if there is an adequate way to protect both sides.

Mr. SAULTER. We think it would be relatively easy to figure out what the additional cost would be to add our flow to the districts. This can be figured out and also how our flow mixes with the district's flow. And that would mean we would be charged exactly, precisely or slightly more maybe. There is a percent of slightly more to make sure it is figured out properly. We would like to think we could join it and not have to pay for some of the things that they need to have as a POTW, but whatever money is spent treating our waste, we would pay for it. That seems logical and fair and shouldn't add to the national budget.

Senator MUSKIE. Let me ask you, suppose we were to change the law and eliminate Federal funding of the industrial share of the plant but authorized communities to negotiate with industries to pay a share of the land and raise their own funds and so on, how would that compare?

Mr. CULVER. May I answer? I think that this would to some extent impair the borrowing capacity of a municipality. It would impact on borrowing capacity of municipalities although in many

instances before the Federal law was in effect this is exactly what was done. We have the case of Berwick, Maine, for instance where two bond issues were made, one to pay for the industrial capacity and one to pay for the municipality, and the local tannery there contributed to pay the costs of the bonding for the industrial part of the plant, and the municipality paid for the municipal cost. But they were both municipality bonds, but entirely separated. One treatment plant was built. But if the Federal Government would be prepared to guarantee the bonds, then the bonding capacity of the municipality would not be impacted.

Mr. HARRINGTON. Mr. Chairman, I would like to respond. I would like to have my associate, Mr. Linton, who has many contacts to answer that question.

Mr. LINTON. Mr. Chairman, we are faced with classicial problems here in communities dealing with significant amounts of discharges and I have a feeling that the questions and responses are addressing the problem from the standpoint of small communities that have a large single discharge. The Congress changed the law, as you recall, in 1977 to provide the option to a publicly owned treatment agency to either use a systemwide basis for assessing the costs of capital recovery for construction for industry as opposed to the way it has been set up under the regulations prior to that where EPA stipulated POTW's must determine the specific cost of that portion of the plant that serves industry for its industrial discharges. In a smaller community that might be hard to determine, but in larger communities it becomes a horrendous administrative problem to begin to analyze and calculate that share for each of those dischargers, so we are grateful to Congress and this committee for their efforts to amend the ICR provisions, one, to provide an exemption of 25,000 gallons-per-day which took out a significant number of small dischargers that cost more to monitor than they paid in. They were also grateful for the amendment that allowed a systemwide basis for determining costs, and some of our agencies are using that. We are dealing with two measures of scale here and it is a difficult matter for a city like Los Angeles, Calif., or other large cities to calculate these discharges at 50,000 gallons-a-day where that is a small percent of the total flow than it is when you are dealing with a smaller community.

I might also point out for the record that my association did not propose the concept of the law on user charges. What they did raise was the ability under certain circumstances to qualify for an ad valorem. Again, the committee in Congress was kind enough to modify the law in 1977 to allow ad valorem user charges, and in my opinion, it is committed to the use of user charges for R. & M. replacement and expansion, so I want the record to how that we did not oppose the user charges.

Senator MUSKIE. There are going to be a series of rollcall votes at 12:10 p.m. John, if you have other questions——

Senator CHAFEE. I would like to ask the consultants a question, if I might. If there is very little industrial capacity in a plant, what assurance does EPA require that a grantee be self-sufficient in caring for that plant in the future? In other words there is very little ICR coming in. What does EPA require of the municipality, the grantee of funds, that it will be self-sufficient? The thrust of

ICR is to have money there to replace the plant, but if the plant doesn't have much industrial capacity, then where are we? What is the justification of ICR if it doesn't have industrial—what do they require?

Mr. LINTON. I am confused on one thing in the question. It is our understanding that the collection for the ICR is for that portion of capital contributions from the Federal grant that was expended to build what was necessary to service that industry.

Senator CHAFEE. True, there is a capital grant given to municipalities to build the original. Lets take a plant with no industrial capacity but there is a grant going to the community to build a waste water treatment facility. How was the U.S. Government going to be assured that there would be money available to replace that facility in 2040.

Mr. LINTON. The regulation from EPA in the development of the facility also included the stipulation of revenues that would be generated by the agency in order to meet its debt service and replacement requirements. The guarantee on that risk with the local legislative body that it will——

Senator CHAFEE. My question is directed—I appreciate the answer. The quandry I have is that the thrust of ICR is to be able to replace the industrial part of the plant. But what about the other part? The Federal Government is entirely dependent upon municipalities behaving in a certain fashion.

Mr. LINTON. The user part must be adequate to replace the nonindustrial part.

Senator CHAFEE. But we have had testimony from Mr. Orthmeyer that in his plant the user charge was being used to retire the bond so when the bond is retired it depends on what the municipality will do. What is the matter with using the user charges to replace the industrial part of the plant?

Mr. LINTON. We would not object to that.

Senator MUSKIE. If the user chargers are high enough?

Mr. LINTON. The user charge would have to be high enough. My members do use the user charge to raise funds for replacement for the nonindustrial part, as well as paying the debt service charge.

Senator MUSKIE. I want to emphasize the budgetary implications we are talking about here. The last 3 or 4 years the Congress has steadily reduced the amount of money to be available for this program from the total construction program, and I am sure we will reduce it even more this year because of budgetary pressures. So ICR actually requires an effort at some point to eliminate the Federal funding for the industrial capacity of waste treatment plants altogether. That creates pressure on us and on you, too, to resolve this issue in a responsible way, and I simply want to stimulate as much input as I can, as to alternative ways of handling this problem.

Senator CHAFEE. Mr. Chairman, I think this testimony has been helpful here in a variety of ways. One, I personally looked on the ICR as a way of reducing the Federal outlays under this program by making it too costly to drive industries into constructing their own and thus not requiring such big plants. Is that your suggestion?

Senator MUSKIE. No, no; I said the program is created so that this option would be available to the mutual interest of the communities and industries and they would work out what was to their mutual advantage. We were not desirous of building pressure in one way or another. I don't want to see every industry in America pumping its effluents into publicly funded plants. It is an option where it makes sense to both points of view. I am sure that circumstances make it less than neutral in some situations. You suggest the Guilford case does, and Mr. Kirk sighted problems, but it is not a push in one way or another, and I would like that option continued. I don't want to repeal the industrial capacity where it is appropriate, but neither do I want to push every industry because we make it so attractive into using publicly funded waste treatment facilities. I don't think the budget can stand that.

Senator CHAFEE. I suppose the vote is on now? Is this a 15-minute vote? Could I ask one of the consultants, maybe Mr. Hensold, what would be the effect if there were no ICR? Would that create a thrust going into a municipal plant? The option for building one's own facility, I suppose, would be reduced?

Mr. HENSOLD. It could be but it would depend on the economics of the relative difference between the cost of ICR as it presently exists and the fact that if it goes to the economies you still would have the user charge cost, and if that was continued to be defined the way it is defined now. That study, we did not make, but which Coopers & Lybrand made, was an attempt to address that issue and find out more about that. They found there was not much information on that.

My specific experience in one case is where we have a client that has an ICR system up and running, that the charges are 3 cents per 1,000 cubic feet per ICR and the minimum user charge, I think, was $5.79 per 1,000 cubic feet. You did not have an ICR charge in that situation. There would not be a significant difference in the—there would not be a significant charge in payments.

Senator CHAFEE. Could I ask the city representatives here, are the ICR moneys retained for future work? What are you doing with ICR funds?

Mr. ORTHMEYER. In my testimony I said we are in the process of setting up that now. We do not have the cost recovery in effect at this time. As I understand it, the regulations, they are set so that 50 percent of that would go to the cities and a portion of that would have to be allocated for the future.

Senator CHAFEE. That is for future work that benefits the city or benefits industry?

Mr. LINTON. The 50 percent of ICR that is required for repayment goes into a bank which would be paid back to the Federal Treasury. Fifty percent which we keep will be used to pay the administrative cost of ICR. The treatment agencies do not keep the Federal portion of ICR. That is retained by the Federal Government.

Senator CHAFEE. Thank you very much, gentlemen.

I want to thank each of you for coming. We may have some questions that we will write to you and if you would get the answers back promptly we would appreciate that.

Thank you.

[Whereupon, at 12:10 p.m., the subcommittee was recessed, to reconvene subject to the call of the Chair.]

[Statements submitted for the record follow:]

STATEMENT OF DONALD G. KIRK
MANAGER, ENVIRONMENTAL ENGINEERING, HEINZ U.S.A.
FOR THE NATIONAL FOOD PROCESSORS ASSOCIATION
ON THE
CLEAN WATER ACT
BEFORE THE
SENATE ENVIRONMENT AND PUBLIC WORKS
SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION
20 MARCH 1980

I am Donald G. Kirk, Manager of Environmental Engineering of Heinz U.S.A., a division of H. J. Heinz Company. I am appearing today on behalf of the National Food Processors Association (NFPA) and as chairman of its POTW Subcommittee. The National Food Processors Association, formerly the National Canners Association, has about 530 processing members who pack over 90% of the total national production of canned fruits, vegetables, meats, fish and specialty products.

The National Food Processors Association agrees with the conclusion of the Environmental Protection Agency's (EPA) January 1979 report to Congress: The industrial cost recovery (ICR) provisions of the Clean Water Act have not achieved their original legislative purposes. It is an unfair penalty on industry. It places at a competitive disadvantage industrial users of POTWs. Its continued implementation could reduce industrial participation in publicly-owned treatment works (POTWs)--an unfortunate consequence. For these fundamental reasons, the National Food Processors Association urges repeal of ICR.

In taking this position, the members of the National Food Processors Association assure you that they do not object

to fair and equitable user charges on all POTW users for actual operation and maintenance costs and for local debt service. We emphasize that repeal of ICR will have no effect whatsoever on water quality or water conservation. ICR is merely a mechanism for partially repaying a federal grant. ICR does not affect POTW capacity, efficiency, or any other aspect of treatment.

Mr. Chairman, our invitation to testify before your subcommittee requested that we comment on several issues. These issues can be separated into two areas: (1) repeal of ICR and (2) modification of ICR. NFPA's members strongly support repeal of ICR. For this reason, the majority of our testimony today will cover the issues concerning repeal with some discussion of the four purposes for which Congress originally created ICR. We will discuss those issues concerning modification of ICR at the end of our testimony in response to EPA's latest recommendations for modifying the current industrial cost recovery program.

First, I want to address some major misunderstandings concerning ICR and its relationship to industry participation with municipalities in joint wastewater treatment ventures.

* * * * *

ICR HAS NOT ACHIEVED ITS CONGRESSIONAL INTENT
- This is The Uniform Opinion of Industry, Municipalities, and EPA's Contractor, Coopers and Lybrand

ICR DISCOURAGES INDUSTRY PARTICIPATION IN MUNICIPAL SYSTEMS
- Even Without ICR, Costs are Generally Higher for Joint Treatment, Due to:
  - Administrative Requirements Imposed on Grantees
  - Capital Costs for Construction of Facilities More Sophisticated than Utilized by Self-Treaters
  - Additional Costs Not Incurred by Self-Treaters

JOINT TREATMENT OF INDUSTRIAL AND MUNICIPAL WASTES SHOULD BE ENCOURAGED
- This Offers Mutual Benefits in Most Cases and Has Been the Stated Position of House, Senate, and EPA

BENEFITS OF JOINT TREATMENT SHOULD NOT BE TERMED "SUBSIDIES"
- Subsidy Implies a Competitive Advantage
- Industries Involved in Joint Treatment Systems are Generally at a Disadvantage

INDUSTRY DOES PRESENTLY PAY ITS SHARE OF JOINT TREATMENT COSTS
- Present User Charges Include Costs of:
  - Operation and Maintenance
  - Replacement of Equipment
  - Retirement of Local Debt Service
- EPA Regulations Prevent Local Governments from Providing Industry with Discounts

AT THE TIME NEEDED, INDUSTRY IS WILLING TO PAY ITS FAIR SHARE OF FUTURE CONSTRUCTION COSTS
- Concept of Replacement Fund is Not Good Business Practice
- Availability of Replacement Fund Could Encourage Perpetuation of Overdesigned and Sophisticated Treatment Systems with Their Inherent High Operation and Maintenance Costs

THE FEDERAL GOVERNMENT PROVIDES INCENTIVES FOR POLLUTION CONTROL BY SELF-TREATERS
- Investment Tax Credits, Tax Free Industrial Development Bonds and Rapid Depreciation for Tax Purposes

THE FEDERAL GOVERNMENT SHOULD NOT IMPOSE A DISINCENTIVE (ICR) FOR JOINT TREATMENT BY INDUSTRY
- Even Without ICR There is No Inherent Financial Advantage for Industries Participating in Joint Systems

THERE IS NO SOUND REASON FOR INDUSTRIAL REPAYMENT OF CONSTRUCTION GRANT FUNDS
- Corporations Account for a Significant Percentage of the Federal Revenue Utilized in the Construction Grants Program.
- Industry Should No More Have to Repay Grant Funds than a Municipality Should Have to Repay Funding for a POTW with No Industry Involvement

* * * * *

I will now direct my testimony toward the issues suggested by the Subcommittee.

THE QUESTION HAS BEEN RAISED: TO WHAT DEGREE DOES INDUSTRY PAY ITS WAY?

There are currently two types of charges which are imposed on industries participating in joint treatment works. One is the user charge, utilized by a municipality to recover its costs for operation and maintenance, equipment replacement and, in many cases, retirement of local debt service. This charge is based on waste volume and/or strength and is paid by all dischargers, including residents. By law, municipalities are not allowed to give industry a discount for user charges. Therefore industry does fully pay its own way for expenses incurred in the operation of a POTW. NFPA has never objected to industrial payment of equitable user charges.

The second charge is ICR; a provision for repayment of grant funds imposed solely on industry. There is no sound reason that industry alone should be required to repay its portion of federal grant funding.

If it is believed that only municipalities are entitled to federal construction grant funds because of the income tax payments of individuals, a more detailed examination of the makeup of the federal revenues, subsequently utilized for the construction grants program should be beneficial.

The first draft of the Administration's 1981 Budget contained the following breakdown of sources of revenue for the Federal Treasury:

Individual Income Taxes	45%
Social Insurance Receipts	30%

Corporation Income Taxes	12%
Excise Taxes	6%
Borrowing	3%
Other Sources	4%
	100%

Considering that federal construction grant funds are derived from the revenues listed above, it is obvious that industry does contribute a significant portion of the funds ultimately utilized for the construction grant program. And the actual corporate contribution to the federal coffers is greater than is readily apparent.

Since individuals and corporations benefit from the construction of a POTW, it is appropriate to consider only the first three revenue sources listed above, which are the only sources of revenue derived directly from POTW users. It should be noted that corporations contribute roughly two-thirds of the social insurance receipts. Therefore of the total individual and corporate revenues, industry's contribution certainly would be greater than 30 percent.

These figures will be developed further once the details of the Administration's revised Budget become available.

Based on these facts, it becomes apparent that an industry which accounts for a significant portion of a POTW's capacity should no more be obligated to repay federal grant funds than a municipality without industry should have to repay a portion of the funding for its POTW.

ANOTHER QUESTION IS THE EXTENT INDUSTRIAL PARTICIPATION IN POTW'S IS ENCOURAGED OR DISCOURAGED

Industrial participation in joint wastewater treatment facilities has been encouraged since the inception of the federal

construction grants program in 1972. It was felt that joint treatment should contribute to improved water quality while benefiting local communities, its residents and industry.

NFPA has long recognized that joint treatment of municipal sewage and compatible industrial wastewaters should benefit the users of joint treatment facilities and the environment. Congress, by its past actions, has indicated its concurrence with this principle.

Since the adverse effects of ICR may cause less industry participation in POTWs, it is appropriate to summarize potential benefits of joint treatment.

First, joint treatment should provide economies of scale advantageous to all users . . . residential, commercial and industrial. However, many factors often make joint treatment more expensive than self-treatment for industrial participants.

Second, NPDES permit-issuing officials need issue only one permit and review monitoring and compliance reports from only one discharge source. Fewer sources of discharge into a given waterway should make it simpler for regulatory officials to oversee and maintain stream quality.

Third, providing necessary pretreatment and paying appropriate user charges should fulfill most of a company's environmental obligations. A company would not have to obtain an NPDES permit or be burdened with possible enforcement actions if it exceeded limitations in the POTW's permit. The experienced POTW staff lessens the need for duplicate efforts by each company.

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Fourth, a company would not be required to hire and train employees for operation and maintenance of a treatment system, relying instead upon expertise of municipal personnel.

Ideally, the food processing industry would prefer not to self-treat its wastewaters. If economically sensible, industry would rather participate in a joint treatment system. After all, food industry wastes are compatible with domestic sewage; both are composed of conventional pollutants, primarily biochemical oxygen demand (BOD) and total suspended solids (TSS) and are readily treatable in the same facility. In some instances due to deficiencies in each waste stream, the combination of food processing industry wastewaters and domestic sewage may actually enhance the biological treatability of both types of waste by providing a more optimum ratio of essential nutrients and thereby reduce the actual costs of treatment.

Unfortunately, location often is the overriding factor in determining whether industry participation in a POTW is optional, impossible, or imperative. Food processing plants in rural areas generally self-treat because there is no nearby POTW of sufficient capacity. Food processing plants in urban areas frequently use a POTW because there is not enough land for construction of self-treatment facilities. Therefore, where ICR creates inequities, plants often have no alternative than to pay the higher costs.

The Issue of Parity

The Senate Report accompanying the Federal Water Pollution Control Act Amendments of 1972 makes clear that Congress intended

to establish parity between industrial users of POTWs and those who provide self-treatment:[1/]

> "The bill would deal with industrial pollutants in this way: each industrial user of a public system would pay a charge that would include not only that share of operating and maintenance costs allocable to such user but which would also be sufficient to recover that portion of the Federal share of the capital cost of the facility allocable to such user. That portion of the Federal share of the capital cost allocable to each industrial user would be returned to the federal treasury.
>
> "The committee believes that this approach to the issue of industrial use of public facilities appeared to the committee to be the most reasonable and equitable one that can be devised. Any scheme that did not provide for full recovery of the Federal share of capital costs allocable to industrial users would clearly constitute a Federal subsidy of private industry and, more particularly, of those industries providing wastes that are compatible with public treatment systems. Any other approach would discriminate unfairly against those industries which, for whatever reason, were unable to utilize public systems."

The Senate report makes clear that Congress believed that if industrial users did not pay a proportionate share of POTW construction costs they would in effect be receiving a federal subsidy and their wastewater treatment costs would be lower than their competitors who constructed, operated and maintained their own wastewater treatment facilities. It was believed that without ICR, direct discharge plants would be placed at a competitive disadvantage compared with plants utilizing municipal wastewater treatment facilities.

In fact, rather than establishing parity, ICR often creates disparity. Industrial users of POTWs, who were perceived as gaining an economic advantage, actually are at a competitive disadvantage

due to the high costs of participation in joint treatment systems. Addition of ICR charges places them at an even greater disadvantage, which is obviously not in accord with the original intent of Congress.

When ICR was written into the 1972 Water Pollution Control Act, Congress did not envision all the extra costs the law would impose on municipal officials in obtaining federal grants, in complying with its special planning and contracting provisions, and in constructing, operating, and maintaining their facilities. When all of these costs besides ICR are considered, it frequently costs industry more to participate in POTWs than to self-treat, which offers some tax advantages for construction not available to POTW users.

Reasons for Lack of Parity

There are several reasons why the costs to industrial users for use of POTWs constructed with federal grant funds under the Clean Water Act often equal or exceed costs of self treatment. In many cases this would be true even if the ICR charge was omitted. The reasons are:

1. Administrative requirements: EPA's grant regulations impose many administrative requirements on POTW officials that industrial direct discharge plants do not have to meet. These include complicated and expensive procedures to:

   a. Attain a high ranking on the state priority list for federal grants;

   b. Prepare applications for federal POTW construction grants;

   c. Administer grants received; and

d. Develop, implement and maintain user charge systems and ICR programs.

2. Capital costs: POTWs generally cost more to construct than equivalent industrial facilities, particularly for treatment of conventional pollutants. Reasons for the higher POTW construction costs include:

a. POTWs usually provide relatively sophisticated treatment, while industrial treatment systems, especially for seasonal food processing wastes, usually can be of a simpler design which is less expensive to build and operate but which achieves the same final degree of treatment. For example, the Best Practicable Technology (BPT) effluent guidelines for fruit and vegetable processing subcategories are based upon use of aerated lagoons rather than activated sludge, which is the most common technology choice of POTWs to achieve secondary treatment.[2/] EPA in developing its fruit and vegetable effluent guidelines, estimated that the costs to a tomato processor for activated sludge treatment would have been more than three times greater than for aerated lagoon treatment.[3/]

b. POTWs generally incur costs that are not necessary for industrial facilities, including costs to:

i. Improve the POTWs' appearance;

ii. Achieve disinfection, which is generally unnecessary for industrial wastewaters;

iii. Construct a facility with an especially long useful life (30 years or more);

iv. Install back-up equipment required by EPA grant regulations; and

v. Construct long interceptor sewers to combine all community wastes.

3. Investment tax credits and industrial development bonds: In its report to Congress (page 6), EPA stated that the ICR provisions of the Clean Water Act ". . . are not effective in accomplishing their legislative purposes." EPA based its conclusion on recent changes in tax laws which provide for accelerated depreciation of pollution control equipment, investment tax credits for capital expenditures, and the availability of tax free industrial development bonds to finance self-treatment facilities.

4. Age of the POTW facilities: The date of funding of a POTW can have a significant effect on costs for industrial participation in a POTW.

a. An additional source of disparity (in this case between various categories of POTW users) is the fact that those companies which presently participate in POTWs constructed or designed and funded without federal grants under PL 92-500 are not subject to ICR provisions.

b. Inflation is also a factor. The great majority of industrial direct dischargers complied with the law and met BPT treatment standards during or

before the 1977 deadline when construction costs were lower. But more than sixty percent of the municipalities did not achieve the required secondary treatment by that date. The cost for secondary treatment by POTWs that have not yet complied with 1977 guidelines, or who have only recently complied, will be much higher due to inflation in recent years.

Effect of Lack of Parity

The most serious effect of ICR is on the ability of companies to effectively compete. The EPA report to Congress notes that "For most industrial users of POTWs, ICR is a slight additional financial burden (about 10 to 15% of the sewer use charge)." A recent survey of NFPA members indicated that a significantly larger percentage of total POTW charges are or will be due to ICR requirements. Rather than 10-15 percent, ICR will account for more than 25 percent of the total treatment charges of our members who participate in POTWs subject to ICR requirements. Although total cost of POTW treatment is a significant problem, this additional cost (whether 10 or 25%) of industrial use of POTWs especially concerns NFPA members, because it assumes the nature of an administrative penalty. Repeal of ICR would end the current penalty for use of POTWs and help restore the parity that Congress sought to establish by including ICR in the 1972 Act.

The impact of the cost of the ICR provision on our industry is more significant than might be expected. A study conducted by

Touche Ross for the National Food Processors Association found that over a recent ten-year period the average annual pre-tax profit for a sampling of NFPA members was less than 4 percent.[4/] Also in such a highly competitive industry as canned and preserved seafoods and fruit and vegetable processing, an individual company does not control the price of its products. Rather, the price is determined by supply and demand for the commodity in the marketplace. A food processor faced with increased sewage treatment costs generally is unable to pass those costs on to consumers.

Explanation for Continued Industry Participation in POTWs

In the face of these impacts on industrial POTW users, it could be expected that most companies would now self-treat rather than participate in joint treatment. We believe that informed management seeking a site for a new processing plant would opt for self-treatment and locate accordingly. However existing companies cannot freely exercise such a choice for the following reasons:

1. When the Federal Water Pollution Control Act was passed in 1972, most food processors had already decided either to participate in a POTW or to provide self-treatment. Once that decision had been made, companies either invested in equipment necessary for self-treatment or budgeted capital required to participate with a POTW. Some companies recently have had to reexamine their 1972 treatment choice.

2. Today's major inducements to opt for self-treatment are investment tax credits and accelerated depreciation as well

as availability of industrial development bonds. However, few food processors have taken advantage of these tax incentives because management has not been fully aware of the provisions or because a company was committed to a course of treatment before the tax laws were changed.

3. Once a company commits to POTW participation or to share in a POTW expansion or upgrading, future consideration of self-treatment is often biased by a long term capital obligation which may be required whether or not the company continues to use the POTW. Thus a company can be faced with unexpectedly high POTW costs but not be able to afford to abandon the POTW in favor of self-treatment. Even if a company is not under contract for future capital cost payments to a POTW, there are various ways local government can discourage an industrial user's withdrawal from a joint treatment system if continued plant operation in the community is desired.

4. Independent of financial considerations, a decision to self-treat or joint-treat largely is determined by plant location. Many companies participate in a POTW under adverse economic conditions simply because no space is available to construct a self-treatment facility.

SELF SUFFICIENCY

Another intent of ICR was to create a fund for local municipalities to finance reconstruction of POTWs at the end of their useful life. Although reconstruction may be a legitimate concern in some cases, the present ICR mechanism is an inappropriate solution.

EPA's report to Congress states that ICR "would not make a significant contribution toward the grantees' financial capability to meet the costs (when adjusted for inflation in the ensuing recovery period) for future expansion and upgrading of their wastewater treatment works."

In addition to its ineffectiveness for such a purpose, ICR also is an unfair approach to employ in creating such reserves. The concept of a replacement fund for financing public works is fundamentally flawed.

The size of the "self-sufficiency fund" for POTWs with ICR varies greatly depending upon the extent of industrial participation in the treatment works. Therefore, it is unrelated to actual needs of a particular POTW. Communities most in need of replacement funds are likely to be those with no industry involvement and, hence, no ICR-generated funds.

Providing for future financing of treatment facilities from monies raised over a long period of time results in industrial users paying simultaneously for both original facilities and replacement facilities. A company that must pay into an ICR reserve fund may not be in operation at that location to benefit from the fund in later years. Conversely, industries that join the POTW system at a later date get the "free ride" which Congress intended to avoid.

Proponents assume that such a replacement fund will allow municipalities to meet future sewage treatment needs without

additional federal funds. As a matter of principle, POTWs should be financed in the same manner as other public utilities, such as power and water supplies. Public works and utilities are financed most fairly by bonded indebtedness which links most closely those who pay for a service with those who benefit from that service. Using this system of financing, the bonds are paid off by the users concurrently with their use charges, as part of their unit costs.

The view that there need be extensive replacement of facilities at the end of a POTW's "useful life" is unrealistic. Treatment works at all times should be kept in satisfactory structural and functional condition through replacements and repairs. A replacement fund is already required as a part of operating and maintenance charge. "Useful life" is a term more appropriately used for accounting purposes than as an indicator of the actual functional life of the structural and mechanical components of the facility. Treatment works usually operate over several generations without total replacement. Maintaining the plant in a satisfactory condition is in fact required to insure continued compliance with discharge limitations.

Use of 40 percent of ICR payments to establish a "self-sufficiency fund" is contrary to good business practice. It penalizes industry by sequestering capital in an account earning modest interest. A well managed company normally invests in facilities that increase profitability and productivity, earning

a combined return far beyond that of any POTW fund. Thus, a company would be better able to meet its environmental obligations if it was allowed to make payments for future construction as needed, rather than making ICR payments in advance.

OTHER ISSUES

ICR Revenues to Federal Treasury

EPA in its report to Congress (page 21) estimated revenues over a thirty-year period of $0.5 - 1.0 billion each for the federal treasury and for local governments.

Unfortunately, EPA's report did not analyze the effect of the return of one half of all ICR payments to the federal government on the total income received by the Treasury Department. The report overlooked the fact that in calculating the company's federal and state income tax the ICR payment would be claimed as a business expense. Since most companies are in the 46 percent income tax bracket, the federal treasury will net only 4 percent of the ICR payment, not the full amount as indicated by EPA in its report to Congress.

To illustrate, a company pays $100,000 as its total ICR payment for one year. Of this, $50,000 goes to the federal treasury. The other $50,000 is retained by the local community for future reconstruction of the treatment works and for other community purposes.

When the company calculates its income taxes, it deducts the total $100,000 ICR payment as a cost of doing business. Assuming

the profit level of the company is reduced by $100,000 and that the tax rate of the company is 46 percent, the federal treasury loses $46,000 in income tax revenue.

The comapny thus pays $50,000 to the federal treasury in ICR payments, but the federal treasury loses $46,000 in income taxes. The net result is a $4,000 payment to the federal treasury; a small return considering all of the special requirements governing ICR.

Even the state government, which receives no portion of the ICR payments, experiences a loss of revenue through industry deduction of the total ICR payments from reportable income.

Capacity and Water Conservation

In its report to Congress, EPA cited capacity and water conservation as issues which contributed to enactment of ICR. We concur with EPA's conclusion that ICR is not effective in controlling POTW size or in conserving water. Higher operation and maintenance charges, escalating water costs, and declining water supplies are the incentives for stringent water conservation efforts. A recent NFPA survey revealed that more than 75% of its members who participate in POTWs have active water conservation programs to reduce their wastewater volume. Reported flow reductions range from 5-95 percent with an average reduction above 35 percent. These measures would be undertaken irrespective of ICR charges.

ADMINISTRATIVE FEASIBILITY OF INDUSTRIAL COST RECOVERY

Although a community must develop a user charge program, development of an ICR program frequently does result in additional costs. This extra cost is because the data bases utilized for user charges and ICR are often different, and because ICR requires the maintenance of several special accounts.

I will not discuss administrative costs at any great length since I feel this would best be covered by the municipalities.

COST-EFFECTIVENESS GUIDELINES

We have not had a chance to thoroughly review the value engineering cost-effectiveness guidelines. However, we do plan to study the guidelines and will make any suggestions or comments we might have available to this subcommittee.

RESPONSE TO RECOMMENDATIONS MADE BY THE ENVIRONMENTAL PROTECTION AGENCY

A brief discussion of EPA's action in evaluating the need for and the effectiveness of ICR is appropriate at this time.

When the Congress passed the 1977 amendments to the Federal Water Pollution Control Act, the National Food Processors Association was pleased that Congress felt it appropriate to declare an eighteen month moratorium on the collection of ICR payments while EPA conducted an in-depth investigation of the merits and the drawbacks of this program. While EPA did submit its Report to Congress on time, the report did not include the Agency's recommendations for resolution of ICR problems. At this time the Agency still has not submitted its final recommendations.

The EPA Report to Congress concluded that the ICR program has not met its Congressional intent. The EPA contractor went further and stated that ICR should be repealed.

Mr. Chairman, EPA now has disavowed many of the findings contained in its Report to Congress. In testimony on 12 March before the House Subcommittee on Water Resources, Mr. Beck stated that EPA has for some time been dissatisfied with the approach taken by Coopers and Lybrand in conducting that study. Certainly, EPA should have been aware of the contractor's approach to the study and the Agency should have provided the necessary guidance to the contractor during the course of the study.

EPA is now apparently offering, in place of its previous report, some preliminary conclusions based upon an in-house review of unspecified scope or duration to examine the objectives and effectiveness of the ICR program. Based on their review, EPA has made several recommendations for ICR modification.

Mr. Beck, of the EPA, in testimony before the House Subcommittee on Water Resources last week, expressed concern that the loss of ICR funds would heavily impact some municipalities. We feel that in most situations the funds lost would not be sizable.

Of greater concern should be the potential impact that the imposition of ICR could have on industry's decision to stay with or to withdraw from a POTW. As previously discussed, ICR can be the factor which directs industry's decision one way or another.

At this time, I would like to respond to four recommendations made by Mr. Beck at the House hearings and by Douglas Costle, EPA Administrator, before this Subcommittee earlier this week.

1. The flow exemption of 25,000 gallons per day of equivalent sanitary wastes could be increased to 50,000 gallons per day.

A 1977 amendment to the Federal Water Pollution Control Act exempted industrial plants discharging 25,000 gallons per day or less into a POTW from the ICR requirements. While it did exempt a fairly large number of small industrial users, it essentially was of no value to the members of our association, who by the nature of the industry, utilize large quantities of water in order to assure the production of safe and wholesome canned food products. Recent EPA estimates show that the 25,000 gallon exemption would exempt 77 percent of the industrial dischargers while retaining 91 percent of the potential ICR funds.

The proposed increase to 50,000 gallons per day would exclude only an additional six percent of industry. That six percent includes the smallest plants presently covered by the ICR provisions. While this is admirable, it falls far short of providing industry and municipalities the needed relief from unwarranted costs. Furthermore, this exemption would have no impact on industries requiring large quantities of water such as food processors that process raw agricultural commodities into foods for human consumption.

2. If the grantee (municipality) can prove the "ICR revenues are not needed in meeting long-range obligations for treatment system improvement or rehabilitation" and "ICR insignificantly

contributes to the grantee's funding program" an ICR program would not be required. This could provide needed relief for those POTWs with little industry participation but would prove of little benefit in most cases.

In its testimony, EPA stated that any exempted grantee should be required to demonstrate that elimination of ICR would not "result in a disproportionate share of current and future treatment system costs being imposed on residential users of the POTW; rather, existing funding mechanisms must require industry to pay its share of future treatment system construction costs". The National Food Processors Association, maintains that elimination of ICR would have no effect on current costs except to reduce everyone's cost through eliminating the cost of administrating the ICR program. As previously discussed, we do not believe that creation of a fund for possible new construction needs at some time in the distant future is sound business practice, especially with the current economic situation. We believe that public works and utilities are financed most fairly by bonded indebtedness, which links most closely those who pay for a service with those who benefit from the service. While the use of a federally funded POTW benefits both local citizens and industrial participants, only industry is required to repay its portion of the federal grant.

If the ICR provision is retained, the result could very well be an increase in cost to residential users. Industry could be forced to withdraw from some POTWs. The operation and maintenance costs no longer paid by industry would have to be divided among other users.

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3. Grantees could "avoid ICR requirements if industrial capacity financing is not sought from the federal government".

This EPA recommendation has all the inherent problems of the present ICR system with respect to high costs for the municipal portion of a POTW. Federal funding encourages over-design leading to high operation and maintenance costs. What is worse, industry would have to obtain its own funding which in the present economy would be extremely expensive and difficult. Having to seek the necessary funding for industrial capacity, would prove another disincentive for industrial participation in POTWs, leading to withdrawal and self-treatment, or higher costs for industrial plants unable to relocate.

EPA stated in its testimony that there are many "grantees that reserve up to 90 percent of treatment capacity for one or a few industrial users. In some cases the system itself was specifically designed to accomodate the particular waste loading of the industry". EPA is concerned that these grantees could not afford to continue to operate and maintain such a POTW if the primary industrial users withdraw. We maintain that a POTW with such high industrial capacity is out of the norm. In such an unusual situation, the municipality and the local industry should work together to assure an equitable means of financing their joint treatment works. If the industry leaves the system, there should be little further need for extensive rebuilding of the POTW, since extra capacity will be available. Plus, the additional capacity could attract new industry.

NFPA does recognize that joint treatment of municipal sewage and compatible industrial wastewaters should benefit the users of joint treatment facilities and the environment. However, we disagree with EPA's statement that "industrial users of POTWs do, indeed, enjoy some degree of subsidy" in comparison to industries which self-treat. EPA has defined "the orginal intent of Congress" to be "the elimination of a preferential subsidy to industries discharging into publically owned wastewater treatment systems". Further, EPA includes in its definition of subsidy, spared "management, administrative and legal costs associated with operation and maintenance of a treatment system."

It cannot be true that industries participating with municipalities in joint treatment works are being subsidized, when, in fact, it is less expensive in most cases for an industry to provide for its own wastewater treatment. A subsidy infers an economic advantage, which is not the case in this situation. It would be easier to rationalize that industrial self-treaters are being subsidized by the various tax write-off provisions for pollution control equipment which Congress deemed it appropriate to provide in the interest of a cleaner environment.

We strongly believe that benefits of joint treatment such as economies of scale, fewer sources of discharge, elimination of the need for duplicative administrative requirements for obtaining NPDES permits, and reduced needs for treatment system operators should be considered as mutual benefits of joint treatment rather than industry "subsidies."

As stated before there is no logical rationale for the continuation of the ICR program. Industrial plants participating in municipal systems are not being subsidized with ICR; they are being penalized. Industry alone should not have to repay the Federal government for its portion of a program which is funded by corporate, as well as, individual taxes.

4. A requirement that industrial users sign binding contracts guaranteeing their participation and obligation to pay for specified treatment capacity.

NFPA is opposed to any general modification of the present ICR program in this direction. Continued industry participation in joint treatment works should be based on continued mutual benefit and financial benefit; not contractual obligations. Total elimination of ICR would resolve one important cause of industrial withdrawal from joint treatment works.

Another reason that this suggestion is unacceptable is that there are too many cases in which industry, in good faith, commits itself to discharge into a POTW based upon cost estimates which double, triple and even quadruple before operation begins. Many of our members have found themselves in this position and even in spite of contractual obligations are seriously considering self-treatment, with full realization that they must continue to pay for treatment never received.

This policy, presently imposed by some municipalities, definitely should not be implemented on a national scale.

CONCLUSION

The National Food Processors Association strongly believes that for the reasons I have discussed with you today, retention of the ICR provision is no longer desirable and would prove detrimental to future joint treatment of wastes by industry and municipalities. We urge quick action by the Senate to repeal the ICR provisiions of the Federal Water Pollution Control Act of 1972.

Thank you for the opportunity to testify before this Subcommittee and I will be happy to answer any questions you might have.

-FOOTNOTES-

1/ Report No. 92-414, page 29, Report of the Committee on Public Works, U. S. Senate, S. 2770, Oct. 28, 1971, (In: A Legislative History of the Water Pollution Control Act Amendments of 1972, Serial No. 93-1, Jan. 1972, Vol. 2, page 1447.

2/ Federal Register, April 16, 1976, page 16274, col. 3, para. 2, Final Effluent Guidelines for Phase II Fruits and Vegetables.

3/ Federal Register, April 16, 1976, page 16276, col. 3, para. 1, Final Effluent Guidelines for Phase II Fruits and Vegetables.

4/ Touche Ross & Co., Canning Industry Profitability Review, 1968-1977, February 14, 1979, Table 1X.

INDUSTRIAL COST RECOVERY

MONDAY, MARCH 31, 1980

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION,
Washington, D.C.

The subcommittee met at 9:45 a.m., in room 4200, Dirksen Senate Office Building, Hon. John H. Chafee presiding.

Present: Senator Chafee.

OPENING STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator CHAFEE. Good morning, everybody. On behalf of the Subcommittee on Environmental Pollution of the Environment and Public Works Committee, I would like to welcome our witnesses and guests to this third day of hearings on the Clean Water Act, particularly as it pertains to the industrial cost recovery aspects of it.

On the March 18 we took testimony from Mr. Douglas Costle, the Administrator of the Environmental Protection Agency, and on March 20, we heard a panel of public witnesses representing large and small cities, the food and textile industries, and experts on municipal finance.

At my suggestion, the subcommittee has set aside today to hear additional witnesses from the public who could not be accommodated last week, but who have particularly valuable experience and expertise to share with us.

Of course, what we are focusing on is the effects of these regulations, the industrial cost recovery regulations, on business decisions and their effect on pollution control activities in the affected communities.

We are delighted to have Dr. Camille Barnett and Dr. Richard Congreve. Dr. Barnett is the assistant city manager of Dallas, Tex. Is she here? Dr. Barnett, would you come and sit right up at the table?

And Mr. Richard Congreve, who is the vice president of the Potlatch Corp., from Cloquet, Minn., why don't you just sit right there? I see we are honored to have the distinguished Senator from Minnesota with us this morning, Senator Boschwitz.

Also on the panel will be Mr. James Riddell from the United States Brewers Association here in Washington, D.C.

Also, Mr. Lawrence Silverman, legislative director of the clean water action project. Mr. Silverman, why don't you just sit right there for a minute and then there will be a seat available.

Now, before we proceed, I would just like to say a couple of words about the history of the industrial cost recovery requirement by way of background. The industrial cost recovery was first enacted in 1972 as a condition to the 75-percent Federal grant under the Clean Water Act to the municipalities for the capital construction of publicly owned sewage treatment works.

Since 1972, EPA has obligated over $25 billion for municipal projects across the country. According to the latest needs survey, there is still $106 billion worth of projects waiting to be funded. Mind you, we have only done $25 billion. There is $106 billion out there still to be done, not counting some of the more exotic construction estimates for storm water controls.

The Federal share of those $106 billion worth of projects is $80 billion.

As a condition of the Federal grant assistance, grantees were expected to develop both a system of user charges to pay for the operation, maintenance, and replacement of the plant and equipment, and a system for recovery of a portion of the federally subsidized capital costs of the treatment works attributable to industrial use.

What I am anxious to hear is both aspects when we hear, particularly from those who are involved in the municipal part of the user charge and the effect of the industry cost recovery.

The idea out of all this was that the funds were to be shared under the industrial cost would be 50 percent by the U.S. Treasury and 50 percent by the grantees and municipalities. The bulk of the grantee's share was to be dedicated to supporting the additional sewage treatment needed in the community, although there was a discretion permitted for a portion of the recovered funds: Ten percent of the total could be used for the book work and the overhead costs of the recovery of the funds, the billing procedures, and so forth.

EPA did not finanlly promulgate ICR regulations until much later, so that when we considered the amendments in 1977 to the Clean Water Act, the requirement regarding the ICR was barely in effect. Only about $2 million had been collected. Already we had objections; indeed, we had them from Dallas, I recall, to the whole system of the collection of the payments.

For one thing, the amounts to be recovered in some cases barely matched or sometimes they even exceeded the administrative costs of recovery. There are claims that ICR would not contribute to achieving any of Congress original objectives, which were parity in treatment costs among competing firms, financial self-sufficiency for the community in meeting their treatment needs, or one of the reasons ICR was involved was, of course, for water conservation.

Consequently, as you recall, we authorized a study of these claims and enacted a moratorium, in which EPA was not permitted to collect, for—I think it was a year.

That expired June 30 and then we enacted it. The study was completed in December of 1978 and confirmed our suspicions. So 1 year ago this week I introduced a bill to repeal ICR on the grounds that it was administratively burdensome and could not accomplish the original objectives.

Others at that time were prepared to agree with that conclusion, and extended the moratorium. Now we have a recommendation back from EPA. EPA apparently does not favor repeal of ICR, but seems to acknowledge it has some defects.

In other words, they don't want it totally repealed, but they say there are some problems. There is a draft report from EPA which we are prepared to enter into the record. [See p. 143.]

Mind you, this is just a draft report, all 100 pages and a half paragraph. Soon we will have officially transmitted to us a final report.

Apparently EPA, while not persuaded that ICR should be repealed, believes that in some cases it can be waived and that an alternative would be preferred.

For my part, I am not completely convinced yet that we shouldn't repeal the entire IRC, but that is why we have witnesses here, to shed some light on this issue.

We are very appreciative for the witnesses being here. Dr. Barnett, Senator Bentsen would have been here. He wanted the opportunity to introduce you, but he couldn't be here today. We are very honored that we have the distinguished junior Senator from Minnesota here, Rudy Boschwitz, who introduced Dr. Congreve.

Senator BOSCHWITZ. Mississippi would be OK, too.

Senator CHAFEE. Sorry.

