UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

905R98101

REPLY TO THE ATTENTION OF

SEP 30 1998

C-14J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Ted Rhienhart, Director
Dept. of Public Works
200 E. Washington St.
Room 2460
Indianapolis, IN 46204

Re: Audit Report No. P2CWN9-05-0070-1400047
Grant No. C180747-01, 03, 04, 05 and 06
C180865-02, 03, 04 and 05
Docket No. 05-92-AD13

Dear Mr. Rhienhart:

Pursuant to your request under 40 C.F.R. Part 30, Subpart L for review of the Regional Dispute Decision Official's final determination of August 19, 1992, I am enclosing the following:

1. Report and Recommendation of the Planning and Management Division and the Office of Regional Counsel, and,

2. Decision and Order of the Regional Administrator.

Pursuant to the Decision and Order of the Regional Administrator, and as more fully set forth in the Report and Recommendation of the Planning and Management Division and the Office of Regional Counsel, the determination of the Disputes Decision Official, dated July 6, 1992, is sustained in part and overruled in part. The total federal share of costs disallowed as a result of this Subpart L review is $3,649,014. The Comptroller has reviewed the City's request for interest waiver and determined that of the 2,214 days since the Final Determination Letter was issued to the

City, 1,608 days were the result of agency failure to act without fault of the City. Interest is therefore due on only 606 of the days. The amount of interest due on $3,649,014 for 606 days at 6% is $363,503. A total refund to the United States in the amount of $4,012,517 is thus due and owing, to be paid as set forth in the Decision and Order.

If full payment of the $4,012,517 is made within 30 days of receipt of the Decision and Order, no additional interest will be assessed. If full payment is not made within 30 days of receipt of the Decision and Order, additional interest will accrue on the federal share at the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).

Sincerely yours,

Robert L. Thompson
Associate Regional Counsel

Enclosures

cc: J. Kent Holland, Esq.

bcc: B. Campbell (MF-10J)
H. Levin (MF-10J)
S. Lee
M. Starus
T. DeGrandchamp
ORC Library
Region 5 Library ✓

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN RE:	)	
CITY OF INDIANAPOLIS, IN	)	REPORT AND RECOMMENDATION
	)	OF THE RESOURCES MANAGEMENT
Grant Numbers:	)	DIVISION AND THE OFFICE OF
C180747-01, 03, 04, 05, 06	)	REGIONAL COUNSEL PURSUANT TO
C180865-02, 03, 04, 05	)	40 C.F.R. PART 30, SUBPART L
Audit Report No. P2CWN9-05-	)	
0070-1400047	)	
REQUEST FOR REVIEW OF	)	DOCKET NO. 05-92-AD13
DISPUTES DECISION OFFICIAL'S	)	
DECISION	)	
	)	

DIGEST NOTES

1. GRL-160-125-000, ASSISTANCE DISPUTES, BURDEN OF PROOF

The Grantee has the burden of proving that the DDO's decision was erroneous. Absent such proof, the DDO's decision must be upheld.

2. GRL-120-155-000, ASSISTANCE ADMINISTRATION, GOVERNMENT'S RIGHT TO AUDIT

All costs claimed are subject to final audit.

3. GRL-040-300-000, ALLOWABILITY OF COSTS, DOCUMENTATION

Additional documentation not available to the Disputes Decision Official (DDO) at the time of his decision justifies reinstatement of previously disallowed A/E fees.

4. GRL-040-850-000, ALLOWABILITY OF COSTS, SCHEDULED COMPLETION DATE

A/E fees and project inspection costs incurred after the construction contract completion date must indicate that the extension is reasonable and necessary and meet the specific

showing that the costs were not due to grantee mismanagement or contractor failure to perform.

5. GRL-040-850-000, ALLOWABILITY OF COSTS, SCHEDULED COMPLETION DATE

Where the Grantee entered into a settlement with a contractor, in consideration for the release of the Grantee's claims against the contractor, at least in part, for the Grantee's use to offset increased costs because of the contractor's lack of timely performance, the Grantee cannot argue that related costs were not incurred as a result of grantee mismanagement or contractor failure to perform.

6. GRL-040-000-000, ALLOWABILITY OF COSTS, START-UP SERVICES

Start-up costs incurred greater than 12 months after the completion of construction are allowable only if the Grantee can substantiate a reasonable basis for the extension of the start-up period.

7. GRL-040-000-000, ALLOWABILITY OF COSTS, START-UP SERVICES

Where the Grantee has demonstrated that the start-up was extremely complex and novel, and involved the integration of many different facilities, and did not involve mismanagement or undue delay, the start-up costs beyond a one-year period will be allowed.

8. GRL-040-315-000, ALLOWABILITY OF COSTS, EQUIPMENT

The cost of vehicles was allowable where grantee purchased the vehicles for purposes relative to construction, not operation, of the wastewater treatment plants, and where there was concurrent U.S. EPA written agreement that such purchase was appropriate as part of plant construction.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN RE:	
CITY OF INDIANAPOLIS, IN	REPORT AND RECOMMENDATION OF THE RESOURCES MANAGEMENT DIVISION AND THE OFFICE OF REGIONAL COUNSEL PURSUANT TO 40 C.F.R. PART 30, SUBPART L
Grant Numbers: C180747-01, 03, 04, 05, 06 C180865-02, 03, 04, 05	
Audit Report No. P2CWN9-05-0070-1400047	
REQUEST FOR REVIEW OF DISPUTES DECISION OFFICIAL'S DECISION	DOCKET NO. 05-92-AD13

DECISION AND ORDER

I have reviewed the attached Report and Recommendation of the Planning and Management Division and the Office of Regional Counsel, and concur in and adopt its conclusions and determinations:

1. The Final Determination of the Disputes Decision Official, dated July 6, 1992, disallowed: $20,982 of costs claimed for basic 75 percent grant funding in grant C18086503 but accepted $20,982 of $138,058 of previously unclaimed costs on that grant as an offset; $6,256,758 of costs claimed for basic funding in seven other grants (all costs claimed in grant C18086502 were accepted); and $842,642 of costs claimed for 10 percent supplemental Federal funding for the portions of grant project C18086505 that met innovative technology criteria. This decision is sustained in part and overruled in part. To date Indianapolis has not paid the federal share of any of the concurred or disputed disallowed costs.

2. This Subpart L review has determined that the net

unallowable cost is $4,753,982 of basic, and $835,272 of innovative, grant costs. The corresponding Federal shares are $3,565,487 and $83,527, making a total of $3,649,014 due and owing. Because the City has not paid any of the disputed costs, pursuant to 40 C.F.R. § 30.1230, interest has accrued at a rate of six percent on the federal share from July 6, 1992, the date of the Final Determination Letter until the date of the Regional Administrator's Decision and Order. The City, though, has petitioned for waiver of interest. The Comptroller has reviewed the City's request for interest waiver and determined that of the 2,214 days since the Final Determination Letter was issued to the City, 1,608 days were the result of agency failure to act without fault of the City. Interest is therefore due on only 606 of the days. The amount of interest due on $3,649,014 for 606 days at 6% is $363,503. A total refund to the United States in the amount of $4,012,517 is thus due and owing.

