UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 1 9 1980

OFFICE OF WATER
AND WASTE MANAGEMENT

RECEIVED MAR 11 1993

MEMORANDUM

SUBJECT: Annexation as a Prerequisite for Wastewater Treatment Services

FROM: Henry L. Longest II, Deputy Assistant Administrator
for Water Program Operations (WH 546)

TO: Water Division Directors, Regions I-X

In a September 29, 1978, memorandum from John Rhett to Charles Sutfin, Environmental Protection Agency's (EPA) Construction Grants Program policy on annexation was set forth (copy attached).

This policy has had essentially two main elements:

1. Cost-effective solutions to water pollution problems cannot be discarded because of local annexation disputes. One cost-effective project may not be split up into less cost-effective segments because parties cannot resolve an annexation problem.

2. Federal grant assistance intended for pollution abatement cannot be used to cause annexation. Annexation is a local and State question involving both legal and political considerations that should not be resolved solely by the Construction Grants Program.

"Annexation" in the context of EPA policy means the complete absorption of an area by a municipality and involves all municipal services (fire, police, schools, etc.)

A few controversies have arisen which seem to indicate that our attempt to completely disassociate our Federal actions from a clearly non-Federal issue may have had the opposite effect, unintentionally injecting the Construction Grants Program into State and local decision-making, and inhibiting or preventing what would have otherwise occurred. This situation is discussed further in the grant appeal of the City of Columbia, South Carolina (Docket No. 77-20). I have, therefore, decided to restate our policy and address the grant appeal decision.

RECEIVED CITY OF GRAND JUNCTION

RECEIVED JUN 27 1980 EPA REGION VIII Water Division

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As the September 29, 1978, memorandum states, "annexation may be acceptable where all parties agree that annexation is in their joint interest and such action is voluntary, or where there is a valid basis under State law to assume that a proposed annexation will occur." That is, if a State has a statute dealing with annexation and provision of municipal services our policy is not meant to preclude its normal functioning. Similarly, where a municipality by ordinance, resolution or other means consistent with State law has an established policy requiring areas contiguous or adjacent to the city to submit to annexation in order to receive utility services, EPA policy is not meant to preclude these local processes from taking place.

Where voluntary annexation is the issue, regardless of whether or not the municipality is able to obtain voluntary annexation, acceptance of a grant is a commitment to completion of the treatment works in accordance with the facilities plan.

I want to reiterate here the role intermunicipal agreements can play in meeting the same concerns that annexation addresses. Intermunicipal agreements need not be executed by two incorporated municipalities. The definition of "municipality" in 40 CFR 35.905 is very broad and includes nearly every public body having a principal responsibility for the disposal of sewage. An agreement between a county, on behalf of a portion of unincorporated territory, and an incorporated city would be an "intermunicipal agreement" for the purpose of the regulation. Further, such agreements can be structured to minimize the potential for urban sprawl; annexation is not the only means of controlling it.

EPA Regions must use the basic EPA policy on annexation issues: Annexation is a local issue to be decided in accordance with State and local laws. The Regions must be sure the Construction Grants Program - as an outside element - is not being used to force or preclude annexation contrary to local and State objectives.

If you have further questions about our policy please contact Roger Rihm, Facility Requirements Division (FTS) 755-8056.

Attachment

blessing of EPA - TP1

EPA - not to get in the way! up to locals

SEP 29 1978

MEMORANDUM

Subject: Annexation as a Prerequisite for Wastewater Treatment Services

From: John T. Rhett, Deputy Assistant Administrator for Water Program Operations (WH 546) Henry L. Longest

To: Charles H. Sutfin
Water Division Director
Region V

We have reviewed your memorandum of June 23 concerning the issue of annexation as a prerequisite for the provision of municipal wastewater treatment services.

"Annexation" in the context of this memorandum means the complete absorption of an area by a municipality and involves all municipal services (fire, police, schools, etc.). This memorandum is not meant to deal with "annexation" in the limited sense where an area joins a sanitary district solely for the purposes of wastewater treatment.