STATEMENT OF HON. RUDY BOSCHWITZ, U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator BOSCHWITZ. Thank you very much, Mr. Chairman. It is a pleasure to introduce Dick Congreve. He is the vice president of the Potlatch Corp. He is a professional engineer who has been registered as such for over 30 years in a number of States.

He is a resident of Cloquet, Minn., which is a community just a few miles south of Duluth.

Mr. Congreve is general manager of Potlatch's Northwest Paper division, which is headquartered in Cloquet. That company, in Minnesota, employs a couple thousand people, all in the northern part of Minnesota, where unemployment has always been quite rampant and where economic activity has always been at a premium. Places like Cloquet are very much served by having Potlatch as an employer. Dick Congreve is here to testify today about his experience with his company and industrial cost recovery. He has previously testified before the House Water Resources Subcommittee. His testimony has important relevance to the understanding of the relationship between the cost to industries of self-treating their waste compared with the cost of participating in publicly owned treatment systems.

Mr. Chairman, It gives me great pleasure to introduce Dick Congreve to the committee. I know the committee will gain from Dick's testimony. I have worked with him and with other members of his company in regard to ICR. I have personally reviewed his testimony, Mr. Chairman, and I am confident it will be very helpful to the committee.

Senator CHAFEE. Thank you very much, Senator. We appreciate your taking the trouble to come here. I might say to Mr. Congreve

that it's quite a privilege to have the Senator come here like this, because it isn't often done.

We are very grateful to Senator Boschwitz for taking the trouble to introduce you. Could I just ask a word about the Potlatch Corp.?

Are you basically a paper company, a wood products company, or what?

Mr. CONGREVE. We could classify ourselves as a forest products company. About 45 percent of our sales are in solid wood products, and 55 percent are in paper products with wood baskets in Idaho, Arkansas, as well as Minnesota.

Senator BOSCHWITZ. My company has bought some products from them in the past.

Senator CHAFEE. Fine. Thank you very much, Senator Boschwitz, for taking the trouble.

Senator BOSCHWITZ. I have to go to the Budget Committee. Excuse me, if you will.

Senator CHAFEE. I imagine the deliberations will be very weighing up there.

Mr. Silverman, why don't you step up to the table. Lets begin in the order I mentioned earlier, starting off with Dr. Barnett from Dallas, the assistant manager? Why don't you proceed, Dr. Barnett?

STATEMENT OF CAMILLE BARNETT, ASSISTANT CITY MANAGER, DALLAS, TEX.

Ms. BARNETT. I think industrial cost recovery gets at several issues that are close to the hearts of all us government officials of financial management, equitable distribution of cost, Government regulations, protection of public health, and improvement of the environment.

The city of Dallas supports long-range responsible financial management, providing for consistent capital investment. We also support equitable distribution of costs between users of treatment systems. We also support the avoidance of any unnecessary governmental regulation.

We support the protection of public health and improvement of the environment through providing waste water treatment facilities and updating them to the latest technology as quickly as feasible.

Our position is that these principles and objectives can be and are being met without industrial cost recovery programs. Our position is that user charges are both more equitable and more cost effective than the current ICR proposals.

Senator CHAFEE. You have some user charges in Dallas?

Ms. BARNETT. Yes, we do.

Senator CHAFEE. How do you meter that? Do you take the water meters and base your user charge on that?

Ms. BARNETT. The user charge is based on volume and waste strengths. The volume is determined by water meters and the waste strengths are determined by sample analysis.

Senator CHAFEE. The type of waste is the sanplant?

Ms. BARNETT. Yes.

Senator CHAFEE. But the volume is based upon the water meter?

Ms. BARNETT. Yes, it is. Since 1959 the city of Dallas has had ordinances in effect establishing a system of user charges applicable to industrial, commercial, and residential users alike. A surcharge is assessed to those dischargers whose waste is of a strength greater than normal domestic waste water. The surcharge compensates for both capital and operation and maintenance expenses.

Adding ICR to this user charge system will not be cost effective for the city of Dallas. In-house studies conducted by the city of Dallas indicate that the annual expenditures on the order of $160,000 in 1980 would be required to administer, build, and collect ICR revenues. These revenues would initially approximate $5,000 and increase to $65,000 per year. Although projected ICR revenues will increase over the 30-year period as further grants are received, these revenues will likely never result in a cost effective relationship between expenditures and receipts.

If inflation continues, the cost effectiveness of ICR will deteriorate further, because the amount to be recovered will be fixed, yet the cost of recovery will continue to escalate.

Our calculations of the cost have not included State or Federal or industry expenditures necessary to support the ICR program. It seems inconsistent with the goal of reducing unnecessary governmental spending to implement an ICR program which will increase municipal, State, and Federal costs without adding productive effort to the national economy.

We were asked to comment on five specific items. Item 1: The possible effects of the changes made to industrial cost recovery by the Congress in 1977, including the 25,000-gallon-per-day sanitary waste exclusion.

Without any exclusion, approximately 1,500 businesses in Dallas would be impacted by the ICR provisions. Some of these businesses are one- or two-person enterprises whose daily discharge of waste water compares in volume with that of a large single-family residence. The adoption of a 25,000——

Senator CHAFEE. You know, that seems to me that that is so small that there are only 1,500 businesses in Dallas that are discharging to your municipal plant, and I take it that some of them are one- or two-person enterprises.

It just seems so tiny. I mean, Dallas is a great big city.

Ms. BARNETT. The number of businesses affected by ICR in Dallas (1,500) may be comparatively small, but their contribution to the municipal waste water treatment plant represents a significant percentage of the total volume and waste strengths, ICR charges are based on the percentage of the treatment plant allocated to industry in terms of volume, DOD and total suspended solids. We have a great deal of industry and business that are not affected by ICR and do not use the waste water system in that way. Most of our commercial activity is banking and insurance, which, of course, does not put an extra load on our municipal system.

This, of course, is an estimate of the number. We also encourage pretreatment, which would decrease the number of businesses that would be impacted.

Senator CHAFEE. I see.

Ms. BARNETT. The adoption of a 25,000-gallon-per-day minimum would reduce that number to approximately 400 Dallas businesses.

Adoption of a 50,000-gallon-per-day minimum would reduce the number of businesses impacted to approximately 300. Either cutoff limit would eliminate most of the small businesses. Of course, any arbitrary exemption on the basis of amount of business involved raises questions of equity.

There may also be questions of legality of providing utility rate relief based on socioeconomic business relations. Even with the raising for of exemptions, administrative costs of the ICR program would not be significantly reduced because the entire structure must be created and maintained.

Item No. 2: Continuing the present industrial cost recovery system along with any recommended modifications to make it more efficient.

Senator CHAFEE. Could you hold up a minute? I just want to ask a question here.

How do we work the definition in this act of what is a business or what type of business is subject to the ICR? Can somebody from the staff tell me that?

I mean, where do you cross the line to say a bank isn't a business, but a two-man cleaning plant is? How does that work? Jackie? What makes the difference? I'm learning.

It is done by regulation, so a commercial establishment couldn't count? Is that right? Do you know, Doctor, how that works? In other words, you say a bank; you have a great big insurance company, 2,000 people. They wouldn't count apparently, you indicated?

Ms. BARNETT. I have Mr. Jim Young with me, who is familiar with those regulations and can probably answer that more clearly if you would like for him to speak to the issue.

Senator CHAFEE. Mr. Young?

Mr. YOUNG. Jim Young, Senator. I'm with the Association of Metropolitan Sewerage Agencies and Dallas is one of our member agencies.

The categories by regulation are A, B, D, E, and I, I think, of the standard industrial classification listing of that type of industry. It was established that way initially in the original ICR regulations and has never been changed. So if you have been listed in those categories which are put out, I'm not sure what agency——

Senator CHAFEE. Could you speak into the mike, Mr. Young, a little bit, please?

So that the bank or insurance company or that type of non-toxic——

Mr. YOUNG. That's correct.

Senator CHAFEE. Is that the—is there a commercial establishment? Is that why they are out or because of the quality of the discharge?

Mr. YOUNG. In general what are called commercial establishments, ranging from apartment buildings or office buildings are excluded from the Government-use categories.

Senator CHAFEE. They are excluded? Why, because the quantity isn't so great?

Mr. YOUNG. I think it's because their waste is comparable to ordinary domestic waste. It has no special characteristics other than ordinary domestic waste.

Senator CHAFEE. OK, fine. You say, Doctor, that—your last statement was that if you raise the—exempted the first 50,000 gallons a day, the administrative costs of the ICR program wouldn't be significantly reduced because the entire cost recovery structure must be created and maintained.

Why is it so expensive? Why do you say—earlier you said it costs $160,000 a year to collect. It seems to me that it would be a very mechanical thing, collection of the fees.

Ms. BARNETT. Well, in order to know the amount to charge based on the strength of the sewage, you would have to have a sampling program. That's probably more mechanical than we would like in that it involves some individual sampling and surveying of businesses.

There is also technical assistance that would be needed at the beginning of the program which involves person-to-person type of contact between the city and the industry.

That includes vehicles' expense and items like that. We in Dallas would use the current billing and collecting and sampling system that we currently have in place for our user charge system, but the allocation of costs incurred for ICR activities would be approximately $160,000 per year.

It includes just one or two additional people, some additional computer hardware, and some additional sampling which would include, of course, some energy consumption vehicle expenses.

I have a detailed breakdown of where those costs come from, which I'll be happy to provide you for the record.

Senator CHAFEE. I see. All right, why don't you proceed with point 2?

Ms. BARNETT. Thank you. Item 2: Continuing the present industrial cost recovery system along with any recommended modifications to make it more efficient.

We would support modifications to exempt the city from paying ICR if, one, its user charge system provides for capital replacement, including the portion financed by grants from all users in proportion to their use of the treatment works; two, if the grantee can demonstrate its ability to finance facility growth and replacement; or three, the estimated ICR collections are nominal in relation to the total revenues of the treatment system.

Item 3: Eliminating the industrial cost recovery.

The city of Dallas supports the elimination of the industrial cost recovery in favor of the user charge system.

Item 4: If industrial cost recovery is eliminated, any changes in the cost-effectiveness guidelines or other existing provisions to further legislative goals.

We would recommend a system of user charges similar to that adopted by Dallas where all customers, including industrial customers, pay their proportionate share of the cost of the treatment works, including the grant-financed portion.

Item 5:——

Senator CHAFEE. Have you always had a system in Dallas where the heavier-than-normal discharges are assessed surcharges?

Ms. BARNETT. That's been in place since 1959.

Senator CHAFEE. Is that heavier than normal in volume or in quality of the waste?

Ms. BARNETT. Heavier than normal in terms of strength.

Senator CHAFEE. All right, item five.

Ms. BARNETT. The degree to which industry pays its way, and the extent to which industrial participation in a municipal waste water treatment system is encouraged or discouraged, and its administrative feasibility.

Industry should and does pay its own way in Dallas through the user charge system. So do commercial and residential customer classes. The user charge system avoids subsidization of one class by another and is administratively feasible.

In summary, Dallas is committed to providing waste water treatment to protect public health and improve the environment; we are also committed to sound financial management to construct and maintain treatment facilities; and we are committed to equitably distributing those treatment costs to the users.

We have followed these principles since before the inception of ICR and will continue to work with you to facilitate these principles nationwide.

Senator CHAFEE. I don't understand why there are all these administrative problems with ICR if Dallas is already monitoring the discharge for strength under your current user charge system.

I mean, what is the difference if you are having to do all of this now, for a corporation—for everybody's discharging? Thus it would seem to me that if you are going to have an ICR, you just look up and see, now, how are we charging the user charges for your strength.

You have got the volume through your user charge. Don't you have any material right there?

Ms. BARNETT. Well, of course, part of the information exists in terms of identifying which industries that need sampling procedures, and we do have sampling procedures that exist.

The particular administrative design of ICR is different from our user design, our user charge design.

In addition, since it's a Federal regulation, separate accounting and separate auditing provisions would pertain to the Federal system that do not pertain to the local system.

Senator CHAFEE. How much has Dallas collected under the ICR now, do you know?

Ms. BARNETT. We have not collected any amounts under ICR. We passed the ordinance in 1977, but have not collected because of the moratoriums placed on it.

Senator CHAFEE. All right, fine. Why don't you stay right at the table because we will want to ask you further questions as we get on with the other witnesses.

I want to thank you.

Now, we will have Mr. Richard Congreve from Potlatch.

STATEMENT OF RICHARD N. CONGREVE, VICE PRESIDENT, POTLATCH CORP., CLOQUET, MINN.

Mr. CONGREVE. I had previously submitted written testimony, and I'm here to answer any questions raised by that testimony as well as to share experiences of a real, live example of a high-percentage participant in a major POTW and offer these brief comments in support of those recorded conclusions.

Since January of last year, 1979, when the WLSSD started up, process wastes from our pulp and paper operation at Cloquet, Minn., have been treated by the Western Lake Superior Sanitary District in Duluth, about 25 miles from Cloquet.

We are by far the largest participant and the largest of four industrial users involved in this district. Our experience with ICR shows that our industrial participation in a publicly owned treatment works is far more expensive than self-treatment.

Therefore, we must now find ways to reduce our charges in order to remain competitive. Companies not yet involved have a powerful incentive to stay away. This is contrary to the concept of areawide water treatment, raising costs for residential users, or in some cases, making the plants uneconomic to build for lack of volume.

The district that serves us covers 11 municipalities in a 500-square mile area, and we were and are yet told, that the plant would have been uneconomical to build without us. We still believe strongly in the regional concept, and we encouraged it from the beginning in the interests of our employees and the community.

In 1974 district figures indicated our payments, including ICR to the district, would be about equal to the costs of running our own plant.

In 1979, the first full year of operations, actual costs were more than 50 percent higher than our own plant would have cost according to updated estimates of self-treatment.

Senator CHAFEE. Does that include amortizing the capital of your own plant?

Mr. CONGREVE. Yes, sir. If we had paid ICR, the difference would have been over 80 percent higher and for 1980 the differences continue to increase.

Our industry displays waste treatment costs by a ton of pulp produced. The national average ranges from $10 to $18 per ton.

At Potlatch, we have a large mill in Lewiston, Idaho, where waste treatment costs are under $3 per ton discharging into the Snake River.

Senator CHAFEE. You mean you have your own plant there?

Mr. CONGREVE. Yes, sir. Our mill in Arkansas, a new mill, about the same size as the one in Cloquet, has costs less than $5 per ton.

For Cloquet, we have made current estimates that would put the total costs for our own self-treatment at about $17 per ton, not unreasonable for our very cold Minnesota climate.

Our actual 1979 costs were $25.39 per ton of pulp. ICR would have added another $5 per ton, putting the total costs at more than $30 per ton. This means that the current costs are over double that originally anticipated or for self-treatment. As a result of these high costs, we are forced to consider other alternatives that include partial withdrawal from our district.

However, it is not our intention to withdraw completely, but theoretically, if we did finance our own plant, our costs would be at least 25 percent lower than they are now.

Senator CHAFEE. Well, don't you get stuck with the costs of—haven't you got some kind of an agreement with the municipality? Can you pull out?

Mr. CONGREVE. I do, sir, and I have that further in my remarks here if we might—then we could discuss everything;

Senator CHAFEE. Sure.

Mr. CONGREVE. The public—if we did our own, the public would then have to pay up to 50 percent more for their rates and the other industrial users' costs would increase more than 60 percent, also giving them a powerful incentive to follow our example.

The situation is a serious one for us. We must now cover water treatment costs that are from $7 to $15 a ton higher than our competitors. It is an equally serious situation for the waste treatment district, including others still in the planning stage.

For rural districts, such as ours, the success of a regional plant depends on the predictable volume and characteristics of the industrial flows in addition to the income from the industries.

If industry users are compelled by economics to reduce their participation, this could be very disruptive. If those same economic considerations make it impossible for regional plants to attract industrial users, some of them may never be built.

In summary, our experience conclusively demonstrates that for us, ICR is not required to assure competitive parity between users and nonusers of POTW's. ICR is an added cost to participation in a high-cost municipal system; is a strong disincentive for further industrial-municipal cooperative efforts; and that ICR is an added incentive for current participants to move toward partial or complete withdrawal.

We hope that our confirmation of the doubts expressed by Congress in 1977 with a temporary moratorium, along with evidence supplied by other witnesses, will convince you to make the moratorium on ICR permanent.

I would like to offer the following responses to the five specific points: Perhaps that will address the question you asked, Senator.

The point about the 25,000-gallon-per-day sanitary waste exclusion is that that volume of 25,000 gallons per day is very minimal as compared to our discharge of 13 million gallons per day, so any change in that level would have no effect on our situation.

However, it is our observation that in our district, the small industrial participant does, in effect, gain a subsidy and yet enjoys relief from ICR.

Senator CHAFEE. You mean increasing the exception?

Mr. CONGREVE. Even today, sir, because in our district and this is a newly formed district, serving the city of Duluth, there are so many small industries that feed into a 100-year-old sewer collection system that it is impossible to measure the discharges of those industrial participants.

Therefore, they pay strictly on a water meter basis, and they are not measured on any other basis.

Senator CHAFEE. You mean they are not measured for strength?

Mr. CONGREVE. That's right, sir, and they are not measured on anything other than what water they have coming into them, which is not necessarily a relationship to the discharge that takes place, such as in a food processing plant.

In our district, there are only four industrial participants out of the whole district that get measured, and therefore pay or are slated to pay for ICR.

Senator CHAFEE. There are only four that are over the 25,000?

Mr. CONGREVE. There are only four that are able to be measured. At the moment, assuming that they are not over the 25,000, but you see, our district apparently has different kinds of agreements and regulations and administration than what I have had the pleasure to hear in both the House Subcommittee and here this morning, because our arrangements are specific for the four industries involved.

The rest of it is just a collection system for the whole Duluth and other 10 municipal areas involved.

Senator CHAFEE. I don't understand what you said when you said that there is no relationship, necessarily, between what comes in through the watermeter charges and what goes out. Where would the difference come from, particularly on the upside. I can see on the downside, but on the up, how could you discharge more than you take in?

Mr. CONGREVE. First of all, you have to assume that all the water comes into an industrial plant through the city watermeter system. That's not necessarily true all the time, because they can get water from a river; they can get water from a steam—a central steam system that they have in the Duluth area.

They can generate moisture out of their processes, particularly if they take goods in at a greater percentage of moisture than that that they're shipping out, as we do in our paper industry.

Senator CHAFEE. I see.

Mr. CONGREVE. In regard to the second point of continuing the industrial cost recovery system, since our district has only these four participants that I mentioned that are slated to pay ICR, any efficiency or inefficiency of the ICR system will have minimal impact on us.

As far as the elimination of industrial cost recovery, our previous comments have addressed the support and certainly the reasons for the elimination of ICR.

In the fourth point, where it relates to guidelines, it is my understanding that cost-effective guidelines were related to the original planning to insure that all the alternatives were examined for the lowest practical treatment costs before facility constructions.

In our case, at the WLSSD, that led the district to identifying the needs, both financial and technical, for our participation on the WLSSD; if ICR were eliminated, there would be added incentives for industry to participate where and when needed to arrive at lowest cost facility designs.

Last, the point about the degree to which industry pays its way, in addition to the comments originally submitted in writing and verbally offered today, I would add that we in Potlatch are currently paying $750,000 per year for the municipal debt service, per year, and an additional—more than $2,750,000 in annual operating maintenance user fees, which are nearly 45 percent of the total district costs.

We surely think that we're more than paying our way already. Further, we understand that ICR is for future expansion and rehabilitation, and it is not required for the current financial viability. If we were to withdraw, current viability would be seriously jeopardized.

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Therefore, the future would be of no use or consequence to us.

Senator CHAFEE. I must say, I am amazed at the sums of money that you are currently paying.

Mr. CONGREVE. So are we, sir. In fact, our figures are now out of date. We just got another bill last Friday for $375,000 in excess of last year that we're catching up with.

Senator CHAFEE. What is the capital investment you have got in your present plant?

Mr. CONGREVE. In the Duluth plant, it started out originally to be $40 million. Today it's over $110 million and growing.

Senator CHAFEE. I don't mean that. I mean the total facility.

Mr. CONGREVE. That's the total facility for the Duluth Western Lake Superior sanitation treatment.

Senator CHAFEE. You mean for the sanitary treatment. I meant Potlatch's total investment.

Mr. CONGREVE. For our total investment in Cloquet, Minn.?

Senator CHAFEE. Yes.

Mr. CONGREVE. We have approximately $120 million invested in Cloquet, Minn.

Senator CHAFEE. In your plant?

Mr. CONGREVE. That's right, in our plant, producing roughly 450 tons a day of pulp and paper.

Senator CHAFEE. How much are you paying in user charges, do you know?

Mr. CONGREVE. Yes, sir; $2,750,000 plus last year. If you add the $375,000, we are over $3 million.

Senator CHAFEE. Boy, they have really got a good thing out there with you, don't they?

Mr. CONGREVE. Well, sir, we started out originally as an enthusiastic explorer in this in 1969. In 1973 when we recognized what was happening to the costs, we thought it was going to be disasterous for us, so we even recorded our intentions to withdraw fron the district.

In the enabling legislation for the sanitary district within the State, there are certain provisions that give them the authority to direct the dischargers in the municipal area to participate, and those enabling legislations and the inferred discussions with the Minnesota Pollution Control Agency as related to the St. Louis River convinced us, with good cooperation from the then district people, to reconsider and there were several adjustments made as to how we could particularly join with the cities of Cloquet and Carlton, to pump this sewage some 25 miles to the Duluth area.

In so doing, we had about a break-even situation in costs. That's why we joined.

In 1975, we again reexamined the ability to get out, and it was inferred that it would be very, very difficult. So we have seen it through to this particular day recognizing that our alternative down the line is this partial withdrawal.

In answer to your previous question, that yes, we have, by contract, a commitment to sustain our portion of the local debt. That's this $750,000 per year that we are now paying.

By contract, even if we withdrew completely, we would have to meet that obligation. However, at the moment, that $750,000 per year waged against an excess of $2 million of costs, and then you

add the ICR on top of that, gives us a great incentive to continue to reduce and through reducing, by greater pretreatment, we will then minimize our financial contribution to the district.

But we recognize when we do that, that throws a tremendous burden on the residential users, many of which are our own employees.

That was the incentive for us to participate originally.

Senator CHAFEE. How many employees do you have in your plant there?

Mr. CONGREVE. Excuse me?

Senator CHAFEE. How many employees do you have in your plant there?

Mr. CONGREVE. In Cloquet, alone, we have about 1,500 employees.

Senator CHAFEE. Let's see if I have got this straight. Your user charges come to $2.75 million?

Mr. CONGREVE. Yes, sir, $2,750,000, as they were last year. They're up this year.

Senator CHAFEE. ICR is how much?

Mr. CONGREVE. The ICR would be—it would have been in 1979 an additional $756,000. We understand from the district it would be over $800,000 a year in 1980.

Senator CHAFEE. All right. Fine. I don't mean fine for the charges; fine for the testimony.

Mr. Riddell from the Brewers Association.

STATEMENT OF DICK W. RIDDELL, UNITED STATES BREWERS ASSOCIATION

Mr. RIDDELL. I'm Dick Riddell of the firm of Dawson, Riddell, Fox, Holroyd & Wilson. I'm here representing the United States Brewers Association, which is a nonprofit trade association of brewers representing approximately 75 percent of the malt production and other member companies engaged in all phases of the production of malt beverages.

Our members employ almost 40,000 persons directly and over 500,000 persons in the United States are involved in beer production and distribution and related industries.

Mr. Chairman, I would like to summarize my statement and have it appear in the record in full, if I may.

Senator CHAFEE. That is fine. [See p. 262.]

Mr. RIDDELL. Yes. The United States Brewers Association has surveyed the recent history and experience of its members in order to provide this committee with the most up-to-date and solid information concerning the questions of parity.

That is to say, whether or not those of our members who utilize POTW's are receiving a subsidy with respect to other users and to determine whether or not the members of our industry would be better off with self-treatment or to continue to participate in POTW's.

Our findings—as shown by questionnaire—indicate in all instances given the option today to build a new brewery, that in all cases, it would pay to build our own treatment works.

The figures that support this finding are summarized in my statement. The assumptions have been stated.

The difference in self-treatment in contrast to discharging into a POTW for an 8 million barrel brewery would be $6.5 million over the period of 30 years.

Our calculations of cost for the same period, that is, 30 years of ICR to our industry would be $300 million, assuming that they were in all instances to be required to pay ICR.

Now, it's significant from the point of view of this committee that many of our older breweries, those that are in trouble, are located in municipalities which are themselves in trouble. That is to say, the breweries are located in central cities, and the municipalities where they are located are making every effort to keep them there to provide a tax base and employment. Senator, many programs of the Federal government are designed to do specifically that.

At the same time that ICR is forcing us away from cities, the Department of Commerce and HUD and other governmental agencies are spending literally millions of dollars to encourage businesses to stay in impacted municipal areas.

Take any city in the Northeast, Midwest, any of the older cities today, and run through their grant programs, you will find that with respect to water treatment, with respect to sewers, and sewage lines and water projects, that there are literally hundreds of millions of dollars of Government programs which are not administered by EPA, perhaps EPA is totally unaware of them, that are being applied to keep industries within cities.

The economics as I have laid out in our statement are such that if the brewing industry today has to consider whether or not it will self-treat or belong to a public treatment works, we will self-treat where we can.

We must consider getting out of the city. We don't want to get out of the city. We would prefer to stay where we are. After all, take Schlitz; the beer that made Milwaukee famous would certainly hate to have to leave Milwaukee.

But the situation is such that given the simple economics of self-interest, the brewing industry, and any food processing industry confronted with the additional cost of industrial cost recovery, simply must consider getting out.

Now, up to now, I cannot state to you that the sole reason for leaving a city has been ICR. That's not been the case, but I can tell you this: That 80 percent of the new construction in the brewing industry which has taken place since ICR was enacted, has gone into self-treatment.

It has certainly been a factor in the decision to go self-treatment. We simply do not understand what EPA has said to you so far. We have attempted to parce what has been revealed to us so far in the statements before this committee and before the House committee. We don't follow it.

There is somewhere an assumption that there is a subsidy to industry in existing POTW's. We don't find that is the case. It's been pointed out here this morning, user charge systems are designed to cover the full cost of industrial users.

We have yet to see any evidence presented by EPA to back up the statement that there is a subsidy.

If I read the Coopers & Lybrand study, which EPA paid for, there is a statement that there is no such subsidy.

Senator CHAFEE. That didn't come out right for EPA, though.

Mr. RIDDELL. I guess not. I'm pleased to hear it stated at the beginning of these hearings that you now have a preliminary report filed by EPA. We would have been delighted to have a copy of it before our appearance here and had some opportunity to analyze it and discuss it with you.

We certainly look forward to an opportunity to do that at such time as it's made public. But on the record so far, Senator, there is no subsidy for industry. You have to take into account this fact, that all industries are not equal. Some of us require a great deal more water and more sewage facilities than others. By its nature, the ICR is based upon BOD loadings, flow and suspended solids. You're taking a look at instances where particular groups of industries are being horribly impacted here—one of them, the brewing industry, the paper industry, but most particularly, the food processing industry. We are talking about inflation. We envision a rate of inflation with respect to municipal systems that is such that without regard to ICR would tilt the balance of economics in favor of self-treatment.

If the Congress of the United States wishes the brewing industry to continue in municipalities and to stay in POTW's, then I strongly urge you to repeal the system altogether.

I thank you.

Senator CHAFEE. Just a question. In your testimony you say the number of brewing companies has declined presently to 40. There are 40 brewers left with 79 plants.

Only 79 breweries in the Nation?

Mr. RIDDELL. That's right. And the number will decline radically.

Senator CHAFEE. There are 40 separate brewing companies?

Mr. RIDDELL. Yes.

Senator CHAFEE. With 79 plants?

Mr. RIDDELL. That's all. The number, you can expect to decline.

Senator CHAFEE. That doesn't seem like very many. Anheuser-Busch and Miller, Schlitz and those people must have five, six, seven different breweries, don't they?

Mr. RIDDELL. Yes, they do; and the strong breweries with the financial resources are moving to self-treatment and away from the cities.

The breweries that are caught and do not have the financial resources because of the volume of the water that they use and discharge are going to be heavily impacted by ICR, and we predict that some of them will fail for the reason of ICR alone. We would like that not to happen.

Senator CHAFEE. I'm not familiar with what you point out. We have a brewery in exactly that situation in a city in Rhode Island. It couldn't possibly have its own treatment facilities.

Mr. RIDDELL. It couldn't move.

Senator CHAFEE. No. I suppose that the 50,000 gallon limitation proposed by EPA wouldn't have any effect on your people at all?

Mr. RIDDELL. It would have no effect whatsoever upon any brewery, or any other food processing firm of any size.

Senator CHAFEE. All right. Let's have testimony from Mr. Silverman.

STATEMENT OF LAWRENCE SILVERMAN, LEGISLATIVE DIRECTOR, CLEAN WATER ACTION PROJECT

Mr. SILVERMAN. Thank you, Senator. I have a written statement which I'll submit for the record. [See p. 269.]

I would like to just summarize it very briefly. First, let me say who I—the interest I'm trying to represent here today which is, I think, might be summed up as a consumer interest. The clean water action project for whom I'm here today is a citizens lobby; We get most of our funds and most of our support from small donations from about 60,000 people. I know their concerns, like here, from the general public, perhaps essentially, and certainly, in particular, our support is the people we speak with, are interested in clean water at a reasonable price.

They are extremely concerned like we are and have been extremely concerned about inflation of the price of water.

When I talk about the price of water, I mean the price of supplying water and the price of treating it after it's used, and the price of treatment, of waste water treatment, has escalated at a dramatic rate.

I think the public is concerned that special interests will get too much more than their share. I think also all of us are very concerned about the problems that some communities find themselves in.

I think it obviously is good for the water and everything else to have strong cities. We don't want to see them injured by a grants program that is misdirected.

We, in a way, we agree with some of the remarks that are made here, that ICR——

Senator CHAFEE. Mr. Silverman, let me say the term "special interest" is not a term with me. Everybody is a special interest. You're a special interest. Sort of to use it as a type of program for other people is——

Mr. SILVERMAN. I don't mean to do that. Perhaps I should have spelled it out. There is a perception that in dealing with these kinds of things that the people with the biggest lobby is going to get the most.

I think the committee has and I hope it will continue to avoid these statements doing that kind of thing. It's a great concern. I think it's one of the things that motivated ICR to be implemented in 1972 was that concern.

Senator CHAFEE. I think everybody instinctively are against special interests which are other interests against their own interests.

Everybody has their own special interest. No one will say that the environmental groups haven't had a fair hearing before this committee, which I'm sure yours will get the same.

Mr. SILVERMAN. I agree with you. In fact, last year, the American Meat Institute, the Paper Institute, the National Food Processing Association, and the National Forest Products Association, I believe that was the first time that a consumer/environmental group joined so closely with industrial groups on a position, which was, in part, was to support the continued moratorium, but really

to look comprehensively at the joint municipal and industrial waste treatment, and also to look comprehensively at the subsidies, the way we subsidize this.

There are many subsidies for industrial waste management, including tax subsidies, economic development administration, the HUD programs, Farmer Homes Administration programs and, of course, EPA programs.

I agree with the statement just made that those subsidies are not at all consistent. In fact, some of the tax laws that were passed after the 1972 law was passed and ICR was put in place sort of undermine the theory of ICR.

I would encourage the Congress to look to all the committees and all the subjects of concern to get a subsidy program for industries which, No. 1, encourage efficient decisionmaking, which encourage low-cost systems, a program which is consistent with one another, which they're not today, and finally, programs which cooperate with industries and consumers.

Senator CHAFEE. I agree with that. I agree with this cooperation. We have had a good deal of testimony in here, both today and on other days, from industry that says that they, like Potlatch in Cloquet, Minn., or testimony we had the other day from a textile company in Maine.

Perhaps you were here. They pointed out that they're the only industry in the town. Thus, they want to be a good citizen. They want to be a participant. After all, the people who would encourage the higher charges would be their employees.

Then they present us with a quandary, that under the existing laws and whether they are right or wrong or not we won't get into that, except we know that it is not within the purview of this committee to change those laws; for you to suggest that we go out and change them in other committees is a little quixotic.

We aren't going to be able to do it. The laws aren't oriented toward sewage treatment. They are ordered around the depreciation of assets or whatever it might be.

So each of these companies has testified that they are trying to be a good citizen. But how far can they go to be a good citizen when the costs are so expensive, and that everything mitigates—that everything oriented them toward having their own disposal plant, particularly if you have ICR. I think we all agree that it doesn't nake sure sense for Potlatch to go construct a great separate facility of their own being driven out of the municipal system.

If we are paying any attention to energy or to conservation of materials, steel, concrete, whatever it is, certainly, we ought to have, as you say, a municipal industrial interface to the greatest extent possible.

Mr. SILVERMAN. I think we need the cooperation. But I don't agree that it is always a good idea to enjoy the industrial-municipal whenever you can or there is something wrong with the small town treating its waste and the big town treating its waste.

I think it unfortunate the very causes of inflation in this program, which is well above the inflation in general, which is bad enough—one of the causes I think has been in an undue push for joint treatment systems.

I am not familiar with this—the Cloquet situation, but I wonder if that facility as designed wasn't uneconomical under any way you cut it, whether they would have been better off to have fewer or more facilities serving smaller populations in smaller areas. I think as we study these things and we look to find the areas where you have the most acute inflation, the greatest hardships, I think it is often—because improper decisions were made with regard to going into a big, joint regional system.

I don't think you can decide that issue in the Congress. I think you have to say, as Senator Muskie suggested, "Well, the parties should consult their interests." When it is to their benefit they should; when it is to their detriment, they should go separately.

I think also there are a lot of different ways in which industries and municipalities can interface. In Baltimore, for example, the pickle liquor from the steel companies is used as a processing agent to take out the phospherous from municipal wastes.

The interest is actually making a positive contribution. It is truly economical. In other instances, it is often very uneconomical to have these big industries going to the systems.

I think experience is teaching us that. I think if, in fact, it is cheaper for the breweries to go alone, I think they should do so. We all drink beer and enjoy beer. We want to do everything we can to keep the price down.

Senator CHAFEE. What do you think about the idea if the brewery industry, which certainly applies to any of the others, that they are in a crowded municipal situation just as the Narragansett brewery in Cranston, R.I., where they neither have the space nor the capital to construct their own facility?

So the result of all this is to be able to—just chasing the Narragansett brewery out of there, cause them to close.

Mr. SILVERMAN. I think that there are, as a result of the inflation of this progarm, many, many casualties of inflation and many, many hardship cases.

I think, incidentally, if you don't repeal ICR, there will be hardship cases such as the one you mentioned. If you do repeal ICR, there will be hardship cases.

In fact, the variety of arrangements around the country is so great that I don't see that you can do anything that will not create some sort of hardship. You are talking about rather substantial sums of money; in some municipalities, some companies had an expectation that they would receive that money.

So that we really do have a lot of problems. As you look at different communities, I think that the Coopers & Lybrand report, it doesn't just say ICR is not working; it says the whole system is not working. They say ICR does not encourage intelligent size of facilities. The assumption is that the facilities are not intelligently sized.

Furthermore, the decisions with regard to size are often made at the wrong time, because we plan these facilities without anybody really thinking about who is going to pay what. It was kind of vague and the EPA didn't have its act together until the very end.

They didn't oppose the ICR until the very end. Now we are coming to the day of payment. That is why people are coming in. People say, "We're not sure what we should pay."

If we conserve now, we will stick a municipality with a plant too large. I think there are hardships, but you have to deal with them, with or without ICR.

I have a few suggestions as to how to deal with them.

Senator CHAFEE. Why doesn't the user charge handle the ICR problem adequately? I mean, what fairer system is there than a user charge? You have a corporation in the community. They are taxpayers on a regular municipal tax system. They get a user charge.

Why are they any different than the homeowner? The homeowner, by the way, if you have got 25,000 gallons exempt, the homeowner is out anyway.

So the corporation is, unless you assume they are using over 25,000 or using over the 50,000, are right off carrying a heavier burden than the normal citizen.

Mr. SILVERMAN. I think the user charge is meant for operation-maintenance as some sort of replacement, sometimes local department service. I'm puzzled. It seems to be too bad in a way of the result of EPA's regulations that communities can't use, collect, the ICR through the user charge.

There is not an extra expense. I think there is a concern on the part of communities that they are collecting for the Federal Government. They would rather not do that, but collect for themselves. I can understand that concern.

Senator CHAFEE. They are getting 50 percent, and getting—Dallas, in the situation, they say it is not even worth doing that; and many others, not just Dallas.

Mr. SILVERMAN. We are talking about, as you said in the beginning, a $106 billion program with $25 billion, maybe $30 billion already out there. Not knowing for how much of industrial capacity it pays, maybe 25 or 50 percent. We are talking about rather substantial sums of money.

I think that any kind of funding mechanism, you need to improve the way municipalities calculate costs and distribute them and assist them in getting more efficient systems.

I think it is very clear that there is a lot of problems, not just with ICR, but with the user charges in any kind of—there are problems between municipalities and regional systems about the allocation of costs on these systems.

We, one of the things that we would encourage is greater assistance and training and education and so on to improve the sort of financial expertise of these agencies. Many of them didn't have that experience.

I think that is one way to begin solving the problem. I think also we need to really look at the causes of the hardship.

I think that is a very disturbing thought. I for one don't regard it as inevitable. It means that something is not being done right in New England. The cost-effective ways are not being adopted. In fact, you find New England is slow about developing some of the innovative technologies which are supposed to save money and energy and so forth that the Congress wanted to promote.

I think that is a real problem.

Senator CHAFEE. Wait a minute. Where—sure, we all know that innovative technology in the waste treatment field is molasseslike slow in coming about.

I wouldn't pin the worst rap on New England; namely, an area that does have innovative technology in waste treatment.

Mr. SILVERMAN. I think you probably can find some good progress in Oklahoma and California and Texas, but I don't think you will find—you will find some in Maine perhaps and particularly with the very small-scale systems with small towns.

I think you find some everywhere, really. I can't say that New England is the worst, but I can say, for example, a town like Newcomb, N.Y., a small town in upstate New York near New England.

Family—largest user bills for families is about $400 a year. That is quite considerable. There is a whole string of horror stories of communities that are having very large costs. Greenville, Maine, had to abandon a waste treatment facility built by the Federal Government, but still has to pay the capital costs.

There is a lot of hardship out there. This program is—it was designed to alleviate municipal hardships. It does not really accomplish that purpose; in some instances, aggravates those hardships.

I don't necessarily think the way to deal with them is to say, "OK, the costs are much higher than we ever anticipated, much higher; therefore, let us conceal them or spread them or distribute them evenly so that we don't feel it, because the costs are there."

In some of the advanced waste treatment systems the economies of scale are negative. The bigger they are, the higher per gallon cost. You can subsidize out of the way or try to compensate for it, but I think you have to look at basic decisions that are being made, and say, "How do we come to make these decisions; why do we make them? Can we improve our planning of facilities?"

I bet every industrialist has made a bad decision and wishes now that he could have improved the planning. I think communities, too, that are struck would like to see improvement in the planning.

I think we have to—we can't escape the fact of the matter that this program is one of the leaders of inflation in the Nation; that we are spending, you know, $4 or $5 million, now $300 million, whatever it is going to be—we seem to be spending in a very inefficient way because of a bad impact of a basic commodity, water.

Senator CHAFEE. Let us go on to your suggestions. That is one: Better planning for the future. What else?

Mr. SILVERMAN. I think some sort of hardship varies for communities. I think we should be concerned with industrial hardship. We are talking about here, a community assistance progran. I think we have to look at communities that are kind of sewage depressed or have extraordinarily high sewage rates.

You will find that they have high industrial rates and high residential rates. You will find that they have high O. & M. and high capital.

Senator CHAFEE. What would you do about them?

Mr. SILVERMAN. I think first of all, I would let them keep a larger portion of the money that is being collected. I think they ought to get more of it.

Senator CHAFEE. You mean the ICR?

Mr. SILVERMAN. Yes.

Senator CHAFEE. But that has to be set aside, doesn't it? You keep 10 percent of administrative costs and you have to set the other 40 percent aside, don't you?

Mr. SILVERMAN. It is supposed to be set aside for refurbishing the plants and other improvements. I think it is very broad what it is for. I don't think that has been too carefully thought out or planned.

It is a potential source of revenue for the community, maybe it should be a better one. I think also where the costs are extremely high, I think some effort should be made to—there might be variances from the price that communities can give, predicated, I think, on some plan to get yourself into solvency.

One of the reasons that ICR charges are high around the country is because there is a lot of oversized capacity.

It is overcapacity in some areas. I think there needs to be a plan to a community in that situation, if it wanted some serious requirement, should demonstrate and be assisted in some effort to fill that capacity, to use that plant in the most efficient way possible, or to substitute it or do something to get out of the situation.

If they are in trouble, I don't think we should bail them out. I do think we should assist them in any way we can. I think that assistance should be designed with solvency in mind or an economy in mind.

That would be better technology, better planning, and better efforts with other programs to assist the communities. I think if we say, "Well, there is a problem—" the reason people are here, Senator, I think is because the costs are getting out of hand.

The people who are feeling it first are the industrial people. Everybody is going to be feeling it.

I think also we have to recognize that wastewater, industrial wastewater and municipal wastewater is a resource. We are talking about water, a potential source of energy.

We are talking about a source of nutrients and so on. We have had enough resource shortage problems, I think, to understand that we should be encouraged in some conservation effort.

Senator CHAFEE. I don't think the conservation effort comes through ICR. Conservation comes through the user charges.

Mr. SILVERMAN. Well, I think costs will induce conservation. I think user charges do. I think ICR should. I think in areas where the ICR is a very large proportion of the cost, in Camden, N.J., where ICR would be about 35 percent of the cost to the industry, that should be an inducement to conservation.

That is part of the problem, because people will have this capacity.

Senator CHAFEE. Let us get a reaction to that statement. Is ICR an inducement for conservation?

Mr. CONGREVE. No, sir. The inducement to conservation comes through the technology that is inherent, in the process of which you work with.

ICR certainly has an added cost, is an incentive to reduce out of the district, but it not an incentive, per se, to conservation of water.

Senator CHAFEE. Mr. Silverman, isn't one of the problems that when industry goes—agrees to go into one of the municipal plants, that they really have tied themselves to a kite in which they have no control of?

In other words, they have no control over the design of that plant. So the plant can be rather goldplated. It can have an administrative building, it can have all the things, if industry built their own plant, they would never have.

So thus they go in innocent. Maybe they shouldn't go in innocent. Maybe they shouldn't be innocent. Maybe they should be sophisticated. But they go in, and suddenly, through delays, through every kind of overlay that Government imposes on any kind of a Government construction project, whether it is hiring minorities or minority contractors or whatever it might be—what is the law that sets the wages—Davis-Bacon—so they end up in a far more expensive situation than they ever dreamed.

Have you got any suggestions how that might be helped?

Mr. SILVERMAN. That is the problem. I think that is just what is helping—that is really the basic issue. I think the community, I think the government and the town we have to work to make the systems they have more economical.

I think also we need to do some—make some drastic changes in the way EPA operates. We can't continue on.

Again, if we were going to identify the hardcore cases of hardship, and you know, you try to relieve them as you can for some temporary basis on a case-by-case basis.