If full payment of the $4,012,517 is not made within 30 days of receipt of this Decision and Order, additional interest will be assessed on the federal share at the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).

Accordingly, Indianapolis shall reimburse the U.S. EPA in the amount of $4,012,517 as specified herein. A check, made payable to the U.S. Environmental Protection Agency in the amount of $4,012,517 should be mailed to the following address:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

This Decision and Order will constitute final Agency action unless, pursuant to 40 C.F.R. § 30.1225, Indianapolis files a petition for discretionary review with the Assistant Administrator for Water (WH-556), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D. C. 20460, within 30 days of the date of this Decision. The discretionary review petition should be sent by registered mail, return receipt requested, and must include:

a. A copy of the Regional Administrator's decision; and,

b. A concise statement of the reasons why Indianapolis believes the Decision to be erroneous.

A copy of any petition for discretionary review also should be sent to:

Chief
Financial Management Branch
Planning and Management Division
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Dated: 9/23/98

for David A. Ullrich
Acting Regional Administrator

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN RE:	)	
CITY OF INDIANAPOLIS, IN	)	REPORT AND RECOMMENDATION
	)	OF THE RESOURCES MANAGEMENT
Grant Numbers:	)	DIVISION AND THE OFFICE OF
C180747-01, 03, 04, 05, 06	)	REGIONAL COUNSEL PURSUANT TO
C180865-02, 03, 04, 05	)	40 C.F.R. PART 30, SUBPART L
Audit Report No. P2CWN9-05-	)	
0070-1400047	)	
REQUEST FOR REVIEW OF	)	DOCKET NO. 05-92-AD13
DISPUTES DECISION OFFICIAL'S	)	
DECISION	)	
	)	

REPORT AND RECOMMENDATION

I. INTRODUCTION

This request for review arises from the decision by a Regional Disputes Decision Official ("DDO"), Region 5, U.S. Environmental Protection Agency ("U.S. EPA"), regarding costs claimed under the subject grants that were questioned as ineligible or unsupported in the subject Audit Report. The DDO's Decision ("DDOD"), dated July 6, 1992, disallowed: $20,982 of costs claimed for basic 75 percent grant funding in grant C18086503 but accepted $20,982 of $138,058 of previously unclaimed costs on that grant as an offset; $6,256,758 of costs claimed for basic funding in seven other grants (all costs claimed in grant C18086502 were accepted); and $842,642 of costs claimed for 10 percent supplemental Federal funding for the portions of grant project C18086505 that met innovative technology criteria.

The grants were awarded to Indianapolis, Indiana (the "Grantee" or "Indianapolis" or "City") pursuant to Title II of the Clean Water Act, as amended ("Act"), 33 U.S.C. §§ 1251 et seq., for the planning, design and construction of two advanced wastewater treatment plants. Each grant provided for 75 percent Federal

participation of allowable costs. The portions of Grant No. C18086505 which met the innovative technology criteria of 40 C.F.R. § 35.908 qualified for additional Federal participation of 10 percent.

The U.S. EPA awarded the grants from May 30, 1975, to July 19, 1978. In signing the Grant Agreements, Indianapolis explicitly agreed to abide by the grant regulations found at 40 C.F.R. Parts 30 and 35 and to expend the funds awarded solely for the purpose of the projects as approved. A brief summary of each of the grants may be found in the attached addendum.

Upon completion of the projects, as described in the summary of the grants set forth in the addendum, the Office of Inspector General for the Northern Division, U.S. EPA, through the firm of Foxx & Company, audited the City's records to determine if those records supported the City's claims of $188,901,325 and $33,372,532 as necessary, reasonable and allocable for 75 percent basic and 10 percent supplemental funding, respectively. The Audit Report questioned $6,750,382 of costs claimed for basic 75 percent funding and $919,555 of the costs in grant C18086505 claimed for the 10 percent supplemental funding.

On August 20, 1992, U.S. EPA sent Indianapolis a letter acknowledging receipt of the City's August 7, 1992, letter requesting a review of the DDOD. The letter advised Indianapolis of its right to be represented by counsel, to submit documentary evidence and arguments and to receive a written decision from the Regional Administrator. In a letter dated September 25, 1992, Indianapolis requested an informal Subpart L conference, submitted additional documents supplementing its responses and documentation of December 3, 1991, January 24, 1992, February 21, 1992, and April 13, 1992, (pre DDOD), and elaborated on its prior arguments in support of its position. Additional information/documents referenced in the September 25, 1992 package were submitted October 29, 1992. The informal conference was held on January 26, 1993. At the conference the City agreed to provide additional documentation, which was done by submissions dated February 11, 1993, and March 9, 1993.

Based on all submissions by the City both prior and after audit, and review of U.S. EPA Region 5 individual grant project files, a Regional Administrator (RA) Decision and Order (D&O) was issued

December 6, 1995. Shortly thereafter, Region 5 found that the Report and Recommendation upon which the D&O was premised, had overlooked the April 21, 1979, Initial Pricing Audit Report and the subsequent correspondence between the Region 5 Water Division and the City concerning construction management services and the purchase of vehicles to provide those services. In addition, the Report contained some mathematical inaccuracies, an inconsistent conclusion and, most significantly, an inaccurate characterization of statements made by the City in various submissions.

Relative to the latter item, the initial Report and Recommendation stated "...the City has concurred with the DDO's decision to disallow $5,002,088." In fact, though, the City had not concurred with the unallowability of the costs. The City had not concurred that any costs questioned and determined unallowable due to the contract completion date issue (in excess of $4,370,000) were, in fact, unallowable. Rather, the City had merely concurred that, given the U.S. EPA accepted or approved contract completion dates, it had received enough information to concur with the number. In each instance where the City "concurred" with an unallowable amount resulting from the U.S. EPA accepted or approved contract completion date, the City either explicitly or implicitly noted the concurrence was with the dollar amount and not the unallowability.

Although Region 5 personnel had agreed on December 14, 1995, that the appropriate action to remedy the situation would be to rescind and reissue the D&O, the holidays and second Federal employee furlough of the fiscal year delayed that action until after the City had petitioned the AA. In any event, this Report and Recommendation is the result. It is based on further review of U.S. EPA files, significant portions of information provided prior to the rescission and information provided at and subsequent to the meeting between the City and Region 5 representatives on November 7, 1996.

The November 1996 meeting had several purposes. One objective of the meeting was to reach agreement on the derivation of the actual dollar amount, whether disputed or not, for each service addressed in the 38 Notes of the Audit Report where the DDOD concluded all or part was unallowable. As noted, the City had submitted much supplemental, additional and/or alternative

documentation after the auditors completed field work on February 8, 1991, and although agreement on allowability of certain items might be impossible, it was deemed imperative to reach agreement on the exact dollar value at issue, irrespective of allowability. The numbers in the following sections reflect achievement of that objective.

Another objective of the meeting was to address the City's request that three change orders involving time extensions be re-reviewed, particularly in context of construction management service questioned costs in Grant C180747-05. The result of the Region 5 reassessment is addressed in this decision.

