CITY OF GRAND JUNCTION, COLORADO

MEMORANDUM

Reply Requested
Yes ☐ No ☐

Date
Nov. 26, 1982

To: ~~(From)~~ Jim Patterson, Gerald Ashby

From: ~~(To)~~ Steve Johnson SJ

RE: Legal Authority and Enforcement of Proposed Pretreatment Program.

On or before November 30, 1982 the City must submit to the State and the EPA several items under the revised Schedule of Compliance required by our NPDES permit and sewer grant.

Submittal item Number 4, "Implementation Verification of Necessary Additional Legal Authorities" concerns the refinement of our draft Pretreatment Ordinance and identification of any necessary changes in the legal structure surrounding developing and enforcing a comprehensive pretreatment program.

An earlier submittal item (#2), "Evaluation of Present Legal Authorities" included a letter of 8/27/82 from Mr. Ashby stating that through several connector agreements, "The City is able to regulate wastewater contributions to the City and County owned wastewater collection and treatment."

EPA has responded to this statement by letter of 9/17/82 as follows:

> We strongly recommend that Grand Junction fully evaluate its connection agreements with all its participating sewage collection agencies to ensure that the user of those collection systems are fully subject to enforceable pretreatment requirements. It may be necessary for each of the collection agencies to adopt parallel legal authority to that of Grand Junction. (Emphasis added).

In my opinion, a fundamental review is required of both (1) the legal authority for creation and enforcement of the pretreatment program, and (2) the mechanisms for achieving an enforceable program. The focus of this review should be on the powers of the City as manager of the new sewer plant to directly enforce pretreatment standards against all contributors to the system - including connector districts. The results may include recommended amendments to connector agreements, to the City/County Joint Sewer Agreement, as well as requirements by the City that the districts adopt independent regulations that the City may enforce directly against industrial users, as an agent for the District.

The City's independent police power and contractual relationship with a permittee (industrial user) is alone insufficient to establish the necessary direct enforcement capability. The police power is of course geographically limited, and an industrial user outside City jurisdiction may commence prohibited discharges without a permit or in violation of one.

To do: pretreatment

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Legal Authority and Enforcement of Proposed Pretreatment Program

AUTHORITY: We must ensure that every other contributing district, and the County, have adequate statutory authority to:

(1) Control and condition industrial discharges, in compliance with City Standards;
(2) Impose penalties for violations;
(3) Shut off "illegal" discharges;
(4) Delegate such control to the City.

ENACTMENT: It is necessary that each connecting District actually amend its Rules and Regulations to adopt the necessary pretreatment program, and possibly to authorize the City to enforce it on behalf of the District. A Resolution of Concurrence with the EPA or City Pretreatment Program is not adequate, for it does not create a rule that may be applied against a discharger. A general statement "adopting" the City program wholesale may not be desireable because it is either too vague, or constitutes a delegation of power that is of questionable validity. The program does not need to "parallel" in every detail, but should include program structure, general standards, enforcement mechanisms and penalties. Most importantly, the rules should contain a requirement that each "significant industrial user" obtain a permit from the City prior to connection to the District's collection system.

TRANSFER OF ENFORCEMENT POWER: Next, the connector agreements should be evaluated with regard to whether the above powers have been properly transferred or contracted out to the City for enforcement on behalf of the District. The agreements should be evaluated from the standpoint of geographical coverage, duration, and ability of the City to take direct physical action against an illegal source.

I have made a partial and preliminary review of several agreements, with the following deficiencies noted:

A. City/County Joint Sewage Service Agreement:

Only limit on type of sewage applies to oil, acid and "other matter detrimental to the treatment process." This is rather vague in scope; also City should protect the receiving waters, treatment by-products (sludge), and collector system that may be harmed even when the treatment process is not.

Provides no remedies to City beyond costs for improper discharges, as defined above.

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1. Limits on type of sewage apply only to "oil, acid, and other matter detrimental to the treatment process." This prohibition is too vague to sustain prohibitions against discharges required under the pretreatment program. The City must also protect against discharges that do not affect treatment, but do poison sludge, harm the collection system, or adversely affect the receiving waters. Explicit reference to the Clean Water Act and City pretreatment program is suggested. Expansion of prohibited discharges is necessary.

2. The only remedy the City has in case of illegal discharge is "to do whatever is necessary to rectify said sewage...at the expense of the Connector." Whether this creates the power to cutoff illegal discharges is unclear.

3. Direct assessment against the dischargers is needed, not just for costs, but also for penalties.

4. If the County is not a Connector, who pays for illegal discharges in the County, outside the City and the four connecting districts referred to in the Agreement? (Area IV).

5. The Connectors are not signatories, and are not bound by this Agreement to reimburse the City for costs.

6. The Agreement applies by its terms to Area IV, but that area includes at least three more connecting districts not referred to in the Agreement.

B. Central Grand Valley Sanitation District

1. District, not City, enforces "City policies on acceptable loadings, volume and strength of sewage."

2. City bills only for service charges; has not authority to bill other items, including ICR or penalties.

3. Agreement expires in 1992, nine years after new plant is on-line.

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4. District "rectifies" improper discharges, upon notice. The City has no direct enforcement power. If illegal discharge occurs, we cannot shut off user if District fails to or acts slowly. Who makes determination of "whatever is necessary to rectify" is not clear.

5. No authority to require payments for sampling, etc., let alone billing them.