Senator CHAFEE. That gets pretty hard. How are you going to tell? Potlatch, are they a hardship case?

Mr. SILVERMAN. It seems to me Duluth sounds like a hardship case.

Senator CHAFEE. Because they have got a big bill?

Mr. SILVERMAN. I think I would look at the price—the cost of the waste treatment and the price of water in Duluth.

I think. I don't know. I haven't studied it, but I think from what I have heard that it would probably be higher than a lot of other places around the country.

That would be one indication, to the point they are getting to be noncompetitive in some way or they are creating hardships for their citizens who use the system, how can we lower their costs? Where the costs lie and let's work to lower those costs as best we can.

If we can't, let's try to understand the mistakes and try to assist people. The Economic Development Assistance, it seems to me, is designed for this type of purpose. The sad thing is that quite often when a city, an oppressed sort of city gets involved with a big regional system, they are no longer eligible for EDA assistance—the one thing designed to meet their needs for hardship. They are out of it because they are in this big, wealthy system with their suburban friends. There are a lot of crazy patchwork things going on.

Senator CHAFEE. It seems you are saying two things: One, there ought to be a reform of the construction program under EPA; that EPA ought to pay more attention to whether they—this consolidation of municipalities or counties, administrative units is worth-

while, whether they are not—whether it is too much goldplating in these facilities.

That is one thing. That is a problem, an that is for the future. And I couldn't agree with you more. I must say, I think you have done a real service in pointing these out to us.

The other problem is right in front of us; that is, the industrial cost recovery. I come from a section of the country where this is harmful to existing plants which are marginal at best, whether they are breweries or dyehouses or whatever they might be.

To hit them with industrial cost recovery may be doing the right thing, but we end up with people unemployed and the plants closed. So standing on principal, we have lost a lot of jobs, which I am not enthusiastic about.

Mr. SILVERMAN. Well, neither am I, because really, in a lot of those situations, an answer is going to be that to get the industries in the systems to conserve and create reserve capacity, get more industries into the system so that more people are sharing the sane costs, because the costs are going to vary.

Senator CHAFEE. That is easy. You try that in Woonsocket, R.I. That is fine. Everybody will agree with you and you will get more industry. If you can find them, you will get the key to the city.

Meanwhile, we have got a queen dyehouse there that is a marginal operation. You hit them with an ICR, they will close their doors and 300 people will be out of work.

Mr. SILVERMAN. Just this weekend we have altered our position. I got calls from the Campbell Soup Co. there, a similar problem, where they were pointing out just this.

I agree, that I don't think we should be cold hearted. I think we should be compassionate. I think in the case of hardship, we should try to assist, particularly to assist the community.

The two ways that I would suggest we do that is to allow the community to lower its charges for some temporary period of time predicted on some solvency plan and to allow the community to take a greater proportion of those fees. Maybe they can use that money to improve the system that they have got.

I think if you take your cases of hardship and say, "We're going to make a general rule on the basis of that," you will erode cost discipline even more than it has been eroded.

You will put a greater draw on the Federal Treasury. You will make federally funded waste treatment even more attractive to new industries in the future.

That is inflationary.

Senator CHAFEE. You were here the other day when Senator Muskie was making the point, which I seem to think was the same point you are making. He seemed to say that if you take away ICR, you will then reduce one of the factors that causes a company to have their own plant, and thus they will come in—a disincentive from coming into the municipal plant will be removed. Thus they will come into the municipal plant, and you say there isn't enough money in the U. S. Treasury to pay for municipal plants if every industrial user came in? Is that the point he was making? That is the point I thought he was making.

Mr. SILVERMAN. Yes, I thought so.

Senator CHAFEE. Thus you want to keep ICR because that encourages people, let's say a factor that goes into the equation when Potlatch or Anheuser-Busch or whoever decides whether they should or shouldn't have their own facility.

Well, let me ask you this: ICR really isn't something that is recovering the costs of the construction of the plant; it is preparing for future costs, is it not?

If you eliminated ICR, that wouldn't affect paying a bond of indebtedness or paying your operating costs of the plant, would it?

Mr. SILVERMAN. It shouldn't. It shouldn't.

Senator CHAFEE. Is that true?

Ms. BARNETT. That is true.

Senator CHAFEE. It is, in effect, a savings account for rehabiltating the plant, which I suppose is an on-going expense. I mean, you have got to keep the place running, but ICR, I envision as more, to have a fund there in 30 years to replace the plant.

Mr. SILVERMAN. Yes, or for other environmental purposes. I think that is right.

Senator CHAFEE. So that if you eliminated ICR that wouldn't affect the operation or the maintenance or the debt payments in the plant? Is that right?

Mr. SILVERMAN. As far as the debt—well, I think if you look closely in different communities you would find that some of them were kind of dependent on that industrial revenue to take care of some portions of those other expenses.

That isn't necessarily the way it ought to be, but that is the way it is in some areas, communities of the country.

Senator CHAFEE. Of course, they are not collecting it anyway.

Mr. SILVERMAN. That is true, but I think there is an expectation that they will. There is another principle that will work which is people who make capital decisions should have some responsibility for the expenditure of the capital.

If they say, "We want this capacity or this kind of facility," that they have some kind of responsibility for it, particularly when they are larger institutions, that that is their skill.

That is what we respect them for, is the ability to direct capital in a cost-effective way.

Senator CHAFEE. What would you say to that, Dr. Barnett?

Ms. BARNETT. Well, in regards to the future facilities that are affected by ICR, our current user charge is not only for the capital and O. & M. cost of the existing facilities but also a provision to provide some set-aside moneys for future facilities.

So that is included in our user charge currently and could be in other operators' user charges.

Mr. SILVERMAN. If the municipality is thinking ahead the way Dallas seems to be and wants to collect the capital costs, then I think that will encourage, and I try to suggest that might be part of the problem with ICR, is that too much of it goes back to the Federal Treasury and not enough back to the community.

I am not far from that position. I think you have to look at the numbers and see how are you going to handle the 75-percent Federal?

When industries have discretion to make decisions and when they ought to be enforced for cost effectiveness and should be

encouraged, have a big say in the way the plant is going to operate since they are going to participate in it.

I don't think you want to take that away from them. In the past, I think people unfortunately didn't think what was going to happen. They didn't get involved like they should have.

No question about that.

Senator CHAFEE. How many, say, can they have under the law? They are just a user. They come in. I don't know what, say, Potlatch could have.

Maybe they could use their influence. If they are doing it over again, maybe they could be in a way to do that, do it such and such a way, eliminate the user charge or we won't play.

Mr. SILVERMAN. A lot of industrial people I have spoken with feel somewhat coerced and pressured to get into the system.

I hope they will resist those pressures. We suggested for the future that maybe Federal funding, EPA funding for industrial capacity be phased out, and that if we are going to give subsidies—I am not against giving subsidies to the industries. Give them to the industry directly, tax law, or some other industrial assistance program.

Give them to the industry and let the industry decide whether to use that subsidy to self-treat or go into muncipal systems, giving them a little bit more leverage.

Last year, one of the things this environmental group and consumer groups and industrial groups agreed on is that there needs to be a lot more public participation by industry.

I think that with the rather rigorous discipline, cost discipline that ICR is imposing, we are going to see that. I think that is often good. We are getting to the point we are pricing ourselves out of the range of clean water.

We are just saying, "It's too expensive." Sometimes every decision we make in this area, particularly with pricing and costing, should be directed—you should ask yourself the question, what will be the long-term impact in inflation in the price of water and waste management services if we take this step?

If you simply repeal ICR and not replace it with something else, perhaps a system where the municipalities get to keep most of the money or something comparable.

Senator CHAFEE. Mr. Riddell, do you have any comments?

Mr. RIDDELL. Yes, I do. We are talking about the present. We have heard from the manager of a municipal system over here that user charges traditionally by properly managed systems have been designed not only for operation and maintenance, but to keep the system in such condition that it does not fall into total disuse at the end of its useful life anyway.

It is a fiction and a fancy to believe that this POTW which has been constructed today with a Federal grant is going to evaporate into dust 30 years from today. It isn't. Is going to keep it operating and it is going to be expanded if there is a necessity for it.

The point here is that we have a totally novel theory that we are going to establish a sinking fund concept for public works.

Those people in being today, those viable businesses in being, in 1980 are going to pay for those people in being and those businesses in being in 2010.

Now, if that is the new concept there are going to be a hell of a whole lot less public works, because there is just not enough money in the world to fund public works. No government in the world has ever considered that a pay-as-you-go program consisted of one in which you pay for construction, operation and maintenance, and then funded a 100 or 150 years in the future, the needs of the citizens and businesses that are going to be in existence at that time.

It is totally irrational, and this proposition is no more than that. The gentleman on my left keeps alluding to other environmental purposes. Perhaps he perceives that the industrial cost recovery provides a fund for other things that he would like to see done in the environnental field.

I do not know, but you have heard from witnesses in business and government who say that a properly administered system today is going to be costed out to keep the system in effect and operating.

I just can't get it through my head how these systems are just going to totally evaporate at the end of 30 years.

The plain fact of the matter was that ICR was a dream. The dream was simply this: The Federal Government and environmentalists and all of us wanted a clean water system. We were willing to vote for it, and then we had to pay for it.

It was obvious that the municipalities didn't have the money. We had to provide them with the money. If we hadn't provided them with the money, it would have never passed Congress. That, we know.

Now that we have laid the money out there, it is a wish and a dream to believe that you can force businesses and people today to be responsible for replacement 30 years from now.

What are they going to be paying for? The people who are in business then and the citizens who are alive then? If they wish it, then they have to assume the financial responsibility for paying for it just as we do today.

I suppose that I should apologize for this momentary outburst, Senator, but that is precisely what we are talking about.

We are talking about a sinking fund to public works; let's apply it to bridges, roads, military facilities.

Senator CHAFEE. I think you have got a good point. I was talking about this earlier when we were discussing this that our interstate highways, which is 90 percent paid for by the Federal Government, there is no sinking funds, although we did, a year ago it was in a provision that the States had to maintain it. If they didn't, we have a way of cutting off their funds, not only in this, but, well, not for the Interstate System, but also other funds that go out from the Highway Trust Fund.

So that we have some leverage over them. I don't think anybody thinks that the plants are going to collapse like the Deacon's one-horse shay at the end of 30 years, but there is a problem right in my home city, there is a problem that back at the end of the 30 years problems occurred and it has just collapsed. They are discharging raw sewage into our bay.

They didn't pay attention and fund it and municipalities will cut operation and maintenance pretty quickly. You don't cut police

departments or fire departments; you just cut O. & M. and pretty soon the worst of things happen.

Dallas is a better run city than some, I am sure. So I can see the concern that motivated this, although it is unique, as you mentioned in the public works field.

We are going to end up in about 5 minutes here.

Mr. SILVERMAN. I think we are talking about the present and the past and the future. I think we have to think about all those things. I think the greatest hope is in the future, particularly if we are not too reckless in correcting the ills of the past.

With respect to the other environmental purposes, I didn't make that up, that is in the law. I think if you look at the section of the law in ICR, what purpose this money is to be spent for, I think you will find it says words to that effect.

With regard to people in 2010, I am so concerned that those people will be continuing to pay off the bills we are accumulating for them in the name of clean water, we won't have clean water. As far as the dream goes, the Baltimore Sun recently did a six-part, front-page series entitled "Clean Water as a Dream Place." It was all about construction and sewage treatment. I think this program will be a dream unless that at every turn, reinvest on fiscal responsibility.

Senator CHAFEE. I think you have made some very, very good points. Certainly, we will talk with Mr. Costle and people about tighter controls on the grant program. Actually, we are going to be looking at it this summer, because it comes up for reauthorization next spring.

So I presume we start our hearings on the oversight this summer.

What would Dallas think about keeping 100 percent of the funds; does that make much difference?

Ms. BARNETT. It won't make much difference. It is better than 50 percent, but it still does not exceed our administrative costs. Currently, all we can expect is to recover half the cost it takes to collect it.

Senator CHAFEE. I find that astonishing. I know we had the same testimony a year ago. I went to speak at the Municipal Wastewater Treatment Managers Convention gathering. Would you say that is—the executive director back there, Mr. Young——

Mr. YOUNG. Mr. Young here.

Senator CHAFEE. Is that a typical experience?

Mr. YOUNG. It varies wildly from our members. And we have surveyed; we have found some who are able to plug ICR systems into their existing computer program and find it no trouble.

We have found others, Duluth included, who face major mandatory costs to make it simply uneconomic. And we have found some such as Dallas who have reported to us that their expenses are way in excess what they can expect to collect.

It is probably a lump of the industrial system and the current collection system and there is going to be great local variety.

Senator CHAFEE. OK. Do you have any—Mr. Congreve, do you have anything you wish to say in conclusion?

Mr. CONGREVE. Yes, sir, if I may. Just to address some of the points of Mr. Silverman, first of all, the user charge systems cur-

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rently mandated by EPA regulations provide for the accumulation of funds dedicated to equipment replacement, and certainly in the case of our district, the user charges do go for equipment replacement so that we—the facility would be perpetuated.

Second, the only way out for us out of this whole system now as we best understand it is to shut down, go out of business, because any discharge from our particular facility must go into the sanitary district by the enabling legislations there.

We are in the system because the process that Mr. Silverman speaks of was exactly what took place. The local community determined what the cost was going to be for the residential user and it was going to be so horrendous, they came back to industry and asked us to participate, put it in the enabling legislation, gained the understanding of the Minnesota Pollution Control Agency, as far as regulatory standards for the St. Louis River into which we would normally have been discharging, even with treated waste, and it was the result of that discussion and the assurance that our costs would be compatible and comparable to what we would be in self-treatment as to why we joined.

It was in the interest of reducing the municipality and the residential costs. We subscribe totally to what the gentleman from the Brewery Association talks about as ICR for the future being very inflationary to fund for the future. We recognize that if we are to withdraw from our situation it will upset the current viability of costs and I would use that opportunity to add that we have no reserve capacity in our situation.

It is not built beyond the capacity of what was actually calculated to be just for the existing operation, recognizing that any new additional capacity would have to be funded by the user who so required it.

Senator CHAFEE. One minute of rebuttal if you wish, Mr. Silverman.

Mr. SILVERMAN. S. T. Warren in Michigan's charges are lower, very low because they are a very efficient system that produces revenues. I think that's where people ought to be looking.

Senator CHAFEE. Well, I am very familiar with S. T. Warren, so we will check into that.

Thank you very much, gentlemen, ladies, for coming. That completes the hearings. Thank you for coming.

[Whereupon, at 11.25 a.m., the hearings were adjourned.]

[The draft report from the Environmental Protection Agency, referred to by Senator Chafee, and statements submitted for the record by today's witnesses and others follow:]

DRAFT

REPORT FROM THE
ENVIRONMENTAL PROTECTION AGENCY

Executive Summary

Congress in the 1972 Federal Water Pollution Control Act established water pollution control requirements for both industry and municipalities. A federal grant program was established to provide municipalities with 75 percent of the capital costs for constructing or upgrading municipal sewage treatment systems. Congress did not establish a similar grant program for industry. Industry was encouraged to use municipal treatment systems provided half the federal costs for constructing industrial capacity was returned by industry to the Federal Government. Congress directed municipal grantees to collect 100 percent of Federal costs for constructing industrial treatment capacity from their industrial users and retain 50% for treatment system improvements.

The industrial cost recovery program was established by Congress primarily to avoid providing some segments of industry with a federal subsidy. Congress expected costs for meeting national pollution control objectives would be internalized by businesses and treated as a normal operating expense. The ICR requirements recognized that industrial facilities would be provided with an unsecured interest fee loan, repayable over a 30 year period, but recoverying costs from those industries that decided to use municipal treatment systems instead of using limited capital to construct self-treatment systems seemed appropriate.

In 1977, Congress revised the nation's water pollution control program. The Clean Water Act Amendments slightly modified the ICR program. Congress excluded small industrial facilities discharging 25,000 gallons a day or less from cost recovery requirements. Congress recognized these small dischargers impose an insignificant burden on municipal treatment systems. Congress

also approved administrative changes expected to provide industry with an incentive to reduce flows and pollutant discharges to public treatment systems. A moratorium on recovering funds from industry also was established, and Congress directed the Environmental Protection Agency to report on the need for and efficiency of the ICR program.

Based on a previous report to Congress and a supplemental analysis of the ICR program, EPA concludes that the construction grants program provides a subsidy to industrial users of municipal treatment systems. The extent of the subsidy cannot be accurately estimated, nor can benefits to industry be quantified on a national basis. Each case must be reviewed individually. Conclusions must be based on an analysis of industrial capitalization, waste characteristics, the age of production facilities, and direct discharge treatment requirements. One general conclusion that can be made is industry receives an unsecured interest free loan, faces no obligation to repay construction costs if municipal treatment system use is discontinued, and is relieved of direct costs for treatment system operation, discharge permit compliance, and sludge disposal requirements.

EPA also concludes that in some instances industry can construct self treatment facilities for less than it costs to use municipal treatment systems. Although this is not true in all cases, in some areas of the country new industrial facilities can be designed and constructed to minimize water use by utilizing new manufacturing and treatment technology. Self treatment can be the most cost effective option for these industrial facilities. EPA is convinced that where self treatment is cost effective, industry, unless confined within an urban area, will not use a municipal treatment system.

EPA's ICR review also shows the program is expensive to administer for some grantees. In those cases where a grantee has numerous small industrial dischargers more costs may be incurred by administering the program than are collected from industry. Although not universally true, this appears to be correct in some cases. ICR administrative costs may exceed the 40 percent share of ICR revenues retained by grantees for treatment system improvements. In other cases, however, ICR returns significant revenues that are needed and utilized by grantees.

EPA recommends Congress allow the ICR program to go into effect once the current moratorium has expired. Elimination of cost recovery requirements would be unfair to grantees in need of ICR revenues to finance treatment system improvements, and elimination would be unfair to those businesses that have made the financial commitment and constructed self-treatment facilities. Elimination of ICR would provide industry with a positive incentive to use municipal pollution abatement facilities, but in some cases self-treatment and utilization of cost effective industrial treatment technologies would result in a net savings to the economy. Industry should not be encouraged to utilize municipal treatment facilities if self-treatment is most cost effective.

EPA also suggests modifications to the ICR program for consideration by Congress which would make the revenue system more valuable and less burdensome to grantees.

The agency, based on a sample of industrial dischargers and grantees, has determined the current 25,000 gallons per day flow exclusion may be increased to 50,000 gallons per day without significantly decreasing

amounts recovered from industry. The number of industrial facilities paying into the system would be significantly reduced, thus minimizing paperwork and recordkeeping requirements for grantees.

Congress also should consider exempting grantees from federal ICR requirements if a grantee can demonstrate the system is too expensive to administer and a local program is in place that efficiently accomplishes the objectives established by Congress. An adequate system should recoup construction costs from industry without shifting industry's costs to other users.

The Agency also suggests Congress consider providing grantees with federal funds only for meeting residential pollution abatement needs. Use of municipal treatment systems by industry should not be discouraged, but flexibility in the construction grants program would enable industry and grantees to negotiate joint treatment needs and find private financing for industrial capacity.

EPA recommends that in all instances where industrial treatment capacity is constructed with federal funds, industry be required to sign a binding contract with grantees specifying the length of time industry intends to use the municipal treatment system and establishing industry's obligation to pay for capacity constructed for industrial use. This would guarantee grantees have sufficient revenues to maintain and improve their treatment systems in those instances where industry withdraws its use and leaves grantees with considerable long term costs that otherwise must be passed on to other users. Congress may also wish to consider the option of charging interest -- at the prevailing rate paid on federal securities -- on "loans" provided to industry for treatment capacity.

for proper plant design, operation, and to determine if toxic pollutant discharges will require special sludge disposal programs. The only incremental cost to a grantee for developing an ICR system is calculating industry's ICR payment. This is, however, a relatively simple process that requires determining industry's share of the federal sewage treatment construction grant made to a grantee based on industry's treatment demand for individual treatment processes.

Intensive monitoring is not required for ICR. ICR, user charges, most sewer use ordinances, and pretreatment programs, all include similar monitoring requirements. Monitoring is not conducted separately to satisfy each of the program requirements, and a monitoring program is necessary to calculate user charge rates annually.

Once in place, the annual cost to a grantee for administering ICR should be negligible. The ICR charge itself for each industrial user is established when the treatment system comes on line, and the major yearly costs incurred by a grantee are for billing, collections, and account maintenance. Some grantees have efficient, computerized billing systems that dispatch bills for user charges and ICR simultaneously. There is little incremental cost for including the ICR element on bills sent to industry. Other grantees continue to employ manual billing systems. In a manual system there are little incremental costs associated with ICR, but the system itself may be very expensive for a large grantee to operate due to manpower requirements. Costs to the grantee will rise roughly in line with inflation while ICR revenues, which do not include an interest charge or inflation adjustment, remain constant.

Management of ICR revenue has been identified as a major incremental cost by some grantees. The Bergen County, New Jersey Utilities Authority for example, estimates about $3,000 is required yearly to administer ICR accounts and have ICR revenues managed by a private investment management firm. Bergen County estimates that fees charged against the sewerage authority for managing the ICR Program will increase in line with inflation, and eventually costs for ICR account management and for billing 72 industrial users quarterly will exceed ICR revenues retained by the grantee. The authority estimates ICR will cost $22,700 to administer when its treatment system is completed. At that time the grantee will collect $106,000 and retain $53,000. The grantee said that assuming an eight percent inflation rate, expenses will exceed revenues by the year 2003, and the net accumulated deficit at the end of the recovery period will be more than $964,000.

EPA is at this time unable to verify Bergen County's administrative cost estimates. Some grantees, however, recalculate ICR charges yearly to reflect actual flow sent by an industrial user to the treatment facility. This practice is not required by EPA, nor should it be followed by grantees. Congress specified ICR charges should be modified only when industrial users adopt permanent process changes that reduce flows or pollutant loadings sent to a POTW.

Although ICR requirements are uniform, grantees employ a variety of techniques in administering their treatment system financing programs. Segregation of costs attributable to ICR alone could not be accomplished by Coopers & Lybrand. The agency's contractor was unable to determine which costs in a grantee's revenue system were associated solely with ICR, and found in many instances that ICR and User Charge administrative costs are shared.

Following is a listing of various grantees with approved ICR systems. The examples presented show a variety of grantees, all of which have different industrial waste loadings. ICR is useful for some grantees, while others consider the recovery requirements unnecessary. Also included is a sample breakdown of ICR administrative costs.

This report was prepared for Congress by the Environmental Protection Agency as a supplement to the Agency's previous "Report to Congress, Industrial Cost Recovery," submitted January 25, 1979, under directive from Congress in the 1977 Clean Water Act Amendments. The 1979 report arrays some of the issues associated with industrial cost recovery (ICR) requirements in EPA's sewage treatment construction grants program, but it does not adequately explain whether the existing ICR program achieves its legislative objectives and fails to provide Congress with the background needed to determine if the moratorium on ICR should be ended or whether the program should be abolished.

EPA's 1979 ICR report, prepared by Coopers & Lybrand under contract, was based on an erroneous interpretation of what Congress expected to result from establishment of an ICR program and therefore conclusions reached in that report do not provide an adequate basis for making informed decisions. Although Coopers & Lybrand did review the existing ICR program, their analysis took place during the Congressional moratorium on ICR collections and was based on uncertain and incomplete data.

The contractor was provided with inadequate guidance by the Agency. As a result, the comparison of industrial and municipal treatment costs failed to reflect differing treatment requirements which would be imposed on self treating industrial discharges into effluent limited streams. Moreover, the contractor failed to assess to what degree municipal treatment system costs, both fixed and variable, increase primarily to accommodated industrial participants. (The absence of these and other considerations results in an unfair comparison of treatment costs.)

EPA's contractor also based its conclusion on an inadequate application of basic economic and business investment principles. The reluctance of corporations reviewed by the contractor to disclose production and profit data and site specific data on requirements for self treatment facilities impaired the contractor's ability to accurately analyze costs for self treatment. The contractor did not address the issue of costs for retrofitting aging industrial facilities, nor did the analysis address the issue of changing technology which, when applied to new industrial development programs, can lead to less production costs (including treatment) for direct discharge industrial facilities.

Generally, the contractor's conclusions were based on a sampling of approved ICR programs. The contractor was unable in many cases to accurately distinguish between ICR charges and user charges. The contractor did not determine how these production costs are treated on corporate accounts, and how the charges actually relate to corporate profits. The contractor's attempt to determine how sewage treatment costs affect business behavior did not recognize that Congress, when writing environmental legislation, expected compliance costs would be internalized as a cost of production by both direct dischargers and users of municipal treatment facilities. The contractor's economic analysis treated these costs as a tax, and assumed the tax is applied directly to corporate profits. EPA disagrees with this assumption and others assumptions used as the basis for the contractor's analysis.

The agency's contractor also based its conclusions on the assumption that ICR was established to create parity in costs for compliance with water pollution control requirements between industrial users of publicly owned treatment systems (POTWs) and industrial facilities using corporately

ned treatment systems. In fact, this assumption does not appear rtable. EPA's review of the legislative history leading to ent of the ICR program indicates that ICR was established to assure the al Government did not subsidize water pollution control programs for one class of industrial facility--users of POTWs--while requiring corporate capital outlays from self-treatment industrial facilities. This conclusion based on a review of appropriate legislative hsitory, forms the basis by which EPA judges the effectiveness of the ICR program and provides the background used to formulate the Agency's conclusions and recommendations to Congress.

Definitions

In this report EPA relies on terminology and sewage treatment construction grant program requirements that are subject to different interpretations. Program terminology and requirements as used in this report are defined as follows:

Parity: The quality or state of being equal. Parity is a comparative indicator generally regarded to mean equalization of costs. In the national water pollution control program, parity is achieved if abatement requirements for each class of industrial discharger are equal. Water pollution control is but one of many production costs faced by businesses. Parity in abatement program costs among various industrial dischargers depends on direct capital costs and indirect costs to businesses including a review of investment opportunities forgone and alternative corporate capitalization and investment programs.

Subsidy: A grant or gift of money such as a grant by a government to a private person or company to assist in accomplishing an enterprise deemed advantageous to the public.

Cash Flow: A measure of corporate worth that consists of net income after taxes plus certain noncash charges against income (as allowances for depreciation.)

Debt: An obligation. For investment purposes an indicator of profitability as measured by corporate debt/equity ratios related to cash flow. Corporate debt can be spread over the long term (30 years) or short term, generally one year or less.

Based on its review of the existing ICR program, EPA concludes that ICR, as intended by Congress, is a viable program if allowed to go into place. The ICR program could be modified to more effectively accomplish the purposes originally set by Congress or changed to accomplish different objectives. In this report the Agency has included a number of options for consideration by Congress.

This supplemental report, like the report prepared by the Agency's ICR contractor, is based on a review of existing information on the development of municipal ICR systems. Projections on the amount of ICR collections are only estimates. Until the ICR program is put into place there is no way to determine the actual industrial use of municipal treatment facilities. The moratorium, and uncertainty regarding the future of ICR, has left corporate planners with a unknown production cost factor which must be identified before a business decision on how to treat wastes and finance ongoing operations can be made. Until the fate of ICR is decided corporations will be unable to determine whether they will have to pay construction costs for capacity in a POTW and therefore will be unable to compare the full stream of cost and benefits associated with using a municipal

treatment system with alternative opportunity costs associated with using limited corporate capital and bonding capacity for constructing self treatment facilities.

The primary issues addressed in this supplemental report are:

- Why did Congress establish the ICR program in the 1972 Federal Water Pollution Control Act, and was Congressional intent modified by the 1977 Clean Water Act Amendments?
- Does the current ICR program accomplish the purposes expressed by Congress, and is there reason to eliminate or modify ICR requirements?
- Would changes to the ICR provisions assist in establishing efficient and responsible revenue programs at the local level that provide adequate assurance the pollution control objectives set forth in the Clean Water Act are met and municipalities remain, over the long term, in compliance with national pollution control requirements.

ICR: Legislative History

The 1972 Federal Water Pollution Control Act imposes substantial technology based pollution control requirements on both industry and municipalities. A Federal grant program was established to assist municipalities in constructing new or upgraded treatment facilities, but Congress expected industry would internalize pollution control as a normal operations cost and finance compliance programs through corporate debt vehicles and profits generated by production processes that cause water pollution.

Congress, in the Water Act, provided industry with an option for complying with national water pollution control requirements: self-treatment of their waste streams or use of a municipal treatment system.

Congress mandated that all industry, regardless of whether compliance programs are based on use of a municipal treatment facility or self-treatment facilities, must comply with requirements for controlling conventional and toxic pollutants, but Congress left the business decision on how to treat waste up to industry.

Although Congress adopted changes to the tax code to minimize the economic impact of major national pollution control effort for self treating industrial facilities, industrial use of municipal facilities was encouraged to minimize overall costs to the economy and the monitoring burden associated with numerous industrial treatment facilities. Congress said, however, in those instances where industry decides to use a municipal treatment system, industry would have to repay the Federal Government for treatment capacity provided by a municipality that is a grantee in EPA's sewage treatment construction grants program. In other words, Congress made it clear that the Federal expenditure for assisting municipalities to come into compliance with the Act was not to unwittingly serve as a subsidy to industrial compliance.

The repayment requirement established by Congress, known as ICR, is authorized by Section 204(b)(1)(B) of the 1972 Federal Water Pollution Control Act. Municipalities using federal funds to construct, expand, or upgrade a publicly owned sewage treatment facility are required to develop an ICR program designed to recover that portion of the federal grant used to construct treatment capacity for industrial use. The ICR provision requires industrial users of POTWs to repay, generally over a 30 year period, their proportionate share of treatment system construction costs.

ICR is, in effect, a long-term, interest-free federal loan program that finances industrial compliance with water pollution control requirements. Industries, without contractual obligation, are required to repay the Federal Government for treatment capacity requested for an industrial production facility.

Municipalities are required to establish an ICR charge for each significant industrial source using the POTW, collect ICR payments yearly, and pay the U.S. Treasury 50 percent of the amount collected. Congress specified that half of the ICR payments should be retained by local governments to defray ICR administrative costs and to provide revenues for improving municipal treatment services.

ICR Objectives

Congress, in 1972, clearly identified two primary objectives expected to be served by establishment of the ICR program. First, ICR would impose a construction cost on industrial facilities that chose to use a POTW. Although the municipal construction grants program would provide unsecured interest free loans to industry for compliance with water pollution control requirements, ICR payments assured the federal government would not be entirely subsidizing compliance for those industrial facilities that chose to use municipal treatment systems instead of constructing corporately owned treatment facilities. Congress reasoned ICR would make compliance costs more equitable among all industrial facilities--both self treaters and users of municipal treatment systems--because without the ICR charge, industrial users of POTWs would have less total production costs and less demand on investment capital than their direct discharge counterparts. Without ICR, users of POTWs would enjoy a investment capital advantage, and therefore a competitive advantage, over their process-related counterparts that use a portion of their current and future bonding capacity and invested limited corporate capital in self-treatment facilities. The absence of a treatment system construction cost liability would enhance the cash flow of users of municipal treatment facilities and enable them to direct limited working capital and bonding capacity toward investments in productive capacity. Competitors constructing their own treatment

systems would not have this process-investment option, and Congress concluded it would be unfair to give a waste treatment cost advantage to one class of industry and not another.

The second objective expected to be served by ICR was the establishment of a revenue system. Congress expected ICR collections would be adequate to repay the Federal Government for financing industrial participation in local sewage treatment systems, but total reimbursement by grantees was not considered of prime importance. In establishing the ICR program, Congress required that only 50 percent of the amount collected yearly from each industrial user of municipal treatment systems should be returned to the Federal Government. The remaining 50 percent should be retained by grantees and used to offset ICR administrative costs and help finance treatment system expansion or reconstruction.

The legislative history leading to enactment of the 1972 Federal Water Pollution Control Act directly supports the objectives outlined above for the ICR program. For example, the House of Representatives report (HR 92-111) accompanying that chamber's version of the 1972 Water Act (HR-11896) sets forth the following rationale in support of ICR:

> "In connection with industrial users of publicly owned systems, the Committee desired to establish within the user charge system an arrangement whereby industrial users would pay charges sufficient to bear their fair portion of all costs including the share of Federal contributions for capital construction attributable to that part of the cost of constructed facilities attributable to use by industrial sources. <u>It is the Committee's view that it is inappropriate in a large Federal grant program providing a high percentage of construction funds to subsidize industrial users from funds provided by the taxpayers at large</u>.* Accordingly, the

* underscoring added

bill imposes an obligation on the part of publicly owned systems to incorporate into their user charge schedule a component to recover, without interest, that portion of the total Federal grant to the community for construction purposes attributable to industrial users. The committee recognizes that there will be some administrative difficulties involved in establishing classes of industrial users and has left to the local system the obligation to set up an effective and equitable system, subject to the approval of the Administrator, inasmuch as the establishment of such a system is a precondition to Federal grants. (Leg. Hist., p. 788)."

In the Senate Report accompaning S.2770, [S.Rep. No. 92-414], the Senate in terms quite similar to those of the House said the following:

"The committee devoted a great deal of attention to the difficult issue posed by the discharge of industrial pollutants into publicly owned treatment systems. There is much to be said for encouraging industrial use of public facilities. Each industrial discharge into a public system is one less outfall that must be monitored, and in many cases the economics of scale that characterize public treatment works would permit a net capital saving to the economy as a whole, assuming that the alternative to industrial use of public facilities is the on-site treatment by industry of its own wastes.

"The bill would deal with industrial pollutants in this way: each industrial user of a public system would pay a charge that would include not only that share of operating and maintenance costs allocable to such user but which would also be sufficient to recover that portion of the Federal share of the capital cost of the facility

allocable to such user. That portion of the Federal share of the capital cost allocable to each industrial user would be returned to the federal treasury.

"The committee believes that this approach to the issue of industrial use of public facilities appeared to the committee to be the most reasonable and equitable one that can be devised. Any scheme that did not provide for full recovery of the Federal share of capital costs allocable to industrial users would clearly constitute a federal subsidy of private industry and, more particularly, of those facilities and industries producing wastes that are compatible with public treatment systems. Any other approach would discriminate unfairly against those industries which for whatever reason, were unable to utilize public systems.*

"It may be that Congress will, at some future time, determine that some form of Federal financial assistance to industry in meeting pollution control costs--whether through tax relief, loans, or grants is appropriate. The committee does not prejudge the propriety or need for such assistance. But the committee does conclude that subsidy of private industry through the waste treatment grants program would be haphazard and inappropriate.* (Leg. His., p. 1446-1447).

The prime objective for the ICR program expressed in both the House and Senate Reports is the decision not to subsidize industrial treatment costs. The Congress clearly considered the issue of equitable treatment of those supplying the funds for the federal grants program--the taxpayers at large, both residential and industrial--and those benefiting from the grants program in the residential and industrial sectors of the economy. But to allow private industry to have wastewater treatment without capital expenditure was considered by both congressional bodies to be

*Underscoring Added

unfair and unreasonable. Congress, as a whole, was not willing in 1972 to subsidize private industry treatment costs. The Senate also felt any approach other than the proposed ICR program would discriminate against those industries who did not discharge into municipal treatment systems and instead, for a variety of reasons, used corporate capital to construct self-treatment facilities.

ICR Amendment Rejected

While there was no serious question raised about section 204(b)(1)(B) during the Senate debates, the House with language nearly identical to the bill which passed, considered but rejected an amendment to strike section 204(b)(1)(B) from the bill.

During the House debate, Congressman McDonald from Michigan prior to offering his amendment said of section 204(b)(1)(B): "I felt it is a grave inequity for the bill to single out industry as the only user also responsible for capital costs." (Leg. His., p. 406). The next day Congressman McDonald offered an amendment to strike section 204(b)(1)(B) from the House bill. In support of his amendment he said:

> "While I am a firm believer in the concept of user charge for the purpose of maintenance and operation, I feel it is a grave inequity for the bill to single out industry as the one user also responsible for the capital costs. This inequity will surely be destructive as far as development of hoped for regional concepts in water pollution control is concerned.
>
> "Revenue must be generated from users on a proportionate basis that will take care of the maintenance, operation, and expansion.

> To charge industry a fee beyond that of user charges, however, is unfair. Businesses, like individuals, are taxpayers and deserve the benefit from Federal grant programs as do other taxpayers. It is clearly unjust and inequitable to require reimbursement from industry while not requiring reimbursement from other users.

"What is necessary today to correct our water pollution problem is a massive, cooperative effort on the part of every individual and corporate entity. Any legislation which has as its intent a solution to this highly complex problem must assign the responsibility equally between those who are creating the problem.

"If this bill is to be just either we make all users pay part of the investment costs, or we release all users from such charges." (Leg. Hist., p. 557-558).

There was considerable debate on this amendment, but it was defeated soundly by a vote of 336-66. Some significant passages from the statements of those House members who opposed the amendment serve to outline why the amendment was defeated.

Congresswoman Abzug, who prior to the amendment had spoke in support of the House bill (Leg. Hist., p. 371), said of the amendment:
"...as I understand it, the gentleman objects to the industrial user being charged their fair portion of construction costs. I oppose the amendment because the fact is in a large Federal grant program which has a high percentage of construction funds. That it would be unfair to expect the taxpayer to subsidize the industrial user. I am quite surprised at the gentlemen's amendment, because the fact is the industrial

user is being given the opportunity to participate in a municipal plant based on a user charge schedule and of the users proportional share of financing construction costs without interest rates. If the industrial user would have to construct his own plant he would have to find the money and then pay interest, and large interest rates, and he would find it could not be done on an economic scale that would make it cheaper. Mr. Chairman, I oppose the ammendment. As a member of the committee I can tell you that I thought we should include interest charges to industrial users, but the committee in its wisdom overruled me." (Leg. Hist., p. 560).

Congressman Seiberling said:

" I must say when I read the gentleman's "colleague" letter on this it had a certain appeal because it implied industrial users were going to be charged twice. However, users would be charged for maintenance and operation of treatment facilities but not for amortization of capital costs. This strikes me as being an unsound principle.. Industrial polluters should not be placed in a position to require that local taxpayers subsidize a part of the capital cost of eliminating the pollution generated by industry as the price for obtaining Federal assistance under this section." (Leg. Hist., p. 560)

Congressman Grover believed industry should pay its fair share. He said:

"In establishing this user charge system, our desire is that industrial users pay a fair portion of costs, including capital costs, attributable to their use of waste treatment facilities. This is a Federal grant program. The Federal Government is providing a major percentage of construction costs. It is certainly not

intended that a construction subsidy by the taxpayers be made to industrial users." (Leg. Hist., p. 565).

Congressman Wright added a different perspective to the debate when he stated:

"Mr. Chairman, I can both appreciate and understand the apprehensions expressed by the sponsors of this amendment. We have to strike a balance between the demands of ecology and the demands of the economy. But I really believe the provisions contained in the House bill would not do the violence that they fear.

"It seems clear to me that we provide only that which the majority of the people desire, and that is if an industrial polluter imposes by reason of his discharge a certain burden upon the municipal treatment plant that he pay a fair share of the cost, a share that would have some relation to the volume of discharge that he puts into that plant." (Leg. His., p. 567-568).

Section 204(b) was amended during conference, but the revision dealt with a grantee's use of funds collected from industrial users and set forth Congress' intent to use ICR as a revenue program providing grantees with funds for future treatment system expansion and reconstruction. (Leg. Hist., p. 295).

The revenue system objective for ICR was agreed to by House and Senate conferences participating in the Water Act conference. The conference report explains (Leg. Hist., p. 295) the ICR provision agreed to in 1972:

"...is basically the same as the Senate bill as revised by the House amendment with the following changes:

(1) The requirement that users pay for the cost of future expansion of waste treatment services has been stricken.

(2) The requirement that revenues derived from payment of cost by industrial users be retained by the grantee for use for operation, maintenance, expansion, and construction of publicly-owned treatment works has been stricken and in place of it there has been substituted a requirement that the grantee shall retain an amount of the revenues derived from payment of cost by industrial users, to the extent costs are attributable to the Federal share of the project costs, equal to (A) the amount of the non-Federal cost of the project, paid by the grantee plus (B) the amount, necessary for future expansion and reconstruction of the project, except that such amount shall not exceed 50 per centum of such revenues from such projects. All revenues not retained by the grantee are to be deposited in the Treasury as miscellaneous receipts. That portion of the revenues retained by the grantee attributable to clause (B) together with any interest thereon must be used solely for expansion and reconstruction."

1977 Water Act Amendments

In 1977 Congress amended the Federal Water Pollution Control Act, approving several significant changes to the municipal sewage treatment construction grants program and establishing a moratorium on collection of ICR payments. The moratorium itself had minimum impact in terms of halting returns to the U.S. Treasury because few treatment systems required

to have ICR programs in place had completed construction and were actually collecting ICR payments.

Generally, in 1977 Congress clarified legislative provisions governing the ICR and user charge provisions. Congress again stated that all users of municipal treatment systems should pay their proportionate share of costs for operation and maintenance. Congress elaborated on the "proportionality" provision by establishing general guidelines for user charge rates wherein both residential and industrial users should be assessed user fees that take into account the volume, or flow, sent to the treatment system and the quality or strength of wastes. Congress established that each class of users should pay fees based on the treatment demand wastes impose on a treatment system. Pretreatment requirements were clarified to assure industrial discharges do not impose special treatment or sludge disposal requirements on a municipality.

Congress in 1977 approved three significant amendments to the ICR program in addition to establishing a moratorium on ICR collections. Prior to conference on the 1977 amendments some grantees reported that administering the ICR program was too costly because of the large number of industrial facilities using municipal treatment systems. The grantees suggested that Congress could reduce the administrative burden by eliminating some industrial dischargers from the ICR program, and an agreement was reached by the Congressional conference committee.

Congress modified the ICR requirements to exempt from payback requirements those industrial facilities discharging less than 25,000 gallons per day of wastes having strength equivalent to domestic wastes. Although Congress expressed uncertainty concerning the adequency of the exemption, conferees generally agreed the 25,000 gallon per day "equivalent sanitary waste" exemption would exclude

a large number of small, sometimes marginal firms, that individually do not significantly contribute to increases in treatment system design requirements or construction costs but collectively might constitute a major administrative burden for grantees.

The other significant changes to the ICR program approved by Congress in 1977 were intended to provide administrative flexibility to grantees and an incentive for industry expected to result in water conservation and less industrial demand for municipal treatment capacity.

Congress recognized that ICR posed administrative burdens for regional municipal treatment agencies that have multiplant systems with geographically dispersed industrial participants. The problem expressed by municipalities was that in instances where improvements were needed to only one plant within a multiplant system, ICR imposed costs on industrial users of that plant but not on industrial users of other plants within the same system. Plant-by-plant application of ICR within a multiplant system was considered unfair in instances where only a single plant within a system was being upgraded because all industrial users of the system were provided with treatment services. The plant-by-plant application of ICR would result in higher cost for some users of a multiplant system, simply because of their location within the system. Moreover, establishing an ICR rate for each plant upgraded within a multiplant system required the establishment of separate accounts for each treatment plant. The amendment eased the administrative burden by permitting grantees to establish one ICR rate applicable to all industrial users within a multiplant system. In this way industrial users would pay their share of costs for improvements that benefit the treatment system.