A third objective of the meeting was to discuss the City's request that the RA address the issue of grant increases on Grants C18086502 and 03 that were covered by the subject Audit Report as well as on closed out grants C18074702 and 08, or alternatively, concurrent with issuing a revised D&O, process the requested increases. As explained by Region 5 representatives during the meeting, the matter of grant increases is not and cannot be subject to the regulatory RA review process. Neither the DDO nor any other U.S. EPA official has authority to unilaterally determine grant increases. Consistent with Section 216 of the Act, funds authorized and allotted to a State under Title II of the Act can be obligated only upon State priority funding certification. The determination of such priority can only be made by the State. An affirmative priority certification from the State agency is an imperative requirement to the obligation and payment of Clean Water Act Title II grant funds, whether it be an initial grant award or the award of a grant increase. There is no statutory, regulatory, policy or guidance criteria requiring a State to issue a priority funding certification to increase a previously awarded grant as a result of changes occurring after the initial award, even when such changes are beyond the reasonable control of the grantee.

Grant funds obligated under one grant for a given scope of work can be paid only from the account where the grant funds are obligated for the scope of work defined in the Grant Agreement. Correspondingly, overpayments of a grant must be repaid, deposited in the U.S. EPA financial management account from which they were initially paid and thence de-obligated, reverting to the U.S. EPA account for the State to which the funds were

originally allotted. The funds are then available for re-obligation on a different grant. A grant decrease Amendment must be processed to effectuate the de-obligation and a grant increase Amendment, subject to the foregoing scenario, must be processed prior to payment of increased funds.

Another constraining factor in a conceptual single action to offset unallowable costs in some grants with previously unclaimed and possible allowable costs from other grants is the difference in the scope of planning (Step 1), design (Step 2) and building (Step 3). Clearly the scopes are different and simply not interchangeable. In addition, all of the Step 3 grants -- those covered by the subject Audit as well as those previously closed out -- in the "747" and "865" sequences are a treatment works segment, as defined at 40 C.F.R. § 35.905. Construction and operation of all the segmented "747" grants was necessary if the City was to comply with the fundamental prerequisite of all CWA grants; namely to meet the enforceable requirements of the Clean Water Act as defined in the discharge permit for that plant. The same was true for the "865" grants. Factually, the scope of work in the "747" segmented grants regarding one plant and a separate distinct discharge permit is not interchangeable with work in the "865" grants, regarding a second plant with a separate permit.

Therefore, as a result of the Agency's financial management system and the Agency's management and administration practices and procedures regarding the construction grant program, the concept of offsetting questioned costs in one grant with unclaimed allowable excess costs from another involves procedures and processes more complex than a simple mathematical listing of plusses and minuses, with a single net action. Nevertheless, it would be possible to implement a series of actions to effectuate funding of previously unclaimed costs on grants C18086502 and C18086503, subject to the State issuing a priority certification. Further, although reopening closed out grants is typically completely opposite to Agency objectives, there is nothing prohibiting reopening under appropriate circumstances. Therefore, again subject to priority certification by the State, the Region is willing to reopen grants to accommodate funding of costs the City did not claim when it requested final payment on those closed grants. Whatever occurs, this Report and Recommendation will not further address the matter of grant increases, i.e. it

will be limited to the issues addressed in the DDOD where costs continue to be contested.

Based on either written or verbal comments or the lack of any comments by the City since the draft Audit Report, EXHIBIT I summarizes unallowable services and costs which U.S. EPA understands the City is not contesting further, namely $1,428,584 for 75 percent basic funding and $567,916 for 10 percent innovative funding. As noted, the amounts for Notes 1a and 1b of Grant C18074701 are adjusted from those in the DDOD and results in the reinstatement of $1,487. Therefore, $1,428,584 and $567,916 of costs that the DDO determined unallowable are sustained as unallowable for the reasons cited in the Audit Report and DDOD.

EXHIBIT I

DDOD UNALLOWABLE COSTS, EXCEPT AS NOTED, WHICH ARE NOT BEING CONTESTED FURTHER

Grant No.	Audit Note	Amounts		Brief Description
C180747 01	1a	$ 14,376* Adjusted		Force Account
	1b	2,221*Adjusted		Fringe Benefits
	2	85,560		Other A/E Fees
			$ 102,148	Total
C180747 03	2a		1,070,076	Total
C180747 04	1a	2,664		A/E Basic
	3b	1,010		Other A/E
			3,674	Total
C180747 05	1a	5,598		A/E Basic
	2a	229,821		Other A/E
	3	1,925		Inspection
			237,344	Total
C180747 06	1a	757		A/E Basic
	3a	583		Inspection
			1,340	Total
C180865 03	1a		2,109**	A/E Basic
C180865 04	1		1,435	Adm. Exp.
C180865 05	1a	9,399		A/E Basic

	3a	1,059		Inspection
			10,458	Total
Total Unallowable For Basic Grant Funding			$1,428,584	
C180865 05	1	35,936		Adm. Exp.
	2a	339,649		A/E Basic
	3a	192,331		A/E Other
Total Unallowable for 10 percent Innovative Grant Funding			$ 567,916	

* U.S. EPA agreement with $ value results in reinstatement of $1,202 on Note 1a and $285 on Note 1b = $1,487 Total.

** DDOD offset with part of $138,058 previously unclaimed cost.

As set forth in EXHIBIT III, below, $3,821,151 and $267,356 of costs for basic and innovative grant funding remain in contention and are the focus of the balance of this Report and Recommendation.

II. ISSUES

A. Whether adequate documentation has been provided by the grantee to support the allowability of the $1,134 Administrative Expense and $26,875 Special Services costs claimed in the Step 2 Grant No. C18074703 (Notes 1 and 2b to Schedule A-2 of the Audit Report).

B. Whether $407,339 of start-up costs (Note 2b to Schedule A-5 of the Audit Report regarding Grant No. C18074706) incurred after the 12 month period cited in Program Requirements Memorandum (PRM) 77-2 are allowable.

C. Whether the $41,652 (Note 4 to Schedule A-4 of the Audit Report) claimed under Grant No. C18074705 for the direct purchase of mobile vehicles by the

grantee for use during construction by the employees of the joint venture firm that provided construction management services for the extensive construction at widely separated job sites over a lengthy construction period is allowable.

D. Whether documentation provided by the grantee concerning construction contract change orders that extended the contract time of completion where the approved time was less than the full period in the change order, justifies longer periods of approval by showing that the time extensions were attributable to either contractor performance or grantee management actions, or the lack of contractor performance or grantee management actions. This issue involves $3,344,151 and $267,356 for basic and innovative grant funding, respectively, for services rendered after the actual U.S. EPA approved/accepted contract completion date. EXHIBIT II sets forth an itemization of services and costs by grant. As reflected in the Notes to EXHIBIT II, based on additional documentation from the grantee, $1,026,518 and $7,370 for basic and innovative grant funding, respectively, are reinstated based on U.S. EPA review of the additional documentation provided by the City. EXHIBIT III is a summary of all costs discussed in the foregoing narrative and EXHIBITS I and II. As reflected, $3,821,151 and $267,356 of costs for basic and innovative grant funding remain in contention and are the focus of the balance of this Report and Recommendation.

