



*U.S. Department of Housing and Urban Development
Office of Inspector General for Audit, Midwest
77 West Jackson Boulevard, Room 2646
Chicago, Illinois 60604-3507*

*Phone (312) 353-7832 Fax (312)353-8866
Internet <http://www.hud.gov/oig/oigindex.html>*

**Audit Related Memorandum
99-CH-243-1802**

December 23, 1998

MEMORANDUM FOR: Robert Poffenberger, Director of Community Planning
and Development, Indiana State Office

FROM: Dale L. Chouteau, District Inspector General for Audit, Midwest

SUBJECT: Clark County
State Community Development Block Grant Program
Jeffersonville, Indiana

We completed a review of the Clark County Community Development Block Grant that funded a sewer line and lagoon to serve Memphis, Indiana. Senators Dan Coats and Richard G. Lugar of Indiana jointly requested the review in response to complaints from an Indiana citizen. Our objectives were to determine whether the complainant's allegations were substantiated and whether HUD's rules and regulations were violated.

To meet our objectives, we reviewed Clark County's Block Grant application, Grant agreement, and financial records. We also reviewed the records of the River Hills Economic Development District and Regional Planning Commission, which administered the sewer extension project for Clark County. At River Hills, we reviewed income survey data, invoices, and payment and receipt records. We determined the number of sewer hookups from the Henryville Membership Sanitation Corporation's records. We reviewed the Project Engineer's inspection reports and other records. We reviewed the records of the Indiana Department of Commerce, the Indiana Department of Environmental Management, and the Indiana Utility Regulatory Commission. We interviewed the staff of each of the organizations whose records we reviewed.

Our review covered the period from December 1, 1992 to October 15, 1998. We performed the review between July 1998 and October 1998.

Under the Housing and Community Development Act of 1974, HUD provides Community Development Block Grant funds to States for distribution to non-entitlement areas. On July 22, 1994, the Indiana Department of Commerce approved a grant of \$500,000 to Clark County. The grant financed the extension of a sewer line from the Henryville sewer line south into Memphis

and the construction of a holding lagoon. The Henryville sewer line drained into two lagoons. As part of the project, a third lagoon was built to accommodate the 122 homes on the Memphis sewer line. The Henryville Membership Sanitation Corporation, a nonprofit corporation, owned and operated the sewer and lagoon. The Sanitary Corporation contributed an additional \$56,000 to the project on behalf of the County, bringing the total cost of the project to \$556,000. The \$56,000 paid for \$49,000 of engineering and construction management services and \$7,000 for the additional cost of expanding the lagoon to accommodate future expansion.

The Memphis sewer project was intended to meet the national objective of benefiting a low and moderate income area. To meet the objective, the benefits of the project must be available to residents of an area where at least 51 percent of the residents are low and moderate income persons. A survey showed that 65 percent of the homes (79 homes) were occupied by persons with low or moderate incomes.

RESULTS OF REVIEW

The complainant made 17 allegations that we reviewed in detail. The complainant also made seven other allegations that we did not review because they were outside of HUD's jurisdiction. They involved local or private issues and/or occurred before the Block Grant was awarded.

We grouped the allegations into the following categories:

- Conflicts of interest;
- Properties served;
- Engineering problems;
- Permits;
- Other allegations; and
- Allegations outside of HUD's jurisdiction.

We concluded that none of the allegations applicable to HUD could be substantiated.

The results of our review of the more serious allegations are briefly summarized below. All of the allegations are discussed in detail in the attachment to this memorandum.

Conflicts of interest and properties served

The most serious allegations concerned possible conflicts of interest involving the President of the Board of County Commissioners and members of the Sanitation Corporation's Board. The complainant alleged that the President and Board members were involved in building duplexes or subdivisions that were hooking up to the Memphis sewer lines or lagoon financed by Block Grant

money. The complainant alleged that contrary to the Block Grant application, the Grant was obtained to provide sewer services for new developments rather than for the 122 existing homes.