The final significant change to the ICR program approved by Congress

in 1977 encouraged industrial users of municipal treatment facilities to adopt process changes that would reduce water consumption and waste discharges. Incentives for water conservation were stressed in several amendments to the Water Act, and Congress expected that encouraging water conservation through the ICR program would result in less water use and less demand by industry for municipal treatment capacity. The change agreed to by Congress permitted municipalities to reduce ICR charges to a specific industrial discharger if the discharger adopts a permanent process change that results in reduced flows or pollutant loadings sent to the municipal treatment system.

Congress in 1977 also established the first of two moratoriums on the collection of ICR payments from industry. Although Congress specified that grantees should continue to develop ICR systems during the moratorium, EPA was told to review the IGR program, determine the need for and efficiency of existing ICR requirements and report back to Congress. Congress directed EPA to include recommendations in the Agency's report for improving the ICR program if the agency determines changes are needed.

Congress estabished the moratorium on ICR collections for several reasons. Grantees reported that administering the ICR program was burdensome, and some said their administrative costs would, over the 30 year payback period, exceed their 50 percent share of the ICR revenues collected from industry. Industry also objected to the ICR program, maintaining ICR constitutes "double taxation" and unfairly singles out industry as the sole user of municipal treatment systems required to repay the Federal Government for sewage treatment construction grants. Industry also alledged that ICR does not result in treatment cost parity because the combined effect

of ICR, user charges, and future pretreatment requirements make it more expensive to use a municipal treatment facility than it would be to construct and use corporately owned treatment facilities.

An Industry Subsidy

In some instances use of a municipal facility is essential if a firm is going to continue operating. This is true for marginal firms that cannot, based on current cash flow, afford to use working capital to construct their own treatment systems nor are they advantaged in the capital market to affect new capital, especially for non productive investment. Use of long or short term bonds is not a viable option for these firms either because interest rates would be prohibitively high, assuming investors were willing to invest in a marginally profitable enterprise. Additionally, it is also true for firms with little or no room for plant expansion. This is an obvious condition on many urban located plants, which must be near supplies, labor, and markets.

The sewage treatment construction grants program provides a subsidy to profitable firms too, which allows them to enjoy cash flow benefits that would be lost if they had to construct self-treatment facilities. Imposition of ICR does not impair the financial viability of these firms, instead the availbility of municipal treatment facilities gives these profitable firms a working capital and competitive advantage over their process-related counterparts that construct direct discharge facilities. Moreover, these financially viable firms are having one step in their manufacturing process subsidized by residential taxpayers that, unlike investors, receive little or no benefit in return.

EPA's review of the ICR program also shows the existing ICR requirements could effectively negate most of the subsidy now provided to some segments of industry, if the moratorium were lifted.

Currently, because of the moratorium on ICR collections, there is a large degree of uncertainty on the part of municipalities regarding whether Congress will eliminate ICR requirements or modify the program. Many municipalities are not developing ICR programs, and many industrial facilities are postponing decisions on whether they will use municipal treatment systems or construct corporately owned treatment facilities.

Industry now is able to calculate its costs for constructing and operating its own treatment facilities. This is a plant-by-plant business decision based on specific cash-flow and process-related considerations. The major variable in projecting self-treatment costs is the cost of money in the corporate bond market and predicting future production (or capacity) requirements. Before industry decides to use a municipal facility it must determine what its costs will be for ICR and user charges, determine what may be required to comply with future direct or indirect discharge treatment and sludge disposal programs, balance those costs against self-treatment and sludge disposal costs and select the alternative that is the most efficient and advantageous to the corporation. Each corporation will base its decision on the least total cost for complying with pollution control requirements while obtaining the maximum treatment benefit and the most efficient use of corporate working capital and long term debt. The decision will depend on interest charges associated with borrowing money, expectations concerning future interest rates, plans for future production targets, and alternative investment opportunities.

Even if ICR were put into place now, there is no way for the Agency to accurately predict how much revenue would be collected over the 30 year recovery period. Many corporations could decide to use municipal facilities for the short term because interest rates on the corporate money and bond

market are high. (Currently prime rate on money markets is about 18.7 percent. Major bond offerings are being withdrawn because of long term interest charges as high as 14 percent. Many firms could decide to use municiple facilities until interest rates drop significantly, and the absence of contractual requirements enables them to withdraw from a municipal facility at any time with no obligation to pay for capacity constructed for their use.)

ICR: Financial Burden For Industry?

As illustrated in the predceeding discussion of Congressional intent, one of the major concerns of Congress in enacting the ICR provision, was to eliminate the presumed subsidy that Federally assisted treatment works could provide to industrial users. Our examination of the issue concludes that there is indeed a subsidy to industrial users. While perhaps not universally true, the subsidy is especially associated with small or economically marginal industries which have difficulty with capital formation.

Industry has represented that the collective costs imposed by ICR, user charges and yet to be established pretreatment requirements are high, and in many instances exceed what it would cost to construct and operate selftreatment facilities.

In some instances it may cost industry less to construct and operate selftreatment facilities than it would cost to use a municipal treatment system. Each case, however, must be judged individually after reviewing the POTW being considered and each individual corporation's cash flow, investment potential, production facility, location, waste stream, direct-discharge requirements, and future investment program.

Coopers & Lybrand, the agency's ICR contractor, found that ICR alone adds only about 15 percent to the average industrial users wastewater treatment bill. EPA's contractor concluded the ICR costs are not high, but incrementally impose costs on industry that over 30 years may exceed incremental selftreatment costs, especially when corporate tax and financial mechanisms related to industrial pollution control investments and corporate properly accounting are considered.

EPA has reviewed recent changes to the Tax Code, provisions governing use of industrial development bonds, the municipal and corporate bond markets, and Coopers & Lybrand's analysis of corporate self treatment costs. The agency has concluded that Coopers & Lybrand overstated the availability and significance of these corporate tax and financing mechanisms and understated economic benefits associated with POTW use.

The agency's sewage treatment construction grants program provides industry with a interest free "loan" for complying with water pollution control requirements. Payments are required over a 30 year period, and industrial users of POTW's are under no obligation to repay the "loan" if they discontinue using the municipal facility. A corporation can declare bankruptcy, relocate, or eventually construct selftreatment facilities without legal or financial obligation to reimburse either the municipal treatment agency or the Federal Government for constructing industrial waste treatment capacity.

EPA agrees that in some instances a corporation can construct and operate its own treatment facilities at less cost than would be incurred by use of a municipal treatment facility. This varies a great deal, however, with the individual industry, the age and treatment demand for specific production facilities, and changes in technology and the cost and need for investment capital. Generally, a corporation will construct

treatment facilities designed to remove specific pollutants. Selfowned and operated facilities will be sized and designed to accommodate predictable flows and pollutant concentrations. There will be less energy and transmission costs for conveying waste to a on-site treatment system. There will be less administrative costs and lower staffing requirements for a simple industrial waste treatment system, depending on the process waste stream. Each case, however, depends on the complexity of the POTW being considered and the treatment demand that will be imposed by industry.

Industry will decide whether to use a municipal treatment system or construct corporately owned treatment facilities after thorough review of the costs and investment benefits associated with each treatment option. Central to the business decision will be a cost-effectiveness review of the production facility in question and an analysis of demand placed on and alternative uses for current and future working capital needs. The option that places the least total demand on long term investment capital and bonding capacity, maximizes equity benefits, and does not significantly impact short term cash flow and profits will be selected.

Corporate financial success is determined by profitability, and an efficient corporation is one that can gain a competitive edge by minimizing production costs and obtaining the maximum benefit from available production options, capital and financing. ICR is a production cost and so are yearly payments on a loan used to finance construction of selftreatment facilities. Currently, ICR and selftreatment impose financial demands on corporate capital. Either cost can be treated as a normal business expense, which means costs are charged against gross taxable income. Elimination of ICR, however, would significantly lower production costs

-- especially at antiquated production facilities -- for users of municipal treatment systems. There would be no corresponding reduction in costs for selftreatment, and inequity would result.

Corporations that own their own treatment systems must borrow construction funds or use readily available capital to pay for treatment system construction costs. Few corporations can or would use operating capital to construct pollution abatement facilities, and those that can secure funds in the bond market face costs which are not incurred by users of municipal treatment facilities. Currently, the prime rate on corporate money markets is about 18.7 percent. Long term bond issues are averaging 13 percent, while recent industrial development bonds and the average interest charge of a general municipal issues is about 9 percent. Most corporations will pay a higher borrowing rate, provided money is available and investors consider the corporation a good investment risk.

Although costs for constructing self treatment facilities may be less than costs for constructing equivalent capacity in a municipal treatment system, a comparision is not sound unless the true costs to a corporation for borrowing investment capital are considered. Coopers & Lybrand did not adequately address this point.

The contractor concluded in those cases where industry finances the major portion of its pollution control investment at a low interest rate, self treatment may be less expensive than POTW use provided treatment requirements for industry are equivalent to municipal secondary treatment requirements. This conclusion is sometimes true, but it can be validated only by plant-by-plant analysis. The Agency's sewage treatment construction grants program permits a corporation to "borrow" funds with no obligation to repay, no interest charge, and no long term loan liability. These are significant production cost exclusions which which would ordinarily be reflected on a firm's books as profit liabilities.

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A self treating industrial facility must carry outstanding bond and interest charges against income on its books. The cash liability may decrease the firm's attractiveness to investors. A corporation that has a significant amount of nonproductive debt in relation to income is not always an attractive stock investment opportunity.

Many bond offerings cannot be marketed without tremendous cost to a corporation, and every corporation has limited bonding capacity. A corporation with a large amount of outstanding debts in relation to income is not an attractive investment risk because one year of depressed sales can result in loan liabilities exceeding income. Unless additional short term credit can be secured, the excess obligations can cause insolvency. In some instances a bond offering for pollution control will preclude a future bond offering that could finance asset-related investment in productive capacity because cash flow -- without additional short term loans -- will not appear adequate to investors to meet outstanding bond and loan obligations.

Coopers and Lybrand's analysis of the ICR program assumed low interest charges for corporate longterm bond offerings and also unlimited investment capital available to both profitable and marginally profitable firms. The study also assumed that every corporation faced with water pollution control compliance costs is an attractive investment risk, could utilize the full investment tax credit, would obtain considerable financial benefits from depreciation charges against taxable income, and would face few restrictions on use of rapid write-off provisions in the tax code for pollution control investments. One other factor assumed in the contractors analysis is that all industrial facilities have the option to finance pollution control investments through private offerings or by using industrial development bonds. These are not necessarily valid assumptions.

Precise analysis of the impact of ICR and alternatives available for financing corporately owned treatment facilities could not be done by the Agency's contractors, primarily because industrial users of municipal facilities reviewed during the initial ICR study would not disclose data related to production processes or profits. Even without detailed data on individual firms, however, there are valid conclusions that can be made regarding availability of and use of industrial development bonds, rapid writeoff, depreciation, and the investment tax credit.

Changes to the tax code reduced the cash flow burden imposed on corporations that finance pollution control investments, provided funds are available and investors are willing to invest. If funds can be secured at a reasonable interest rate self financing of pollution control hardware is an attractive option for corporations that are not concerned about the age of production facilities, discharge requirements, and incurring debt unrelated to plant expansion.

Corporations that self-finance pollution control investments may take an investment tax credit, which results in an income tax reduction. The tax credit is applicable, however, only for investment in "qualified property" as defined by the Internal Revenue Service. Regulations governing the investment tax credit are complex and include a restrictive definition of "qualified property," place limitations on the amount of income tax that may be offset by the tax credit, and place restrictions on carryover of tax credits. Coopers & Lybrand assumed most corporations would obtain a significant (10 percent) tax credit, that all pollution abatement capital costs would be defined as qualified property, and that sufficient income tax liability was incurred so the full tax credit

could be taken in the first year the pollution control investment was made. According to the Department of Treasury, roughly 40 percent of industry's pollution control investments would qualify for the full range of investment tax incentives.

Coopers & Lybrand also assumed the maximum benefit to industry for depreciation charges against income tax liability. There are, however, restrictions governing depreciation and rapid write off for pollution control investments. Generally, rapid write off is applied to "retrofit" expenditures and cannot be applied to pollution control investment needed for new production facilities. Coopers & Lybrand assumed maximum benefit to industry in its analysis of rapid writeoff provisions, although some limitations in the use of depreciation were considered.

One major assumption in Coopers and Lybrand's ICR review that the Agency disagrees with is the unlimited availability of industrial development bonds. Industrial development bonds are commonly used by municipalities to assist a resident industry. These bonds carry a lower interest rate than most corporate offerings because they are tied to the municipality's, and not the benefiting industry's, credit rating. Although interest rates can be significant for a financially distressed municipality, for most, interest charges are several percentage points below the most credit-worthy corporate offerings. Rates are lower because the bonds are issued by a public agency and investors do not pay taxes on bond income.

Although industrial development bonds are commonly used to finance industrial pollution abatement programs, their use is restricted primarilly to expenditures for retrofitting older industrial facilities. IDBs cannot be used to finance process related improvements, and the ababement program to be financed must be certified as necessary. IDB offerings generally must be

approved by the residents of a community or by their designated representatives. Every municipality, like all corporations, has limited bonding capacity. It is suspect to conclude, during a period when taxpayers are calling for fiscal constraints, that voters would agree to bond offerings primarily benefiting industry when offerings expected to provide civic improvements such as sewage treatment services and public water supply are increasingly resisted.

As pointed out earlier, the option to use a municipal sewage treatment system provides industry with the opportunity to divert limited working capital and bonding capacity to plant improvements and expansion. This investment opportunity provides users of municipal treatment systems with an equity advantage over their product related direct discharge counterparts, and is of itself an advantage subsidized by the Federal Government.

Industry comments indicating that ICR, combined with pretreatment and user charges, collectively impose costs in excess of those paid by process related selftreaters have merit but ignore the stream of benefits provided by use of a municipal treatment facility.

Use of a municipal facility is the only option available to marginal firms, which are not attractive investment risks, do not have adequate working capital to construct selftreatment facilities, and in many instances would either be in noncompliance or have to discontinue operations if capacity in a municipal treatment facility was not available. POTW use is also attractive to corporate managers that have not decided whether or not to shut-down a production facility that utilizes antiquated production processes.

Users of a municipal facility also have several water pollution control compliance advantages that are not shared by those that construct their own treatment facilities.

The user of a municipal system is not concerned with treatment system malfunctions and liability for National Pollutant Discharge Elimination System permit violations. Industrial users of municipal treatment systems are relieved of the responsibility for training treatment plant operators, developing programs and purchasing facilities for sludge disposal, complying with reporting and discharge monitoring requirements, undertaking NPDES renewal every five years, and modifying treatment programs to reflect future pollution control requirements or stringent water quality standards.

Users of a municipal treatment facility often do pay more in operation and maintenance costs than self treaters, but it is erroneous to assume there are no salaries, pensions, energy costs, or other administrative costs associated with self treatment. Nor is it valid to assume industrial participation if a POTW does not increase POTW operating costs and manpower requirements about what would be required to service residential users.

Self treatment requires land for constructing a pollution abatement system, and the industrial facility must be located near a waterway that can accept a waste discharge without showing water quality deterioration.

A corporation constructing selftreatment facilities must negotiate terms and conditions for a National Pollutant Discharge Elimination System permit, or hire counsel to negotiate with environmental agencies after consultation with an inhouse engineer or corporate consultant.

A selftreating industrial facility also faces enforcement liability amounting to $10,000 per day for violations of NPDES permit effluent

limitations. Regular monitoring and compliance reports must be completed and filed with State environmental agencies or with EPA. In some instances there are local permit and reporting requirements.

Although in the future there will be pretreatment requirements imposed on industrial users of municipal treatment systems that discharge toxic wastes, there are now restrictions on discharges of toxic materials that must be met by selftreating industrial facilities. A direct discharger also must provide for safe disposal of process sludges in accordance with provisions in the Resource Conservation and Recovery Act. RCRA includes its own permit, monitoring, and reporting requirements, and they are coordinated with provisions in the Safe Drinking Water Act to assure waste is disposed of properly and will not contaminate groundwater supplies. A direct discharger that incinerates instead of employing land disposal for sludges must comply with the Clean Air Act and applicable State implementation plans. In nonattainment areas it is difficult to obtain a permit for incineration unless emission offsets can be secured.

The cummulative burden posed by compliance with all environmental regulations is substantial for a direct discharge facility and requires a great deal of corporate financial, legal, and engineering resources. A user of a municipal treatment system, however, currently must pay ICR charges which are calculated upon only that portion of a treatment system actually used by industry and constructed or upgraded through EPA's construction grants program. An industrial user of a municipal system does pay user charges, but they are calculated based on the industrial discharger's proportionate share of costs for operating the POTW. Often

user charges are increased for all users of a POTW because of industrial participation, especially in the case of seasonal industry or high volume water users. Industrial participation often requires the selection of treatment technologies uneconomic for some communities. Moreover, capacity provided for seasonal users tends to increased fixed system costs which are paid by all users year round.

Industrial users of municipal treatment systems do have to comply with future pretreatment requirements. Pretreatment requirements for specific industrial categories have not yet been fully established by the agency, and there is uncertainty concerning some of the removal requirements that will be established. In instances where a municipality demonstrates its POTW effectively prevents toxic discharges from industrial users from entering the waterways, pretreatment requirements and costs for industry will not be excessive. There will, however, be increased sludge disposal costs borne by all users and opportunities for beneficial use or sale of sludges will be lost.

Industrial Treatment Needs

Coopers & Lybrand estimated that nationwide industry uses about 15 percent of the treatment capacity funded through EPA's construction grants program. This figure does not represent total, actual industrial use. ICR is required only for that portion of treatment capacity constructed or upgraded by utilization of federal funds granted under the authority of the Clean Water Act. ICR is not required from any industrial user discharging 25,000 gallons per day or less of equivalent sanitary wastes. The flow exemption is very broad. Industry, in practice, is not charged for waste discharged from in-plant sanitary facilities. Grantees discount 100 gallons per day, the residential user flow design standard, from industry's total waste flow for each employee. Some grantees also provide industry with a credit for the first 25,000 gallons of process waste discharged to the municipal facilities, and charge ICR only on that portion of flow in excess of 25,000 gallons per day.

Flow by itself is not the most significant measure of how process waste imposes demands on municipal treatment facilities. Conventional treatment systems are designed for volume of flow, biochemical oxygen demand, and suspended solids loadings. A plant reaches capacity when loadings for any individual pollutant reach design limits. Treatment systems are designed, and technologies are selected, based on maximum flow and maximum loadings for each pollutant parameter. An overload on any treatment process will affect system performance and compliance with NPDES requirements. Generally, plant design assumes each individual residential user contributes 100 gallons per day flow, 0.17 pounds BOD, and 0.17 pounds suspended solids. Pollutant loadings from industry can be

significantly higher. For example, discharges from a meat packing house processing cattle that average 1100 pounds a head will require special design considerations in order to avoid a treatment system overload. Wastes from such a firm average, for example, 880 gallons/head flow, (equivalent to nearly 9 residential users), 8.8 pounds per head BOD (equivalent to 52 people), and 8.8 pounds suspended solids per head (equivalent to 52 people). The flow exemption discussed above excludes industries from ICR requirements that discharge wastes equivalent to the treatment demand imposed on a municipal system by 250 residential users.

EPA looked closely at ICR in one Region (Region V) which includes Ohio, Michigan, Illinois, Indiana, Wisconsin and Minnesota. There are large, small, and varied categories of industry. The Agency's review was undertaken to determine how loadings are portioned among residential and industrial POTW users. The Agency also wanted to determine how much ICR revenue would be generated and whether industrial participation necessitates selection of mechanical as opposed to passive treatment technologies. The following series of tables illustrate the estimated amount of ICR revenues returned to the Federal Government from the 6 states in Region 5. Total estimated ICR collections would be double the amount indicated assuming there is no additional industrial participation. ICR collections would be less if some industries decide to withdraw from the systems reviewed. Congress should note that these figures are not based on all grantees within the Region subject to ICR requirements. These figures were obtained by reviewing approved ICR systems. Many grantees have not submitted their ICR systems for review. Also, the data shown does not reflect future industrial participation as treatment systems now being planned or under construction come on line. The information shown is based on letters of intent from industry to participate in municipal treatment systems.

The figures in table 1 are based on a review of approved ICR programs for 38 grantees in Illinois, 32 grantees in Indiana, 31 grantees in Missouri, 11 grantees in Minnesota, 27 grantees in Ohio, and 32 grantees in Wisconsin (a total of 171 ICR programs). Total return to the Federal Government is estimated to be $2,734,364 annually for 30 years if the ICR moratorium is lifted. EPA has awarded $_____ to these 171 grantees for upgrading treatment systems or constructing new facilities. ICR is applicable to $_____, roughly ____ percent of the total grant award.

The statewide aggregations show Minnesota alone has a fairly large proportion (23.3 percent) of industrial flow, but industrial requirements for other specific pollutant measures is significantly high in Minnesota and in the other Region V States.

The tables show that industrial process waste does place treatment demands on municipal treatment systems. The type of demand cannot be generalized, however, because each individual industrial process waste stream is different and causes stress on different components within a treatment system. One generalization that can be made is that industrial process wastes imposes a significant demand on a municipal treatment systems being constructed with Clean Water Act funds, and the fact that an industrial discharger intends to use a municipal treatment system requires special design considerations and treatment system operation and maintenance programs that would not be required in systems designed only for domestic use.

TABLE 1

REGION V STATE	ANNUAL ICR DOLLARS RETURNED TO U.S. TREASURY	DESIGN			INDUSTRIAL					
		MGD	BOD	SS	MGD	%	BOD	%	SS	%
ILLINOIS	153,334	177.56	336,870	316,227	14.891	8.38	32,739	9.7	30,909	9.8
INDIANA	659,703	424.91	727,725	778,734	53.55	12.6	205,035	28.17	184,823	23.7
MICHIGAN	465,477	1,404.387	2,264,142	2,800,760	196.08	13.96	377,321.5	16.6	389,806	13.9
MINNESOTA	496,919	103.6175	251,933	190,325	24.14	23.3	112,635.3	44.7	54,660.6	28.7
OHIO	589,968	560.7	1,076,487	1,156,942	60.86	10.85	284,533	26.43	200,520	17.3
WISCONSIN	368,963	165.644	269,150	276,393	16.3	9.8	48,593.6	18.	28,407.9	10.3
TOTALS	2,734,364	2836.8185	4926307	5519381	365.821	12.9	1060857.4	21.5	889126.5	16.1

TABLE 2

STATE ILLINOIS	ANNUAL ICR DOLLARS RETURNED TO U.S. TREASURY	DESIGN			INDUSTRIAL					
		MGD	BOD	SS	MGD	PERCENT	BOD	PERCENT	SS	PERCENT
Chicago MSD	$ 308,481	$655,175.	656,770,000	890,600,000	79,606.	12.15	189,960,000	28.94	383,104,000	43.
Bellville	5,800	8.	18,400	16,700	1.	12.5	5,993	33.	3;494	21.
Sycamore	14,828	1.5	2,510	3,210	.9	60.	840	33.5	1,025	31.9
Milledge-ville	1,425	.24	1,000	1,340	.045	22.3	790	79.	476	35.5

TABLE 3

STATE INDIANA	ANNUAL ICR DOLLARS RETURNED TO U.S. TREASURY	DESIGN			INDUSTRIAL					
		MGD	BOD	SS	MGD	PERCENT	BOD	PERCENT	SS	PERCENT
Tipton	6,312	2.	250	250	.165	8.3	164.6	65.8	137.8	55.
Indianapolis	311,275	162.34	473,077	413,882	24.084	14.8	159,807	33.7	125,882	30.4
Fremont	3,778	.3	625	700	.043	14.3	226	36.2	254	36.3
Gary	115,500	60.	100,080	125,010	6.263	10.4	19,989	20	13,536	10.3

TABLE 5

STATE MINNESOTA	ANNUAL ICR DOLLARS RETURNED TO U.S. TREASURY	DESIGN			INDUSTRIAL					
		MGD	BOD	SS	MGD	PERCENT	BOD	PERCENT	SS	PERCENT
Western Lake Superior	576	44.	97,700	61,900	14.72	34.	63,190	65.	24,380	39.
Albert Lea	266,480	12.5	21,660	28,960	3.08	24.6	11,674	54.	2,876	44.5
Moorhead	92,805	6.	25,035	8,762	1.68	28.	14,885	59.	1,869	21.
Dover-Eota-St. Charles	6,853	.8	2,255	1,335	.1213	15.	524	23.	328	24.

TABLE 6

STATE OHIO	ANNUAL ICR DOLLARS RETURNED TO U.S. TREASURY	DESIGN			INDUSTRIAL					
		MGD	BOD	SS	MGD	PERCENT	BOD	PERCENT	SS	PERCENT
Hamilton County	169,500	180.	369,860	446,575	28.7	16.	143,060	38.7	108,030	24.2
Canton	53,179	33.	82,500	82,500	4.6	13.9	22,734	27.6	12,513	15.2
Salon	134,700	3.6	7,000	6,000	1.06	29.	4,352	62.	1,650	28.
Covington	11,716	.75	3,635	1,945	.183	24.	1,490	41.	764	39.

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TABLE 7

STATE WISCONSIN	ANNUAL ICR DOLLARS RETURNED TO U.S. TREASURY	DESIGN			INDUSTRIAL					
		MGD	BOD	SS	MGD	PERCENT	BOD	PERCENT	SS	PERCENT
Manitowac	38,769	15.5	37,500	28,400	2.921	18.8	10,417	28.	3,146	11.
Watertown	9,800	4.2	5,640	4,800	.42	10.	1,582	28.	458	10.
Black Creek	13,897	.34	2,100	1,571	.067	20.	1,442	69.	749	47.7

As mentioned earlier in many instances the presence of an industrial discharger requires the selection of treatment technologies and construction of conveyance systems that would not be used because they are considered too expensive or unnecessary for a treatment system designed only for residential users. The following examples illustrate this point.

The City of Oscola, Iowa in 1972 completed construction on a federally assisted sewage treatment project. The city built a simple, zero discharge, non-aerated lagoon consisting of two ten acre treatment cells. The project was designed to serve residential users and was intended to complement an existing single stage trickling filter plant. The lagoon, which cost the Federal Government $363,000, had a design life of twenty years. Lagoon systems are a nonmechnical treatment process that require little or no operation and maintenance. There was no energy and few chemical additive requirements for Oscola's lagoon treatment system.

EPA in 1972 conducted a final "close-out" inspection of the lagoon system. At that time city officials informed agency inspectors that Jimmy Dean Pure Pork Sausage was starting to build a local processing plant. The city asked for a new construction grant. The desire to treat Jimmey Dean Pure Pork Sausage's waste meant Oscola's new treatment system was underdesigned because it was not originally intended to accommodate process loadings from a major meat processing facility.

The city, as an interim measure, installed surface aerators in the lagoon until a new plant could be built. The City in 1975 obtained a $2,200,350 EPA grant to build a new two-stage trickling filter plant designed for 1.31 million gallons per day flow and 4308 pounds per day BOD. Although the residential design population is 3600 (BOD loading equals 612 pounds/Day), treatment components had to be designed and constructed to accommodate Jimmy Dean Pure Pork Sausage's BOD loadings and flow. In this case the BOD loadings alone required a system design that would, comparatively, accommodate the treatment requirements imposed by an additional 25,341 residential users. The BOD demand from an industrial user in Oscola, Iowa required the city to construct a higher priced, more complex and energy intensive treatment system than would otherwise have been the case. Higher fixed operating costs associated with the mechnanical treatment process would be shared by all users. The city eventually abandoned its new lagoon and single filter trickling plant.

Special design considerations to accommodate industrial flows are not uncommon, especially in rural areas, in areas where industry is not located near the municipal facility or if industry intends to locate in a small community. Often small communitites can use lagoon systems which are not expensive to construct and usually require little operation and maintenance. As in the case of Oscola, the presence of a significant, year-round industrial facility often requires that a small community utilize and share costs for a mechanical treatment system instead of a lagoon. Likewise, more costly design and operational considerations often are required if a significant seasonal user intends to use the municipal treatment system too.

Gibbon, Nebraska recently built a rotating biological surface treatment system instead of a lagoon to accommodate its 2200 residents and two industries, Nebraska Turkey Growers Association and Gibbon Picking Company. Total design parameters for the treatment system are 1.11 million gallons per day flow, 5875 pounds/day BOD and 4840 pounds/day suspended solids. The system is currently designed for a residential population of 2200, but treatment capacity allocated to the two industrial users--0.77 MGD flow, 5100 pounds/day BOD, and 3900 pounds/day suspended solids--constitutes roughly 75 percent of the system's capacity, or a treatment demand equivalent to that required for _____ residential users. Nebraska Turkey Growers uses the system only six months each year, but if adequate capacity had not been provided for the industry's waste, overloads would result and the city would be liable for enforcement action. Nebraska Turkey Growers alone required design capacities of 0.40 MGD, 1512 pounds/day BOD and 1200 pounds/day suspended solids. Without the industrial demand, a system adequate to serve Gibbon's residents alone probably would be a 42 acre nondischarging lagoon, which would have cost the Federal Government less than the $1,903,000 grant EPA awarded to Gibbon.

The examples above are used to illustrate the fact that some communities go to considerable expense to provide treatment capacity for industrial use, and in many instances more sophisticated and costly systems must be selected by a municipality because it will have a significant industrial discharger. Congress, in advancing the concept of regionalized sewage treatment services, accepted the fact that encouraging industrial use of municipal treatment facilities would impose addition financial obligations on both the Federal Treasury and on local

budgets. Congress considered the additional costs, but reasoned that economies of scale associated with providing sewage treatment services and reduced monitoring requirements associated with having fewer selftreating industrial facilities justified providing treatment capacity for industry because total costs to the economy would be less than would be the case if each industrial and municipal discharger constructed individual treatment systems.

There are also other reasons for permitting industrial use of municipal treatment facilities. Industry does pay income taxes and is entitled to benefits provided by Federal, state, and local governments. Industry also provides employment and, to some degree, financial stability for a community. For these reasons Congress agreed to finance industrial participation in the Federal sewage treatment construction grants program, but Congress expected industry to repay the Federal Government for sewage treatment "loans" in addition to paying their proportionate share of ongoing operation and maintenance expenses.

Although Congress expected industry would continue to use treatment capacity funded through the agency's sewage treatment construction grants program, in some instances industry decides to construct self-treatment facilities or relocate to a community that has a treatment system which has not been constructed or improved with funds authorized by the Clean Water Act. Treatment systems funded locally or through programs other than EPA's sewage treatment construction grants program are not required to impose ICR requirements or establish proportion user charge systems.

As mentioned before, ICR imposes no contractual obligation on industry to remain in a municipal treatment system. Industry can, at any time, withdraw from a municipal treatment system without legal or financial obligation to repay either the local community (unless a local contract is in effect) or EPA costs associated with construction capacity for the vacating industry's use. After

a significant industrial facility leaves a municipal treatment system, new excess capacity often requires different and sometimes costly operating procedures if the plant is to remain in compliance with its NPDES permit. These increased operational costs must be absorbed by the local community which no longer receives either industrial user charges, debt payments for local bond issues, or the discontinued ICR payments.

Industrial withdrawal from municipal treatment systems is not uncommon. Changes in corporate borrowing interest rates, production processes, treatment requirements, user charges, business conditions, the availability of less costly municipal treatment services, or any number of other variables can and do trigger industrial decisions to discontinue using a municipal system subject to ICR requirements. Often industrial withdrawal imposes financial hardship on a community, especially small communities that, for a variety of reasons, built treatment systems that included a significant amount of capacity for industrial use.

The City of Anderson, Missouri is one example of a small community now using an oversized and overdesigned treatment system that, when planned, was expected to serve one significant industrial discharger. Until 1974 the City of Anderson operated a simple, 23 acre non-aerated lagoon system. The city's sole industry, J & J Poultry, a turkey processor, had additional treatment needs and the city decided to construct facilities which would remove grease and feathers from the poultry company's waste. Anderson initiated a $658,000 project and commenced construction on a 2.7 acre aerated lagoon. The new lagoon system would have six 15 horsepower surface aerators and chlorination facilities. It would be used in conjunction with the existing lagoon and provide "pretreatment" for the poultry company's waste, effectively removing grease and feathers.

After construction was completed Anderson had a mechanical system in place which would treat its residential waste (.090 MGD Flow and 223 pounds BOD/day) and J & J Poultry's waste (0.35 MGD and 4146 pounds BOD/day). The total design loading for the system is 0.62 MGD, 4200 pounds BOD/day and 2068 pounds/day SS. The system is on line now but shortly after start-up J & J Poultry withdrew and moved to another location, leaving the city with overdesigned facilities and a financial obligation but no users other than those adequately served by the city's original treatment system. The city would have continued using its original treatment system without modification, but now it must daily operate the new system to keep the mechanical aerators in functioning order.

ICR: Administrative Burden For Grantees?

In establishing the construction grants program, Congress outlined requirements for municipal financing of sewage treatment system operation and maintenance costs. Congress provided municipalities with wide latitude in determining how user charges are developed, but said proportional costs should be assessed to each user that reflect the treatment demand the user's discharge imposes on the treatment system.

Grantees were selected to administer the ICR system as they would be responsible for on-going operation of newly constructed treatment facilities. Congress provided that grantees could keep half of the ICR revenues collected, and funds retained could be used to defray ICR administrative costs and assist in funding treatment system improvements. In 1977 Congress did not significantly change the ICR program requirements.

ICR collections returned to the Treasury so far amount of $559,536. EPA estimates that about $500,000 in additional pre-moratorium ICR revenues will be returned to the Treasury by grantees, and an additional $500,000 will be returned from those grantees collecting during the moratorium. Future ICR collections cannot accurately be estimated while the moratorium is in place because the extent of industrial POTW use is uncertain.

EPA's contractor concluded that industry (as currently defined) uses about 15 percent of municipal treatment capacity. This conclusion is based on an analysis of flow loadings, and does not attempt to measure impact of pollutant loadings on individual treatment system components. If one applies this percentage to the total estimated treatment needs as calculated in the 1978 Needs Survey -- $106 billion, a simple extrapolation puts industry's share of unfunded needs in excess of $15 billion. Although this figure is an exaggeration it does illustrate the magnitude of industrial demand on the federal sewage treatment construction grants program. Moreover, in the absence of ICR requirements, it is probably fair to assume that industrial use of municipal treatment systems will progressively increase.

All grantees are required to develop ICR, user charge systems, and sewer use ordiances. In some instances, grantees are required to develop pretreatment programs. EPA provides grant assistance for developing ICR, sewer use ordinances, user charge systems, and pretreatment program.s Data on industrial waste streams that must be gathered by a grantee to satisfy each of the above requirements is also needed to properly design a municipal sewage treatment system, and information gathered by a grantee to satisfy any one of the above program requirements should be utilized to satisfy the other requirements. In a properly designed grants management system there should be little incremental costs for ICR data compliation.

The major burden faced by a grantee in developing ICR, user charge, sewer use ordinances, and pretreatment programs is identifying industrial dischargers and determining their treatment needs. Identifying which industrial facilities actually will use a POTW can be difficult because industry often is unwilling to make a commitment to use a POTW until all costs to industry are identified. In most cases firm cost data is unavailable until construction of the municipal facility is completed. In many instances, actual costs to industry may be more than initial estimates due to inflation which occurs during design and construction. In some cases uncertainty associated with industrial treatment needs cause grantees to over-design as a hedge against future discharge violations.

Once industrial users are identified, treatment needs must be determined based on pollutant loadings. Industry's pollutant loading must be determined for both ICR and user charges, and a characterization of industry's waste stream is needed to assure compliance with a grantee's sewer use ordinance and pretreatment program. Gathering data on industrial waste stream characteristics is a difficult undertaking for most grantees. The grantees must discuss production plans, pollutant loadings, and special treatment needs with corporate plant managers. Much of this information historically has been considered priviledged by industry.

The pollutant loading and flow information required to develop an ICR system should be collected by a grantee regardless of whether ICR is continued or abolished. Information on industrial discharges is essential

Incremental Annual Cost of Administering ICR

1. No cost for industry monitoring (covered under user charge system)

2. Fixed costs (regardless of number of industrial users):

a.	System accounting (allocation of revenues, bookkeeping, investment management, disbursement to U.S. Treasury and to projects approved by the Regional Administrator, calculation of incremental costs)	$2,700
b.	Bank custodian fees	300
c.	Annual audit	600
		$3,600

3. Variable cost (per industrial user):

a.	Extraction of data from user charge data base, and calculation of annual ICR charge	$ 25
b.	System accounting (accounts receivable, receipt and logging of payments, and follow-up on late payments)	$ 50
c.	Records maintenance	$ 25
		$ 100

4. Additional cost per industrial user if manual (rather than computerized) system is used $ 100

Efficiency of ICR Revenue Systems

Name of Grantee	Incremental ICR Expenses	Number of Industrial Users	Average Flow per Industrial User
Western Lake Superior, MN	0.5%	22	0.67 MGD
Albert Lea, MN	1.0%	8	0.38 MGD
Sacramento, CA	1.3%	40	0.31 MGD
Templeton, MA	1.5%	1	2.51 MGD
Passaic Valley, NJ	1.5%	400	0.18 MGD
Fall River, MA	5.0%	27	0.12 MGD
Rockford, IL	8%	110	0.20 MGD
Bergen County, NJ	21%	72	0.07 MGD
Ellsworth, WI	53%	1	0.12 MGD
Los Banos, CA	92%	2	0.07 MGD
Viroque, WI	108%	1	0.015 MGD

The "average" figures for ICR systems mask a wide range of specific ICR situations which confront various grantees. The following eleven grantees have been selected as examples of these various situations.

A. High-efficiency revenue systems (incremental cost of collection is less than 2% of ICR revenues):

1. Templeton, MA. - a 3 MGD plant with one industrial user which contributes 89% of the design flow, 98% of the design BOD loading, and 99% of the design SS loading.

2. Passaic Valley Sewerage Commission, NJ - a 300 MGD plant, currently under construction, with 400 industrial users which will contribute 24% of the design flow, 60% of the design BOD loading, and 60% of the design SS loading.

3. Albert Lea, MN - a 12 MGD plant with eight industrial users which contribute 25% of the design flow, 54% of the design BOD loading, and 44% of the design SS loading.

B. Average-efficienty revenue systems (incremental cost of collection equals 5% to 21% of ICR revenues):

4. Bergen County Utilities Authority, NJ - a plant with 72 industrial users which contribute 7% of the design flow, 13% of the design BOD loading, and 7% of the design SS loading.

5. Rockford, IL - 60 MGD plant with 110 industrial users which contribute 37% of the design flow, 17% of the design BOD loading, and 9% of the design SS loading.

C. Low-efficiency revenue systems (incremental cost of collection exceeds 50% of ICR revenues):

6. Ellsworth, WI - a 0.7 MGD plant with one industrial user which contributes 18% of the design flow, 27% of the design BOD loading, and none of the design SS loading.

7. Viroque, WI - A 0.5 MGD plant with one industrial user whose high-strength waste contributes 3% of the design flow, 20% of the design BOD loading, and 18% of the design SS loading.

D. Special situations:

8. Fall River, MA - a 31 MGD plant currently under construction, with 27 industrial users which will contribute 11% of the design flow, 31% of the design BOD loading, and 14% of the design SS loading. When the ICR system is implemented, it is expected to impose a heavy economic burden on a number of old, marginally profitable industrial users.

9. Sacramento, CA - a 136 MGD plant currently under construction, with 40 industrial users which will contribute 11% of the initial flow. The seasonal nature of the activities of the five large food processors which were expected to use this plant would result in very high ICR rates. This makes self-treatment an attractive alternative, especially for those users which can use a low-cost land treatment system. One user (Libby-McNeil-Libby), constituting 16% of anticipated ICR revenues and 1% of anticipated user charge revenues, has already ceased operation, and the largest user, (Campbell Soup), constituting 34% of anticipated ICR revenues and 5% of anticipated user charge revenues, is expected to construct its own land treatment facility prior to the start of operation of the new plant.

10. Los Banos, CA - a 2 MGD plant whose two remaining industrial users contribute 7% of the design flow, 7% of the design BOD loading, and 7% of the design SS loading. The largest industrial user (Beatrice Foods), which had contributed 24% of the design flow, 74% of the design BOD loading, and 44% of the design SS loading, has moved about 20 miles to Gustine, CA, which has an older plant which is not subject to the ICR requirement.

The high-efficiency ICR systems generate a large amount of revenue in relationship to the incremental cost of collection. Generally, these are grantees whose industrial users have an average flow in excess of 0.25 MGD, although grantees with large revenue bases may fall below this figure and still have a high-efficiency ICR system.

The average-efficiency ICR systems will initially generate a reasonable amount of revenue in relationship to the incremental cost of collection. However, as the incremental cost of collection rises due to inflation, while the ICR revenues remain constant, the efficiency of these systems will gradually decrease, and before the end of the recovery incremental cost of collection will exceed the grantee's 50% share of ICR. Since 50% of ICR revenues must be paid to the U.S. Treasury, the user charge system must be used to finance all incremental costs of collection which exceed the grantee's 50% share of ICR revenues.

The low-efficiency ICR systems will generate no net revenue for the grantee. (even the initial year's incremental expenses will exceed the grantee's share of ICR revenue) As the incremental administrative costs rise due to inflation, the net deficit from the ICR system will increase each year. Again, since 50% of the ICR revenues must be paid to the U.S. Treasury, the user charge system must be used to finance all incremental costs of collection which exceed the grantee's 50% share of ICR revenues.

1. Templeton, Massachusetts

   3 MGD AWT plant

   $8,698,000 Federal grant

   30 year recovery period

   1 industrial user (Baldwinville Products Company)

   Industrial contribution: 2.51 MGD
   89% of design flow
   98% of design BOD loading
   99% of design SS loading

   $258,000 annual ICR revenue

   $3,800 initial incremental cost of collection

   1.5% of revenues used for expenses

   2.9% of grantee's share used for expenses

   ICR rates: 5.2 cents per 1000 gallons
   0.6 cents per pound of BOD
   0.3 cents per pound of SS

   This grantee is voluntarily continuing to collect ICR payments during the moratorium period.