EXHIBIT II

DDOD UNALLOWABLE COSTS FOR SERVICES RENDERED AFTER U.S. EPA ACCEPTED/APPROVED CONTRACT COMPLETION DATE AND NOT DEMONSTRATED AS UNRELATED TO, OR RESULTANT FROM, UNSATISFACTORY CONTRACTOR PERFORMANCE OR INAPPROPRIATE GRANTEE MANAGEMENT ACTIONS.

GRANT NO.	AUDIT NOTE	DDOD UNALLOWABLE	REINSTATED (NOTE I)	UNALLOWABLE CONTESTED
C18074704	1b	$ 211,135	$ 43,139	$ 167,996
	2	114,188	465	113,723
	3a	15,611	0	15,611
TOTAL		$ 340,934	$ 43,604	$ 297,330
C18074705	1b	30,720	3,204	27,516
	2b	12,577	0	12,577
	2c	3,170,520	809,494	2,361,026
TOTAL		$3,213,817	$ 812,698	$2,401,119
C18074706	1b	137,898	52,019	85,879
	2c	46,224	11,140	35,084
	3b	1,683	1,683 NOTE II	0
TOTAL		$ 185,805	$ 64,842	$ 120,963
C18086503	1b	1,899	0	1,899
	2	12,023	1,095	10,928
	3	4,951	0	4,951
TOTAL		$ 18,873	$ 1,095	$ 17,778 NOTE III
C18086504	2	69,298	2,616	66,682
C18086505	1b	332,938	64,118	268,820
	1b	43,276	0	43,276
	2	147,030	18,847	128,183
	2	15,259	15,259 NOTE IV	0
	3b	3,439	3,439 NOTE II	0
TOTAL		$ 541,942	$ 101,663	$ 440,279
TOTALS FOR BASIC 75 PERCENT GRANT		$4,370,669	$1,026,518	$3,344,151

EXHIBIT II (Continued)

GRANT NO.	AUDIT NOTE	DDOD UNALLOWABLE	REINSTATED (NOTE I)	UNALLOWABLE CONTESTED
C18086505	2b	$ 208,338	$ 7,370	$ 200,968
Innovative Technology	3b	66,388	0	66,388
TOTAL FOR INNOVATIVE 10 PERCENT GRANT		$ 274,726	$ 7,370	$ 267,356

NOTE I - Portions of costs/services reinstated based on U.S. EPA review and affirmative conclusion regarding previously unclaimed costs or additional documentation which confirmed the service was not related to, or resultant from, either unsatisfactory contractor performance or inappropriate grantee management actions.

NOTE II - Costs claimed and questioned on premise they were for inspection services but actually were for one time material testing that was necessary regardless of when done.

NOTE III - Entire $17,778 plus $2,109 unallowable per Note 1a on this Grant -- SEE EXHIBIT I -- or total $19,887, was offset by $138,058 of previously unclaimed allowable costs. The remaining $118,171 ($138,058 - $19,887) on which the City has requested grant funding through a grant increase is not subject to RA review.

NOTE IV - Questioned on basis of information being insufficient to identify if it was a one time service. Additional information showed the service is not related to, or resultant from, either unsatisfactory contractor performance or inappropriate grantee management actions.

EXHIBIT III

	Basic Funding	Innovative Funding
Unallowable per DDOD	$6,277,740	$842,642
Reinstated EXHIBIT I	- 1,487	0
Subtotal	6,276,253	842,642
Reinstated EXHIBIT II	-1,026,518	-7,370
Subtotal	5,249,735	835,272
Not contested Further EXHIBIT I	-1,428,584	-567,916
Subtotal	$3,821,151	$ 267,356

Contested Issues A, B and C

C18074703	$ 1,134	A
C18074703	26,875	A
C18074706	407,339	B
C18074705	41,652	C
Subtotal	$477,000	

	- 477,000	0
Amounts Contested Per EXHIBIT II	$3,344,151	$ 267,356

PREVIOUSLY UNCLAIMED COSTS - submitted with request they be used to offset unallowable costs -- NOT subject to RA review.

Grant C180747-02	$337,039
Grant C180747-08	267,297
Grant C180865-02	401,153
Grant C180865-03	138,058*

*Will be used to offset $2,109 unallowable (EXHIBIT I) and possibly up to $17,778 of disputed unallowable (EXHIBIT II) costs, i.e. minimum unfunded could be as small as $118,171.

III. DISCUSSION

A. Documentation to Support Claimed Costs

The DDOD disallowed some costs because the City had not provided accounting records, such as time sheets and payroll journals, to support the charges by its engineering firms. During the informal conference, the City explained that some records had been located. The City was also able to reconstruct some records.

Additional documents not available at the time of the DDO's decision can be the basis for allowing previously disallowed costs. City of Auburn, New York, 02-91-AD11, (March 21, 1995), City of Wellesville, Ohio, 05-95-AD01, September 26, 1995), Metropolitan Water Reclamation District of Greater Chicago, Chicago, Illinois, -5-91-AD10, October 18, 1993, Urbana & Champaign Sanitary District, Illinois, 05-90-AD12, (February 19, 1991), Highland Sanitary District, Indiana, 05-90-AD03, (September 24, 1990). Based on the Subpart L review, in some cases the documentation provided by the City satisfied the requirements of 40 C.F.R. § 30.805, and allows the reinstatement of $1,487 (EXHIBIT I) and $1,026,518 and $7,370 (EXHIBIT II). The issue is also applicable to two other Audit Report Notes, i.e.:

Grant No. C18074703 (Schedule A-2 of the Audit Report)

Note 1 - The DDO disallowed $1,134 of claimed administrative expenses because these costs were unsupported by documentation as required under 40 C.F.R. § 30.805(a). The City proposes to offset these costs with previously unclaimed indirect costs. However, the indirect cost amounts are not based on the terms of the Indirect Cost Agreement the City negotiated with the U.S. EPA Headquarters Cost Policy and Rate Negotiation Section. That section has sole authority to negotiate such Agreements and the terms thereof. Accordingly, the $1,134 original claim is sustained as unallowable because no documentation has been provided to support the claim. Further, notwithstanding the probable accuracy of the City's contention that it incurred some indirect costs but was unable to claim same at the rate contained in the Indirect Cost Agreement i.e. a percentage of the Federal share of AWT construction costs, because no AWT construction

costs were incurred or being incurred at the time the subject Step 2 grant design work was being done, the City's request to offset the unallowable $1,134 with the previously unclaimed indirect cost is denied. The City negotiated the terms and must abide by same. The contention that the alternative method of claiming based on a rate applied to the City's consultant labor costs was a reasonable approach should have been presented to the U.S. EPA representatives with whom the original negotiations occurred. The RA is without authority to accept or reject the alternative method. For the record, the Cost Policy and Rate Negotiation Section personnel advise they have never seen or heard of a municipality using a consultant's labor costs as a basis of its indirect costs as proposed by the City.