The only hookup to the Memphis sewer line related to the conflict of interest allegation was a single connection for two new duplexes. The duplexes were in the project area and built on a site previously occupied by a single family home. The property was acquired by a Sanitation Corporation Board Member after the Grant had been approved and did not represent a conflict of interest. Both HUD's Director of Community Planning and Development and its Chief Counsel at the Indiana State Office said the Board Member's action did not represent a conflict of interest. The subdivisions, which have not been built, plan to hook up to the existing Henryville sewer line, not the Memphis sewer extension. Sewage from the new developments will flow into the lagoon built as part of the Grant; however, the Sanitation Corporation paid for the lagoon's expanded capacity to handle growth outside the project area.

The County complied with the explicit purpose of the Grant and met the Federal requirements. It made sewer service available to all residents in a low and moderate income area. Grant funds were used in accordance with the Grant application. As the Grant required, the Sanitation Corporation contributed \$56,000 to the project.

Engineering Problems

The complainant alleged the following serious engineering defects: the lagoon was not lined, sewer lines were installed too deep, and the estimate of \$7,000 to expand the lagoon for future growth was too low.

The Project Engineer relied on soil borings that showed the soil in the new lagoon could be compacted to form a liner. The Indiana Department of Environmental Management agreed with this methodology. The Indiana Department of Commerce determined that the depth of the sewers was reasonable considering the topography of the project area. A HUD Engineer in the Indiana State Office determined that \$7,000 was a reasonable cost to expand the lagoon's capacity. As a result, we concluded that the alleged engineering defects were not valid.

Permits

The complainant alleged that the Sanitation Corporation did not obtain several permits and residents' waivers as required by the State.

We determined the Corporation obtained all the necessary permits. The Indiana Department of Environmental Management exempted the Corporation from obtaining residents' waivers because two lagoons already existed at the location of the new lagoon.

Should you or your staff have any questions, please contact me at (312)353-7832.

Attachment

ANALYSIS OF ALLEGATIONS

The following are the allegations that would be of concern to HUD, if substantiated, and our evaluation of them. We did not substantiate any of the allegations and concluded that there were no violations of the Grant agreement.

CONFLICTS OF INTEREST

Allegation 1 - The Project Engineer had a conflict of interest because he was also the Clark County Surveyor.

24 CFR 570.489 (g) says when procuring property or services to be paid for in whole or in part with Community Development Block Grant funds, a State shall follow its procurement policies and procedures. The State of Indiana's Office of the Attorney General, in a letter dated March 20, 1995 to an Indiana State Representative, ruled that the Project Engineer complied with, and was not in violation of, the conflict of interest statute in Indiana Code 35-44-1-3 and the professional licensing regulations under 864 of the Indiana Administrative Code 1.1-11. The letter stated that Indiana law does not prohibit holders of elective offices from contracting with the government they serve on matters that do not involve their official duties. The County Board of Commissioners awarded the contract and the County Surveyor's Office was not involved in the contract award. As a result, we concluded the Project Engineer did not have a conflict of interest.

Allegation 2 - The Sanitation Corporation's Board Member connected his recently built duplexes to the sewer system.

The Board Member's new duplexes were connected with a single connection to the sewer lines that were installed with the Community Development Block Grant funds. The duplexes were located in the project area and were constructed on the site where one of the original 122 houses the Grant was planned for stood. The property was acquired by the Board Member after the Grant had been approved. Both HUD's Director of Community Planning and Development and its Chief Counsel at the Indiana State Office said the Board Member's action did not represent a conflict of interest. The Grant stated that the sewers would be extended to 122 proposed beneficiaries in the project area, of which 51 percent had to be of low or moderate income. We determined that this condition was met.

Allegation 3 - The Sanitation Corporation's Vice President and a past business partner of the County Board's President were each developing a subdivision that would connect to the Community Development Block Grant financed sewer extension and benefit from the expanded capacity.