2. Passaic Valley Sewerage Commission, New Jersey

   300 MGD secondary plant, scheduled completion 1981

   $394,000,000 Federal grant

   30 year recovery period

   400 industrial users

   Industrial contribution: 72 MGD (0.18 MGD average per user)
   24% of design flow
   60% of design BOD loading
   60% of design SS loading

   $2,840,000 annual ICR revenue

   $43,600 initial incremental cost of collection

   1.5% of revenues used for expenses

   3.1% of grantee's share used for expenses

   ICR rates: 1.7 cents per 1000 gallons
   1.0 cents per pound of BOD
   0.1 cents per pound of SS

3. Albert Lea, Minnesota

12 MGD secondary plant

$26,588,400 Federal grant

30 year recovery period

8 industrial users

Industrial contribution: 3.08 MGD (0.38 MGD average per user)
25% of design flow
54% of design BOD loading
44% of design SS loading

$532,960 annual ICR revenue

$5,200 initial incremental cost of collection

1.0% of revenues used for expenses

2.0% of grantee's share used for expenses

ICR rates: 6.4 cents per 1000 gallons
2.4 cents per pound BOD
2.1 cents per pound SS
15.0 cents per pound NH_3-N
19.5 cents minimum total charge per 1000 gallons

4. Bergen County Utilities Authority, New Jersey

75 MGD secondary plant

$8,800,000 initial Federal grant

$44,000,000 subsequent Federal grant

two 30 year recovery periods (second recovery period starts in the fourth year of the first recovery period)

72 industrial users

Industrial contribution: 5.06 MGD (average 0.07 MGD per user)
7% of design flow
13% of design BOD loading
7% of design SS loading

$16,000 initial ICR revenue (increases to $106,000 in the fourth year of the recovery period; decreases to $90,000 after the thirtieth year)

$18,000 initial incremental cost of collection (increases to $22,700 in the fourth year of recovery period, assuming 8% inflation)

112% of revenues used for expenses in first year
21% of revenues used for expenses in fourth year

225% of grantee's share used for expenses in first year
43% of grantee's share used for expenses in fourth year

ICR rates: 0.3 cents per 1000 gallons (increases to 1.0 in fourth year)
0.1 cents per pound BOD (increases to 0.7 in fourth year)
1.1 cents per pound SS (increases to 4.0 in fourth year)

This is a typical grantee. Its $106,000 annual ICR revenue and $18,000 initial administrative costs are almost exactly equal to the average amounts of $101,000 and $15,000 found by Coopers and Lybrand. At an 8% inflation rate, expenses would exceed revenues by the year 2003, and the net accumulated deficit at the end of the ICR period would exceed $964,000. At a 10% inflation rate, expenses would exceed revenues by the year 1998, and the net accumulated deficit at the end of the ICR period would exceed $3,878,000. Of course, regardless of such costs, the U.S. Treasury would continue to receive its 50% share of all revenues, which in the case of Bergen County would total $3,180,000 over the 33 year recovery period.

At an 8% inflation rate, the incremental cost of collection will exceed the grantee's 50% share by the year 1994, at which time the excess costs have to be financed through the user charge system. At a 10% inflation rate, incremental costs will exceed revenues by the year 1991.

It also should be noted that expenses will exceed revenues during the first three years of the recovery period, due to the lower amount being recovered.

5. Rockford, Illinois

60 MGD secondary plant

$33,937,000 Federal grant

two 30 year recovery periods (second recovery period starts in the fourth year of the first recovery period)

110 industrial users

Industrial contribution: 22.2 MGD (0.20 MGD average per user)
37% of design flow
17% of design BOD loading
9% of design SS loading

$1500 initial ICR revenue (increases to $220,000 in the fourth year of the recovery period; decreases to $218,500 after the thirtieth year)

$14,600 initial incremental cost of collection (increases to $18,400 in the fourth year of recovery period, assuming 8% inflation)

973% of revenues used for expenses in first year
8% of revenues used for expenses in fourth year

1947% of grantee's share used for expenses in first year
17% of grantee's share used for expenses in fourth year

ICR rates: 0.00 cents per 1000 gallons (increases to 4.1 in fourth year)
0.00 cents per pound BOD (increases 0.2 in fourth year)
0.02 cents per pounds SS (increases to 0.9 in fourth year)

While the industrial flow to this plant is substantial, only a small portion of the facility is subject to the ICR requirement during the inital recovery period. As additional Federally-assisted facilities go into operation, the ICR revenue will increase substantially.

6. Ellsworth, Wisconsin

0.7 MGD secondary plant

$601,380 Federal grant

30 year recovery period.

1 industrial user (a creamery)

Industrial contribution: 0.12 MGD
18% of design flow
27% of design BOD loading
0% of design SS loading

$7,196 annual ICR revenue

$3,800 initial incremental cost of collection

53% of revenues used for expenses

106% of grantee's share used for expenses

ICR rates: 5.8 cents per 1000 gallons
3.6 cents per pound BOD
0.0 cents per pound SS

7. Viroque, Wisconsin

0.5 MGD secondary plant

$859,635 Federal grant

30 year recovery period

1 industrial user (a cheese processor)

Industrial contribution: 0.015 MGD
3% of design flow
20% of design BOD loading
18% of design SS loading

$3,522 annual ICR revenue

$3,800 initial incremental cost of collection

108% of revenues used for expense

216% of grantee's share used for expenses

ICR rates: 6.5 cents per 1000 gallons
1.7 cents per pound BOD
1.8 cents per pound SS

Although the industrial user discharges only 15,200 GPD, the high strength of the discharge makes it equivalent to over 25,000 GPD of domestic sewage, on the basis of both BOD and SS.

8. Fall River, Massachusetts

31 MGD secondary plant, scheduled completion 1981

$32,057,000 Federal grant

30 year recovery period

27 industrial users

Industrial contribution: 3.34 MGD (0.21 MGD average per user)
11% of design flow
31% of design BOD loading
14% of design SS loading

$180,600 annual ICR revenue

$9,000 initial incremental cost of collection

5.0% of revenues used for expenses

10.0% of grantee's share used for expenses

ICR rates: 4.2 cents per 1000 gallons
1.3 cents per pound BOD
4.3 cents per pound SS

cost of development of ICR system:

$9,900	Federal grant
1,980	state grant
1,320	local funds
$13,200	

Fall River was selected as an example because many local industries appear to be only marginally profitable, and the imposition of ICR can be expected to have a significant, adverse economic impact. Fall River is an older, industrialized city. Local industries are competing against other areas with lower utility costs, lower taxes and lower transportation costs. Because of the substantial upgrading of wastewater treatment facilities and the change from an ad valorem tax to a proportionate user charge system, received total wastewater costs will increase significantly. The recurring statement from industries, local government, and trade groups has been that wastewater treatment costs will be the final incremental cost that will force them out of business in the Fall River area, thus seriously harming the local economy.

9. Sacramento Regional County Sanitation District, California

136 MGD secondary plant, scheduled completion 1981

$303,000,000 Federal grant (50% for treatment plant and 50% for interceptors)

30 year recovery period

40 remaining industrial users (one closed; one will self-treat)

Industrial contribution: 12.3 MGD (0.31 MGD average per user)
9% of design flow (was 19%)
31% of design BOD loading (was 51%)
17% of design SS loading (was 35%)

$571,774 annual ICR revenue (was $1,137,000)

$7,600 initial incremental cost of collection

1.3% of revenues used for expenses

2.7% of grantee's share used for expenses

ICR rates: 4.0 cents per 1000 gallons*
1.3 cents per pound BOD*
0.4 cents per pound SS*

*actual rates will be much higher for seasonal users, since costs are allocated on maximum demand basis

user charge rates: 17.0 cents per 1000 gallons
2.4 cents per pound BOD
5.0 cents per pound SS

This is a regional system which will replace 19 existing treatment plants. After the start of construction, two of the largest potential users reversed their earlier decision to use the new system. The largest potential user, Campbell Soup, which would have contributed 7% of the design flow, 16% of the design BOD loading, and 15% of the design SS loading, has designed its own land treatment system. Campbell Soup has not yet initiated construction of its land treatment system, but is expected to do so unless the ICR requirement is repealed. The fifth largest potential user, Libby-McNeil-Libby, which would have contributed 3% of the design flow, 5% of the design BOD, and 4% of the design SS, has closed its food processing plant. As a result, neither of these potential users will be required to make user charge or ICR payments, despite the fact that $15,540,000 in Federal funds, $2,590,000 in state funds, and $2,590,000 in local funds are being expended to construct the transmission and treatment capacity previously sought by these two potential users.

The departure from the system by Campbell Soup is expected to result in a 6% increase in user charge rates for the remaining users, and the closing of Libby-McNeil-Libby is expected to result in a 1% increase.

ICR revenue loss:	Campbell Soup	$ 385,000
	Libby-McNeil-Libby	130,000
	Total per year	515,000
	Total during recovery period	$15,540,000

10. Los Banos, California

2 MGD lagoon

$1,498,000 Federal grant

30 year recovery period

2 remaining industrial users (one moved away)

Industrial contribution: 0.14 MGD (average 0.07 per user)
7% of design flow (was 31%)
7% of design BOD loading (was 81%)
7% of design SS loading (was 51%)

$4,338 annual ICR revenue (was $22,523)

$4,000 initial incremental cost of collection

98% of revenues used for expenses
184% of grantee's share used for expenses

ICR rates: 8.2 cents per 1000 gallons*
0.2 cents per pound BOD*
0.4 cents per pound SS*

*actual rates will be much higher for seasonal users, since costs are allocated on maximum demand basis

cost of development of ICR system:	$3,750	Federal grant
	625	state grant
	625	local funds
	$5,000	

The departure of the largest industrial user (Beatrice Foods), which contributed 24% of the design flow, increased user charge rates for the remaining users by 35%.

ICR revenue loss:	Beatrice Foods	$ 18,185
	Total per year	$ 18,185
	Total during recovery period	$595,550

11. Western Lake Superior Sanitary District, Minnesota

44 MGD secondary plant

$79,900,000 Federal grant

30 year recovery period

22 industrial users

Industrial contribution: 14.7 MGD (0.67 MGD average per user)
34% of design flow
65% of design BOD loading
39% of design SS loading

$1,153,714 annual ICR revenue

$5,800 initial incremental cost of collection

0.5% of revenues used for expenses

1.0% of grantee's share used for expenses

ICR rates: 8.2 cents per 1000 gallons
2.3 cents per pound BOD
1.3 cents per pounds SS

This is a totally new regional system. The largest industrial user, Potlatch, which contributes 30% of the design flow, 43% of the design BOD loading, and 32% of the design SS loading, is located 25 miles from the treatment plant. The combination of a totally new system and a 25 mile force main results in an unusually high ICR rate structure. For its 13 MGD of wastewater, Potlatch annually pays about $2 million in user charges and about $0.1 million in local debt service, and would pay about $1 million in ICR charges. Thus, while Coopers and Lyband found that the average industrial user's ICR payment would equal 10-15% of the total cost of wastewater treatment services, Potlatch's ICR payment would exceed 30% of its total cost of wastewater treatment services, or more than double the nationwide average found by Coopers and Lyband.

ICR revenues to most grantees can provide a significant supplemental fund for treatment system improvements. The income can be used to replace treatment components as they age, and retained ICR revenues can be used to replace system components that unexpectedly break down.

Treatment system maintenance is a major expense for grantees, but one which historically has been neglected. Where industrial flows constitute a significant contribution to the municipal treatment system, treatment system deterioration may be accelerated. Unless a grantee has an aggressive and well-financed program for replacing deteriorating equipment there eventually will be treatment system malfunctions and water quality violations. Currently, about 70 percent of the existing municipal treatment systems are not performing properly. Some of these systems need construction grant assistance, but in many cases poor operation, maintenance, and replacement programs are the cause of inadequate performance.

Faced with this specter of failing systems, the Agency is increasingly concerned that the Federal government will be faced with an increasing level of expectation from the grantees for financial assistance for facility replacements and upgradings. The availability of dedicated ICR revenues could, in many communities, help ameliorate this problem. The prospect of a growing expectation for Federal funding assistance is not without precedence in the area of Federally assisted public works enterprises.

Congress need only look at the Federal highway program for comparison. The highway program is similar to the sewage treatment construction

grants program. Both provided Federal grant assistance to construct essential public facilities. Once constructed, state or local governments assume responsibility for ongoing operation, maintenance, and major rehabilitation or improvements.

Although both programs started with similar objectives, the Department of Transportation now is finding there are new demands on the Federal Highway Trust Fund. The trust fund, which provides the Federal share of highway construction, is financed by a tax on gasoline. The gas tax advanced the concept of proportional user charges Gasoline users needed highways, which justified the tax on gas as the basis for the trust fund. The trust fund would be used to build highways that benefitted gas users, and those using the highways frequently consumed more gas and therefore paid an increased proportion of taxes into the trust fund.

States and local agencies also rely on the gasoline tax for their share of highway construction matching grants. This revenue system effectively raised income for all levels of government until gas prices rose and consumption declined. Now during a period when most new highway construction--the original Federal objective in the highway program--is completed, States and local governments faced with on-going operation and maintenance of Federally constructed roads have declining revenues and are unable to affort road maintenance. State governments are returning to Congress seeking grant assistance for maintenance.

Congress, over the past few years, have approved "emergency legislation" that gives States "second grants" for maintaining roads previously constructed with Federal grants. One Department of Transportation official told EPA

recently that if Congress changes the definition of road improvements in the highway program's authorizing legislation to include maintenance programs, the Federal government would face a new multibillion dollar grant liability.

EPA is concerned that if grantees do not develop sound and complete revenue programs, demands will be placed on the sewage treatment construction grants program for second grants that will be used to finance the rehabilitation of treatment systems now being constructed. The Agency is concerned that grantees are not now anticipating future capital requirements for upgrading their treatment systems, and generally funds now are not being reserved and managed for treatment system improvements.

ICR requirements do force a grantee to hold revenues generated by their treatment systems, and retained income must be used for treatment system improvements. Although the user charge program includes requirements for retaining income adequate to cover treatment system replacement, the replacement guidelines established by Congress require only that sufficient income be retained to pay for minor equipment replacement. Many grantees currently transfer yearly budget surpluses generated by treatment systems into general revenue accounts. Once transferred, the funds are lost to the municipal treatment agency and are unavailable for treatment system improvements. ICR revenues, unlike user charges, cannot be transferred into general revenue accounts. The revenues returned to a grantee can be managed to offset inflationary losses that are particularly severe because although administrative costs to a grantee may rise over time, an industry's ICR payment is fixed. The industrial user repays the grantee local and Federal construction cost without interest. Although industry repays with deflated dollars, sound ICR revenue management can provide a grantee with a sizable portion of income needed for future system reconstruction.

CONCLUSIONS AND RECOMMENDATIONS

Based on our recent evaluation of the ICR provisions and the limited experience with their application, the Environmental Protection Agency concludes that ICR, if effectively and uniformly applied, will achieve the original intent of the Congress -- partial elimination of a subsidy to industries discharging into publicly owned wastewater treatment systems. If, after consideration of this report and the testimony of witnesses from both the industrial sector and the municipal treatment systems, Congress decides to sustain its original objective, then the Agency recommends that the present moritorium be allowed to expire on June 30 and that grantees begin collecting ICR revenues from industrial users.

This recommendation is based on several findings and conclusions. First among these is the fact that industrial users of publicly owned and financed treatment systems do, indeed, enjoy a subsidy--as compared to comparable industries which treat and discharge their own wastes. The extent of this subsidy is difficult to quantify and depends on a number of factors such as location, type of discharge, flow and loadings, sophistication of the waste treatment process, etc. Nevertheless, it is fair to assert that indirect dischargers are relieved of the financial burden of raising capital for development of plan facility not directly related ot its production; they are relieved of bearing the market cost of money which their counterpart industry has to bear in the financial market -- a difference at this time of over 18 percent in the cost of investment capital for lenders' most creditworthy customers; in many cases they are also spared substantial management, administrative and legal

costs as they do not have to directly operate or maintain the treatment system, monitor and report on the discharge performance and acquire and comply with the discharge permit limitations which direct dischargers must do.

Another conclusion which the Agency believes argues persuasively for the maintenance of a system of dedicated revenues is an increasing apprehension about the financial capacity of municipalities to make necessary operational improvements, facility replacements and upgradings in the absence of an earmarked pool of revenues. While ICR is not the total answer to this problem, nor should industry bear more than its proportionate share of reconstructon costs, the availability of ICR revenues, which in some areas will be substantial, can provide an effective cushion against future replacement costs and perhaps just as important, provide the precedent for maintaining a "sinking fund".

Currently, some grantees include a charge within their user charge system for future capital expenditures. Generally, future capital expenditures are defined as treatment system expansion. Expansion is one valid consideration in any sound sewage treatment system's financing program. In most instances, however, funds collected and reserved are held for short term (5-year) capital improvement programs. Most municipalieis are not doing the long-range fiscal planning necessary to avoid future capital shortfalls caused by treatment system malfunctions and NPDES noncompliance.

A grantee should be applying investment planning techniques in its wastewater treatment program similar to those utilized by industry when it makes long-range capital needs projections for investors. Sewage treatment systems should

be viewed as businesses that are capable of generating sufficient profit to maintain operations and finance expansion.

Most grantee revenue systems now in place, however, are designed only to repay past obligations (local debt service) and pay, on a yearly basis, for actual operation and maintenance expenses. Few grantee revenue systems include a managed account or charge for major system improvements that will be required in the future. A grantee using a systematic enterprise approach to financing its treatment system will consider ongoing operation and maintenance expenses necessary to keep the treatment system performing properly. The grantee also will be able to identify needs for debt service on loans used to finance past capital improvements as well as forecast future capital needs for plant reconstruction. User charges collected to operate the treatment system are identified as well as ICR receipts. Accounts are segregated Funds collected are dedicated and debt is managed for specific purposes.

Most grantees are not developing revenue programs that include provisions for forecasting long-term capital needs and identify where financing will come from to cover those needs. The absence of this planning component assumes treatment systems now being constructed will always be adequate to satisfy a grantee's needs and will never require major rehabilitation. This is not a valid assumption unless Congress intends to continue providing municipalities with sewage treatment construction grants after all first-round grant needs have been satisfied. Given the magnitude of present unmet needs for basic treatment facility ($54 billion for just Categories I, II, and IV B), EPA at this time,

could not support expanding grant eligibility for a new category of sewage facility reconstruction.

ICR is one component in the local sewage treatment revenue programs that can be relied on for income dedicated exclusively to treatment system improvements. Economic independence for local sewage treatment programs is essential, and the factors which must be considered by municipal agencies include:

1. Expected life of existing facilities and capital expenditures required for future upgrading, expansion, rehabilitation, reconstruction, and/or new construction.

2. Expected future bonding capability.

3. Estimate of funds which will be available when funding is needed.
   a. ICR retained amounts
   b. Replacement holdovers from user charges and existing bond funds
   c. Income from general revenues
   d. Income funds from any other local sources

4. Projections on how much additional money will be needed considering all of the above factors.

5. Action to ensure that additional money will be available. If necessary bonding capacity is not available, money from other sources earmarked for future capital expenditures should be assessed. Current sources include user charges for debt service and various methods of taxation.

Congress did in 1972 consider requiring grantees to reserve funds for future system replacement as a condition to award of EPA construction grants. The replacement provision was modified, however, to require small reserves adequate to pay for yearly plant maintenance. EPA would support an amendment to the ICR or user charge provision requiring long-range treatment system financial planning and the establishment, at the local level, of a sinking fund dedicated to treatment system replacement and improvements. Such a fund could be managed by a grantee to eliminate inflationary losses.

If the Congress decides to retain ICR requirements, there are still opportunities for reducing the administrative burden imposed on grantees. The Agency proposes that the Congress consider some of the following modifications:

° Currently, industrial users of municipal treatment systems discharging less than 25,000 gallons per day of equavalent sanitary wastes are exempted from ICR requirements. This exemption, established by the 1977 Clean Water Act Amendments, effectively excludes most small industrial facilities from ICR requirements.

The flow exemption exclusion provides benefits to a number of small firms that in many instances are unable to afford or obtain financing for self-treatment facilities. Many of these firms are "family businesses" in urban areas. A significant number would be considered marginal according to standard profitability indicators and would probably cease operations if required to pay for sewage treatment capacity.

Data available to the Agency indicates the flow exemption could be increased to 50,000 gallons per day of equivalent sanitary

waste without significantly decreasing the total amount of revenues collected by grantees and returned to the Treasury. Available data indicates increasing the flow exemption to 50,000 gallons per day would exclude 83 percent of industry now using municipal treatment systems from ICR requirements while retaining 87 percent of the potential ICR revenues. The major disadvantage to this option is that grantees would have less incentive to inventory industrial users and characterize process waste streams. This information is needed to protect plant performance and sludge.

Based on a review of ICR systems in EPA Region V, however, increasing the flow exemption could decrease billing and other administrative requirements for grantees without significantly decreasing ICR revenues. Preliminary figures taken from Region V to illustrate various flow exemptions are shown below. The effect of various flow exemptions is shown as applied to Region V industries participating in approved ICR systems. The reductions estimated to occur in Region V are then applied to the anticipated national Federal share of ICR revenues to determine the reduction in ICR revenues returned to the Federal Treasury under various flow exemptions.

Estimated 30-Year Federal Share of ICR Payments

GPD Exclusion	Region V No. of Users (% Reduction)	National Estimate Federal Share (% Reduction)	National Estimate Per Year (1/2 Total ICR Collections)
0	277 (0%)	$ 900 Mil (0%)	$ 30 Mil
2,500	169 (39%)	$ 891 (1%)	$ 30 Mil
5,000	130 (53%)	$ 882 (2%)	$ 29 Mil
10,000	100 (64%)	$ 864 (4%)	$ 29 Mil
20,000	71 (74%)	$ 828 (8%)	$ 28 Mil
25,000	64 (77%)	$ 819 (9%)	$ 27 Mil
50,000	46 (83%)	$ 783 (13%)	$ 26 Mil

The $900 million Federal share of ICR payments is only a rough estimate, based on a cumulative EPA grant amount of $45 billion.

° An additional modification of the ICR program advanced by the Agency for consideration is exempting those grantees from ICR program requirements that can satisfactorily demonstrate ICR revenues are not needed in meeting long-range obligations for treatment system improvement or rehabilitation. In other words, if a grantee can show its existing funding mechanisms provide for future capital expenditures and ICR insignificantly contributes to the grantee's funding program, ICR would not be required.

An exempted grantee should be required to demonstrate elimination of ICR will not result in a disproportionate share of current and future treatment system costs being imposed on residential users of the POTW. Moreover, a grantee should show industry will be required to pay its share of treatment system construction costs.

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Industry's total share of costs could be retained by the grantee or a portion of the payment could be returned to the Treasury if industry receives significant benefits from the sewage treatment construction gran ts program. Each case would be judged individually, and at that time a determination could be made regarding whether a grantee should return a portion of the industry payments to the Federal Government. All revenue collected from industry and retained by the grantee should be dedicated to treatment system improvements, some of which could be tailored to industrial treatment needs.

Data presented to the Agency by some grantees indicates that in some instances ICR revenues retained by grantees will not significantly help in meeting future capital requirements for treatment system reconstruction. This is not true in cases where one or a few industrial dischargers use a significant portion of treatment capacity. There are many grantees, especially small grantees, that reserve up to 90 percent of treatment capacity for one or a few industrial users. These grantees could not afford to operate and maintain a treatment system if the primary industrial users withdrew from the facility, and without a mechanism for recouping construction costs from these users a grantee will be unable to finance system improvements without imposing a significant financial

burden on other users. It is the Agency's opinion that ICR should be required in those instances where any individual industrial user requires capacity amounting to 10 percent or more based on flow, or BOD, or suspended solids. Similarly, ICR should be required where any geographically concentrated group of industrial users individually exceed the established cost recovery flow exemption and collectively require more than 20 percent of a municipal treatment system's capacity. ICR appears in many cases unnecessary to the financial viability of the treatment system in cases where any one industrial discharger is allocated less than 10 percent of capacity for each system parameter. Moreover, ICR should be required for major industrial parks and areas where industrial activity is concentrated and often in need of specialized treatment services.

° Another option offered by EPA for consideration by Congress is make ICR a mandatory condition for grantees seeking Federal funds for industrial treatment capacity, but provide grantees with an option which would enable them to avoid ICR requirements in cases where industrial capacity financing is not sought from the Federal Government.

EPA under this option would award grants adequate for domestic treatment capacity and for industrial users meeting the established 25,000 or 50,000 gallon per day ICR flow exemption. In new treatment system construction the grant amount would be determined based on a

model plant designed to serve a specified domestic population. A grantee would be permitted to treat industrial wastes, but the grantee and the future industrial users would be required to arrange private financing to raise funds for constructing capacity reserved for industry's use.

Development of a self-financing program would involve a grantee, industrial users, and the grantee's bond counsel in detailed negotiations during which funding mechanisms would be established and revenue requirements would be determined. Municipal bonds tied to revenues generated by the treatment system is the most likely source of financing for most grantees. Bond counsel, prior to certifying the municipal offering complies with the Securities and Exchange Commission disclosure requirements, would assure the grantee and industrial users develop a user charge program that would generate revenue sufficient to cover debt payments, O&M and future treatment system improvements.

This option has several advantages not found in the current ICR program. Industrial users and grantees would have an ongoing financial interest in the treatment system. Industry, by virtue of its bond obligation, would not withdraw from the treatment system without financial liability. Both the grantee and industry would be concerned with treatment system performance and rehabilitation.

Another advantage provided by this option is it provides a strong incentive to construct cost effective treatment processes that are sized according to needs and include a minimum of speculative treatment capacity. Industry has no incentive to accurately project its treatment needs under the existing ICR program. Currently, industry estimates its needs but often uses less than is constructed for its use. In such cases ICR is charged only for capacity actually used, and domestic users are required to make debt payments on excess capacity. Requiring industry to share in treatment system financing will encourage proper sizing of treatment facilities and discourage industrial withdrawal.

In all instances where a grantee and industry decide to utilize Federal financing under conditions established in the ICR program, a shorter recovery period and interest charges should be imposed and industrial users should be required to sign a binding contract guaranteeing their participation and obligation to pay for specified treatment capacity.

Grantees and the Federal Government receive deflated dollars under the existing ICR program. ICR payments are not indexed for inflation and no interest is charged on the "loan" provided to industry. EPA suggests a 5 or 10-year payback period because the time interval is more closely aligned with time frames used by corporate planners and long-term financing practices now being considered by the financial community. The interest charge to industry should not exceed the prevailing rate paid on Federal securities.

DRAFT

Statement of the City of Dallas

at a Public Hearing of the

Sub-Committee on Environmental Pollution

United States Senate

Washington, D. C., March 31, 1980

My name is Camille Barnett and I am an Assistant City Manager of the City of Dallas, Texas. I am pleased to be here at the invitation of Senator Muskie to present the views of the City of Dallas concerning the industrial cost recovery (ICR) program called for under Section 204 (B) of the Clean Water Act of 1977. We are grateful to the Subcommittee on Environmental Pollution for making available this opportunity for an exchange of ideas concerning this topic of paramount import.

Since 1959, the City of Dallas has had ordinances in effect establishing a system of user charges, applicable to industrial, commercial, and residential users alike, in which an additional fee is assessed those dischargers whose wastewater is of a strength greater than "normal domestic wastewater." The current ordinance, adopted in 1976, defines the strength of "normal domestic wastewater" as 250 mg/l for biochemical oxygen demand (BOD) and 250 mg/l for total suspended solids (TSS). The surcharge formula in the cited ordinance compensates for both capital and O & M costs. The funds collected are used in part, to finance replacements of the treatment works; a use contemplated by one of the ICR provisions for user charges.

In November 1977, the City of Dallas enacted ICR ordinances as required by the Federal Water Pollution Control Act Amendments of 1972. However, ICR collections have not been initiated because of moratorium actions by the Congress.

Our basic recommendation to this Committee is that the law be changed so that the ICR program not be implemented. This view derives from in-house studies conducted by the City of Dallas which indicate that annual expenditures on the order of $160,000 in 1980 dollars would be required to administer, bill, and collect ICR revenues which would initially approximate $5,000 and increase to $65,000 per year over the 30-year recovery period. The $65,000 annual recovery is based on all grant proceeds received through September 30, 1979.

And although projected ICR revenues will increase over the 30-year period as further grants are received, these revenues will likely never result in a cost effective relationship between expenditures and receipts. On the contrary, if the inflationary spiral which this country is currently experiencing continues, the cost effectiveness ratio of the ICR program will deteriorate even further because while the amount to be recovered will be fixed, the costs of recovery will continue to escalate. Further, our calculations have not included state and federal expenditures necessary to administer the ICR program. Based on this cost/benefit analysis, the City of Dallas has previously urged, and continues to urge, its Congressional Delegation to support legislation which would abolish ICR requirements, particularly the federal reimbursement provisions. It would seem inconsistent with the President's goal of reducing unnecessary governmental spending to implement an ICR program which will clearly increase municipal, State, and Federal costs without adding productive effort to the national economy.

In response to the five (5) specific items posed in Senator Muskie's mailgram of March 21:

ITEM 1: The possible effects of the changes made to industrial cost recovery by the Congress in 1977, including the 25,000 gallon per day sanitary waste exclusion.

Without any exclusion, approximately 1500 businesses in Dallas would be impacted by the ICR provisions. Some of these businesses are one or two person enterprises whose daily discharge of wastewater compares in volume with that of a large single family residence. The adoption of a 25,000 gallon per day minimum would reduce that number to approximately 400 Dallas businesses. Adoption of a 50,000 gallon per day minimum for all industry, including the toxic waste dischargers, would further reduce the number of businesses impacted to approximately 175. Either cut-off limit would eliminate most of the small business enterprises. Of course, any arbitrary exemption on the basis of amount of business involved raises questions of equity. There may be also questions of law. For example, there have been court decisions adverse to the question of legality of providing utility rate relief on the basis of socio -economic considerations. Even with the raising of the cut-off to 25,000 or even 50,000 gallons per day, the administrative cost of the ICR program will not be significantly reduced because the entire cost recovery structure must be created and maintained.

ITEM 2: Continuing the present industrial cost recovery system along with any recommended modifications to make it more efficient.

Potential modifications which we feel would render the ICR program more reasonable, would be the adoption of provisions whereby a city may be exempt from paying ICR if: (a) its user charge system provides for capital replacement, including the portion financed by grants, from all users in proportion to their use of the treatment works; (b) the grantee can demonstrate its ability to finance facility

growth and replacement; or (3) the estimated ICR collections are nominal as to the amount in relation to total revenues of the treatment system.

ITEM 3. Eliminating industrial cost recovery.

As already mentioned, the City of Dallas feels that the elimination of the ICR system concept is preferred because ICR is not cost beneficial. Our user charge system now recovers the grant-financed portion of the treatment works from all customers in relation to their use of the wastewater system and the estimated ICR collections are nominal in relation to projected wastewater revenues. We believe the administrative burden associated with ICR outweighs any benefit to the general revenues of the federal government. Any monies collected by the publicly owned treatment works operator in the form of user charges should be retained by that community and applied locally. This would provide an even greater incentive for local government to enact and enforce user charges than if the money had to be shared with Washington.

ITEM 4: If industrial cost recovery is eliminated, any changes in the cost-effectiveness guidelines or other existing provisions to further legislative goals.

We would recommend a system of user charges similar to that adopted by Dallas whereby all customers, including industrial customers, pay their proportionate share of the cost of the treatment works, including the grant-financed portion, based on both volume and strength, the latter determined by the level of BOD and TSS. The City of Dallas has historically had a user charge system where heavier

than normal dischargers are assessed a surcharge. A copy of the Dallas ordinance containing these provisions is appended to the copy of this statement.

ITEM 5: The degree to which industry pays its way, the extent to which industrial participation in a municipal wastewater treatment system is encouraged or discouraged, and its administrative feasibility.

Again, as mentioned in our response to Item #4, we favor the user charge system as implemented in Dallas for the reasons cited; because it equitably charges industry and is administratively feasible.

Again, we appreciate this opportunity to present these comments. If we can be of further assistance, please to not hesitate to ask.

Thank you.

4/15/76

ORDINANCE NO. 15179

An Ordinance amending Section 49-84, "Definitions," Section 49-100, "Certain waste prohibited in sanitary sewers," and Division 2," Use for Industrial Wastes Generally," of Article III, "Sanitary Sewers," and adding Article IV, "Private Waste Disposers," to CHAPTER 49, "WATER AND SEWERS," of the Dallas City Code, as amended; providing definitions; designating and clarifying wastes prohibited in the sanitary sewer; requiring a permit for discharge of industrial waste into the sanitary sewer; providing for denial or suspension of the permit; requiring certain pretreatment of wastes; requiring a surcharge for discharge of excessive concentrations of waste; providing for an estimated surcharge for certain class groups discharging industrial waste; requiring inspection chambers; providing for measurement of waste volume; providing for sampling of waste; providing for disconnection for failure to pay bills or for unlawful discharges; regulating certain private waste disposers; requiring certain liquid waste haulers to pay a deposit to the water utilities department and pay a fee for disposing of waste at the city's waste treatment facility; providing a penalty not to exceed $200; providing a saving clause; and providing July 1, 1976, as the effective date.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Section 49-84, "Definitions," of Article III, "Sanitary Sewers," of CHAPTER 49, "WATER AND SEWERS," of the Dallas City Code, as amended, is amended to read as follows:

"Sec. 49-84. Definitions.

In this article, unless the context requires a different definition:

(1) AMENABLE TO TREATMENT refers to a substance being susceptible to reduction in concentration by treatment provided in the city's wastewater treatment plant, to a level which is acceptable for discharge into a stream.

(2) BOD (denoting biochemical oxygen demand) means the quantity of oxygen, expressed in mg/l, utilized in the biochemical oxidation of organic matter by standard methods procedure in five days at twenty degrees centigrade.

(3) BUILDING (HOUSE) DRAIN means that part of the lowest horizontal piping of a drainage system which receives the discharge from wastes and drainage pipes within the walls of the building, and conveys it to the building sewer, beginning three feet outside the inner face of the building wall or foundation.

(4) BUILDING (HOUSE) SEWER means the extension from the building drain to the sewer lateral at the property line or other lawful place of disposal (also called house lateral and house connection).

(5) CITY means the city of Dallas, Texas.

(6) COMPOSITE SAMPLES means samples composited during a period of time exceeding fifteen minutes.

(7) COD (denoting chemical oxygen demand) is the measure of the oxygen consuming capacity, expressed in mg/l. It is expressed as the amount of oxygen consumed from a chemical oxidant in a specific test. It does not differentiate between stable and unstable organic matter and thus does not necessarily correlate with biochemical oxygen demand.

(8) DIRECTOR means the director of the water utilities department of the city or his authorized representative.

(9) FLOATABLE GREASE means grease, oil or fat in a physical state such that it will separate or stratify by gravity in wastewater.

(10) GARBAGE means animal and vegetable wastes and residue from the preparation, cooking, and dispensing of food and from the handling, storage, and sale of food products and produce.

(11) GRAB SAMPLES means samples taken during a period of fifteen minutes or less.

(12) GREASE means fatty acids, soaps, fats, waxes, petroleum products, oil, and any material which is extractable by hexane or freon solvent from an acidified sample and which is not volatilized during evaporation of the solvent.

(13) INDUSTRIAL SURCHARGE means the additional charge made on those persons or industries who discharge into the sanitary sewer, industrial wastes which are amenable to treatment by the city's wastewater treatment processes but which exceed the normal strength.

(14) INDUSTRIAL WASTE means all water-borne solids, liquids, or gaseous substances resulting from an industrial, manufacturing, or food processing operation, or from the development of a natural resource, or any mixture of these with water or domestic sewage.

(15) INDUSTRY means a person or establishment that is recognized and identified in the Standard Industrial Classification Manual 1972, Executive Office of the President: Office of Management and Budget.

(16) MILLIGRAMS PER LITER (MG/l) is a weight per volume concentration; the milligram-per-liter value multiplied by the factor 8.34 is equivalent to pounds of constituent per million gallons of water.

(17) NORMAL DOMESTIC SEWAGE means 'normal' sewage for Dallas, for which the average concentration of suspended solids and five-day BOD is established at 250 mg/l, each on the basis of the normal daily contribution of twenty-one hundredths pounds per capita.

(18) NORMAL DOMESTIC WASTEWATER means water-borne wastes normally discharging from the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, factories and institutions, free from storm surface water and industrial wastes.

(19) PAVED means any concrete pavement of Portland cement or asphaltic concrete base pavement, concrete driveway, walk, curb, or gutter and all types of pavement having native stone, crushed rock, or gravel base.

(20) PERMITTEE means a person granted a permit under this article.

(21) PERSON means an individual, firm, company, industry, municipal or private corporation, association, governmental agency, or other entity.

(22) PH means the reciprocal of the logarithm (base 10) of the hydrogen ion concentration of a solution.

(23) PROPERLY SHREDDED GARBAGE means the wastes from the preparation, cooking, and dispensing of food that have been shredded to such an extent that all particles will be carried freely under the flow conditions normally prevailing in sanitary sewers, with no particles greater than one-half inch in any dimension.

(24) RIGID BASE PAVEMENT means any concrete pavement of Portland cement or asphaltic concrete base pavement, concrete driveway, walk, curb or gutter.

(25) SANITARY SEWER means a public sewer which conveys domestic wastewater or industrial wastes, or a combination of both, and into which storm, surface, and ground water or unpolluted wastes are not intentionally admitted.

(26) STANDARD METHODS means the laboratory procedures set forth in the latest edition, at the time of analysis, of Standard Methods for the Examination of Water and Wastewater, as prepared, approved and published jointly by the American Public Health Association, the American Water Works Association and the Water Pollution Control Federation.

(27) STORM SEWER or STORM DRAIN means a conduit, drainage ditch, stream, or other water course that may carry water to the Trinity River directly or indirectly.

(28) SUSPENDED SOLIDS means solids that either float on the surface of, or are in suspension in, water, wastewater, or other liquids and which, in accordance with standard methods, are removable by a standard, specific laboratory filtration device.

(29) WASTE MANAGEMENT OPERATOR means a person engaged in the business of receiving, storing, treating, or disposing of industrial waste.

(30) WASTEWATER means water-carried waste.

(31) WASTEWATER FACILITIES means all facilities of the city for collecting, pumping, treating, and disposing of sewage.

(32) WASTEWATER TREATMENT PLANT means the city-owned facilities, devices, and structures used for receiving and treating wastewater from the city wastewater facilities."

SECTION 2. That Section 49-100, "Certain wastes prohibited in sanitary sewers," of Article III, "Sanitary Sewers," of CHAPTER 49, "WATER AND SEWERS," of the Dallas City Code, as amended, is amended to read as follows:

"Sec. 49-100. Certain waste prohibited in sanitary sewers.

(a) No person shall discharge or cause to be discharged into a sanitary sewer:

(1) any inflows or infiltration, as illustrated by, but not limited to, storm water, ground water, roof run-off, sub-surface drainage, a downspout, a yard drain, a yard fountain or pond, or lawn spray;

(2) wastewater or industrial waste generated or produced outside the city unless approval in writing from the director has been given the person discharging the waste;

(3) a liquid or vapor having a temperature higher than one hundred and fifty degrees Fahrenheit (sixty-five degrees Centigrade);

(4) gasoline, kerosene, benzene, naphtha, fuel oil or vapors, or materials capable of forming a flammable or explosive mixture;

(5) solid or liquid substances in quantities capable of causing obstruction to the flow in sewers or other interference with the proper operation of the wastewater facilities as illustrated by, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, whole blood, paunch manure, hair and fleshings, entrails, lime slurry, lime residues, slops, chemical residues, paint residues or bulk solids, except when such items as lime slurry or lime residues are used in the treatment of combined storm and wastewater during storm runoff;

(6) a gas or substance capable of forming a gas which either singly or by interaction with other waste may cause objectionable odor, hazard to life, or other conditions deleterious to structures or the city's wastewater treatment processes;

(7) garbage that has not been properly shredded;

(8) wastewater exceeding 100 mg/l of oils, fats and grease of the following types:

(A) floatable grease of any origin;

(B) free or emulsified grease of petroleum or mineral origin, or both, including, but not limited to:

(i) cooling or quenching oil;

(ii) lubrication oil;

(iii) cutting oil; and

(iv) non-saponifiable oil;

(9) a substance having a pH value lower than 5.5 or higher than 10.5;

(10) metals in the form of compounds or elements, in solution or suspension in concentrations exceeding the following:

Arsenic (As)	0.05	mg/l
Barium (Ba)	1.0	mg/l
Cadmium (Cd)	0.10	mg/l
Chromium (Total)	3.0	mg/l
Copper (Cu)	3.0	mg/l
Lead (Pb)	3.0	mg/l
Manganese (Mn)	1.0	mg/l
Mercury (Hg)	0.005	mg/l

Nickel (Ni)	3.0	mg/l
Selenium (Se)	0.05	mg/l
Silver (Ag)	3.0	mg/l
Zinc (Zn)	3.0	mg/l

(11) heavy metals and toxic material in concentrations prohibited by state or federal regulations including, but not limited to:

Antimony	Molybdenum	Tellurium
Beryllium	Uranyl ion	Fungicides
Bismuth	Rhenium	Herbicides
Boron	Strontium	Pesticides
Cobalt		

unless the permit obtained under Section 49-107 specifies conditions of pre-treatment, concentrations, and volumes;

(12) cyanides or cyanogen compounds capable of liberating hydrocyanic gas on acidification in excess of two (2) mg/l as CN;

(13) chlorides greater than 500 mg/l;

(14) radioactive materials in a manner which will permit a transient concentration higher than one hundred microcuries per liter;

(15) sulfides greater than 5.0 mg/l;

(16) sulfates in concentrations which are not amenable to treatment;

(17) emulsified grease of animal or vegetable origin in concentrations which are not amenable to treatment;

(18) unusual taste or odor producing substances, unless pretreated to a concentration acceptable to the director, so that the material does not:

(A) cause damage to collection facilities;

(B) impair the city's treatment processes;

(C) incur treatment cost exceeding those of normal sewage; or

(D) render the water unfit for stream disposal or industrial use;

(19) BOD or suspended solids in excess of 250 mg/l;

(20) a discharge of water, wastewater, or industrial waste which in quantity of flow, exceeds for any period of duration longer than 15 minutes, more than four times the average 24 hour flow during normal operation;

(21) total dissolved solids in concentrations which are not amenable to treatment;

(22) COD in concentrations which are not amenable to treatment; or

(23) any other substance which is determined by the director to be not amenable to treatment.

(b) If a person discharges a substance into the sanitary sewer in violation of this section, the director may:

(1) terminate the service of water or sanitary sewer to the premises from which the substance was discharged; or

(2) require pretreatment or control of the quantities and rates of discharge of waste to bring the discharge within the limits established by this section.

(c) Action taken by the director under Subsection (b) does not prevent the use of other enforcement methods available to the city."

SECTION 3. That Article III, "Sanitary Sewers," of CHAPTER 49, "WATER AND SEWERS," of the Dallas City Code, as amended, is amended by adding a new Section 49-100.1 to read as follows:

"Sec. 49-100.1. Unlawful disposal of wastewater and industrial waste.

A person commits an offense if with intent to dispose of wastewater or industrial waste, he:

(1) discharges wastewater or industrial waste into the sanitary sewer from a vehicle, tank truck, portable tank or other container used for transporting industrial waste;

(2) discharges wastewater or industrial waste into a sewer appurtenance intended for maintenance, including, but not limited to, a manhole, or clean-out connection; or

(3) forces industrial waste into a sanitary sewer from a grease interceptor, sand trap, or waste collection device by means of a mechanical device or extraneous water."

SECTION 4. That Division 2, "Use for Industrial Wastes Generally," of Article III, "Sanitary Sewers," of CHAPTER 49, "WATER AND SEWERS," of the Dallas City Code, as amended, is amended to read as follows:

"Division 2. Use for Industrial Wastes

Sec. 49-107. Permit required for discharge of industrial waste; application; exemptions.

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(a) A person shall not discharge industrial waste into the sanitary sewer without obtaining and maintaining a valid permit from the director.

(b) Application for a permit must be made to the director upon a form provided for the purpose and must be accompanied by plans and specifications for pretreatment facilities if pretreatment is required.

(c) The director shall issue a permit if he determines that:

(1) pretreatment facilities are adequate for efficient treatment of discharged waste;

(2) applicant is not discharging waste in violation of Section 49-100 other than excessive BOD or suspended solids; and

(3) applicant is in compliance with applicable federal, state, and local laws and regulations.