Grant No. C18074703 (Schedule A-2 of the Audit Report)

Note 2b - The DDO disallowed $26,875 for technical assistance for purposes of design rendered by the Purdue Research Foundation because the City could not provide invoices and time sheets to support the costs. Because the City has been able to document from the Advanced Water Treatment (AWT) Project Technical Director's (C.M. Robson) diaries that approximately 1,827.5 hours related to the AWT projects during the project time period, the allowability of the $26,875 is adequately supported and the DDO's decision is reversed.

B. Start-Up Costs Beyond One Year

The DDO disallowed $407,339 claimed for A/E startup services that exceeded a period of 12 months cited in Program Requirements Memorandum (PRM) 77-2 for Grant No. C180747-06 (Schedule A-5), Note 2b. PRM 77-2, dated November 29, 1976, states in part:

> Grant eligible start-up services will average 90 man-days for most treatment plants. For large or complex plants, however, grant eligible start-up services may range up to 300 man-days. Start-up services shall be completed within a period of 12 months. To be eligible, the services must be rendered by the design engineer or others identified by the design engineer.

The City has contended that the start-up at issue here was extremely complex and involved. The September 25, 1992, submittal sets forth the City's position and states at p. 24: "The number and types of equipment that had to be operated and calibrated was immense. The effluent quality required by the discharge permit was unforgiving. The task of running the new plants was intimidating to the operations staff. The Indiana Department of Environmental Management, the EPA and the DPW were in agreement that the startup of these two advanced wastewater treatment plants was the key to realizing the benefit of $185 million of construction."

The issue to be decided is whether PRM 77-2 allows for start-up costs to exceed a one year period when start-up is as complex and involved as in the present situation. In City of Howell, Michigan, 05-87-AD07 (December 31, 1987), it is stated that:

> (T)he PRM recommends that start-up costs that exceed one year should not be eligible for grant participation, absent reasonable justification for the delay (which is not due to mismanagement of the grantee, contractor negligence, or contractor failure to perform). The PRM is simply a guideline, not a steadfast rule, and it is possible in some instances that U.S. EPA could consider factors that would allow for plant start-up in excess of 12 months.

The City has demonstrated that the start-up in this case was extremely complex and novel, and involved the integration of many different facilities, including a Bio-Roughing facility, an Oxygen Nitrification System, an Effluent Filter Building, an Ozone Disinfection System, and a Main Control System. The City has adequately demonstrated that the start-up in this case did not involve mismanagement or undue delay. Rather, the start-up exceeded one year because of the complexity of the process. Based on the City's documentation and arguments, the start-up costs beyond the one-year period (ie. those costs incurred between February 1983 and November 1983) provided for by PRM No. 77-2 are allowed. Therefore the DDO's determination that $407,339 is unallowable is reversed.

C. Acquisition Cost of Trucks and Cars

In questioning the $41,652 cost incurred by the grantee for the direct purchase of vehicles, the Audit Report cites both 40 C.F.R. § 35.940-2(g), "Ordinary operating expenses of local government", and the U.S. EPA Construction Grant program Handbook of Procedures, which provides Agency guidance on the matter, as the basis of unallowability. Although the Handbook clearly says what is quoted in the Audit Report and the DDOD, that guidance pertains to wastewater treatment plant "operation," which is an ordinary operating expense of local government after wastewater treatment plant "construction" is completed. In the present situation, though, the grantee purchased the trucks and cars for purposes relative to construction, not operation, of the wastewater treatment plants. The vehicles were used by the joint venture firm that provided construction management services. The scope of those services simply do not constitute local government ordinary operating services.

Furthermore, U.S. EPA had its Office of Audit do an Initial Pricing Audit of the architectural/engineering proposed subagreement the City had negotiated for the construction management services. The scope of the subagreement included the purchase of the vehicles by the A/E firm. The Pricing Audit Report recommended deletion of the vehicles and other equipment from not only the subagreement, but also the project. The Region 5 Water Division disagreed, and advised the Office of Audit Northern Audit Division, in a May 9, 1978, letter to the City transmitting the April 21, 1978, Initial Pricing Audit and explicitly recommended the City consider direct purchase of the vehicles in lieu of the A/E firm purchasing the vehicles if it would be cost effective and a lesser cost. The City concluded affirmatively, submitted specifications, bidding data, purchase vouchers, etc., and in each instance there was a Water Division written concurrent response. After more than 7 years of use, construction was completed, and City employees used the vehicles for 6-8 months before the City properly requested and received disposal instructions from U.S. EPA and remitted the Federal share of the proceeds of the sale of the vehicles to the U.S. EPA.

In summary, the cost was questioned on the basis of a misinterpretation of Agency guidance (unrelated to wastewater

treatment plant operation). The DDOD was premised on the same flaw and the City followed the U.S. EPA recommendation and then requested and followed written responses for both the direct purchase and disposition process. There has been no demonstration or even suggestion that the Water Division actions were outside the limits of managerial discretion or were in violation of nondiscretionary standards in existence at the time of administrative approvals. Therefore the $41,652 is reinstated in whole.

D. Contract Completion Date

As set forth in EXHIBIT II and further detail below, the DDO disallowed some costs incurred after the construction contract completion date accepted by DDO review. The U.S. EPA construction contract completion dates are October 18, 1981, for the ozone disinfection contract, and October 16, 1981, for the effluent filter building contract. The final DDOD agreed with the final Audit Report that the City had not provided adequate justification to support the following change order time extensions:

Contract	Change Order No.	No. of Days
Ozone disinfection	157	18 of 120
Effluent filter building	69	81 of 179
Effluent filter building (see p 4 of 9/25 submittal)	70	376

In its written arguments and documentation, the City stated that U.S. EPA made several affirmative management decisions that impacted the length of time required to complete construction of the project. This argument suggests that the burden of proof for the disallowed change orders was upon U.S. EPA, and that the DDO is required to show why the approved change orders were not justified. The City based this suggestion upon the argument that U.S. EPA made an affirmative management decision when approving the disallowed change orders and that, based on City of Bloomington, Indiana, 05-88-AD03 (August 5, 1991), citing Jeanrette, Louisiana, 06-87-AD03 (December 18, 1987), Audit Resolution Board Decision 13/14, March 11, 1982, Holdenville, Oklahoma, 06-86-AD02 (December 18, 1986), and Jerome, Idaho, 10-85-AD05 (July 31, 1986), those approved change orders are

entitled to a presumption of regularity and cannot be set aside without proof that the approval of the change orders was not justified.