The Corporation's Vice President was developing a subdivision, but it was in Henryville, not Memphis, the location of the Block Grant project. The County Board's President had been a partner of another developer who was developing a project north of the Memphis sewer extension. Neither project is connected to the Memphis sewer extension financed with Community Development Block Grant funds, but the projects will use the expanded lagoon

capacity. Community Development Block Grant funds were not used to finance the lagoon expansion for more than the 122 homes in the project area. The Sanitation Corporation financed the expansion of the new lagoon for future growth. Since the expanded capacity that the projects will use was financed by the Sanitation Corporation, we concluded there was no violation of the Grant Agreement.

PROPERTIES SERVED

Allegation 4 - Half of the 122 houses in the project area had not been connected.

The Block Grant agreement required the sewer system to be made available to the 122 homes in the project area. HUD's regulations and the Grant agreement did not require the homes to be connected. It was the homeowners' responsibility to arrange for connecting the lines from their properties to the main sewer line. Even so, we found the allegation was incorrect. As of October 14, 1998, 86 houses (71 percent of the 122 proposed beneficiaries in the project area) had been connected or had paid their fees to be connected to the sewer extension.

Allegation 5 - The Grant was not for the 122 existing homes as stated in the Grant application, but for new developments. The Corporation did not obtain the State's approval before providing services outside of the 122 homes.

Clark County complied with HUD's regulations and the Grant agreement. 24 CFR Part 570.482 states that an activity meets the objective of benefiting low and moderate income persons if the benefits from the activity are available to all the residents in an area where at least 51 percent of the residents are low and moderate income persons. The Sanitation Corporation made the sewer services available to the 122 residents of the project area. An income survey showed that 79 houses (65 percent of the area's residences) were of low to moderate income. Community Development Block Grant funds were not used to finance the expansion of the lagoon capacity beyond the 122 existing residences in the project area. The new lagoon was needed to handle the additional sewage from the 122 homes in the project area.

The County and the Sanitation Corporation signed an agreement with the Indiana Department of Commerce stating that sewer service to the 122 homes in the project area would be provided before other residences would be serviced. The agreement required the Corporation to obtain the State's approval prior to providing sewer services to properties outside of the 122 homes. This condition was not required by HUD's regulations nor by the Grant agreement; therefore the portion of the complaint related to not getting the State's approval is outside of HUD's jurisdiction.

Allegation 6 - One truck stop had connected to the sewer system, another truck stop was negotiating to connect to the system, and a metal manufacturing company did not get permission to connect to the sewer system.

No truck stops were connected to the new system. One truck stop built its own sewer system. The other truck stop connected to the original sewer system and lagoons that were in place before

the Grant. The manufacturing company had moved to another city and was not connected to the Memphis sewer extension.

Allegation 7 - The lagoons were at full capacity because 456 customers had already been connected.

The complaint was based on a 1992 Wastewater System Study for Henryville, Indiana that showed the two existing ponds could handle 439 homes. The number of households (456) being serviced by the lagoons came from a March 14, 1996 Indiana Utility Regulatory Commission meeting. The complaint was based on outdated data and did not consider the 1996 addition of the third lagoon that expanded the systems capacity by 265 customers, for a total capacity of 704 customers.

ENGINEERING PROBLEMS

Allegation 8 - The new lagoon was not lined and the Indiana Department of Environmental Management could not provide an engineer's application report for the project.

The Project Engineer sent an application report to the Indiana Department of Environmental Management. The report showed the Engineer used soil borings to determine that approximately the top foot of the soil was silt loam, while the rest of the soil was a silty clay loam. The report explained that the proposed dike and existing undisturbed surface at the bottom of the lagoon would be compacted and serve as a liner. The Department determined the soil at the site was suitable for lining the lagoon and also approved the soil samples when it issued the permit to the project.

This allegation was based on a geological survey performed by the Head of the Environmental Section at Indiana University. The Head of the Environmental Section told us his geological survey was based on geological and topographical maps of the area. He said if soil borings from the site showed a different type of soil, then the soil borings should have been used to make the engineering decisions. As a result, we concluded the lagoon was lined with compacted soil and the method of lining was approved by the Indiana Department of Environmental Management.