(d) Residential premises and class group users paying an industrial surcharge under Section 49-110 are exempted from this section.

Sec. 49-103. Denial or Suspension of permit.

(a) The director may deny a permit if he determines that an applicant is not qualified under Section 49-107(c) and may suspend a permit if he determines that a permittee:

(1) is not qualified under Section 49-107(c);

(2) has violated a provision of this article; or

(3) has failed to pay a fee required by this chapter.

(b) After suspension under this section, a permittee may file a request for reinstatement of the permit. When the director determines that the permittee is again qualified, all violations have been corrected, precautions have been taken to prevent future violations, and all required fees have been paid, he shall reinstate the permit.

(c) A permittee whose permit is suspended shall not discharge industrial waste into the sanitary sewer.

Sec. 49-109. Pretreatment.

(a) The owner of premises from which industrial waste is discharged shall provide grease and sand traps for the proper handling of liquid wastes containing grease, flammable substances, or sand. The traps must be of a type and capacity approved by the director to adequately handle the waste and must be located so that they are easily accessible for cleaning, inspection, and monitoring.

(b) When pretreatment of waste is required by the director as a condition for acceptance of the waste into the sanitary sewer, the owner of the premises from which the waste is discharged shall operate and maintain waste treatment facilities in an efficient manner at his own expense.

(c) The owner, operator, or permittee of premises from which industrial waste is discharged shall not allow the use of extraneous water intermixed for the purpose of diluting the concentration of waste.

Sec. 49-109.1. Industrial surcharge for excessive concentrations of waste, sampling fees.

(a) A person discharging industrial waste into the sanitary sewer which exhibits none of the characteristics of waste prohibited in Section 49-100, other than excessive BOD or suspended solids, but having a concentration for a duration of fifteen minutes, greater than four times that of normal domestic sewage as measured either by suspended solids (SS) or biochemical oxygen demand (BOD) or both, or a concentration during a 24 hour period average of suspended solids or BOD content in excess of normal domestic sewage, shall pretreat the industrial waste to meet the concentrations of normal domestic sewage; however, the waste may be accepted in the sanitary sewer for treatment by the city if all the following requirements are met:

(1) The waste will not cause damage to the collection system.

(2) The waste will not impair the city's treatment processes.

(3) The BOD or suspended solids concentration of waste discharged does not cause the average BOD or suspended solids of waste received at the wastewater treatment plant to increase above 275 mg/l, and in any event, the BOD or suspended solids concentration of waste discharged does not exceed 7000 mg/l, at the source.

(4) The person responsible for the waste pays an industrial surcharge in addition to regular water and sewer rates, either under Section 49-110 or in accordance with the following cost factors and formula:

(A) The user's cost factors for excessive industrial waste are based on the capital and operating cost of wastewater facilities to provide treatment for the reduction of BOD (biochemical oxygen demand) and SS (suspended solids). The rate formula is:

$$S = (V)\ (R)$$

Where S = Industrial surcharge in dollars to be added to monthly billing for water and sewer service.

V = Volume of waste discharged to the sanitary sewer, in millions of gallons per month as determined in Section 49-112.

R = $0.10 (BOD - 250) + $0.08 (SS - 250) per million gallons.

BOD = Average concentrations of BOD in mg/l, determined from sampling the wastes as described in Section 49-112.1.

SS = Average concentrations of suspended solids in mg/l, as determined from sampling the wastes as described in Section 49-112.1.

*Cost factor BOD = $0.10 per mg/l per million gallons.

*Cost factor SS = $0.08 per mg/l per million gallons.

(B) $0.10 and $0.08 are the capital, operation, and maintenance costs to treat a mg/l of BOD and SS, respectively, per million gallons of wastewater.

(C) The rate for each user may be calculated once every 12 months.

(b) A person determined to be discharging waste in violation of Section 49-100, other than excessive BOD or suspended solids, shall compensate the city for the cost of sampling and laboratory service expense required for monitoring the discharges until such time as the discharged waste is in compliance with Section 49-100. The director shall determine the number of samples and the frequency of sampling necessary to maintain surveillance of the discharges.

(c) A person discharging concentrations of BOD or suspended solids in excess of normal domestic wastewater concentrations shall compensate the city for the cost of sample collections and laboratory service necessary when an industrial surcharge rate is established each year. This subsection does not apply to waste management operators nor to dischargers who accept billing under Section 49-110.

Sec. 49-110. Estimated industrial surcharge for class group.

(a) The director shall classify commercial and industrial establishments which routinely discharge BOD and SS concentrations exceeding those established for normal domestic wastewater, into the following class groups:

* Please see Page 16 for revised cost factors.

Class	Description
(1)	Eating places: Includes restaurants, bars, lounges, and other establishments which engage in preparation of food or beverage which is served directly to the consumer.
(2)	Equipment service facilities: Includes establishments which perform washing, cleaning, or servicing of automobiles, trucks, busses, machinery, or equipment, this class to include public facilities, facilities limited to specific companies, attended and coin operated establishments.
(3)	Food and kindred products processing: Includes commercial establishments which engage in the preparation packaging, processing, or distribution of food, food products, grains, or produce, other than those included in Class (1) and which discharge less than 200,000 gallons of wastewater per month.

(b) The director shall assess an industrial surcharge rate for each class group based on waste strength determinations established by averaging grab or composite samples or both, taken from a representative number of establishments in each group and shall apply this rate to the water consumption or metered wastewater of the establishment. If the establishment is within a larger facility for which water usage is determined from a master meter, the director shall determine an estimated volume for the establishment on which the surcharge rate is applied. The director shall then add the appropriate industrial surcharge to billings for regular water and sanitary sewer service for each establishment classified into a class group.

(c) If an establishment contains operations from more than one of the class groups, and the director determines that the surcharge rate for a particular class group would not adequately compensate the city for its cost of treatment, the director may assess a surcharge rate based on a proportional average of the class group rates involved or he may require the establishment to be billed for an industrial surcharge computed under the requirements of Section 49-109.1.

(d) The owner or agent of the owner of an establishment classified into a class group may elect to have the industrial surcharge billed under Section 49-109.1 rather than this section, by making application to the director and paying the required sampling costs.

(e) The director may, from time to time, revise class group surcharge rates based on analysis of current samples.

Sec. 49-110.1. Sampling fees for major contributing industries.

(a) Each major contributing industry for which the city has reporting requirements under its National Pollutant Discharge Elimination System permit shall compensate the city for the cost of sampling and laboratory service required for monitoring discharges. The director shall determine the number of samples and the frequency of sampling necessary to comply with the reporting requirements.

(b) For the purposes of this section, major contributing industry means an industry that:

(1) discharges 50,000 gallons or more wastewater per day;

(2) discharges a toxic or prohibited substance listed in Section 49-100; or

(3) discharges an amount of wastewater which represents five percent or more of the total influent of the city's wastewater treatment plant.

Sec. 49-111. Inspection chambers.

(a) A person who discharges industrial waste into the sanitary sewer or wastewater facilities shall provide at his own expense, an inspection manhole or chamber in an accessible location on the premises from which the waste is discharged.

(b) An inspection manhole or chamber must be:

(1) near the outlet of each sewer, drain, pipe, or channel which connects with the sanitary sewer or wastewater facility;

(2) designed and constructed to prevent infiltration by ground and surface water; and

(3) maintained so that a person may easily and safely measure the volume and obtain samples of the flow.

(c) Before beginning construction of an inspection manhole or chamber, a person shall submit plans to the director for review and approval to insure compliance with this section. Plans must include the sewage metering device if one is to be installed.

Sec. 49-112. Measurement of waste volume.

(a) If a person who discharges industrial waste into the sanitary sewer installs and maintains in proper working condition, a sewage metering device of a type approved by the director for measuring sewage flow, the actual sewage flow from the premises will be the basis for computing charges for service.

(b) On premises where water is obtained exclusively from the public water supply and no sewage metering device is installed, the director shall compute the sewage flow for purposes of determining service charges, based on the water consumption during the previous month.

(c) On premises where all or part of the water is obtained from a source other than the public water supply and no sewage metering device is installed, the owner shall provide and maintain a metering device of a type approved by the director, to measure sources of private water.

(d) If an activity on a premises consumes water by evaporation, including it in a product, or discharge into a storm sewer, the owner may make application to the director for reduction in the volume of waste estimated to be discharged from the premises. The application must contain supporting data, including but not limited to, a flow diagram showing the route and destination of the water supply and waste and data from submeters installed on process piping.

Sec. 49-112.1. Sampling of waste.

(a) The director shall take samples of waste discharges from establishments as often as he determines is necessary to adequately monitor and control the discharges. If an owner desires additional samples, the director may require the owner to pay the cost of the additional service.

(b) Samples may be taken manually or by use of mechanical equipment. The director shall use standard methods laboratory procedures for determining concentrations of industrial waste.

Sec. 49-112.2. Disconnection for failure to pay bills or unlawful discharges.

(a) The director may order disconnection of water and sanitary sewer services to an establishment if he determines that:

(1) the owner has not paid monthly charges for water or sanitary sewer service when due;

(2) the owner has not paid an industrial surcharge when due;

(3) the establishment has discharged waste to the sanitary sewer in violation of Section 49-100; or

(4) disconnection is necessary to protect the wastewater facilities or the health and safety of the citizens of the city.

(b) A disconnection order does not prevent the use of other enforcement or collection procedures available to the city."

SECTION 5. That CHAPTER 49, "WATER AND SEWERS," of the Dallas City Code, as amended, is amended by adding a new Article IV, entitled "Private Waste Disposers," to read as follows:

"Article IV

Private Waste Disposers

Sec. 49-134. Waste management operators.

A person who is a waste management operator and discharges waste into the sanitary sewer shall:

(1) install and maintain an accurate sewage metering device;

(2) compensate the city for the full cost of all sample collection and laboratory analyses for the purpose of monitoring and maintaining control of the discharge of waste to the city's sanitary sewer;

(3) maintain accurate records, available to the director upon request, showing the volumes, dates of receipt and disposal, types of waste, and names and addresses of producers of all waste being processed; and

(4) comply with all applicable federal, state, and local laws and regulations.

Sec. 49-135. Charges for haulers of septic tank or portable sanitation waste.

A person who hauls or disposes of septic tank or portable sanitation waste at the city's waste treatment facility shall:

(1) obtain and maintain a city health department permit for each vehicle;

(2) deposit $50 with the water utilities department, commercial division, for each vehicle, the deposit to be refunded when the vehicle is no longer used to dispose of waste at the city's waste treatment facility and all fees have been paid;

(3) pay a disposal fee established by the formula in Section 49-109.1 or $2 per load, whichever is greater, to be billed monthly;

(4) dispose of waste at the waste treatment facility specified by the director."

SECTION 6. That a person who violates a provision of this Ordinance is guilty of a separate offense for each day or portion of a day during which the violation is committed, continued, or permitted, and each offense is punishable by a fine not to exceed $200.

SECTION 7. That CHAPTER 49 of the Dallas City Code, as amended, shall remain in full force and effect, save and except as amended by this Ordinance.

SECTION 8. That this Ordinance shall take effect on July 1, 1976.

APPROVED AS TO FORM:

N. ALEX BICKLEY, City Attorney

BY Barbara Mauzy
Assistant City Attorney

PASSED: MAY 10 1976

CORRECTLY ENROLLED: MAY 10 1976
N. Alex Bickley
City Attorney

ATTEST:
Harold G. Shank
City Secretary.

Ordinance No. 15396 of the Dallas City Code amended Section 49-109.1(a)(4) of Chapter 49, "Water and Sewers".

SECTION 49. That paragraph (4) of subsection (a) of Section 49-109.1, "Industrial surcharge for excessive concentrations of waste; sampling fees," of CHAPTER 49, "WATER AND SEWERS," of the Dallas City Code, as amended, is amended to read as follows:

"(4) The person responsible for the waste pays an industrial surcharge in addition to regular water and sewer rates, either under Section 49-110 or in accordance with the following cost factors and formula:

(A) The user's cost factors for excessive industrial waste are based on the capital and operating cost of wastewater facilities to provide treatment for the reduction of BOD (biochemical oxygen demand) and SS (suspended solids). The rate formula is:

$$S = (V)(R)$$

Where S = Industrial surcharge in dollars to be added to monthly billing for water and sewer service.

V = Volume of waste discharged to the sanitary sewer, in millions of gallons per month as determined in Section 49-112.

R = $.200 (BOD - 250) + $.202 (SS - 250) per million gallons.

BOD = Average concentrations of BOD in Mg/l, determined from sampling the wastes as described in Section 49-112.1.

SS = Average concentrations of suspended solids in Mg/L, as determined from sampling the wastes as described in Section 49-112.1.

Cost factor BOD = $.200 per Mg/l per million gallons.

Cost factor SS = $.202 per Mg/l per million gallons.

(B) $.200 and $.202 are the capital, operation, and maintenance costs to treat a Mg/l of BOD and SS, respectively, per million gallons of wastewater.

(C) The rate for each user may be calculated once every 12 months.

(D) In this paragraph, the cost factors for retail wastewater service outside the city are $.300 per Mg/l per million gallons of BOD and $.303 per Mg/l per million gallons of SS."

Potlatch

Potlatch Corporation

TESTIMONY OF

R. N. CONGREVE, VICE PRESIDENT

POTLATCH CORPORATION
P. O. Box 510
Cloquet, Minnesota 55720
(218)879-2300

BEFORE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION

U. S. SENATE
WASHINGTON, D. C.
March 31, 1980

Mr. Chairman, members of the committee:

I am Richard N. Congreve, vice president of Potlatch Corporation and general manager of the corporation's Northwest Paper division, which has its main offices in Cloquet, Minnesota. The corporation's headquarters are in San Francisco. I am also a professional chemical engineer, so registered in the states of Minnesota, Idaho, Washington, California and Illinois. The Northwest Paper division operates paper mills in Brainerd and Cloquet, Minnesota; our Cloquet complex includes a pulp mill, one of three owned by Potlatch in various parts of the country. Like others in the pulp and paper industry, we utilize large quantities of water in our manufacturing processes, and that water must be treated before it can be discharged back into public waterways. Water treatment is handled entirely by company facilities at each of our locations except Cloquet. There, after pretreatment, our effluent is turned over to the Western Lake Superior Sanitary District. This district, which began to service us in January of last year, also provides treatment for waste water generated in a 500-square mile area by approximately 130,000 residential users, eleven municipalities and four industrial users. We are by far the largest client, paying about 40 percent of the total cost, and my testimony today is based on our experience over the last few years,

during which the sanitary district plant was conceived, built and put into operation.

My purpose is to urge the elimination of industrial cost recovery requirements for publicly-owned treatment works funded under provisions of PL 92-500, as it is a disincentive for further participation and cooperation between municipalities and local industries.

Our experience has convinced us that the ICR requirement, contrary to the intent of Congress, not only fails to maintain parity for industrial users, but actually injures them competitively and creates additional inequities for both present and potential industrial users of publicily-owned treatment works. Depending on their situation, it encourages them to minimize their use of the municipal system through added pretreatment, to seek ways to terminate participation or--in the case of potential users--to avoid becoming involved. This is at odds with our national goal of maximum water quality at minimum cost because it encourages the proliferation of small, specialized treatment plants. Withdrawal of industrial users injures existing public plants by reducing their efficiencies and penalizes planners of new plants by denying them the opportunity to build to efficient sizes. This increases costs in the operation of public plants and, thereby, to their customers. Overall, encouraging the construction of more and smaller plants raises the total costs of water treatment for the country, adding to inflation

and diverting scarce capital to essentially non-productive uses.

We believe, as we did in 1974, when we agreed to participate in the regional district, that a system of publicly-owned treatment works is the best overall solution for all users. However, this approach has disadvantages to industrial users without the extra burden of industrial cost recovery, which would make those disadvantages overwhelming.

I want to emphasize that we are not trying to turn the clock back to 1973, nor are we attempting to withdraw from our agreements. This is not the case. My hope is that our experience can be used by the Congress to help perfect a system that has helped this country make enormous progress toward a national goal of clean and healthful water.

Our understanding of the original purpose of industrial cost recovery was clear. Capital would be required to construct the plants used to treat industrial waste. If some companies, by using a municipal plant, did not have to provide that capital, they could have an unfair competitive advantage over those who built their own plants. It was recognized that municipal plants would have certain requirements industry would not need. However, it was assumed industry would benefit from economies of scale, and that any other inequities would be eliminated by limiting the payment to the capital advanced in the grants: in effect, an interest-free loan. The theory sounded great,

but it was unproven and there were grave doubts that it would work. Congress recognized this by authorizing a delay in the collection of payments until the results of the overall program could be studied. We believe the wisdom of that Congressional action has been borne out by experience.

I suspect that the process we followed in deciding to become part of a sanitary district was like that for large users elsewhere. Discussions began in 1969 and, by late 1970, when cost factors began to crystalize, it appeared to be far less expensive for us to remain independent. We appreciated the logic of the publicly owned treatment works approach, however, and continued to negotiate.

By December of 1973, when Potlatch agreed to participate, there had been considerable negotiation, including some concessions by the sanitary district that reduced our projected costs.

I will be using some figures as I go on, but they are summarized on the last two pages of my statement.

As closely as we can reconstruct the figures today, the difference between the costs of the public facility and comparable costs for our own plant, including the tertiary treatment required by 1977, had narrowed by December of 1974, when final estimates were available. The figures offered by the sanitary district actually were lower than what we estimated our own plant would cost. The saving at that time would have been $128,000 a year, or about eight percent.

We did not have a lot of confidence in that figure. Our own was based on the kind of detailed study required for an allocation of corporate capital, but we didn't know how good the district's figures were. However, even with a good sized margin of error, it was not unreasonable; it eliminated the possibility that changes in requirements on the river could hurt us, and it helped the sanitary district achieve a plant of economic size. Even today, we are told that, without us, construction of a regional plant would have been uneconomic. Finally, of course, at the time of our decision, we did not have access to current investment tax credits, industrial development bonds with their low interest rate, or the state pollution control tax credit, all of which are available in 1980. Therefore we committed to participation.

We did not have the opportunity to participate in the design, nor were our technical people, who have considerable experience in this field and in controlling costs, ever consulted. As a result, we had to accept the estimates of the consulting engineers for the sanitary district.

Our first real indication of problems came when the bids were opened: they exceeded the estimates by 32 percent, or nearly $20 million.

In addition, it became apparent that the municipal plant would not be able to handle our effluent in untreated form as originally planned. This may be because we did not supply information in

the right form, or it may simply have occurred because we were not intimately involved in the design discussions--our communications may have been poor. The result, however, was that we had to install pretreatment facilities that added nearly a million dollars to our annual costs in 1979, the first full year of operation.

In 1974, we estimated that our own plant would cost about eight percent more to operate than we would pay to the sanitary district, for a saving of about $120,000 per year. In 1979, our estimated costs--including operations, depreciation and interest charges--would have been dramatically lower for self-treatment. Sanitary district charges exceeded estimates for our own plant by $1.4 million, or 57 percent. If ICR had been included, the difference would have been 87 percent higher than our self-treatment estimate, or $2.1 million. For 1980, still including depreciation and interest in our costs, the differences become even more staggering.

Our payment to the sanitary district, plus the pretreatment costs we did not anticipate in 1974, will amount to $4.4 million, which is $1.8 million, or 70 percent, more than our estimates for self-treatment. If ICR is added, the difference will go to $2.6 million, more than twice as much as we believe our own plant would cost, including operating costs and charges for depreciation and interest payments.

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Now that we have agreed to participation in the district, and now that the standards for the St. Louis river have been changed, converting to self-treatment probably is out of the question for us. However, it is a real option for an industrial user who has not made a commitment. This is why I say the possibility of ICR expenses is a strong deterrent for an uncommitted company, and why local sanitary districts are handicapped in their efforts to recruit industrial users. All they need to do is look at our experience.

For Potlatch, this added cost of doing business is an obvious disadvantage. Our competitors have lower treatment costs than we at this point, and the only way we can absorb this difference is to forego a portion of our income. We can't recover the difference through higher prices, if we expect to attract or retain business.

Pulp mills are rated on tonnage; that is, our Cloquet plant produces about 450 tons of pulp per day. We compare costs on a per-ton basis, and we know that today our total water treatment costs are $25 per ton of pulp produced. For comparison purposes, the two other Potlatch pulp mills figure their costs of water treatment at $4.61 per ton in Arkansas, and $2.88 per ton in Idaho. For the whole industry, we are told that treatment costs average $10 to $18 per ton. The low figure in Idaho is due partly to the size of the mill, which is about two and one half times larger than Cloquet--but the Arkansas operation is rated at about

the same size as Minnesota. At both Arkansas and Idaho the milder climates make a difference. Minnesota's extremely cold climate raises our costs, so we expect a difference, but not of that magnitude. We estimate that if we were self-treating today, our treatment costs would come to $17 per ton--on the high side in terms of the industry averages, but not out of line in a cold climate.

At Cloquet we manufacture a bleached pulp, which has a market price of about $350 per ton. Added costs of $7 to $15 per ton make a substantial difference in the willingness of a customer to choose our pulp over a competitor's.

We do have some opportunity for reducing those costs, and we obviously have to take advantage of them. However, the degree to which we do is affected by the ICR payment, and our zealousness in reducing these costs will have an effect on our sanitary district and on all the other customers.

We face two types of charges from the sanitary district. One is the so-called operating and maintenance charge, the user charge paid by everyone, including homeowners. The other is the ICR charge. Both are affected by the volume of our discharge and its characteristics. The dependability of that flow, and the stability of its components, are critical to the operation of a water treatment plant. Municipal sewage has widely variable flows and characteristics. So the predictability of our discharge is valuable in planning. However, the degree to which

we can reduce our flow relates to our costs.

We are operating a primary treatment plant now. We must ask ourselves how much we must invest to make a significant saving in our payments to the district. The degree of urgency, and the amount we can spend, are directly related to the size of those charges. The difference now is $1.8 million, but will go to $2.6 million with ICR.

Our local district is aware of the dilemma faced by us and other industrial users, and, at our request, provided some information to illustrate what happens when companies are forced, by economic necessity, to withdraw from a public facility, or even to reduce their loadings substantially.

Those figures are attached to my statement as Addendum B. Because of our obligation to contribute to the funding of local debt service, our payments never could fall to zero, but we theoretically could reduce them by almost 85 percent. Other industrial users would see their charges go up by 62 percent, encouraging them to get out, as well. Sewer bills for homeowners would go up more than 50 percent, but the local taxpayer also would have to absorb a 50 percent increase in the charges to municipalities.

This is a worst case example, of course, and would not happen in our area unless we were forced to shut down our operation.

It does, however, illustrate the importance of industrial users to new districts in the planning stage.

It is feasible for us to consider reducing our flow and load by a third to two thirds, the other examples on the chart. This could mean savings to us of 21 to 47 percent, with charges to other industry increasing from 12 to 31 percent, and 12 to 28 percent for residential connections.

Frankly, we have not conducted the expensive, detailed studies that would be necessary to decide how much reduction could be economically justified at various levels. The studies conducted by EPA persuaded us that ICR would be abandoned as a negative force in water legislation. If ICR is imposed, we must conduct those studies, along with every other user. For an operation not yet committed, figures like these will likely result in strong pressure to withold that commitment.

The engine that drives this disruptive force is ICR. Without it, costs to industrial users still are higher than for self-treatment but probably not so high as to endanger the competitive position of a well-managed operation. Adding ICR makes the burden almost intolerable.

I suppose it might be possible to require every industrial user of water to join a sanitary district, if one were available, making everyone equal in his misery, but that wouldn't make

for competitive equity, which was the purpose of this section of the law. Marginal operations still would face the threat of closure.

We do not have enough information to address all the aspects of the ICR question that were discussed in the studies undertaken by the federal government, and that were scheduled for discussion before this committee.

However, our experience is compelling in suggesting that an industrial user does not get an advantage over his competitor by participating in a publicly-owned treatment works. To the contrary, he suffers, competitively--even if ICR is not required.

We can testify that the water conservation objective is being met in our case by our need to reduce user charges, which means reduced flow, and the huge increases we have had to pay in pumping charges because of higher energy costs.

In terms of revenue loss to the federal government if ICR were eliminated, others far more expert than we have testified. I understand that if we did not pay ICR, we would pay the federal government almost as much through the corporate income tax rate, and our company would be healthier and more competitive.

Local jurisdictions, through their organizations, have testified overwhelmingly in opposition to ICR. I can say only that they

know their business far better than I do, but, to an outsider, it appears that the threat of losses from reductions in use or complete withdrawals is a far greater problem than the loss of these dollars. In the case of Potlatch alone, as the sanitary district's own figures show, this would be the case. By reducing our loadings only one third, district revenues would drop by $900,000, but its costs could be reduced by only about $250,000. The difference, $650,000 is considerably more than the district's share of ICR, which cannot be used for operations in any case. For jurisdictions without facilities, or for those trying to attract new industrial customers, the ICR requirement is a major handicap.

In summary, Mister Chairman, we can testify that the ICR concept threatens to make us less competitive. In an industry where margins are relatively small, this can be serious on a long term basis. We also can testify that it provides strong incentive to withdraw or draw back from a sanitary district, and it certainly would discourage us from considering that alternative if we had the choice today.

The local information available to us indicates the effects are just as serious, and just as negative, for the districts.

We are very grateful that Congress was skeptical enough in 1977 to foresee some of these problems and postpone the implementation of ICR payments. We hope that our confirmation of those doubts, along with the evidence supplied by other witnesses, will persuade you to recommend that the Congress make the moratorium permanent.

Thank you.

ADDENDUM A TO TESTIMONY OF R. N. CONGREVE

COST COMPARISONS: SELF-TREATMENT VS. PUBLIC FACILITY
POTLATCH CORPORATION, CLOQUET, MN.

PAYMENTS TO WESTERN LAKE SUPERIOR SANITARY DISTRICT

	1974 (Estimates)	1979 (Actual)	1980 (Estimates)
OPERATION AND MAINTENANCE CHARGE	$1,221,945	$2,866,805	$3,469,130
PRETREATMENT	-	993,737	1,000,000
SURCHARGE	-	50,567	-
PRESENT TOTAL	$1,221,945	$3,911,109	$4,469,130
ICR TOTAL (NET)	359,300	756,600	807,172
PROJECTED TOTAL	$1,581,245	$4,667,709	$5,276,302
SELF TREATMENT ESTIMATES (Operating costs plus funding of debt)	$1,710,000	$2,494,000	$2,620,000

WATER TREATMENT COSTS PER TON OF PULP PRODUCED : 1979

LEWISTON	McGEHEE	INDUSTRY AVERAGE	CLOQUET	
			6.45	Pretreatment
			18.94	WLSSD
			25.39	Present cost
			4.91	ICR
$2.88	$4.61	$10 - $18	$30.30	Projected total

SOURCES: POTLATCH CORPORATION
WESTERN LAKE SUPERIOR SANITARY DISTRICT
NATIONAL COUNCIL FOR AIR AND STREAM IMPROVEMENT

ADDENDUM B TO TESTIMONY OF R. N. CONGREVE

WESTERN LAKE SUPERIOR SANITARY DISTRICT
Evaluation of Industrial (Potlatch) Participation
In Wastewater Treatment Facilities
February 27, 1980

	Basis I Flow/Load at Current Levels	Basis II Potlatch Flow/Load at 2/3 Current Levels	Basis III Potlatch Flow/Load at 1/3 Current Levels	Basis IV No Flow/Load from Potlatch
Municipal - Costs				
Operations/Maintenance	2,729,137	3,121,050	3,679,644	4,493,363
Debt Service	1,112,677	1,112,677	1,112,677	1,112,677
Credits	(327,634)	(314,491)	(300,865)	(287,636)
Net	3,514,180	3,919,236	4,491,456	5,318,404
Reserve Capacity Charged to Municipalities				
Debt Service	165,514	208,612	212,518	212,518
Credits	(7,927)	(7,527)	(5,065)	(2,538)
Net	157,587	201,085	207,453	209,980
Total Municipalities	3,671,767	4,120,321	4,698,909	5,528,384
Potlatch				
Operations/Maintenance	2,764,986	2,174,457	1,309,920	---
Debt Service	751,147	708,049	704,144	704,144
Industrial Cost Recovery	839,152	563,413	277,540	---
Credits	(35,974)	(25,546)	(16,782)	(8,410)
Net	4,319,311	3,420,373	2,274,821	695,734
Other Industries				
Operations/Maintenance	1,060,677	1,259,292	1,565,235	2,061,221
Debt Service	305,004	305,004	305,004	305,004
Industrial Cost Recovery	278,810	278,810	278,810	278,810
Credits	(14,608)	(11,004)	(7,269)	(3,642)
Net	1,629,883	1,832,102	2,141,780	2,641,393
Total Industries	5,949,194	5,252,475	4,416,601	3,337,127
TOTAL	9,620,961	9,372,796	9,115,510	8,865,511

NOTE: No reduction in operations and maintenance cost is reflected as the significant portion of such costs is fixed. Offsetting that portion which is variable may be additional costs of adding alum to treat a potential phosphorous imbalance.

SOURCE: WESTERN LAKE SUPERIOR SANITARY DISTRICT

A STATEMENT ON BEHALF OF THE
UNITED STATES BREWERS ASSOCIATION, INC.
IN SUPPORT OF THE REPEAL OF THE
INDUSTRIAL COST RECOVERY PROVISIONS
OF P.L. 92-500 AND P.L. 95-217

This statement is filed on behalf of the United States Brewers Association in support of the repeal of the industrial cost recovery provisions of P.L. 92-500 and P.L. 95-217. A similar statement has been filed in support of H.R. 6667, hearings on which were held in the Public Works and Transportation Committee of the House on March 12, 1980.

The USBA is a nonprofit trade association of brewers representing approximately 75% of the U.S. malt beverage production and other member companies engaged in all phases of the production of malt beverages. Our members employ almost 40,000 persons directly, and over 500,000 persons in the United States are involved in beer production and distribution and related industries. Overall, the making of malt beverages in the U.S. is a 7.5 billion dollar industry. The American brewing industry contributed a record 2.5 billion dollars in local, state, and federal taxes in 1979.

The United States Brewers Association and its members strongly urge this Committee and Congress to repeal the industrial cost recovery provisions of P.L. 92-500 and P.L. 95-217. Briefly, the reasons we offer for this position are: (1) industrial cost recovery (ICR) does not meet the legislative intent of the Federal Water Pollution Control Act Amendments; (2) ICR represents a system of double payment, which results in an unwarranted burden on industrial users of publicly-owned treatment works; and (3) many industries can be expected to fail, at least in part, due to the added burden of ICR which falls disproportionately on those industrial members least able to pay the added cost of improving older municipal waste treatment plants.

According to the legislative history of the industrial cost recovery provisions of the Federal Water Pollution Control Act Amendments, Section 204 was intended to achieve parity, capacity, water conservation, and self-sufficiency. That ICR provisions of the Act have not met legislative intent has been well documented in Report to Congress, Industrial Cost Recovery, December, 1978, by Coopers & Lybrand, the EPA's consultant. In fact, EPA Administrator Costle's letter transmitting the report pointed out that "based on the data available, the study concludes that the ICR provisions of 204(b)(1) of the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500) are not effective in accomplishing their legislative purposes."

Coopers & Lybrand point out that four basic ideas are contained in the legislative history as goals which ICR was to achieve.

. Parity is the equalizing of the assumed economic advantage (namely, less expensive sewage treatment costs) for those industries using public sewage systems, as opposed to those industries treating their own sewage and discharging it directly.

. Capacity is the appropriate sizing of wastewater treatment plants with adequate but not excess future capacity. ICR was one of the several tools available to assure the proper planning of grant-funded wastewater facilities.

. Water conservation.

. Self-sufficiency is the retention of 40% of the ICR payments by the grantee for future expansion and upgrading of their wastewater treatment works.

During the debates in April and June, 1979, on the merits of extending the moratorium on ICR collections, additional evidence was introduced to illustrate

the manner in which these four criteria were not met. At the same time, the Congress called for additional studies to further substantiate the Coopers & Lybrand findings.

The United States Brewers Association has surveyed the recent history and experience of its members in order to provide this Committee with the most up-to-date and solid information concerning the question of parity. Our intent was to determine whether brewer members using a municipal treatment plant were obtaining a "free ride," or if, as a result of changes in tax law, it was more economical for a member to self-treat its wastewater discharge. In order to make accurate comparisons, a detailed questionnaire was provided members and a model developed in which the cost to a brewer participating in a municipal treatment facility with ICR is compared with the cost for a similar size brewery which chose to build its own treatment works.

The results of the USBA survey assumed a new brewery of eight million barrels per year capacity. Extrapolation from survey data indicates that such a facility would need a treatment plant costing $22.6 million. Depreciation and other assumptions are as follows:

(1) Depreciation Category	Depreciation Amount	Depreciable Life	Method of Depreciation
Machinery & Equipment	$ 9.04MM	8 years	200% DB/SYD
Building	3.39MM	40 years	150% DB/SL
Site Improvement	10.17MM	20 years	150% DB/SL

(2) 10% Investment Tax Credit on machinery and equipment.

(3) The treatment facility would be financed with Industrial Revenue Bonds with following terms: 30-year maturity; 9% interest rate; annual interest payments; principal repaid in a lump sum after the 30-year term.

(4) Operating and maintenance costs are estimated at $1.6 million per year and have been escalated at a 10% annual rate.

(5) The residual value of the facility after 30 years of use is 30% of its original cost.

(6) A 48% brewer tax rate.

According to the survey, an eight million barrel brewery participating in a publicly-owned treatment works (POTW) would have captured costs allocated to it of $27.1 million. In such a circumstance, there would be no depreciation benefit to the brewery, and investment tax credits could not be obtained by the brewery. This figure also assumes that the municipal project would be financed 70% by federal grant funds repaid at 30 equal annual payments at 0% interest rate, and the remaining 30% by municipal revenue bonds at 9% interest with 30 equal annual payments. The allocated operation and maintenance costs are assumed to be $1.9 million per year, escalating at 10% annually. The annual payment by the brewery consists of operating and maintenance costs, industrial revenue bonds, and repayment of federal government grants for total of $3.32 million. Two further assumptions made were that the annual brewery payment is tax deductible and that the brewery pays a 48% tax rate. Bearing these considerations in mind, the additional cost to the brewer for discharging to a POTW vs. self-treating is $6,511,200.

Some of the reasons for the difference in the costs of going to a POTW and self-treating are that self-treatment facilities are tailored to the waste being treated and that industrial users will insure their treatment works are staffed only at a needed level and are functional in design. POTW's, on the other hand, are of necessity designed to handle domestic wastes and many other pollutants from a wide variety of industries. In addition, POTW's often must be sized to

handle large amounts of infiltration and inflow and combined sewer overflow whereas a self-treating facility designed specifically for brewery wastes would treat a concentrated waste without extraneous water. Municipalities offered the "carrot" of a federal grant often over-design POTW's with substantial excess capacity intended to accomodate future growth, which may or may not take place. The additional costs associated with the over capacity built into POTW's is borne by those industrial users unfortunate enough to be required to participate in the system.

A second compelling and perhaps the most important objection which the USBA has to the ICR system stems from our observation that our industry already annually pays in excess of one and one-half billion dollars in excise taxes to the federal treasury. Under the industrial cost recovery system, based upon the survey data developed by us, the industry would be required to pay an aggregate additional $300 million to various municipalities receiving federal grants over 30 years.

Rather than providing a federal subsidy to private industry, especially those situated so as to make use of POTW's, the ICR system causes exactly the reverse situation to exist, namely an unwarranted double charge upon dischargers of compatible wastes. The disparity can only be expected to increase as inflation escalates the costs involved in administering the program.

Coopers & Lybrand pointed out that there had been at the time of their report few instances of economic dislocation or plant closings as a result of ICR. This is the case in the brewing industry only because ICR charges have not been implemented generally. However, if one extends the parity reasoning outlined above, particularly as it relates to small or marginal brewers and malting plants,

detectable trends may be apparent. Small brewers may be unable to raise the necessary capital to finance their own treatment facilities, and the reality of plant closings, dislocation, and the related economic hardship may be expected to occur if ICR is implemented. Consideration of historical trends in the brewing industry is instructive in addressing this possibility.

According to records compiled by the Treasury's Bureau of Alcohol, Tobacco and Firearms, in 1935 there were 750 breweries in the United States. Since that time the number of brewing companies has declined to 40, operating 79 plants. Decline in the number of breweries doing business has been steady over the years, and among the reasons for the decline is that small brewers are often unable to build modern, efficient plants and, therefore, cannot produce malt beverages as cheaply as larger operations. Small brewers are encumbered by the high cost of distribution and are hard pressed to provide a product at a competitive price with larger companies. The inflation experienced in agricultural and packaging costs has added to the profit squeeze and accelerated the demise of the small brewer. Add to this already heavy burden the inequitable costs of ICR payments, and one can easily foresee even more plant closings.

Often small brewing companies are located in older municipalities and discharge to antiquated POTW's which require extensive upgrading. In addition, it is likely that the brewing company will represent the major discharge to that municipal system. As a consequence, since ICR payments are based upon proportionate loading of BOD, suspended solids, and flow, the brewer in that situation will be the most heavily impacted by the capital cost recovery system required to upgrade the municipal plant.

There are no instances in the brewing industry where a decision to locate a brewery was based solely on ICR. However, it is important to note that since the passage of P.L. 92-500, where a brewing company had the option to locate a new plant and was not already locked into a municipal system for paying ICR charges, in 80% of the cases the decision was to locate in an area which would allow construction of a self-treating waste facility as opposed to locating in an urban area and participate in a municipal treatment facility.

To date, the USBA has not been able to gather any additional information concerning the projected increase in administrative costs of operating an ICR program over and above that which was outlined in the Congressional Record of June 14, 1979. General responses, however, from several municipal or sewerage district personnel variously described the administrative costs as "a bookkeeping nightmare" to "incalculable but significant" additional costs to be passed on to the users.

There are several examples of federal grant-in-aid programs which are designed to keep industries in urban areas. Examples are, HUD's Urban Development Action Grant Program and the Department of Commerce's Economic Development Administration. These programs frequently provide grant funds for sewers, water lines, and other public works programs in order to keep industry in urban, high unemployment areas. The ICR provisions have precisely the opposite effect.

In summary, the reasons for repeal of industrial cost recovery are obvious. Legislative intent is not met. Small industrial dischargers will endure severe economic burden. Due to the economic advantages of self-treatment, the multiplicity of small individual treatment operations is encouraged rather than the large, more cost-effective publicly-owned treatment works. Administrative costs of municipalities will escalate. Finally, most industries have already paid to the federal treasury the funds which should be used to upgrade publicly-owned treatment works to achieve the stated goals of the 1972 and 1977 Federal Water Pollution Control Act Amendments. For all these reasons, the USBA urges repeal of the industrial cost recovery system.

Clean
Water
Action
Project

1341 G St., N.W.
Washington, D.C. 20005
(202) 638-1196

TESTIMONY OF LARRY SILVERMAN, LEGISLATIVE DIRECTOR OF CLEAN WATER ACTION PROJECT, BEFORE THE U.S. SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS, MARCH 31, 1980. RE: INDUSTRIAL COST RECOVERY.

Mr. Chairman, my name is Larry Silverman, and I am here on behalf of the Clean Water Action Project, a national citizens' lobby for clean water. Municipal water and waste management systems have been a special concern of Clean Water Action Project for more than ten years. Like some members of this committee, we have been in the sewage treatment business since 1969. This interest grows naturally from the fact that our operating funds come from more than 60,000 small non-tax deductible contributions. Most of these contributions are made by citizens and organizations in their own homes or neighborhoods. Each weekday evening, five nights a week, fifty-two weeks a year, carefully supervised and trained teams of canvassers go door to door in the metropolitan Washington area, and increasingly in other communities as well, talking with citizens about clean water and asking for political and financial support. The public gives generously of both, with the expectation that we will look out for their interests in the water programs which have the most direct impact on their lives. In the last year, more than 100,000 people signed a petition

> to assure that tax monies which have been appropriated for municipal sewage treatment are not spent wastefully on systems that are inefficient, unnecessarily large or wasteful of energy.

The people who open their homes to our canvassers and otherwise contribute have a number of key interests that relate directly to the question of Industrial Cost Recovery.

62-136 O - 80 - 18

Like most every one else in the United States, our supporters want clean water at a reasonable price.

They are against inflation in the price of water and waste water treatment.

They are, in general, distrustful of the power of special interest groups.

Many are actively involved in what I call community conservation. Examples of community conservation are efforts to check deterioration of the cities, to strengthen the industrial base, to preserve and expand parks and green space, and other environmental improvement projects.

The issue of Industrial Cost Recovery touches all these concerns very directly.

Need for Comprehensive Review

Last June, Clean Water Action Project joined with the American Meat Institute, the American Paper Institute, the National Food Processors Association, and the National Forest Products Association in calling for a "thorough congressional review" of joint municipal-industrial waste treatment facilities.

> This review should be aimed at improving the planning, economics, effectiveness, and environmental integrity of federally funded joint treatment systems.
>
> A final decision on ICR should be made in the context of such a general review of the municipal-industrial interface. (Testimony of Donald G. Kirk of the National Food Processors Association before the House Public Works Committee, June 14, 1979).

We continue to support this position.

We oppose a simple repeal of ICR. We believe that this committee and its staff should review all of the many subsidies and incentives for industrial waste management, with a view to answering the following questions: --Does the subsidy encourage waste water treatment methods which

result in the conservation of water, energy, and other resources, including money? --Are the subsidy programs consistent with one another? --Does the subsidy program encourage a cooperative relationship among municipal officials, industries, and consumers?

We fear that the answers to all these questions are no. Congress' continued failure to assess and rationalize industrial waste treatment subsidies is likely to be a major contributor to inflation in the cost of water and waste management.

We urge the subcommittee to join with the congressional committees that write our tax laws in addressing these questions.

We made this suggestion to the House Subcommittee on Water Resources a few weeks ago. Subcommittee Chairman Roberts of Texas indicated that this might be politically impossible, and that opening up the tax laws might make things worse than they are now. We have no reason to doubt Congressman Roberts' political judgment. Nonetheless, unless the Congress reviews, and where appropriate, rewrites, all the laws and programs with a significant impact on the cost of waste water treatment, we will soon find that clean water is beyond our economic capability.

Repeal of ICR Is Inflationary

The Sewage Treatment Construction Grants Program is suffering severely from inflation. We are endeavoring to discover the inflation rate in various aspects of this program. We will provide this committee with our findings. Annual rates of 20 and 30 per cent are not uncommon. As new facilities come on stream, we expect a substantial, until recently unanticipated, increase in operation and maintenance costs. Sewage user charges for industries and individuals are going the way of oil prices. The reasons for this are many. Chief among them, in our judgment, is an attitude on the part of municipalities, industries, the U.S. EPA, and others, that permitted sewage facilities to be designed and constructed with little thought to the cost and who would pay it.

Since 1972, every industry that has joined a municipal system knew, or should have known, that some day a portion of the federal grant would have to be repaid on "easy terms". Now that the bill is coming due, these same industries are asking the Congress to cancel their obligations. Repeal of ICR will further fuel inflation by reducing anticipated federal and municipal revenues, by removing a key element of fiscal discipline, and by establishing a bail out precedent which will be difficult to contain.