Under the applicable regulations, the evaluation of the City's request for reimbursement for post construction completion date costs is based upon the fundamental principle that the City is responsible for the administration and successful completion of the project for which U.S. EPA grant assistance is awarded. 40 C.F.R. § 30.600 (1975). In addition, the burden of proof is always upon the City to justify claimed costs and demonstrate that those costs are reasonable and necessary, and otherwise eligible for federal funding. Environmental Quality Board, 02-93-AD10 (March 29, 1995), County of Nassau, NY, 02-90-AD03 (April 20, 1995), Luce County Department of Public Works, Michigan, 05-90-AD10 (December 26, 1990), City of Watkins, Minnesota, 05-89-AD05 (September 6, 1989). The regulations state that "[a]n award of a grant shall be deemed to constitute a public trust. It is the responsibility of the City to comply with this Subchapter and all terms and conditions of the grant agreement, efficiently and effectively manage grant funds within the approved budget, complete the undertaking in a diligent and professional manner, and monitor and report performance. This responsibility may be neither delegated nor transferred by the grantee." 40 C.F.R. § 30.210 (1975). See Morehead, Kentucky, 04-87-AD07 (May 19, 1988).

The regulations also state that "(t)he grantee bears the primary responsibility for the administration and success of the grant project . . . Although the grantees are encouraged to seek the advice and opinions of EPA . . . the giving of such advice shall not shift the responsibility for final decision to EPA." 40 C.F.R. § 30.600 (1975). These regulations make clear that it is not the role of U.S. EPA to monitor all the project costs of a grant and determine what is ineligible for Federal participation; that role is clearly taken on by the Grantee when the grant agreement is signed. In addition, the regulations state that "[a]ny settlement made prior to the final audit is subject to adjustment based on the audit. Final settlement will not be considered complete until all audit findings, appeals, litigations, or claims have been resolved. Any debt owed by this grantee to the United States, and not paid at the time of final settlement shall be recovered from the grantee . . ." 40 C.F.R.

§ 30.815 (1975). Therefore, all costs are subject to final audit. The Water Conservation Subdistrict of the Miami Conservancy District, Dayton, Ohio, 05-92-AD10, June 10, 1993, City of Dayton, Indiana, 05-84-AD04 (July 21, 1986), Village of Holgate, Ohio, 05-86-AD09 (December 31, 1986), City of Lenora, Kansas, 07-87-AD01 (March 31, 1988), Worcester County Sanitary Commission, Maryland, 03-86-AD27 (September 28, 1989).

It is a well-settled principle of grants law that post-scheduled contract completion resident engineer inspection and associated A/E fees are allowable provided two criteria are met. First, the grantee needs to show that the costs were not incurred due to grantee management actions or lack thereof or contractor failure to perform satisfactorily, i.e. the costs were due to justified extensions of the contract completion date. Second, the grantee must then show that the costs were otherwise reasonable and necessary. Urbana & Champaign Sanitary District, Illinois, 05-90-AD12 (February 19, 1991), Merrillville Conservancy District, Indiana, 05-90-AD02 (September 27, 1990), Highland Sanitary District, Indiana, 05-90-AD03 (September 24, 1990), City of Watkins, Minnesota, 05-89-AD05 (September 6, 1989), City of Sun Prairie, Wisconsin, 05-89-AD01 (September 1, 1989), Genesee County Drain Commission (II), Michigan, 05-87-AD15 (June 29, 1988).

U.S. EPA guidance emphasizing this grants law principle is reflected in the U.S. EPA Memorandum dated April 18, 1983, from Lee A. DeHihns, Acting Associate General Counsel, to Ernest E. Bradley, III, Assistant Inspector General for Audits ("DeHihns Memorandum") and the October 1, 1990, memorandum from James A. Hanlon, Director of the Municipal Construction Division and Kenneth A. Konz, Assistant Inspector General for Audit in the Office of Inspector General to Municipal Construction Program Managers in Regions I - X and Divisional Inspector Generals ("Hanlon Memorandum"). The October 1990 memorandum, which essentially elaborates on the principles in the April 1983 memorandum, clearly delineates what must be shown to justify construction contract time extensions. Under a subheading of "Contemporaneous and After-the-Fact Change Order Approvals," the

memorandum states:

> Great weight should be assigned to contemporaneous change orders approved by a delegated state, the COE or an EPA project officer (any of which is hereafter referred to as project officer approval), where the file reveals the project officer conceptually adhered to the Change Order Guide by taking a "hard look" at the need for a contract time extension and whether costs claimed were reasonable and necessary . . . . For contemporaneous change orders and for change orders approved after the fact where the file does not reveal that a project officer took a "hard look" at the contract time extension, an explanation of the justification for the length of time extension and necessity and reasonableness of cost will be obtained. The level of detail in that explanation should be commensurate with the scope and complexity of the change order. Acceptable supporting documentation includes such records as contractor logs, resident inspectors diaries, A/E billing records, photographs and progress schedule records or other baseline documents. In the absence of this information, Regions must ask a grantee to submit a narrative statement or affidavit describing its review, including the documentation it considered, or they must ask for a short narrative statement from the project officer who approved the change order describing his review, including the documentation he considered. The information/documentation used in the review of the change orders should be referenced in the project file and available for review. Regions will determine whether the documentation, the narrative statement or affidavit is adequate . . . . Where such documentation, narrative statements, or affidavits cannot be obtained, the Region must make an independent determination about the necessity of the time extension and the associated A/E fees.

This memorandum has also been cited in grant decisions, such as Urbana & Champaign Sanitary District, Illinois, 05-90-AD12 (February 19, 1991), Macomb County, Michigan, 05-89-AD10 (June 5, 1991), City of Owosso, Michigan, 05-90- AD06 (June 21, 1991), City of Carbondale, Illinois, 05-90-AD08 (July 18, 1991).

The City sets forth several lines of argument regarding the allowability of costs incurred after the DDO accepted

construction contract completion date. The City argues that U.S. EPA is bound by its affirmative management decisions, as well as further arguing that additional time was justified on change orders, that the auditors' reliance upon the DeHihns Memorandum was misplaced, and that the auditors applied the incorrect cut-off date to allowable costs.

At the November 7, 1996, meeting, the City requested that the three change orders ("COs") listed in the first paragraph of the Discussion on the subject Contract Completion Date, be reviewed again and consideration be given to approving all or at least more of the unapproved 18, 81 and 376 days. Location of COs 157 and 69 along with applicable supporting information and correspondence was relatively simple because of the Region 5 Water Division filing system i.e. in addition to documents for the Region's official files for each grant project, the Division maintains a separate folder on all requests for review of U.S. Army Corps of Engineers ("COE") or delegated State agency decisions with duplicate copies. The City had formally disputed the COE initial decisions on those two COs.

A review of the CO 157 Dispute File disclosed:

1. The City submitted the CO to the COE on 8/26/82.
2. COE issued a preliminary decision after receiving more information on 2/24/84.
3. COE modified decision 4/22/85.
4. Final COE decision was dated 7/2/86.
5. City requested Region 5 review of COE decision 8/20/86.
6. Notwithstanding that the City's request was beyond the 30 day period stated in COE letter and U.S. EPA regulations for such review requests, the Water Division conducted a detailed analysis and on 3/26/87 provided feedback and opportunity for the City to provide supporting documentation.
7. A formal DDOD was issued, which included some delay costs deemed beyond contractor or grantee reasonable management control, increased allowable costs and confirmed the approval of 102 days of the 120 day time extension. The certified mail letter of 6/9/87 sending the DDOD to the City included the provision that it constituted final Agency action unless the grantee requested RA review within 30 days.