Allegation 9 - The new lagoon was constructed within 150 feet of a creek, in violation of the original permit from the Indiana Department of Natural Resources.

The allegation is based on a plan that was not implemented. The area about which the complainant was concerned was not included in the revised plan. Furthermore, an Indiana Department of Natural Resources inspection report showed that the points closest to the creek had been maintained since the installation of the new lagoon. The report stated that the Department's permit had not been violated. As a result, we concluded that no violations of the Indiana Department of Natural Resources' permit occurred.

Allegation 10 - The sewer lines were installed too deep.

The Controller for the Indiana Department of Commerce said the State determined that the depth of the sewer main was reasonable considering the topography of the area. The complainant could not provide any information to show the basis for her allegation that the lines were too deep.

Allegation 11 - The Project Engineer, in a meeting, told nearby residents that it was their decision whether the lagoon would be constructed. The residents were against the lagoon.

The Project Engineer said he asked the people whether they would like to participate in the planning of the lagoon. He said he did not inform residents that it was their decision whether or not a lagoon would be constructed. He said the complainant told the residents the lagoon would not be constructed if they did not want it. The residents did not participate in the planning. There was no documentation to support what occurred at the meeting referenced by the complainant. Since none of the parties to the meeting kept a record of what transpired at the meeting, we could not substantiate the allegation.

Allegation 12 - The Project Engineer's estimate of \$7,000 to expand the lagoon by 3,500 cubic yards for future expansion seemed low.

The estimate appears low because the Sanitation Corporation did not have to incur certain costs that would be necessary if the expansion were accomplished as an individual project. For example, the Sanitation Corporation's costs did not include developing plans and getting equipment to the site. A HUD Engineer at the Indiana State Office stated in a memorandum to OIG that he concurred that the Project Engineer's estimate of \$7,000 to expand the lagoon was reasonable.

PERMITS

Allegation 13 - The Henryville Membership Sanitation Corporation did not receive permission from the Indiana Utility Regulatory Commission to provide service in Memphis, Indiana.

The Indiana Utility Regulatory Commission, on August 28, 1996, approved the expansion of the Sanitation Corporation's original certificate of territorial authority. The expansion was for services to the 122 households within the project area in Memphis, Indiana. Since the Sanitation Corporation received permission to provide service in Memphis, we concluded the allegation was incorrect.

Allegation 14 - The new lagoon was constructed in a flood plain. The Sanitation Corporation, however, did not obtain permits from the Indiana Department of Natural Resources and the Indiana Department of Environmental Management.

In a November 4, 1993 letter, the Indiana Department of Natural Resources exempted the Sanitation Corporation from obtaining a permit for the sewer line to cross a creek. In an April 7, 1995 letter, the Department stated that a permit to build in a flood plain was unnecessary because

the lagoon was an extension of another project. The Indiana Department of Environmental Management issued a permit to the Sanitation Corporation on February 8, 1995.

Allegation 15 - Waivers from residents within 1,320 feet of the new lagoon site were not collected and Indiana's Departments of Natural Resources and Environmental Management were told to look the other way.

The Indiana Department of Environmental Management said the law does not require waivers to be obtained from residents within 1,320 feet of a lagoon site. The Department has an internal policy to get waivers if lagoons are to be put within 1,320 feet of housing; however, since two lagoons already existed at the location of the new lagoon, the Department did not see the necessity of requiring waivers in this situation. Thus, the Department waived the requirement.

OTHER ALLEGATIONS

Allegation 16 - The Sanitation Corporation's application overstated its debt and the cost of aerators. The complainant believed the Corporation did not have any debt and that aerators were for odor control and would not expand capacity as stated.

The Sanitation Corporation's Grant application correctly stated the Corporation's debt position. The Grant application and supporting documentation showed the Sanitation Corporation had a long-term debt of \$405,795.