Pay As You Go Is the Best Policy

Clean Water Action Project supports the principle that industry -- especially the larger companies -- should pay its own waste treatment costs. We oppose subsidies that encourage corporations to make waste treatment decisions which have nothing to do with good economics or good engineering. In taking this position we are not anti-industry. On the contrary, we favor greater integration of municipal and industrial waste management, and fully support the provisions of Section 201(e) of the Clean Water Act. This section -- virtually ignored by EPA -- encourages integrated municipal-industrial waste management facilities which produce revenues in excess of capital and operation and maintenance costs. We believe that with proper planning and cooperation, revenue producing, economically self sufficient facilities are a realistic possibility. Because we see and believe in the great potential of joint municipal-industrial waste management, we oppose any industrial subsidy which encourages the waste of resources, water and capital. We do not agree with the position expressed by the National Association of Manufacturers last year that every city should be served by large, regional waste treatment systems. Sometimes regional systems make sense; sometimes they don't. Sometimes joint systems are cost-effective; sometimes they are not. We need a system of incentives that encourages industry to do what is cheapest for everybody, that gets them into municipal systems when that is cost-effective, and keeps them out when it is not cost-effective.

It is not a hardship or a "tragedy" if a big industry and a small town manage their waste water in separate systems. Numerous innovative and alternative technologies are available for small community waste flows. Similarly, industries are finding that self treatment is often more economical from their point of view than joint municipal-industrial treatment.

Congress Should Continue to Encourage Water Conservation

Between 1972 and 1978, industrial dischargers using publicly owned treatment works reduced their water discharge by 29%. This was the result of tightened water pollution control standards, user charges and Industrial Cost Recovery. The degree of conservation is one of the few solid successes of the construction grants program. Repeal of Industrial Cost Recovery would slow down or stop the momentum towards conservation. We should not wait until the coming water crisis is upon us to institute conservation measures. Water conservation saves money, energy and water.

Past Mistakes in Sewage Treatment Policy Have Created Serious Fiscal Hardships for Certain Communities

The need to combat inflation, to impose fiscal discipline, to encourage cost-effectiveness, and to foster habits of water and energy conservation should not blind us to the fact that certain communities will suffer hardships if Industrial Cost Recovery goes into effect. Indeed, other communities will suffer hardship if Industrial Cost Recovery is repealed. This committee will find it hard to take any action on the question of Industrial Cost Recovery that will not seriously disadvantage one community or another.

We would like to make a number of suggestions on how this committee and the government as a whole should deal with sewage treament hardship cases.

First, our principal concern should be with hardships to the grantees, the cities and towns who are the beneficiaries of this program. The problems of industries should be considered as an element of the whole community picture. The Construction Grants Program is a municipal assistance program. It is intended to alleviate the hardships which municipal governments might otherwise suffer on the road to clean water.

Second, we should recognize that it hasn't always worked that way in practice. The Construction Grants Program has many casualties, which are only now being discovered by the mass media.

Third, the federal government should extend management assistance, training, and education to municipal and state officials in water and sewage hardship areas. A water hardship area is one in which water and sewage costs are unusually high, and beyond the ability of the community to pay. For example, the Coopers & Lybrands indicated that certain New England and New York communities were experiencing unusually high sewage costs. Should we accept as an

immutable fact that New England should have higher water costs than other parts of the country? We do not believe so. In our judgment, New England and New York are victims of misguided EPA policies to encourage excessive regionalization and to discourage the use of innovative and alternative technologies. We need to change that around as quickly as possible by better planning, better technology, and better management.

Fourth, the general rules should not be based on the needs of the hardship cases. A temporary variance type relief should be available to communities with high treatment costs. These communities should be permitted to keep a larger portion of Industrial Cost Recovery money and be permitted to lower the rates somewhat for industrial and other customers. Variances should be available to communities in financial trouble predicated upon a planned return to solvency.

Future EPA Funding of Industrial Capacity should Be Reconsidered

The Congress should seriously consider a phase out of EPA funding of industrial sewage capacity. If there are to be subsidies or assistance to industry, it should be through tax laws or Economic Development programs. An industry which decides to buy into the municipal system would get the same tax breaks and incentives as industries who decide to self treat. Such a scheme might help insure cost-effective decisions making. It would also be of benefit to those communities that now have too much federally funded industrial capacity.

Local Governments Should Have a Larger Stake in Industrial Revenues

Local officials resent being a collection agency for the federal government. Many might have a different attitude towards ICR if they realized more from it. Congress should consider changing the amount retained by municipalities. Much more thought and planning should go into where the money actually goes and how to manage it most effectively. The high administrative costs associated with Industrial Cost Recovery are largely a problem of management. No one has placed a firm figure on the amount of money

that could be produced by ICR. Estimates range from $2 billion to $12 billion. Surely a collection system for such amounts of money could be devised , which makes the collection worthwhile.

The Real Issue Is Inflation

The real issue today, Mr. Chairman, is inflation, and the victims of inflation -- inflation in the sewage treatment industry brought on by excessive government spending, poor financial management, and inefficient facility planning. Your decision on Industrial Cost Recovery could help fuel or arrest the growing inflation in the price of water. This issue, moreover, should force a reexamination of the financial failures and adverse consequences of the Construction Grants Program. This committee and its staff should continue and expand its investigation of communities suffering hardships as a result of the Construction Grants Program. Careful studies of case histories will help this committee take action which relieves symptoms and attacks causes of sewage distress.

State of California
WASHINGTON OFFICE
600 PENNSYLVANIA AVE., S.E., SUITE 201
WASHINGTON, D.C. 20003
(202) 543-6100

EDMUND G. BROWN, JR.
GOVERNOR

April 1, 1980

Honorable Edmund Muskie
Chairman
Subcommittee on Environmental Pollution
6231 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Muskie:

On behalf of the California State Water Resources Control Board, I respectfully request that the enclosed statement be made part of the Subcommittee on Environmental Pollution's hearing record on legislation to extend certain provisions of the Federal Water Pollution Control Act and industrial cost recovery.

Thank you for considering this request and for the opportunity to present the views of the State of California.

Sincerely,

R. Gary Magnuson
Assistant Director
for Resources

Enclosure

STATEMENT OF THE STATE OF CALIFORNIA WATER RESOURCES CONTROL BOARD AT THE HEARING ON LEGISLATION TO AMEND THE FEDERAL WATER POLLUTION CONTROL ACT REGARDING EXTENSIONS OF AUTHORIZATIONS AND INDUSTRIAL COST RECOVERY

It is our understanding that testimony is desired only on Sections 104, 106, 204, 208, 314 and 517 of the Act (PL 92-500).

Section 104: This section relates primarily to research programs and special studies. However, a portion of this section involves grants for pilot projects for training sewage treatment plant operators. We are very concerned about the lack of Federal support, on an ongoing basis, for operator training programs. While billions are being spent to build sophisticated wastewater treatment facilities, almost no funds are being spent to train operators to operate such plants. This issue may relate more to Section 109, which is not the subject of this hearing, but we feel it is of sufficient importance to be mentioned at this time.

Section 106: Over the past two fiscal years the SWRCB has had to substantially reduce the staff-years supported by Section 106 funding. This trend is projected to continue into the foreseeable future due to the following:

a. A real dollar reduction in the 106 funds provided, and
b. The fact that 106 funding has not been increased to keep pace with inflation.

To date 17 staff-years have been eliminated in California.

This issue has brought to light a management problem related to administration of 106 funding. It is the approach of EPA to allocate 106 funds across the full range of State Board water quality activities.

As a result, approximately $2.8 million in 106 funding in California is leveraged against a state expenditure of $10 million. The minimum state match for 106 funds is $3.3 million.

The impact of this strategy is that with reduced Federal funding the Board is required to make commensurate program reductions. In this process, EPA takes the position that reductions must be made in areas outside Federal priorities. It is the state's position that reduced Federal funds should not preclude consideration of reductions in Federal-oriented program activities. It is the state's position also that re-prioritization will be far more responsive to water quality needs within a state if the state at least has a voice in this process.

Section 204:

- The cost of administering the ICR program has grown substantially. This is due in part to the expansion of its application to relatively small operations. In California, the 25,000 gallons per day of sanitary waste or equivalent will include large commercial users such as department stores, car washes, laundries and large multi-family townhouses.

It is our recommendation that:

- That the minimum flow rate which would subject an industry to ICR be increased. (100,000 gpd)
- That local communities be allowed to retain the total ICR collected for future plant expansion/replacement or other wastewater related projects.
- That if administrative costs exceed amounts collected, the Federal Government will reimburse the community for the difference.

Section 208: The funding authorization for the 208 planning program is provided in Subsection (f)(3) of this section. The final authorized amount was $150 million for F.Y. 1980, ending September 30,1980. The 208 program should continue beyond next fiscal year, therefore, a new authorization is needed. It is our recommendation that the authorization be continued at the $150 million level. It is also recommended that a multiple-year authorization and multiple-year appropriation be provided in order to add some stability to the program.

Section 208 (f)(3) provides grant funds only for planning. Grant funding for actual implementation (i.e., construction) is not provided. It has become increasingly clear that nonpoint source pollution is a major factor in water quality protection and, in relation to point source pollution, is becoming more important as time passes. Subsection (j)(9) of this section authorized to be appropriated to the Secretary of Agriculture $200 million for F.Y. 1979 and $400 million for F.Y. 1980. This money was to be used for the "Rural Clean Water Program". This would have been an effective source of implementation funds. The money has never been appropriated. It is recommended that this money be reauthorized for the coming year and appropriated to assist in implementation of needed nonpoint source facilities.

Also regarding Section 208(j), in December 1979, new regulations were proposed to carry out an experimental Rural Clean Water Program. These regulations do not provide for any substantive responsibilities for the Governors and State Water Quality Agencies. Implementation of the RCWP in compliance with these proposed regulations therefore does not appear to be the program intended by Section 208(j) of the Clean

Wat Act. The program's primary objective should be the control of nonpoint source pollution for improved water quality. For the program to achieve this primary objective, it is suggested that the program include mandatory adherence to project area priorities set forth in state adopted and EPA approved water quality management plans. In addition, State Water Quality Agencies should be given a more substantive role including responsibility for concurrence of any proposed project.

Section 314: The Clean Lakes program is important to the State of California as it is one of the few sources of funds available to carry our control on nonpoint source pollution. The State Water Resources Control Board recently released a draft Water Quality Plan for the Lake Tahoe Basin which relies heavily on Clean Lakes grants to protect Lake Tahoe water quality. Erosion, caused by poor development practices, is increasing the nutrients reaching the Lake. Over the past twenty years, algal growth rates have doubled. Strict controls on development are required to prevent additional erosion problems. In addition, erosion control projects, such as revegetation of bare areas, costing $63 million on the California side, are needed to prevent further deterioration of water quality. Clean Lakes grants are needed to help pay for the program. EPA has limited implementation grants to 50% of project costs, instead of the 70% authorized by Section 314. Because of the importance of protecting Lake Tahoe, we intend to make a major commitment of state funds to match Clean Lakes grants, so that our Lake Tahoe Water Quality Plan can be implemented.

It is important that Section 314 remain flexible enough to deal with the variety of pollution problems affecting our lakes, and that adequate funds be provided to protect outstanding national resources such as Lake Tahoe. It is also desirable that grants be given at the 70% authorized.

Section 517: It is our understanding that none of the state's various Federal fund sources (i.e., 106, 208, 201) come out of this authorization. We would like, however, to take this opportunity to comment on two generally related issues:

(1) California does not have a specific recommendation on the level of funding which should be established. We are, however, working closely with the Association of State and Interstate Water Pollution Control Administrators to develop recommended levels.

(2) We are concerned on the issue of funding stability. It is critical, in order to efficiently plan and manage a program of this magnitude, to be able to predict funding levels past the current year. While multiyear appropriations extending several years into the future would be desirable, we recognize the problems this would create for Congress. Therefore, we would recommend that Congress consider either (1) adoption by the Appropriation Committee of two-year appropriations, or (2) adoption of the concept of "year-ahead" appropriations.

D. W. McKENZIE Director
W. C. WANDERER, JR. Deputy Director

COUNTY OF SACRAMENTO
DEPARTMENT OF PUBLIC WORKS
WATER QUALITY DIVISION . . . W. S. Hyde, Chief
9660 ECOLOGY LANE
SACRAMENTO, CALIFORNIA 95827

March 27, 1980

Ms. Sally Walker
Committee on Environment & Public Works
Dirksen Senate Office Building
Room 4204
Washington, D. C. 20510

Dear Ms. Walker:

Subject: Support of EPA Position for Case-By-Case Exemption of Sewering Utilities from Industrial Cost Recovery (ICR)

In an effort to assist in reaching some agreement between representatives from the offices of Senator Edward Muskie, Congressman Harold T. "Bizz" Johnson, EPA and California industries impacted by ICR, the following comments are offered as a possible dialogue base.

A. BACKGROUND

EPA has offered preliminary suggestions for mitigating the impacts of ICR which include:

Relaxation in the daily flow levels which define industrial users.

Case-by-case exemptions where the sewering utility demonstrates its financial solvency to handle:

a. replacement costs

b. future capital improvements (whether for reasons of flow or process capacity, or for upgrading of treatment levels)

B. CRITERIA FOR DEMONSTRATION OF FINANCIAL SOLVENCY

The key elements in such a showing include:

1. Approved Revenue Program

Reference is made to the revenue program of Sacramento Regional County Sanitation District, attached as an example. The program provides an estimate of projected revenues and costs over a three year forward time frame. This program was approved by EPA in its letter to the District dated July 3, 1979. An approved revenue program is a Clean Water Grant program requirement. Grant payments must be withheld unless draft and final revenue programs are submitted as required. Preparation and adoption of the revenue program is subject to the EPA Public Participation Regulations published in February, 1979. The revenue program is subject to EPA audit and is reviewed during grant audits.

2. Generation of Replacement Costs

Replacement costs for treatment and pumping station facilities have been budgeted at the annual level of 1% of facility cost. This amounts for the District to $2.28 million annually. These funds are obtained from sewer service charges, from all user groups. They are allocated with other O & M costs in proportion to use. The level of these replacement accruals was based on a 1976 review of cost levels of major west coast sewering utilities including East Bay Municipal Utility District (EBMUD), Los Angeles County Sanitation District (LACSD), and the earlier experience with District plants.

3. Funding for Future Capital Improvements

For a growing community, major future investments will be required either for reasons of flow or process capacity, or for upgrading of treatment levels. Based on the current trends in setting of water quality criteria for toxic pollutants, with their subsequent evolution into stream standards and discharge requirements, it is probable that treatment upgrading will be the earliest area of concern. This unfolding regulatory process will probably not permit definition of capital needs until the mid 1980's.

Whether for reasons of upgrading or because of capacity needs resulting from growth, the District will plan to provide financing through bond issuance. This will permit capital repayments to be spread among those who will then be using the facilities and offers the most equitable form of financing such costs.

4. Reserves

An operating reserve equal to approximately thirty-five percent of the annual maintenance and operating budget has been set as a minimum. This fund would be available for unanticipated operating costs.

C. SUMMARY

Concern has from time to time been expressed for other aspects of control of fund use. Many constraints now exist by reason of prior bond commitments (either revenue or general obligation), and institutional forms subject to specific state or local laws. It is believed impossible to stipulate a set of financing constraints much beyond those above noted in view of the diversity of local conditions.

In the long run, lack of fiscal adequacy as it relates to maintenance and operations will be evidenced by inability to consistently meet discharge requirements, and will have to be enforced through available regulatory controls. Further, an inadequate fiscal posture will impair availability of bond financing through capital markets.

It is believed that regulatory and credit constraints already inherent in our system will force a prudent fiscal posture for most sewering utilities. For the relatively few cases where this is not so, no level of statutory or administrative control is probable that would avoid such occurrence.

Very truly yours,

W S Hyde

W. S. Hyde

WSH:cc

Attachment: Final Revenue Program
Sacramento Regional County Sanitation District
(Adopted by Board 5/22/79)

Original Letter to:

K. Braithwaite
J. Kovalic
S. Walker
C. Finch
K. Cottrell w/o attachment
L. Gilde " "
H. Stone " "

BEFORE THE

SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

OF THE

UNITED STATES SENATE

Testimony of the American Frozen Food Institute on The Industrial Cost Recovery Provisions of the Clean Water Act

James F. Rill
Thomas L. Anderson
Counsel to the
American Frozen Food Institute
1055 Thomas Jefferson Street, N.W.
Washington, D.C. 20007
(202) 337-6000

April 2, 1980

62-136 O - 80 - 20

These comments are submitted on behalf of the American Frozen Food Institute, a nonprofit trade association representing companies which are responsible for 90 percent of the total frozen fruit and vegetable processing production in the United States, as well as a substantial portion of the production of other frozen foods.

AFFI believes that the Industrial Cost Recovery provisions of the Clean Water Act should be repealed.

In 1972, Congress enacted the ICR program so as to avoid providing "a federal subsidy" to industrial sources that discharge into publicly owned treatment works.

However, changes in the tax laws and regulations since 1972 have eliminated the "unfair subsidy" problem as a concern. Indeed, ICR must be repealed to place indirect dischargers on roughly the same footing as direct dischargers with respect to the treatment of capital expenditures for pollution control equipment by the Federal government. This fact is reflected in the conclusion to EPA's report on ICR that, "for some medium or large industries . . . it is less expensive in the long run to self-treat than to pay user charges and the local debt service." EPA's report is a clear warning to Congress that its goal of encouraging joint industrial-municipal treatment is in jeopardy if changes are not made in the Clean Water Act to reduce the cost of joint treatment.

Indeed, the experience of companies in the frozen food industry bears this point out. With the adoption of the 1972 Federal Water Pollution Control Act, many companies supported joint industry-municipal POTW treatment wherever possible. First, they believed they would benefit from the economies of scale in a POTW. Second, AFFI's member companies are in the food processing business, not the waste treatment business. However, experience with these POTWs has been such that many companies have reversed their earlier policy and will now generally install their own treatment facilities wherever possible. The major reasons for this change are cost factors, including the potential cost of ICR. Repeal of ICR is one way to reduce such costswithout endangering the environment or the economic viability of POTWs.

It is also clear from EPA's ICR report that existing ICR provisions do not serve any other useful function.

The report concludes that ICR has not influenced the capacity decisions made in planning new POTWs. Clearly, the construction of excess capacity by POTWs is a problem. ICR is not the answer to this problem, because industry's interest in avoiding the construction of excess capacity does not always translate into an ability to influence the design of the local POTW.

EPA's ICR study also concluded that ICR payments do not have a significant impact on water conservation. Water conservation efforts are not related to ICR costs as much as they are to higher user chargers and increased water rates. Also, AFFI would like to point out that many of its members are located in geographical areas where local water conditions compel industry to implement effective water conservation programs. Many of its members have instituted strict water conservation measures either in processing modification or by adopting alternate means of effluent disposal, such as direct land application. Continuation of the ICR program, therefore, cannot be justified in terms of its encouraging water conservation.

The ICR revenue gathered by municipalities, even when all POTW systems authorized by the Clean Water Act are complete, will not provide a significant pool of funds to finance future POTW construction. EPA's study has estimated that the total revenue recovered will be $1.6 million of the $45 billion currently designated for the construction grants program. Further, AFFI members, who are often seasonal users of POTWs, contributed cost information to the ICR study showing that many frozen food plants could expect to incur substantial ICR charges if ICR was enacted fully. In many cases, such payments would represent a significant portion of these plants' revenues. They do not, however, in any way improve the plants' effluent or the environment. AFFI suggests that these funds would be spent better as investment capital to expand job opportunities or to improve waste treatment technology.

Finally, it is clear that in many instances the ICR program is simply not cost-effective for the local POTW to administer. The administrative burden and cost far outweigh the revenue collected.

On March 18, 1980, Eckardt C. Beck, Assistant Administrator for Water and Waste Management at EPA, recommended continuation of ICR in testimony before this Subcommittee. He justified EPA's position by asserting that ICR provides "some degree of subsidy" to indirect dischargers and by stating that ICR is needed to generate capital to finance future construction of new POTWs. These justifications ignore the findings of EPA's ICR study and suggest a fiscally unsound mechanism for financing POTW projects. AFFI urges that EPA's recommendations be rejected and ICR be abolished.

A close examination of EPA's testimony suggests the Agency either does not understand some very basic facts about the financing and operation of POTWs or it is purposely misleading Congress in an attempt to justify its ridiculous recommendation. Mr. Beck stated that ICR would provide capital to finance the replacement of pumps, gates and motors as they wear out. This statement ignores the fact user charges include funds to replace these types of capital items as a normal part of maintenance operations. EPA also suggested that industry be required to sign a contract with a POTW to ensure that the industry would not withdraw from the facility. The experience of frozen food companies indicates that all POTWs already require industry to sign such contracts before the POTW can qualify to sell bonds to finance the local capital share of the POTW. How can EPA's recommendation regarding ICR be given any credibility if the Agency evidences such a shallow understanding of the POTW program?

EPA's credibility is undermined also by its suggested "alternatives" to the existing ICR program. The Agency has not offered any alternative except continuation of the existing program. The suggestion that the "small discharger" exemption be raised to 50,000 gallons per day offers no relief whatsoever for either industry or POTWs. EPA's data reveal that very, very few new sources would qualify for the exemption under

EPA's proposal. Further, EPA did not explain why flow is a fair measure of which industries should pay ICR and which should not. Flow does not measure the cost to a POTW of treating a particular industry's effluent, nor does it reveal the value of POTW treatment to the industry. While flows from food processing plants are generally high, pollutant loading is not high in relation to some other industries; nor does effluent from such plants contain toxic water pollutants. Despite those facts, under EPA's small discharger proposal substantially all frozen food processing plants would be required to pay ICR.

EPA's second "alternative" is to exempt from ICR local jurisdictions which have alternative methods for raising capital to finance future POTW construction. This is nothing more than ICR in a different set of clothes. Indeed, since EPA has not defined what is a satisfactory local program, industry might be required by this alternative to pay more than would be required by ICR. Worse perhaps, EPA has not attempted to articulate why local bonding authority is not a perfectly satisfactory vehicle for financing the construction of POTWs in the future or how equity will be preserved between industries that contribute to the ICR fund and those that use a new POTW but did make ICR contributions.

EPA's ICR recommendations are based on the Agency's belief that ICR should be used to generate a sinking fund at each POTW to be used to finance future POTW construction. AFFI strenuously objects to the initiation of this wasteful, inequitable and environmentally-damaging concept.

First, as noted previously, ICR will not generate sufficient capital to finance major POTW projects. Local jurisdictions still will rely on bonding authority to finance POTW construction. Further, the presence of an inadequate ICR-based sinking fund endangers environmental standards, because the public may view the sinking fund as the sole source of capital funds and may be reluctant to approve bond authority. The local jurisdiction then would be faced with the choice of excluding industry from the new

POTW or pressing for a relaxation of its effluent standards. In effect, the POTW would be built to accommodate the capital available in the ICR sinking fund rather than being built to achieve environmental objectives.

Second, the existence of a sinking fund will inhibit the introduction of new and innovative technology. The availability of a large amount of "free capital" will encourage local officials to rehabilitate an existing POTW and perpetuate its outmoded treatment system rather than build a new POTW which incorporates the most modern, efficient and effective treatment technology.

Third, EPA has not suggested any mechanism to ensure that ICR funds will be available to communities that have the greatest need for POTW construction capital.

Fourth, EPA's ICR sinking fund proposal ignores the fact that there is probably not a single business in this country that finances capital projects by accumulating funds in a sinking fund. Debt financing is the most cost-effective and equitable way to finance major, public capital expenditures.

Fifth, the type of sinking fund EPA has proposed will tie-up large amounts of scarce capital in a nonproductive use. These funds are needed desperately by industry, and by the country, to expand and modernize production facilities.

Sixth, the money in the ICR sinking fund would be viewed by local officials as "free money" and would be spent accordingly. EPA's proposal, thus, would encourage wasteful spending on unneeded projects.

EPA has failed to substantiate its view that continuation of ICR serves any useful purpose. AFFI believes that continuation of ICR will not benefit the environment, local governments, the Federal government or industry. ICR, therefore, should be abolished.

API/NFPA
Environmental
Program



American Paper Institute
(202) 332-1050
National Forest Products Association
(202) 797-5800
1619 Massachusetts Ave., N.W., Washington, D.C. 20036

March 20, 1980

The Honorable Edmund Muskie
Chairman, Subcommittee on Environmental Pollution
Senate Environment and Public Works Committee
U.S. Senate
Washington, D.C. 20510

Dear Senator Muskie:

On March 18 and 20 1980, the Senate Subcommittee on Environmental Pollution held hearings on extensions of authorizations under the 1977 Clean Water Act and industrial cost recovery. The American Paper Institute and the National Forest Products Association which together represent the nation's growers and producers of wood and paper products, wish to express their support for continued authorization for the Section 208 planning program.

While the forest industry has had differences with the Environmental Protection Agency on the administration of the Section 208 program, the program has made a laudable start in identifying nonpoint source problems and developing control programs specific to the needs of problem activities. Continued authorization is warranted because the program's results are just now becoming apparent. As of March 3, one hundred and sixty-five Section 208 plans were certified by state governors. One hundred and thirty-six of these have been approved by EPA.

If the Section 208 program authorization is not extended there may be pressure for a federal regulatory program to control nonpoint source pollution. Such a program would be unworkable and unnecessary. Indeed, we concur with you when you noted, during August, 1977, Senate debates on the 1977 Amendments to the Federal Water Pollution Control Act, that:

> "Between requiring regulatory authority for nonpoint sources, or continuing the Section 208 experiment, the Committee chose the latter course,

judging that these matters were appropriately left to the level of government closest to the source of the problem...Section 208 [is] the 1972 Act's laboratory for new institutional control mechanisms for vexing nonpoint source problems..."

The Section 208 approach of state control, with the flexibility to develop different types of control programs, has demonstrated sensitivity to the wide variation in nonpoint source problems. Efforts to control nonpoint source pollution should continue to be focused at the state level in the Section 208 program.

While the forest industry has not always concurred with the Section 208 programs developed by the states, the process has afforded a fair opportunity to express industry views in the development of state programs. The Section 208 program has fostered a greater level of public participation in achieving the nation's water quality goals than any other Clean Water Act program.

In short, the forest industry urges you to provide the authorization necessary to continue the Section 208 program as well as the authorizations under Section 314 and 106 to continue EPA's integrated nonpoint source control grant program. These programs will demonstrate their effectiveness toward meeting the nation's water quality goals, as the programs reach fruition.

Sincerely,

John F. Hall
Vice President, Resource and Environment

cc: Members, Senate Environment and Public Works Committee

jf

AMERICAN TEXTILE MANUFACTURERS INSTITUTE, INC.
1101 CONNECTICUT AVENUE, N.W., SUITE 300, WASHINGTON, D.C. 20036
TWX: 710-822-9489
TEL: 202/862-0500

March 20, 1980

The Honorable Edmund S. Muskie
Chairman
Subcommittee on Environmental Pollution
Committee on Environment and Public Works
U.S. Senate
Washington, D.C. 20510

Dear Chairman:

We would appreciate having this letter included in the record of hearings on the industrial cost recovery program. ATMI believes the ICR program as currently administered has failed to achieve its stated goals and should be abolished.

ATMI is the central trade association of the U.S. textile mill products industry representing some 80% of the domestic capacity for spinning, weaving, knitting, and finishing textile products of cotton, wool, man-made fibers, and silk.

There are approximately 6,000 textile plants in this country of which 2,000 are wet processers. Of these, approximately 1,500 plants discharge to publicly owned treatment works and are therefore directly impacted by the ICR program. ATMI has consistently supported the position that there should be parity in wastewater treatment costs between direct and indirect dischargers.

After review of the Coopers and Lybrand report, it is ATMI's position that ICR has failed to achieve its legislative purposes. ICR, as currently administered, fails to control excess plant capacity, provide greater water conservation, or increase municipal self sufficiency. In addition, the revenues generated have been off-set by the administrative cost.

While Congress recognized the benefits of joint treatment to promote economics of scale and avoid duplicative treatment systems, ICR instead encourages the construction of individual treatment works. It is also expected that when Federal pretreatment requirements are finally implemented the

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cost of pretreatment will increase and provide a greater incentive for independent treatment. However, many plants will not be able to take advantage of a separate treatment system, because they are limited by the physical location of the plant, or lack the necessary capital. Thus ICR creates inequities for industries which tie-in to a publicly owned system.

ATMI therefore recommends that the current ICR program be abolished. We appreciate this opportunity to present our views and hope you find them helpful.

Sincerely,

W. Ray Shockley
Executive Vice President

WRS/hk

NATIONAL ASSOCIATION OF MANUFACTURERS

JOHN J. CASTELLANI
Vice President & Manager
Resources & Technology Department

April 1, 1980

The Honorable Edmund S. Muskie
Chairman, Subcommittee on
Environmental Pollution
Committee on Environment and
Public Works
United States Senate
4204 Dirksen Building
Washington, DC 20510

Dear Chairman Muskie:

On March 18 and 20, 1980, your subcommittee held hearings on the Clean Water Act, specifically on the Industrial Cost Recovery (ICR) provisions of the Act. The National Association of Manufacturers (NAM) was unable to testify at that time, and respectfully requests that this letter be made a part of the record.

NAM is a voluntary membership organization of more than 12,000 companies engaged in manufacturing in the United States. Together, these companies produce approximately 80 percent of all goods manufactured in this country. NAM is affiliated with an additional 158,000 companies through the National Industrial Council and NAM's Associations Department.

The rationale supporting a presumed national policy favoring regional wastewater treatment plants is based on economies of scale achievable by larger treatment plants, technical advantages possible through favorable interactions of industrial and municipal wastes, administrative ease from the standpoint of water pollution control, and the fact that large regional plants can more readily maintain a full complement of highly trained operating and management personnel and can call on trained industrial personnel for supplemental help. Failure to employ trained personnel has been identified by the General Accounting Office as one of the weaknesses in the national water pollution control program.

Unfortunately, the federal government keeps changing the economics involved in such plants through on-again, off-again cost recovery schemes and yearly changes in funding programs. This leads to reevaluation of projects, with resultant delays and perhaps abandonment, even after they have been designed and engineered. The best way to encourage something is to provide a framework of economic certainty. The best way to discourage something is to create economic uncertainty surrounding it.

Economic uncertainty can discourage cities and industries from getting together to solve water pollution control problems.

The history of this problem dates back before the Federal Water Pollution Control Act of 1972, Public Law 92-500. In implementing a provision of the pre-1972 statute that no construction grants for publicly-owned treatment works (POTWs) be made unless the applicant made provisions "for assuring proper and efficient operation and maintenance of the treatment works," the Secretary of the Interior on March 31, 1970, proposed, and three months later adopted without change, a regulation prescribing principles for assessing costs upon dischargers of industrial wastes. The regulation included the following statement:

> "Such system shall provide for an equitable assessment of costs whereby such assessments upon dischargers of industrial wastes correspond to the costs of the waste treatment, taking into account the volume and strength of the industrial, domestic, commercial wastes, and all other discharges treated, and techniques of treatment required. Such cost recovery systems shall produce revenues, in proportion to the percentage of industrial wastes . . . relative to the total waste load to be treated by the project, for the operation and maintenance of the treatment works, for the amortization of the applicant's indebtedness for the cost of such treatment works, and for such additional costs as may be necessary to assure adequate waste treatment on a continuing basis."

NAM filed a statement on those regulations which, a decade later, remains an accurate summation of the Association's position. At that time, NAM said:

> "These provisions completely ignore the role which industrial companies frequently play as major taxpayers and providers of employment in communities and areas where their plants are located. As major taxpayers, these companies perforce bear a proportionate share of the construction cost and operating and maintenance cost of municipally based wastewater treatment plants. As providers of employment, they make possible other sources of tax revenues for municipalities."

The ICR program was given a statutory foundation by the 1972 Federal Water Pollution Control Act. Problems of administrative feasibility, among other major problems, prompted Congress in the 1977 Clean Water Act to place an 18 month moratorium on further ICR payments, with deferred payments accumulating until the moratorium was lifted. The moratorium was extended in December 1979 (almost six months after the initial one lapsed) until June 1980. During the first 18 month period,

an EPA contractor undertook a study of "the efficiency of, and need for" Industrial Cost Recovery. The study, required by the 1977 statute, offered prima facie evidence that ICR was not meeting the four legislated objectives of promoting:

- water conservation;
- parity in sewage treatment costs between direct and indirect dischargers;
- sufficient POTW capacity; and,
- grantee self-sufficiency in providing financing for future expansion.

It is not necessary to cite chapter and verse of the seven volume EPA "Report to Congress: Industrial Cost Recovery." It is enough to note that the initial draft refort, submitted to EPA by the contractor, Coopers & Lybrand, recommended the elimination of ICR. The agency then submitted a watered down version of the study to Congress in January 1979, acknowledging only that "the Industrial Cost Recovery provisions of P.L.92-500 have not accomplished their legislative purposes." It was the Administration's position at that time that the moratorium should continue for an additional two years so that the problems encountered could be worked out.

NAM interprets this to mean additional study, additional delay, and additional uncertainty for municipal grantees and industrial users of POTWs. We also see this as an attempt to find a way to discount and discredit the Coopers & Lybrand study and reimpose double taxation on industiral indirect dischargers.

On March 12, 1980, and again on March 18, EPA Assistant Administrator Eckardt Beck and Administrator Douglas Costle, respectively, offered the Agency's "preliminary thoughts" on alternatives to the present ICR program. The two EPA officials set forth three "options" for changing the current system for the House Water Resource Subcommittee's and your Environmental Pollution Subcommittee's consideration, as follows:

--increase the flow exemption from 25,000 gallons per day (GPD) to 50,000 GPD of equivalent sanitary waste;

--exempt municipal grantees from ICR program requirements upon a satisfactory showing that ICR revenues are not needed in meeting long-range obligations for treatment system improvement or rehabilitation; and,

--permit grantees to avoid ICR requirements if industrial capacity financing is not sought from the federal government.

In NAM's view, these adjustments are cosmetic at best, and do not change the original intent of the program or the attainability of the program's objectives, which are water conservation, parity in sewage treatment costs, sufficient treatment works capacity, and grantee self-sufficiency in providing financing for future expansion.

Doubling the daily flow exemption to 50,000 GPD, NAM believes, would result in only a very small reduction in the number of indirect dischargers which would be subject to ICR, and EPA's testimony bears this out. "As an additional increment to the existing statutory limitation of 25,000 GPD," EPA acknowledges, "it would exclude an additional 6 percent of industry while reducing receipts by 4 percent." This translates to a very meager decrease in the administrative problems experienced by municipalities charged with collecting ICR payments.

The second option, the lifting of ICR requirements when a grantee can show that projected ICR revenues will be insignificant or unnecessary in meeting long-range obligations, is an extension of the thinking that creates a need to justify an existing program. ICR is not needed to insure that municipalities have these capabilities. EPA seems to be saying that companies should maintain publicly-owned treatment works (POTWs) in good repair if the city chooses not to fund these repairs in its budget. It should be noted that these necessary repairs were intended to be funded in large part by user charges, with which we have no quarrel. Any necessary future improvements or rehabilitation, therefore, could be met by adjusted user charges; they are not justification for continuing ICR.

The last option, permitting grantees to avoid ICR requirements if industrial capacity financing is not sought from the federal government, is justified by EPA in part by the statement that "there is no contractual obligation on the part of an industry to remain with a POTW after construction is complete, even though capacity has been incorporated for industrial use." This is technically correct; grants do not require a contractual obligation. But from a practical operating viewpoint, most municipalities do in fact require such an obligation. Sewer use ordinances and bond issuers will in many cases require a contractual promise from the industrial user that it remain in the POTW for a specified period of time. To do otherwise would invite individual companies to elect to join and withdraw from POTWs at will, resulting in widely fluctuating sewer rates. EPA should take a close look at what the practices of its municipal grantees are before it makes such an assertion.

If ICR were to go back into effect when the current moratorium is lifted this summer, and no changes were made in the system as it existed when the first moratorium was put in place in 1977, for every ICR dollar paid by a company which participates in a POTW, the breakdown would be as follows:

--local administrative costs	10¢
--retained at locality	45¢
--returned to U.S. Treasury	45¢

If ICR were not to go back into effect this summer, but instead repealed, the federal income tax on this added dollar of profit would be approximately 40¢. The nickel's worth of difference would be further narrowed because any administrative costs incurred by EPA under ICR would be eliminated.

Companies which participate in a POTW pay for its support in a number of ways. They pay user charges for operation and maintenance, local debt payment, and for monitoring and special services such as treatment of wastes of extra concentration. These charges and payments are not ICR.

ICR funds that are retained at the grantee level are (1) the 10%, which can and often is, used for the same purposes mentioned above and is small compared to what is needed, and (2) the 45%, which is a fund for future expansion or upgrading so that the federal grant program can eventually be terminated. NAM agrees with the objective of establishing limits to any federal grant program. However, the ICR program is not the proper way to finance future growth, considering today's cost of money. Nor is it the best way to use industry's capital. Further, there is no assurance that the capital put into the local fund will be available when the company needs it for its future expansion.

No other segment of the community is required to put away money for the future growth of a POTW. Industry should only be required to pay for the capacity it uses or has in reserve, as do the other members of the community. Companies that treat their own wastewater, and do not utilize POTWs, pay only for operating treatment plants, and would consider it financially unwise to establish a "set aside," as ICR requires, for future needs.

In conclusion, NAM would like to repeat and endorse the statement of the Agency of Environmental Conservation, State of Vermont, a participant in the 1978 study.

> "An industry is as much a part of the community as a homeowner, shop owner, drug store, school, or church, and therefore should be treated no differently with respect to receiving the benefits of federal construction grants."

NAM strongly supports the repeal of the Industrial Cost Recovery provisions of the Federal Water Pollution Control Act.

The goal of enhanced water quality has not been in the past, nor will it be in the future, served by the perpetuation of a system which places the overwhelming burden of pollution control financing on a single segment of the community.

Thank you for the consideration of our views.

Sincerely,

John J. Castellani
Vice President & Manager
Resources & Technology Department

JCG:mal



NATIONAL ASSOCIATION OF REGIONAL COUNCILS

1700 K St., N.W., Washington, D.C. 20006 • Area Code (202) 457-0710

RICHARD C. HARTMAN, Executive Director

STATEMENT OF

JAMES H. WILSON
Vice Mayor, City of Long Beach, California,
Member, Southern California Association of Governments;
and
President, National Association of Regional Councils

ON BEHALF OF THE

NATIONAL ASSOCIATION OF REGIONAL COUNCILS

BEFORE THE

SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION
SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ON THE

REAUTHORIZATION OF CERTAIN PROVISIONS OF THE
FEDERAL WATER POLLUTION CONTROL ACT

MARCH 18, 1980
WASHINGTON, D.C.

62-136 O - 80 - 19

Mr. Chairman, I am James Wilson, Vice Mayor of Long Beach, California, and President of the National Association of Regional Councils. I appreciate the opportunity to testify before the Subcommittee on the reauthorization of funding for certain sections of the Federal Water Pollution Control Act.

The National Association of Regional Councils represents approximately 350 regional councils throughout the United States. Regional councils are public organizations encompassing a regional community. Through communication, planning, policy making, coordination and technical assistance, councils serve the local governments and citizens in a region by dealing with issues and needs which cross city, county and, in some instances, state boundaries. The basic responsibility of a regional council is to be an umbrella agency which provides comprehensive areawide policy planning, coordinates regional functional planning and operational agencies, and arranges for the implementation of regional policies.

NARC is particularly concerned about the reauthorization of the Section 208 areawide waste treatment management program. It is our understanding that the Carter Administration will propose that the 208 program be reauthorized for a two-year period (through FY'82) at a $34 million funding level, an amount consistent with the President's FY'81 budget request.

NARC would prefer to see an authorization level of $150 million, which is the current authorization level. More importantly, however, we propose that the Section 208 program be reauthorized for one year only so that a more thorough examination of the program can take place at the Subcommittee's earliest opportunity next year.

NARC realizes the time constraints upon both this panel and the entire Congress this year. Time does not permit the close examination of the structure and administration of Section 208 at this time. However, NARC strongly believes that a congressional clarification of this program is needed and that it should be pursued at the earliest opportunity. A simple one-year reauthorization of the program would lead to such an early examination.

Our rationale for this proposal is as follows.

According to the legislative history of the 208 program, Congress intended it to be a broad, continuing planning process which addressed both point and nonpoint sources of water pollution. The program's mandate is an ambitious one and pursuit of its goals have been hampered by uneven federal-management and severe funding difficulties.

As you know, the Environmental Protection Agency has modified the program substantially and limited its comprehensive mandate. Recently, the agency has moved to turn 208 into a narrowly focused non-point source demonstration program.

And while the results of the program to date justify that central attention be given to the non-point source issues, we feel that such single emphasis is not the best approach at this time.

NARC believes that program flexibility is of paramount importance. The program should remain comprehensive and support a continuing planning process which addresses other relevant issues besides non-point sources of pollution. To that end, it should provide for update and review of existing regional strategies for fulfilling the nation's water quality goals.

Flexibility Necessary For Viable Local Role

The 208 program was originally designed to include a strong local decision-making role. If the program is shifted to a narrowly-defined non-point source demonstration program as EPA proposes, then areawide planning and decision-making processes that are absolute necessities in complex areas will be lost. But this is bound to happen under the current approach. The continuing development of data and the examination of alternate strategies for meeting water quality standards cannot exist if the bulk of 208 money is for funding demonstration projects. Moreover, the political and planning linkages necessary for the States and EPA to attain the national water quality objectives will disappear under a narrowly focused program. In short, if EPA defines national priority problems and funds only demonstration projects dealing with those problems, the local analytical process and the political support that it provides for solving sensitive environmental issues will be seriously impaired. In our opinion, the majority

of designated 208 agencies with approved and certified plans would have to abandon the program and terminate their staffs under this approach.

Also of great concern is that EPA has noted its intention not to fund plan update and review. NARC believes that 208 planning agencies with adopted, state certified and EPA approved plans should receive continuing funding to assure updating and implementation of their 208 plans. For EPA to withdraw support for these activities at this time opens local governments and regional planning bodies to possible citizen suits under Section 505 of the Act. Plans which do not respond to changing conditions can hardly be used as guidance for construction funding under 201 — a linkage specifically called for in the Act. Therefore, the validity of older plans used for this purpose could be challenged.

It is clear that the manner in which EPA is administering the 208 program is inconsistent with the original intent of Congress when it designed 208. A simple reauthorization of 208 would be treated as a congressional reaffirmation of original intent. We believe this would put many local governments in an untenable position. As previously noted, 201 facility grants (and 402 discharge permits), because of their linkage to 208, would be subject to legal challenge because of the failure to maintain 208 plans as currently required.

In light of these issues, a congressional re-examination and revision of 208 is certainly in order.

Components Of A Revised 208 Program

In NARC's opinion, a revised 208 program should focus on responding to issues of cost effectiveness and alternatives analysis of realistic options for meeting water quality problems. This is the only way that we can identify and deal with the trade-off issues concerning the relative advantages of developing costly advanced treatment facilities versus reducing pollutant loadings through non-point source measures. It should include a priority for dealing with non-point source and urban run-off problems.