Review of the CO 69 Dispute File disclosed:

1. COE decision rendered 9/1/87.
2. City filed Notice of Disagreement 9/30/87.
3. City's formal request for Region 5 review dated 12/11/87.
4. Region found some of the same inconsistencies or inappropriate applications/interpretations as were cited in the CO 157 analysis, so on 3/11/88 the Region remanded to COE with instructions to consider CO 157 principles.
5. On 3/11/88 the City was advised of the remand and Region's suspension of its review.
6. COE issued a revised decision 7/12/88 -- an additional $259,488 of cost approved but only the same 98 day time extension.
7. Regional DDO wrote to City 7/25/88 giving the City 30 days to reactivate its request for Region 5 review or drop it.
8. City withdrew request by letter dated 8/5/88.
9. Region 5 confirmed request "moot" by letter of 8/12/88.

The City has had a formal final Agency action on CO 157 since June 1987 and on CO 69 since August 1988. There have also been several other instances where the City disputed COE or delegated State Agency decisions through the formal disputes process to establish beyond any reasonable doubt that the City is intimately familiar with, and thoroughly understands, the review process. A further review and possible change of conclusions on any part of the three COs at this time absent an indication of fraud or a showing that the prior decisions were arbitrary and/or capricious would be akin to establishing a completely new disagreement/dispute process and potentially undermine hundreds of similar prior decisions that have supposedly been determined. Therefore, the City should not be given an opportunity in this review process regarding audit matters to again challenge these determinations.

In addition, and as noted in the subject audit report, the City entered into a settlement agreement with the contractor on the ozone disinfection contract to settle several disputes on this and other projects (the settlement related to Grant Nos. C180747-04, 05 and C180865-03, 05). The settlement provided payment to the City of $1,700,000 as consideration for the release of the City's claims against the contractor. Included in the settlement

were liquidated damages assessed against the contractor in the amount of $750,000. In fact, the City specifically stated in a December 19, 1989, memo to the Indiana Department of Environmental Management ("IDEM"), which discusses the $1,700,000 settlement, that "monies recovered based on the assessment of liquidated damages have no affect on the determination of allowable costs (i.e. are not considered to be grant related income). These monies are for the City's use to offset increased costs because of the contractor's lack of timely performance." It is thus untenable, as regards the subject projects, for the City to argue that related costs were not incurred as a result of grantee mismanagement or contractor failure to perform.

As stated in the 1990 Hanlon Memorandum (p.6):

> In accordance with established EPA policy, any additional costs (e.g., building, engineering, legal, or administration) incurred because of a contractor's lack of timely performance are assumed to be offset by the liquidated damages, and therefore are unallowable, even in the event that the grantee elects not to exercise its right to recover liquidated damages, or the liquidated damages are insufficient to cover the grantee's additional costs. Payment of liquidated damages provided for in construction contracts generally has no bearing on the allowability of post-scheduled contract completion A/E fees. However, it evidences the contractor's responsibility for any additional costs (i.e., those which would not otherwise have been incurred), including A/E support costs, which result from its untimely performance.

In this case the City obtained liquidated damages based on the contractor's failure to perform. The responsibility to determine the appropriate damage amount remained with the City. All of the information the City provided failed to show that the costs were not incurred as a result of grantee mismanagement or contractor failure to perform. As a result, it is recommended that the administrative costs and other A/E fees incurred after the construction completion date accepted by DDO review costs be disallowed.

Following is a discussion of each claim by the City as it relates to the contract completion date. Other issues are discussed as necessary in order to reach resolution of each claim.

Grant No. C18074704 (Schedule A-3 of the Audit Report)

Note 1b - The DDO disallowed $211,135 of A/E basic fees claimed for services performed after the U.S. EPA approved construction contract completion dates. However, the City provided sufficient documentation to support $43,139 of allowable one time activities which may be used as an offset against the $211,135. Therefore, the revised disallowed cost is $167,996 and the disallowance of $43,139 is reversed.

Note 2 - The DDO disallowed $114,188 of A/E fees incurred after the U.S. EPA approved construction contract completion dates. Based upon a review of the City's September 25, 1992 submission, the City has satisfactorily documented one-time allowable costs (for as-built drawings) of $465 which should be reinstated and used to offset the disallowed $114,188. Therefore, the DDO's disallowance of $113,723 is sustained and the disallowance of $465 is reversed.

Note 3a - The DDO disallowed $15,611 of project inspection costs claimed for services performed after the U.S. EPA approved construction contract completion dates. The City has also provided minutes of a March 30, 1976, meeting held at the Indiana Board of Health (now Indiana Department of Environmental Management (IDEM)). The City believes that these minutes document that the off-site disposal of sludge, which resulted in site access delay claims by follow-on contractors, was the result of U.S. EPA imposed requirements (actually was accepted by the City in lieu of the alternative, namely, preparation of an environmental impact statement) to allow off-site disposal despite documentation from the City that off-site disposal would result in significant delay. However, no documentation could be located that shows the subject project inspection costs were not additional or related to allowable post construction activities, such as one-time allowable activities, including punch list items, record drawings, etc. Therefore, the DDO's disallowance of the $15,611 of project inspection costs is sustained.

Grant No. C18074705 (Schedule A-4 of the Audit Report)

Note 1b - The DDO disallowed $30,720 of A/E basic fees for services performed after the U.S. EPA approved construction contract completion dates. These costs relate to costs claimed after the U.S. EPA-approved contract completion date of October 29, 1981, for ONS. The City has now provided U.S. EPA with documentation to support $3,204 of unclaimed one-time allowable costs, i.e. as-built drawings, O&M manual, etc. Therefore, the revised disallowed cost is $27,516.

Note 2b - The DDO disallowed $12,577 of other A/E fees for services performed after the U.S. EPA approved construction contract completion dates. The City stated in its February 11, 1993, submittal that it agrees with U.S. EPA as to the disallowed amount if the U.S. EPA completion dates are held to be accurate. Because the contract completion dates are being upheld, and because a review of the documentation verifies that the City has not provided any additional documentation that supports the allowability of the $12,577 of other A/E fees claimed, the DDO's disallowance is sustained.

Note 2c - The DDO disallowed $3,170,520 of construction management services performed by Geupel, DeMars and Turner (GDT) for services performed after the U.S. EPA approved construction contract completion dates. The City maintains that costs incurred after the DDO accepted construction contract completion date should be allowed. Although the City disagrees with the contract completion date, it has provided the Region with an alternative methodology (Attachment G to the September 25, 1992, submittal) for allocation of costs. The City believes that its proposed methodology, which allocates the engineering costs on a month by month basis rather than on the total construction cost of the project, the method utilized, more accurately distributes the questioned costs by specific time periods and each project's construction costs. In addition, the City provided a similar methodology at the January 26, 1993, informal conference, which it has provided again for reference (See Attachment C of the February 11, 1993 submittal). The proposed methodology provided during the January 26, 1993, informal conference is reasonable, and is a more refined method than the current allocation which looks to total construction cost, and will be accepted. This

method reduces the total disallowed costs to $2,361,026. Therefore, the DDO's disallowance of $2,361,026 is sustained and the disallowance of $809,494 is reversed.