The Agency's policy on annexation is based upon two considerations:

1. Cost-effective solutions to water pollution problems cannot be discarded because of local annexation disputes. One cost-effective project may not be split-up into less cost-effective segments because parties cannot resolve an annexation problem.

2. Federal grant assistance destined for pollution abatement cannot be used to cause annexation. Annexation is a local and State question that involves both legal and political considerations that should not be resolved solely by the Construction Grants Program.

There are four basic sources f[...] lves the Clean Water Act (section 204) [...] n regulations and procedures on serv[...] s and user charges.

Section 204(b)(1)(c) of the Clean Water Act requires a grantee to have adequate "legal, institutional, managerial and financial" capabilities. These requirements, however, do not require annexation where a municipal grantee is acting on behalf of areas outside the grantee's municipal boundary. Intermunicipal service agreements make it possible for a municipal grantee to serve a region that i[...] territory.

Such service agreements should be vol[...] to apply pressure in a local dispute over [...] are dealt with in the revision to the cons[...] 40 CFR Part 35, which are effective on Oct[...] tion must include "proposed or executed ([...] the Regional Administrator) intermunicipal [...] construction and operation of the propose[...] 35.920-3(b)(6)). The grant applicant mus[...] agreements before a Step 3 grant can be made (40 CFR 35.920-[...]).

Experience has shown that there are inordinate program delays unless intermunicipal agreements are obtained prior to the award of grant assistance. It should be noted that intermunicipal agreements need not be executed by two incorporated municipalities. The definition of "municipality" in 40 CFR 35.905 is very broad and includes nearly every public body having a principal responsibility for the disposal of sewage. An agreement between a county, on behalf of a portion of unincorporated territory, and an incorporated city would be an "intermunicipal agreement" for the purpose of these regulations. A grantee cannot simply dispense with intermunicipal agreements without risking the denial of grant assistance or an action to enforce or terminate an existing grant agreement.

A letter addressed to the Ohio EPA from your office dated September 23, 1977, and attached to your June 23 memorandum, mentioned that a sewer use ordinance "which contains a policy requiring annexation prior to conclusion of the treatment works would not be approved." Regulations and procedures relating to sewer use ordinances mandate technical requirements for new connections and prohibit new sources of inflow. EPA Region V should allow itself some discretion when evaluating each individual sewer ordinance. Annexation may be acceptable where all parties agree that annexation is in their joint interest and such action is voluntary, or where there is a valid basis under State law to assume that a proposed annexation will occur.

Finally, section 204(b)(1)(A) requires development of a user charge system to cover the costs of operation and maintenance of wastewater treatment services. The provision does not address the recovery of

capital costs. A city could thus complete service agreements to cover operation and maintenance (O&M), and later attempt to levy an additional capital cost charge to force a given area to comply with the grantee's annexation plans. Such a dispute over capital costs and annexation should be resolved under State laws because EPA's regulations do not apply to the problem. It is a local concern that should be resolved through local negotiations. We urge that you encourage communities to include recovery of capital costs in their initial service agreements to avoid disruptive local controversy during construction or after municipal treatment works are completed. Planning entities should also address the question of local capital cost recovery.

A few closing comments are appropriate. First, annexation battles should be anticipated if possible. This could be done by State agencies responsible for drawing 201 area boundaries. EPA regions must ensure that such disputes do not suddenly arise during construction or at the end of Step 3. Parties must see that appropriate arrangements (which may or may not include annexation) can be agreed upon prior to the end of the planning process.

EPA regions must be flexible when faced with annexation. The regional approach should be based upon the premise that an annexation dispute should not be decided solely because a 201 facility happens to be built in the area. As you aptly point out in your September 1977 letter, the Construction Grants Program is supported by American taxpayers as a whole and the benefit derived from a 201 facility should not depend simply upon the location of a municipal boundary. Annexation decisions should neither be dictated by the 201 program nor mandated by one party against the will of another to further the water pollution abatement goals of both.

We hope this discussion has helped to resolve the issue you raised. If we can be of any further help, please let us know.