Above all, it should remain flexible. Designated agencies should be permitted to respond to their particular regional problems where those problems deviate from those receiving national emphasis.

The successor program should permit the fulfillment of national objectives on energy and growth and maintain other environmental standards.

A partnership arrangement between state, regional and local participants in the planning process should be established with the concurrence of all parties required on all major policy and planning decisions. If an impasse results, the federal government could withhold support and Section 402 permit renewals until agreement is reached.

Also, the analytical need of alternative analysis and provision of an adequate information base to support regulatory decisions should be supported with federal funds.

These issues need to be explored by the Congress; if Congress does not take the initiative on this and provide guidance to EPA, the 208 program will be in jeopardy. In fact, the repercussions of erratic federal guidance are already being felt by many local agencies. Some have simply become so frustrated that they have withdrawn from the program.

Therefore, it is of prime importance that Congress examine these issues at its earliest opportunity. A one-year reauthorization of the program would necessitate a reopening of the issues early next year.

Reauthorization In 1981 Not Premature

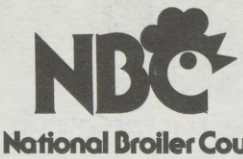
Some might argue that dealing with the 208 planning process next year would be premature. The reason for such an argument is obvious; most of the provisions in the Clean Water Act will be considered for renewal and adjustments in 1982. Thus, it could be argued, a planning process which would assist in federal, state, areawide and local decisions on water quality issues should serve and reflect the changes in the Act that are bound to come about in 1982.

We do not agree with this point of view, however. A clear determination of the kind of planning process that would aid and assist in making wide decisions in utilizing federal resources to meet national water quality goals can be defined without knowing the particular substantive changes in the present federal legislation. In fact, the definition of the planning process and how it might assist in developing a better understanding of the alternatives and their cost effective

implications may well assist in developing the changes to substantive legislation envisioned in 1982.

NARC urges this panel to support a simple one-year reauthorization at the $150 million level so that these crucial issues so important to our nation's water quality goals can be addressed as soon as possible.

Thank you.



March 25, 1980

Senator Edmund S. Muskie
Chairman
Subcommittee on Environmental Pollution
Committee on Environment and Public Works
Room 4204 DSOB
United States Senate
Washington, D.C. 20510

Attention: Sally W. Walker

Dear Mr. Chairman:

The National Broiler Council wishes to submit the attached comments for the hearing record on industrial cost recovery.

Sincerely,

George B. Watts
President

The Madison Building-Suite 614/1155 Fifteenth Street, N.W./Washington, D. C. 20005/202 296-2622



National Broiler Council

National Broiler Council
1155 - 15th Street, N.W.
Suite 614
Washington, D.C. 20005
(202) 296-2622

Statement of the National Broiler Council for the Record
Industrial Cost Recovery Hearings
Held March 18, 20, and 31, 1980

Subcommittee on Environmental Pollution
Senate Committee on Environment and Public Works

March 25, 1980

The National Broiler Council, which represents the producer/processors of over 75% of the young meat chickens (broilers) marketed in the United States, is a not-for-profit trade association. A number of our poultry slaughtering/processing plants are discharging their wastewater into publicly-owned treatment works (POTW) that are involved in industrial cost recovery (ICR).

We appreciate the fact that the Subcommittee is holding hearings on this issue. Our industry believes that the ICR provisions of the Clean Water Act have not achieved the purpose intended by Congress and further, that ICR places an unfair burden on industrial plants using POTWs involved in ICR. The theory behind partially repaying a federal grant through the ICR provision as originally envisioned may have had merit; experience, however, has proved this theory to be otherwise. While we cannot support the ICR program, the poultry industry does support equitable user charges to finance the operation and maintenance costs and for local debt servicing as long as all POTW users are paying their proportionate share.

On March 18, the EPA Administrator, Mr. Douglas M. Costle, reported to your Subcommittee that EPA was now not satisfied with the approach they had taken earlier in conducting EPA's January 1979 Report to Congress on Industrial Cost Recovery. The approach taken by EPA's own contractor on this study was reviewed by the Agency, but now Mr. Costle states that EPA is not satisfied and an in-house review of the program objectives and potential effectiveness is underway. We disagree with the Administrator's statement that their own contractor used the wrong approach on the ICR study. We believe the original approach taken by EPA's contractor is valid and sound.

In his January 25, 1979, letter to Congress, Mr. Costle stated "This study was conducted with the fullest public participation achieved to date by EPA in a major study. A broad spectrum of industrial, environmental, civic, and governmental organizations were actively and voluntarily involved in the decision-making process through the project."

We are deeply concerned that the EPA now intends to refute its previous report based on considerable public participation and replace it with a report based only on input from EPA and OMB. We encourage this Subcommittee, before accepting this new report from EPA, to require the Agency to circulate it widely for public comment. We do not believe the January 1979 Report to Congress should be refuted by EPA unless its new report is reviewed and commented upon by all sectors of the public.

Also, in his March 18 statement, Mr. Costle provided "some preliminary thoughts" resulting from the Agency's on-going evaluation. None of the "thoughts" provide any relief to poultry processors. One of the proposals would make the participation of industrial users in POTWs even more difficult than present. This is the Agency's proposal to eliminate that portion of a Federal grant used for industrial capacity.

We do not wish to see any portion of construction grants stopped. If, as EPA has indicated, federal grants for the construction of industrial capacity in POTWs is eliminated, it should not be stopped just for the industrial share of the POTW but for the community share as well. To re-emphasize the point, the poultry industry does not wish to seek an end to federal construction grants to POTWs; it only seeks to remove the ICR provision which has proved inequitable.

The following is an example of where ICR creates inequities in the poultry industry. In one town where four poultry processing plants are located, the POTW was upgraded via a construction grant with the ICR program. This upgrading was done by the municipality after consultation with the poultry plants involved and assuring them that discharging into the POTW would be less costly and more advantageous than pre-treating by those plants. Even before the upgrading was completed, however, the POTW indicated to the poultry processing plants that it could not meet its permit requirements. In effect, the POTW said that the poultry processing plants would now have to build their own pre-treatment facilities - an option that the poultry processing plants wished they had opted for in the first place. These four plants now face both ICR charges as a result of the upgrading of the POTW, as well as investment and operating costs for building and operating their own pre-treatment facilities. Space limitations prevent these processing plants from performing their own secondary treatment of wastewaters.

Congress originally believed that if industrial users did not pay a proportionate share of POTW construction costs (that is, ICR), the industrial users would, in effect, be receiving a federal subsidy and the wastewater treatment costs would be lower than those of their competitors who had their own wastewater treatment facitlities. As a result of the relatively higher costs for industrial users to participate in POTWs, there could be a shift away from our industry participating in POTWs. For reasons of administrative requirements, capital costs, investment tax credits, and age of the POTW, it has generally been more costly for an industrial user to participate in a POTW involved in the ICR program than to self-treat.

Requiring industry to pay ICR charges essentially amounts to an additional or "double" taxation on industry. Both industry and citizens pay federal taxes and a part of these taxes are used as construction grants in the ICR program to fund POTW. Although both the community and industry participate in the POTW, only industry is required to pay the ICR charges. Congress' action in 1972 to incorporate the ICR provision into the Federal Water Pollution Control Act of 1972 may have been well intended, but the experience with ICR has proved otherwise. This provision is proving to be inequitable and appropriate corrective action to repeal the ICR provision should be taken.

* * *

National League of Cities

1620 Eye Street, N.W.
Washington, D. C.
20006
(202) 293-7310
Cable: NLCITIES

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STATEMENT SUBMITTED

BY THE

NATIONAL LEAGUE OF CITIES

TO

SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION

ON

REAUTHORIZATION OF CERTAIN SECTIONS OF THE

CLEAN WATER ACT

MARCH 25, 1980

PAST PRESIDENTS: Tom Bradley, Mayor, Los Angeles, California • **Henry W. Maier,** Mayor, Milwaukee, Wisconsin • **Tom Moody,** Mayor, Columbus, Ohio • **DIRECTORS: R. Michael Amyx,** Executive Director, Virginia Municipal League • **Patrick J. Baca,** Council President, Albuquerque, New Mexico • **Stephen C. Bauer,** Executive Director, League of Oregon Cities • **Kenneth P. Bowen,** Mayor, Lafayette, Louisiana • **Kenneth G. Buechle,** Executive Director, Colorado Municipal League • **Henry G. Cisneros,** Council Member, San Antonio, Texas • **Charles G. Clack,** Mayor, Garland, Texas • **Thomas J. Clark,** Mayor, Long Beach, California • **Willie Dell,** Councilwoman, Richmond, Virginia • **Arrington Dixon,** Council Chairman, Washington, D.C. • **Patrick A. Dunne,** Executive Director, Mississippi Municipal Association • **Woody Etherly Jr.,** Council Member, Flint, Michigan • **Carl T. Langford,** Mayor, Orlando, Florida • **Ronald P. Lurie,** Commissioner, Las Vegas, Nevada • **Jim McConn,** Mayor, Houston, Texas • **Ruth W. Messinger,** Council Member, New York, New York • **Ernest N. Morial,** Mayor, New Orleans, Louisiana • **John M. Patriarche,** Director, Michigan Municipal League • **Kenneth Payne,** Executive Director, Rhode Island League of Cities and Towns • **Jayne H. Plank,** Mayor, Kensington, Maryland • **Joseph P. Riley Jr.,** Mayor, Charleston, South Carolina • **Patricia Roach,** Commissioner, Dayton, Ohio • **Charles Royer,** Mayor, Seattle, Washington • **James T. Ryan,** Mayor, Arlington Heights, Illinois • **Victor F. Snyder,** Council Member, Kansas City, Missouri • **Fred Turnage,** Mayor, Rocky Mount, North Carolina • **Dorothy Van Horn,** Council Member, Jefferson, Iowa • **John F. Watkins,** Executive Director, Alabama League of Municipalities • **Rene Wetreich,** Mayor, Hayward, California • **Ted Wilson,** Mayor, Salt Lake City, Utah

The National League of Cities, representing 15,000 municipalities, appreciates the opportunity to state for the record our views on reauthorization of sections of the Clean Water Act (CWA) that expire this year.

In brief, NLC supports reauthorization of these sections of the Clean Water Act without change, particularly Sections 104, 106, 208, and 314. We believe that, given the current budgetary realities, the funding levels proposed by the Administration are sufficient. NLC also supports a two-year reauthorization for these sections.

On the issue of industrial cost recovery, NLC has supported these requirements in the Act in the past. We supported the cost recovery program as a method to provide revenue to municipalities in financial difficulty and to help finance system improvements and rehabilitation, but we have waited in vain for the Environmental Protection Agency to develop cost recovery guidelines that are equitable and workable. We leave it to the Subcommittee to judge from EPA's record and testimony whether a cost recovery program is a practical possibility.

We appreciate that the Committees in both Houses do not have sufficient time or opportunity this year for a close examination of the programs that are expiring. We believe, however, that next year will be a propitious time for a thorough review of the entire Act. In 1982, Congress must reauthorize the wastewater construction grants program; by then most area-wide 208 plans will be approved and certified and there will be some record of implementation experience to examine. For these reasons, NLC supports a simple two-year reauthorization of the CWA sections expiring this year, so that Congress can conduct a full and integrated review of all CWA programs.

In anticipation of this review, we would simply point out to the Subcommittee some of the important issues that will be ripe for your consideration in 1981 and 1982. We believe that, among other issues, the Subcommittee should carefully examine:

- Funding mechanism for wastewater construction grants. It seems evident that the state allocation formula has not been a satisfactory mechanism in its present form to distribute construction funds. Among other problems, it has encouraged last minute obligations of low priority projects, and delays in many states where the allocation is not sufficient for projects ready for obligation. NLC has supported the commendable efforts of this subcommittee to enact H.R. 4113 to alleviate some of the problems of the existing funding mechanism. If H.R.4113 is not enacted by Congress this year, we believe the method of distributing construction grant funds should be overhauled in the 1982 reauthorization. The Subcommittee should consider options such as the two-tier mechanism of H.R.4113; state allocation with a borrowing pool; an entirely or partially discretionary program; a longer time period for obligating funds; and other mechanisms to improve the flow and obligation of 201 funds.
- Categories of projects eligible for funding. In general, Congress must determine the degree of flexibility it will allow in funding projects to abate water pollution. To a large extent, this flexibility is affected by the categories of projects eligible for funding under the 201 program. We have seen that the existing categories have not always been the most cost effective method of addressing a particular water

pollution problem, nor the most energy efficient. Nor has the existing program been flexible enough to meet some serious pollution problems. Congressional direction is needed in this area. For example, control of combined sewer overflows and urban runoff is not currently being adequately addressed, yet this is an increasingly significant source of waterway pollution, recognized in many areawide 208 plans. Nonstructural, low-cost methods of controlling overflows and runoff have been largely ignored. Likewise, the validity of funding multi-purpose projects under the 201 program has not been resolved. The national interest in energy production might be served by funding multi-purpose plants for cogeneration of energy; local water supply shortages might be alleviated by recycling of treated water.

- Priority lists of projects. While NLC supports the current CWA provision allowing states to determine priorities for funding eligible projects, we have two concerns which Congress should consider: first, states frequently have not consulted adequately with local governments in establishing priority projects lists,and state-set priorities often are inconsistent with approved areawide water quality plans; and second, there may be a national interest, which should be reflected in the Act, in mandating a uniform priority in all states for projects which must meet schedules established under the enforceable requirements of the Act, or for projects which will meet comprehensive water quality needs for major population concentrations.

- Integration of Sections 201 and 208. We believe the areawide 208 planning process has been a success in many respects. But the program will soon be at a crossroads as the initial plans are completed and approved. EPA now seems to be steering the 208 agencies toward a demonstration program to control nonpoint source pollution. In our view, it is Congress' role to decide the future of the 208 program. Congress could continue the 208 role as a planning tool in order to update plans, complete the nonpoint source data base, oversee implementation, and maintain local involvement in the water program; in this case, the 201 program must be expanded to include nonpoint source control, as we suggested above. Or Congress could choose to make 208 an implementation program, perhaps focusing on nonpoint source control and innovative control methods and technologies; in this case, the 208 program would be complementary to the 201 point source program. Whatever course Congress chooses should provide for a more comprehensive and integrated approach to controlling point and nonpoint sources than is currently provided by the Clean Water Act or EPA's implementation of that law.
- Additional issues. Other areas of the water pollution abatement program that need attention from Congress include inadequate disposal of sewage sludge and state-EPA agreements to centralize water quality management. Local governments have serious concerns about the state-EPA agreements that cut across all environmental programs. The gradual centralization at the state level through these administrative agreements circumvents carefully constructed statutory processes for involving local officials and threatens to undercut local political

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support for a number of federal environmental programs.

By providing a one-year reauthorization of expiring CWA sections, we believe the Subcommittee next year can conduct a thorough and integrated review of the issues above. NLC has been a decade-long supporter of the goals of the Clean Water Act and of the federal-state-local partnership to achieve those goals. We hope to provide the Subcommittee next year with the considered opinion of the nation's municipal officials on the issues we have raised.

STATEMENT OF

NATIONAL MEAT ASSOCIATION

AND

DUBUQUE PACKING COMPANY

AND

SPENCER FOODS, INC.

BEFORE THE

SUB-COMMITTEE ON ENVIRONMENTAL POLLUTION,

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS.

THE HONORABLE EDMUND S. MUSKIE, CHAIRMAN.

Richard C. Bond
Dubuque Packing Company
701 East 16th Street
Dubuque, Iowa 52001

319-588-6298

My name is Richard C. Bond. I am Vice President and Corporate Engineer of Dubuque Packing Company, Dubuque, Iowa. I represent the National Meat Association, Spencer Foods Inc. and Dubuque Packing Company appearing in opposition to implementation of Industrial Cost Recovery (ICR) as prescribed in the Clean Water Act (CFR Volume 43, No. 8 188 dated September 27, 1978).

The National Meat Association, formerly The National Independent Meat Packers Association, represents 300 meat packing, processing and sausage manufacturing operations across the nation. The membership accounts for more than 70 per cent of the beef industry and a substantial portion of the pork and processed meats industry. The Dubuque Packing Company is a full line meat packer with ten plants located from Wisconsin to California with headquarters in Dubuque, Iowa. Spencer Foods Inc. is

We believe it to be essential to the meat packing industry that the principal of Industrial Cost Recovery be permanently removed from consideration.

The meat packing business is one of low profit margins, generally one percent or less of gross sales. If ICR payments are instituted, the costs for our plants will increase by many millions of dollars annually. In our low margin industry, these millions of dollars will have to be passed through to the consumers of meat products. This will result in additional numbers of U. S. citizens who will be unable to afford meat. A pass-through of these additional costs would obviously be inflationary. Foreign importers

of food products would almost certainly receive a competitive advantage if ICR is adopted. The cost to U. S. consumers is obvious. The principle of encouraging foreign competition and foreign trade in this country adversely affects the meat industry in general, and adversely affects the balance of trade deficit.

Our industry firmly believes that we should pick up our "fair share" of the cost of treatment of our wastes as treated in a publically-owned treatment works. While we believe in our "fair share", we do not believe that we should be required to pay more than that amount, or subscribe to the principle that our payments be used to, in effect, susidize other industry or commercial entities.

Industrial Cost Recovery is discriminatory. We believe that it is the only federal grant program for which federal grant monies are to be repaid by users of the facilities built by the grants, and then only a certain segment of the users is singled out for repayment. ICR only applies to those users contributing more than 25,000 gallons per day. Industrial Cost Recovery is not part of the "fair share" costs, it is a cost added to "fair share".

Fifty percent of Industrial Cost Recovery funds goes to the city to be used for various purposes, upgrading the treatment plant, or in fact, to be used by their general fund. This use of ICR funds is, in effect, simply another local tax authorized by the federal government and applied only to certain large industrial users of the publically-owned treatment works.

Several comments are offered, hopefully in a constructive manner, relating to costs in general of publically-owned treatment works, POTW's,

both capital and operating. It is our feeling that the costs of such projects are unnecessarily high and that the scope of many projects is unnecessarily exaggerated. The scope of the project is all too often determined by a consultant whose fee is proportionate to the size of the project which he is able to sell to the grantor.

The user who pays for the project, whether there is ICR or not, has no say in the design parameters of the facility, or to the operating techniques of the plant. At one time it was estimated that the cost of required publically-owned treatment works under the grant program would be measured in billions of dollars. This cost has now grown by a factor of 4 or 5. One of the principal reasons for this is the overdesign of many facilities. This is pointed out in regard to total costs to industry, but it should be noted that ICR payments are a major portion of the total cost to users of such overdesigned facilities. ICR would exaggerate and multiply still further these excessive user costs. Let me give an example.

The Environmental Protection Agency encourages and has stated its position that by 1985 land application of treated effluent is the preferable means of disposal, and if this method is not adopted, reasons why it is not practical must be given. In practice, the land application of treated effluent is discouraged by state and local agencies to the extent that the implementation of such systems by either public or private parties is virtually impossible today.

We have a plant (let's call it Plant A) which is successfully land-disposing of 300,000 gallons per day of plant effluent through overland run-

off irrigation on its own plant grounds, the result is a zero discharge system. The system was installed at a cost of less than $50,000. It should be noted that a 30 acre lagoon system already existed; the cost of installation or replacement of such a lagoon would probably be near $500,000 today.

We have another plant (let's designate it as Plant B). It is a small canning plant with only 150,000 gallons per day of plant discharge, most of which is cooling water. Local governmental agencies have made it impossible to design a system for disposal by land application thereby requiring that the plant discharge go into a publically-owned treatment works, (POTW) which will be subject to the provisions of the grant requirements of the Clean Water Act. The projected cost of this small municipal plant has grown from $2 million to $6.4 million in a three month period without increase in design criteria. Plant B contributes 25 percent of the treatable material to this POTW, and it will therefore be required over a 30 year period to pay back 25 percent of $6.4 million, plus financing and other related costs to the project. If land application were encouraged and installed, the cost to this Plant B would have been less than $300,000. It should be further noted that based on the most recent cost proposal presented by the consultants, the payments made by Plant B will exceed the appraised value of the entire manufacturing plant facility after two years of operation and payment of user and proposed ICR charges.

It is obvious that while both Plant A and Plant B are owned by the same party, should they have been owned by different parties, an extreme economic disadvantage would have existed for Plant B.

We encourage this committee to do all that they can to eliminate discriminatory costs and charges to our companies, association members, and all members of the meat and food industry. We point out that the actions taken as a result of this hearing will have far-reaching effects on both our companies, our association, the many farmers and ranchers from whom we buy livestock, and the many millions of customers which we serve.

STATEMENT OF DONALD O. DENCKER, OSCAR MAYER & CO., FOR
THE AMERICAN MEAT INSTITUTE ON
INDUSTRIAL COST RECOVERY
SUBMITTED TO THE SENATE ENVIRONMENT
AND
PUBLIC WORKS SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION
March 28, 1980

As Chairman of the Environmental Committee of the American Meat Institute, a national trade association for the U.S. meat packing industry, offer these comments on the Industrial Cost Recovery (ICR) provisions of the Clean Water Act.

The American Meat Institute has long supported repeal of the ICR provisions of the Clean Water Act. Our members have found that ICR is nothing more than double taxation which places an onerous burden on meat slaughtering and manufacturing establishments attempting to continue their operations in American cities.

We appreciate the two ICR moratoriums which Congress has granted to give the U.S. Environmental Protection Agency time to evaluate the effectiveness of ICR. The first moratorium was granted to allow time for an EPA recommendation. During this moratorium, a clear factual case was made to abolish ICR. In spite of the facts, and consensus, EPA could not bring itself to recommend abolition of ICR.

Faced with EPA's refusal to acknowledge the universal conclusion that the best course of action was abolition, Congress provided a second moratorium so that EPA could formally submit its recommendations to Congress when the new session began in January 1980.

Again, we find that EPA did not meet a congressional mandate, but came forth this month with certain options which it has under

analysis. This is another example of dilatory tactics that are damaging the economic viability of this Nation.

The March 18, 1980 statement of Mr. Eckardt Beck, EPA Assistant Administrator for Water and Waste Management, presented some preliminary thoughts on the options under study by the EPA. Our comments are directed at these preliminary thoughts resulting from the forever on-going EPA evaluation.

1. Mr. Beck states that their review makes it appear that industrial users of POTWs do enjoy some degree of subsidy. We wonder how their review makes this appearance come about? Our members find just the opposite. We know that there is no such thing as absolute equality, but, on balance, meat industry plants discharging to POTW's are at a financial disadvantage to those facilities located outside areas served by POTW's. This is because those served by POTW's do not have an on-land disposal option.
2. We share Mr. Beck's concern about the ability of municipalities to make necessary operational improvements and facility replacements. However, fairness alone demands that these requirements be borne by all users of POTW's, not just the industrial cost recovery segment. His recommendation to try to cure an illness by the wrong medicine would compound the problem and delay the solution.
3. Mr. Beck suggests that one potential option would be to increase the flow exemption from 25,000 gallons per day to 50,000 gallons per day equivalent sanitary waste as a means of lessening the administrative burden. We strenously

object to another descriminatory adjustment to the ICR provisions. The EPA Administrator, Mr. Douglas Costle, has stated that this approach is inequitable, so why make it more so? We attach for reference a copy of Mr. Costle's letter of January 25, 1979 to Vice President Mondale on ICR.

4. Mr. Beck suggests that the ICR program might be modified so that grantees might be exempt from the ICR program provided the grantees can demonstrate that ICR revenues are not needed in meeting long-range obligations for treatment system improvement or rehabilitation. Again, we objected to this discriminatory approach. We agree with the stated long-range objective, but believe that it is obvious that the ICR provisions can not be in anyway modified to achieve the stated objective. This should be the responsibility of all users of the POTW system.

5. Mr. Beck suggested another option that grantees could avoid ICR requirements if industrial capacity is not financed in anyway by the Federal Government. This to us is totally unfair! What Mr. Beck is saying is that industry should pay their taxes, but they had better not seek to share in the use to which this portion of their taxes is dedicated.

6. Mr. Beck presents still another idea by suggesting consideration of an ICR modification whereby industry would be required to enter into binding contracts for

specified treatment capacity under the ICR program with interest charged to industry geared to prevailing rates on Federal securities. Again, this is another discriminatory proposal which has little merit considering today's high interest rates. Fairness dictates that any approach of this nature must be applicable to all users, industrial, residential, commercial and governmental alike.

We understand the current concern in Congress towards adoption of any measure which would reduce Federal Government income. This is not what would happen with the abolition of ICR in that increased tax yield to the Federal Government would at least equal income loss, while the net drain on the economy due to the heavy administrative cost burden would disappear.

Mr. Costle's letter of January 29, 1979 estimates that ICR payment recovered by the U.S. Treasury would be $30 million per year. This total is minute in the overall U.S. Government treasury, but would be individually overwhelming for many existing meat industry plants located in municipalities. The picture is particularly bleak for retention of ICR-impacted older plants in older urban locations.

We appreciate this opportunity to comment during these Industrial Cost Recovery hearing proceedings. We believe that the time has arrived to take positive action to abolish ICR. This can and should be accomplished by the enactment of legislation such as H.R. 6667, which was introduced in the House of Representatives on February 28, 1980.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 25 1979

THE ADMINISTRATOR

Honorable Walter F. Mondale
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

The Environmental Protection Agency (EPA) is pleased to submit to the Congress its report on the study of the efficiency of, and the need for, Industrial Cost Recovery (ICR). This study and its report was directed by the Congress in section 75 of the Clean Water Act of 1977 (Public Law 95-217). This study was conducted with the fullest public participation achieved to date by EPA in any major study. A broad spectrum of industrial, environmental, civic, and governmental organizations were actively and voluntarily involved in the decision-making process throughout the project.

Based on the data available, the study concludes that the ICR provisions of section 204(b)(1) of the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500) are not effective in accomplishing their legislative purposes. It should be realized that the ICR Study took place early in the actual implementation of the ICR program, and that there is only a limited quantity of actual data available. However, the following trends were discernible:

- Changes in the tax laws have largely mooted the question of the Construction Grants Program being a subsidy to industries utilizing publicly-owned treatment works.

- ICR has had only a minor impact upon water conservation, when compared to the effects of proportionate user charges. In most cases, ICR has had an insignificant impact on industrial decision-making.

- ICR has been extremely difficult to manage for both grantees and EPA, and will continue to be a resource intensive activity, if ICR is continued. ICR tends to be more of a managerial burden in small communities than in large communities.

- The exemption for industries with flows of 25,000 gallons or less per day makes the program somewhat more manageable for grantees, but is inequitable because many industries are exempted from ICR based only on size.

- With the exception of small communities with very large industrial flows, ICR produces little discretionary revenue for most local governments, particularly when revenues are compared with local costs of administering ICR.

- ICR is a 30-year program after the construction is completed. During this period, the industrial payment recovered to the U.S. Treasury is estimated to be $30 million per year.

- The user charge system is effective in accomplishing the bulk of the aims of ICR, especially on inducing waste reduction or water conservation.

Specific legislation is being considered for the legislative package to Congress. I trust that the report proves fully satisfactory to you and the Committee. If you have additional questions, please contact me.

Sincerely yours,

Douglas M. Costle

BEFORE THE

SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

OF THE

UNITED STATES SENATE

Written Statement of the Tanners' Council of America, Inc. on The Industrial Cost Recovery Provisions of the Clean Water Act

Richard E. Schwartz
Thomas L. Anderson
Counsel to the Tanners' Council of America, Inc.
1055 Thomas Jefferson St., N.W.
Washington, D.C. 20007
(202) 337-6000

April 4, 1980

Congress' decision whether to continue the industrial cost recovery (ICR) provisions of the Clean Water Act must take into account the fact that the future of joint municipal/ industrial wastewater treatment is today in great jeopardy. The Environmental Protection Agency's (EPA's) ICR report concluded that "for some medium and large industries . . . it is less expensive in the long run to self-treat than to pay user charges and the local debt service." More and more companies are becoming aware of this fact and deciding to self-treat wherever possible.

The growing disparity between the costs of self-treatment and POTW treatment can be documented in the leather tanning and finishing industry. Several companies can compare the cost of self-treatment and POTW treatment by calculating the total treatment costs for their plants that discharge into POTWs with the costs for their plants which discharge into surface waters. In a number of cases, costs for the indirect discharger plant far exceed the costs of the direct discharge plant. The Armira Corporation projected 1981 total treatment costs for two of its plants. One discharges into a POTW, while the second discharges into surface water. The combined user and ICR costs were more than double the total treatment costs of the direct discharger. Faced with these kinds of cost disparities, industries will choose to self-treat whenever possible.

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The high costs of joining a POTW system penalizes older urban areas by forcing new industries to locate in suburban or rural areas. In his October 1970 testimony before the EPA, Mayor Angelo J. Errichetti, Mayor of the city of Camden, New Jersey, urged the repeal of ICR primarily because of the adverse economic impact that ICR and user charges were having on urban areas such as Camden. The nation's inner cities and the poor pay the price of the ICR penalty.

ICR contributes to the prohibitive costs of joint treatment and stands as an obstacle to attainment of one of the primary goals of the 1972 Federal Water Pollution Control Act. If Congress continues to adhere to its goal of encouraging joint municipal/industrial treatment, it must take steps now to make joint treatment attractive to industry. The repeal of ICR would not only reduce the costs of joint treatment, but would also be a signal to the business community that Congress will continue to support joint treatment in publicly-owned treatment works.

In 1972, Congress was concerned that without ICR, the federal construction grant program would provide a federal "subsidy" to industries that discharge into publicly-owned treatment works. However, changes in the tax laws since 1972 have eliminated the "subsidy" problem. The accelerated depreciation, investment tax credit and industrial development bond provisions for the Internal Revenue Code provide significant tax advantages to plants that self-treat. Elimination of ICR is needed to provide some equity for indirect dischargers to balance the advantages Congress has given to direct dischargers in the Internal Revenue Code.

First, EPA's ICR study concluded that if federal construction grants totaled $45 billion, local jurisdictions would receive between $0.4 and $0.8 billion through ICR. This is considerably less than the $4.5 billion to $7.0 billion that had been estimated in 1972. Administrative costs over the thirty-year life of the ICR program will continue to rise and in many instances exceed the revenue derived from ICR. A study of the Metropolitan Denver Sewage Disposal District concluded that in the first ten-years of ICR the costs of administering the program would be about 80% of the revenues derived. (A copy of this study is attached.) ICR will be at most a minor source of revenue for local jurisdictions.

Nor will the federal treasury profit from ICR. One-half of all ICR payments will be returned to the federal treasury. In most cases, competition will force companies to take ICR payments out of corporate profits. If these monies were not expended as an ICR payment, they would be subject to the 48% corporate income tax. Thus, the federal government would recover almost as much through the income tax system if ICR were repealed, as it would through ICR if it is retained.

On March 18, 1980, Eckardt C. Beck, Assistant Administrator for Water and Waste Management at EPA, presented EPA's views on ICR in testimony before this Subcommittee. Incredibly, more than two years after Congress requested that EPA undertake a full study of ICR, the agency could only report its "preliminary thoughts" on the subject. The agency's testimony ignores the facts that were revealed in its published ICR study and attempts to justify its suggestions by misstating facts and confusing issues.

EPA's testimony suggests that ICR provides "some degree of subsidy" to indirect dischargers. The facts belie this assertion.

EPA claims that indirect dischargers: (1) are "relieved of the financial burden of raising capital for development of plants and facilities not directly related to increased production", (2) do not bear the full interest costs for construction capital and (3) are spared the management, administrative, and legal costs associated with operation and maintenance of a treatment system and from the requirements of monitoring and reporting.

In fact, industry incurs substantial capital, interest, operation and maintenance, monitoring, reporting, and administrative costs as a participant in the POTW system. As the data cited above in regard to the Milwaukee POTW system clearly demonstrates, at times industry incurs substantial capital and interest expenses in association with the POTW system. Operation and maintenance costs are paid in the user fee each company pays annually to the POTW. Many indirect sources are required to monitor wastes and report the findings to the POTW.

In addition, EPA has proposed to require stringent pretreatment by leather tanning and finishing plants that discharge into POTWs. The Tanners' Council has calculated that between 1/4 and 1/2 of all the existing leather tanning and finishing plants could not afford to meet the proposed pretreatment standards and will be forced to close if EPA promulgates the proposed pretreatment standards.

Thus, EPA's assertion that indirect sources are relieved of many of the costs experienced by direct sources is simply wrong.

Fair examination of the facts reveals that there is no federal subsidy to indirect dischargers. To the contrary, because of the tax advantage to only direct dischargers and the heavy costs incurred by indirect sources, the federal government has made POTW treatment more expensive for indirect sources than self-treatment in many cases.

EPA's testimony also defends continuation of ICR on the basis that ICR payments will provide local jurisdictions with a pool of earmarked funds. EPA envisions an ICR program which requires each POTW to establish an earmarked fund to finance the construction of new treatment facilities. The Tanners' Council is opposed to the concept of establishing this type of sinking fund for a number of reasons.

First, EPA's ICR report concluded that ICR would not generate sufficient funds in most situations to reconstruct treatment works after 30 years. Therefore, the ICR will not replace local bonding authority for federal construction grants and loans as a primary mechanism for financing future construction.

Second, while it would not replace other sources of funding for new sources, the existence of a sinking fund will inhibit the introduction of new and innovative technologies. Instead of replacing old and worn out systems with a newer innovative treatment system, local jurisdictions may use EPA's sinking fund to continually rehabilitate the

old system. The Tanners' Council favors using local bonding authority to finance POTW construction in part because it will force communities to evaluate the type of treatment to be installed. This ability to switch treatment systems will encourage the development of new and innovative technology.

Third, EPA's sinking fund approach does not guarantee that funds will be available in communities where they are needed. EPA's suggestion assumes that new growth and development will occur in locations where POTWs now exist. Any system designed merely to generate capital for future developments must include a mechanism for ensuring that funds will be available to communities whose needs are greatest. ICR does not include such a mechanism.

Fourth, businesses are forced by competition to identify the most cost-effective means for financing capital construction. There is probably not a single major business enterprise in the country that sets money aside in years 1 through 9 to finance a capital project which may or may not be built in year 10. Nonetheless, EPA is suggesting that Congress retain just this kind of costly, ineffective financing scheme.

Industry has found that the cost-effective way to finance capital projects is to wait until the need for a specific project is established and, only then, enter the money market to raise capital to finance the construction. We believe that Congress should follow this example. The most cost-effective means for financing capital projects in the public sector is through reliance on local bonding authority.

Future POTW construction should rely on local bonding authority rather than EPA's misguided notion of an ICR-based sinking fund.

Fifth, EPA's sinking fund proposal will tie up in an essentially nonproductive use funds that otherwise would be used to expand production facilities or increase productivity. This nation's failure to expand and modernize its production facilities and thereby increase productivity lies at the root of the inflation problem we face today. Continuation of ICR, as EPA has suggested, will only further aggravate these problems and feed the fires of inflation.

Sixth, it is both logical and fair to require industries that use a POTW to pay a portion of the capital costs of the facility. However, EPA's sinking fund proposal would require industry to pay the capital costs of a POTW to be built in the future which they may or may not use. Such a system would also force existing industries to subsidize a new industry entering a POTW built with ICR generated capital funds. Reliance on debt financing of POTW construction, as TCA advocates, with beneficiaries paying debt service over the life of the works, relates user benefits to system costs very well.

From TCA's perspective EPA's sinking fund proposal is totally inequitable because the Agency has also proposed pretreatment standards applicable to any new leather tanning and finishing plant which will ensure that no new plants will join a POTW. In proposing to make PSNS equal to BAT for direct dischargers, EPA stated that such a standard would

discourage new sources from joining POTW's. Surely it would. How can EPA justify requiring existing leather tanning and finishing plants to pay into an ICR-based sinking fund which would be used to finance new POTW construction, if the Agency is also making it virtually impossible for any new sources to join a POTW?

Seventh, an accumulation of funds as suggested by the EPA can only lead to wasteful spending on unneeded additions, make-work projects, and election-year boondoggles. The funds would be "free money" which begs to be spent by local jurisdictions. Voter approval of bond initiatives forces the local officials to examine the need for, and design of, a proposed project. EPA's sinking fund would relieve local officials from the necessity of being concerned about justifying a project to the voters. It is, therefore, an invitation to wasteful spending.

TCA believes that an examination of real world facts concerning ICR leads to only one conclusion -- ICR should be repealed. ICR will not benefit local jurisdictions, the federal government, industry or the environment.
It will contribute to the demise of joint municipal/industrial POTW treatment and thereby increase the financial burdens of residential users of POTWs and increase the cost to all levels of government for permitting, monitering and otherwise regulating an increasing number of direct dischargers.

Industrial Cost Recovery Provisions of P.L.92-500 In Denver

The unsuccessful attempt of the Metropolitan Denver Sewage Disposal District No. 1 to implement industrial cost recovery requirements of federal legislation

By William E. Korbitz
Manager, Metropolitan Denver Sewage Disposal District District No. 1
Commerce City, CO

Based on a paper presented at the 1976 International Public Works Congress and Equipment Show

Efforts to develop an acceptable industrial cost recovery system for the Metro Denver District which serves 1.1 million persons started in 1972 immediately after P.L. 92-500 became law. Efforts to establish such a system had already commenced under the old Federal Water Pollution Control Act for the local share of construction costs, but virtually no progress had been made.

Although nobody associated with the Metro Denver District could support industrial cost recovery philosophically or morally, action proceeded toward the development of an acceptable system for the district.

During 1973 and 1974, the Metro District conducted an industrial survey of the 21 member municipalities to determine the industries connected through their systems into the Metro District system, the types of industry, and the amounts and strengths of wastewater flows. Several rough drafts of an industrial cost-recovery system were prepared during this period for review by Metro District directors and personnel of the member municipalities. Efforts were made to secure guidance from the Environmental Protection Agency as to specific details which would be required in this system. Numerous personal contacts were made with member municipality officials to explain the need for the industrial cost recovery and the proposed major features of that system.

In 1975, the EPA regional office tentatively approved proposed Section 6 of the Metro Denver District Rules and Regulations which contained the proposed industrial cost recovery system. A reluctance on the part of the City and County of Denver to support this system resulted in the formation of a special Metro District committee to revise the proposed Section 6 to satisfy Denver officials. This committee helped develop a revised system for which approval was then requested from the EPA Regional Office.

On April 20, 1976, the Metro District Board of Directors adopted a resolution incorporating Section 6, Industrial Cost Recovery System, into the Metro District Rules and Regulations.

A request went to the 21 member municipality governing bodies on April 26, 1976, requesting that they adopt a resolution committing themselves to the Section 6 Rules and Regulations provisions.

As of August 4, 1976, 13 of the 21 Metro District member municipality governing bodies had adopted resolutions accepting the industrial cost recovery system. A letter from the City and County of Denver indicated that these provisions would be incorporated into the appropriate wastewater ordinances of the City and County of Denver.

In addition to compliance by Metro District member municipalities, it will be necessary for more than 40 sanita-

FIG. 1 METRO DENVER SEWAGE DISPOSAL DISTRICT
Construction Projects Included in
Industrial Cost Recovery System (1977-1986)

Approximately 10% of flow comes from industry throughout Metro District

1. Central Treatment Plant Expansion (Primary and Secondary Treatment Facilities)
   Federal Grant on Primaries – $5,000,000 (5% ICR)
   ICR Annual Charge = $8,420 (start in 1977)
2. Central Treatment Plant Anaerobic Digesters
   Federal Grant – $4,576,000 (10% ICR)
   ICR Annual Charge = $15,250 (start in 1978)
3. Platte River II Interceptor (Metro Central Plant to Denver North Side Plant)
   Federal Grant – $1,450,000 (5% ICR)
   ICR Annual Charge = $2,410 (start in 1978)
4. Platte River II Interceptor (Alameda to 47th Avenue)
   Federal Grant – $9,530,000 (2% ICR)
   ICR Annual Charge = $6,340 (start in 1978)
5. Solids Reuse Facilities
   Federal Grant – $14,200,000 (10% ICR)
   ICR Annual Charge = $47,350 (start in 1979)
6. Lower South Platte Plant and Interceptor
   Federal Grant – $8,170,000 (1% ICR)
   ICR Annual Charge = $2,710 (start in 1981)
7. Clear Creek Interceptor
   Federal Grant – $4,170,000 (1% ICR)
   ICR Annual Charge = $1,620 (start in 1981)
8. Sand Creek Interceptor Federal Grant – $4,480,000 (1% ICR)
   ICR Annual Charge = $1,500 (start in 1981)
9. Weir Gulch Interceptor
   Federal Grant – $940,000 (0% ICR)
10. Central Treatment Plant Phase II Expansion (SWT)
    Federal Grant – $30,000,000 (10% ICR)
    ICR Annual Charge = $100,000 (start in 1985)

tion districts served by Metro District member municipalities to take formal action to commit themselves to the Metro District industrial cost recovery system. This is not an insurmountable problem; but compliance by these other agencies will take time. Considerable delay and difficulty in implementation are anticipated.

An example of the counterproductive nature of industrial cost recovery is illustrated in Figure 1 and Figure 2. Figure 1 lists the Metro Denver District construction projects hoped to be completed in the period, 1976-1985. The annual industrial charges for each project are based on the estimated portion of facilities capacity which would be used by industry and also based on a 30-year payment by all appropriate industries for each project. These assumptions may not be completely accurate, but they serve to indicate fairly accurately the estimated charges to industry for the specific projects.

Figure 2 illustrates the undesirable fact that over a 10-year period the cost of administering the industrial cost-recovery program will be about 80% of the amount of money taken from industry for these charges. The 5% per year increase in administrative cost represents estimated inflation increases only, with no increase in activity anticipated. Administrative costs include sampling and analyses of industrial wastes for industrial cost recovery purposes by member municipalities as well as the Metro Denver District.

In summary, the Metro Denver District has, since November 1972, moved forward as expeditiously as possible, but is still several member municipality resolutions and more than 40 such resolutions by sanitation districts away from implementation of the industrial cost-recovery provisions of the federal act. It is obvious that the high cost of collecting the industrial charges will be terribly out of proportion to the funds recovered from industry. Thus, the total impact on local citizens is an increase in sewer service charges to finance additional administrative costs plus the additional cost of the products of industry caused by industrial cost recovery. Even though we cannot justify the high costs of the required industrial system, the Metro Denver District will continue to pursue vigorously the tasks remaining in our efforts to implement the industrial cost-recovery provisions of the federal act. □

FIG. 2 METRO DENVER SEWAGE DISPOSAL DISTRICT No. 1
Industrial Cost Recovery Charges and Administrative Costs (1977-1986)

Year	Annual		Cumulative	
	Administrative Cost (5% increase/year)	ICR Charges	Administrative Cost	ICR Charges
Prior to 1977	$75,000		$ 75,000	
1977	50,000	$ 8,420	125,000	$ 8,420
1978	52,500	32,420	177,500	40,840
1979	55,000	79,770	232,500	120,610
1980	57,700	79,770	290,200	200,380
1981	60,500	85,600	350,700	285,980
1982	63,500	85,600	414,200	371,580
1983	66,600	85,600	480,800	457,180
1984	70,000	85,600	550,800	542,780
1985	73,500	185,600	624,300	728,380
1986	77,000	185,600	701,300	913,980