The River Hills Community Development Director said the aerators were for future expansion. The Grant application showed a cost of \$220,000 for the aerators. However, the aerators were not part of the budget in the Grant application and Grant funds were not expended on aerators.

Allegation 17 - The lagoons smelled horrible and water in the creek was black.

The Indiana Department of Environmental Management inspected the site on October 24, 1997 and March 26, 1998 in response to complaints. The inspection reports showed no discharge was present at the time of the inspection nor was there evidence of pollution. The October 24, 1997 report also concluded that the complaint that the lagoons were discharging to the dry creek and the creek looked bad was unfounded. In a February 23, 1998 memo, the Indiana Department of Commerce reported that it did not detect an offensive odor at the lagoon site. We did not detect any offensive odor during our visit to the site on October 16, 1998. The complainant and her brother told us that the odor was not as bad since aerators had been installed.

ALLEGATIONS OUTSIDE OF HUD'S JURISDICTION.

We did not look into the following allegations because they were not within HUD's jurisdiction and are local issues that occurred before the Grant award:

- In the early 1970s, the complainant's father sold the land for an easement to the Sanitation Corporation solely to provide sewer service to a Memphis school. Others have been connected to the easement running through her property;
- Before the grant, the Sanitary District returned to the son of its then President, the \$40,000 the son had paid to connect his development to the lagoons; and
- In 1991, West Clark Community Schools illegally sold a pump station and easement to the Sanitation Corporation for \$10.

We did not look into the following allegations because they are local or private issues that need to be pursued with the Grant contractor, the State, or local officials and are not HUD's responsibility:

- The Sanitation Corporation had not done anything to connect the Henryville residents that were not on the sewer system;
- Private trucks were dumping raw sewage into the lagoons;
- The complainant's tile system was damaged when the lagoon was being constructed; and
- The Sanitation Corporation illegally removed its Vice President and the Sanitation Corporation had an illegal election to get out from under the Indiana Utility Regulatory Commission's jurisdiction.

Distribution

Secretary's Representative, Midwest
Senior Community Builder, Indiana State Office
Assistant General Counsel, Midwest
Director of Community Planning and Development, Indiana State Office (2)
Director of Administrative Service Center 1, New York State Office
Assistant to the Deputy Secretary for Field Management, SDF (Room 7106)
Chief Financial Officer, F (Room 10164) (2)
Deputy Chief Financial Officer for Finance, FF (Room 10164) (2)
Acquisitions Librarian, Library, AS (Room 8141)
Special Advisor/Comptroller, Office of Community Planning and Development,
DOT (Room 7220) (3)
General Counsel, C (Room 10214)
Deputy Secretary, SD (Room 10100)
Assistant Secretary for Congressional and Intergovernmental Relations, J (Room 10120)
Deputy Assistant Secretary for Public Affairs, W (Room 10220)
Deputy Assistant Secretary for Operations, A (Room 10110)
Director, Office of Budget, ARB (Room 3270)
Assistant to the Secretary for Labor Relations, (Acting), SL (Room 7118)
Assistant Secretary for Community Planning and Development, D (Room 7100)
Associate General Counsel, Office of Assisted Housing and Community Development, CD
(Room 8162)
Chief of Staff, S (Room 10000)
Counselor to the Secretary, S (Room 10234)
Senior Advisor to the Secretary for Communications and Policy, S (Room 10222)
Director, Housing and Community Development Issue Area, U.S. GAO, 441 G Street N.W.,
Room 2474, Washington DC 20548 (2)
The Honorable John Glenn, Ranking Member, Committee on Governmental Affairs, United States
Senate, Washington DC 20515-4305
The Honorable Fred Thompson, Chairman, Committee on Governmental Affairs, United States
Senate, Washington DC 20515-4305
Ms. Cindy Sprunger, Subcommittee on General Oversight and Investigations, Room 212, O'Neil
House Office Building, Washington DC 20515
Mr. Pete Sessions, Government Reform and Oversight Committee, Congress of the United States,
House of Representatives, Washington DC 20510-6250