Grant No. C18074706 (Schedule A-5 of the Audit Report)

Note 1b - The DDO disallowed $137,898 of A/E basic fees for services performed after the U.S. EPA approved construction contract completion dates. These costs represent RQAW costs claimed after the U.S. EPA-completion date of March 10, 1981, for Electrical Distribution, November 14, 1981, for BioRoughing and November 1, 1982, for Main Control.

The City argues that, even if the U.S. EPA-completion date is utilized, the correct date is October 19, 1981, rather than March 3, 1981. The City states that there were two Electrical Distribution Projects. For the Electrical Distribution Project associated with the Oxygen Nitrification, the U.S. EPA-completion date is October 18, 1981. This portion of Electrical Distribution was constructed by the joint venture of Huber, Hunt & Nichols/Tibbetts/Grunau. The Electrical Distribution Project constructed by Ernest Jarvis was completed by March 10, 1981, (U.S. EPA project completion date). According to the City, RQAW did not distinguish between the two projects (i.e. Electrical Distribution in general and Electrical Distribution for Primary). Since a field engineer could not readily distinguish between Electrical Distribution as constructed by the Joint Venture and Electrical Distribution as constructed by Jarvis, both portions of Electrical Distribution were in this grant. Thus, based on time sheets and computer printouts summarizing costs per task from Reid, Quebe, Allison, Wilcox and Associates (RQAWA), the City stated that the total current unallowable amount should be $107,966.

Based on documentation supplied by the City the DDO's disallowance of $85,879 is sustained and the disallowance of $52,019 is reversed.

Note 2c - The DDO disallowed $46,224 of other A/E fees for services performed after the U.S. EPA approved construction contract completion dates. These costs represent RQAW costs claimed after the U.S. EPA-approved completion date. The City

has now provided A/E summaries and invoices that support an additional $11,140 of unclaimed allowable one-time tasks. Therefore, the DDO's disallowance of $35,084 is sustained and the disallowance of $11,140 is reversed.

Note 3b - The disallowed $1,683 is reinstated per NOTE II to EXHIBIT II.

Grant No. C18086503 (Schedule A-7 of the Audit Report)

Notes 1b, 2 and 3 -- The DDO disallowed $18,873 of A/E and inspection costs. Additional information documented that $1,095 of "Other A/E fees" (Note 2) was a one-time service. Therefore, $17,778 of the DDO's disallowance is sustained and $1,095 reversed. (Also see NOTE III to EXHIBIT II.)

Grant No. C18086504 (Schedule A-8 of the Audit Report)

Note 2 - The DDO disallowed $69,298 of engineering costs for services performed after the U.S. EPA approved construction contract completion dates. The City states that the unallowable amount should be $66,682 and referenced its September 25, 1992, submittal, Attachment L, and its October 29, 1992, submittal, page 53. A review the City's September 25, 1992 submittal, Attachment L, indicates that the documentation supports an additional $2,616 in one-time allowable tasks. Therefore, the DDO's disallowance of $66,682 is sustained and the disallowance of $2,626 is reversed.

Grant No. C18086505 (Schedule A-9 of the Audit Report)

Note 1b - The DDO disallowed a total of $376,214 of A/E basic fees. The $376,214 represents $332,938 of A/E basic fees for services performed after the U.S. EPA approved construction contract completion dates and $43,276 of fees incurred under the Snell Environmental Group, Inc., (SEG) engineering agreement. The City is disputing the U.S. EPA-completion date for Electrical Distribution, and believes that the completion date that should have been used is June 1, 1981. RQAW did not differentiate its costs between the two projects.

The City states that it has documented one-time allowable costs and has reduced the disallowed amount to $268,820 for RQAW. The

City references its September 25, 1992, submittal, Attachment M, and its October 29, 1992, submittal, page 60. The City further states that $28,331 of the reduction represents costs not claimed but allowable. The City also states that $5,721 of certain costs, documented in its February 3, 1992 submittal, Volume 2, are also allowable. The City further references its April 13, 1992, submittal (Volume 2) which supports certain drafting costs. A review of the submittals reveals that $64,118 of RQAW costs can be supported. Therefore, the amount to be disallowed is $312,096.

Note 2 - The DDO disallowed $162,289 ($147,030 RQAW inspection costs + $15,259 Snell costs) of other architectural engineering fees for services performed after the U.S. EPA approved construction contract completion dates. Based on information supplied by the City, $18,847 in RQAW costs and $15,259 in Snell costs (see NOTE IV to EXHIBIT II) may be reinstated while $128,183 remains disallowed. The total reinstated under this note is thus $34,106.

Note 3b - The disallowed $3,439 is reinstated per NOTE II OF EXHIBIT II.

Grant No. C18086505 (Schedule A-9.1 of the Audit Report)
Innovative Funding

Note 2b - The DDO disallowed $208,338 of the $277,353 questioned A/E basic fees incurred under the oxygen nitrification contract because these costs were unsupported by adequate documentation. The City, in its September 25, 1992, submittal (Volume III of VI) justified $7,370 in additional unclaimed costs that should be allowed. Based on this supplemental documentation, the DDO's disallowance of $200,968 is sustained and the disallowance of $7,370 is reversed.

IV. CONCLUSION

EXHIBIT IV summarizes the conclusions and recommendations of this Report on a grant-by-grant basis. It sets forth the amount of: unallowable costs from the DDOD; costs not being contested further; costs reinstated; and recommended unallowable costs based on the RA review along with the corresponding Federal 75

and 10 percent shares after offsetting the $19,887 unallowable costs claimed in Grant No. C18086503. The net unallowable cost is $4,753,982 of basic, and $835,272 of innovative, grant costs. The corresponding Federal shares are $3,565,487 and $83,527, making a total of $3,649,014 due and owing.

In addition, there is accrued interest due. The City has requested relief including total forgiveness of all interest charges. The Comptroller has reviewed the request and determined that interest, pursuant to 40 C.F.R. 13.11(e)(1)(ii), should be due only on 606 days out of the total of 2,214 days since the July 6, 1992, Final Determination Letter was issued to the City. The Comptroller was thus willing to waive interest for a total of 1608 days based on the Agency's inaction without fault of the City. Interest will again accrue on any remaining unpaid principal balance from the effective date of this decision if full repayment is not made within 30 days of effective date of this decision. The amount of interest owed by the City on the final disallowed amount of $3,649,014 for 606 days at 6% is $363,503. A total refund in the amount of $4,012,517 is due and owing.

EXHIBIT IV

REPORT RECOMMENDATION

Grant No.	DDOD Unallowable	Not Contested Further	Reinstate	Unallowable	Federal Share
C18074701	103,635	102,148	1,487	102,148	76,611
C18074703	1,098,085	1,070,076	26,875	1,071,210	803,408
C18074704	344,608	3,674	43,604	301,004	225,753
C18074705	3,492,813	237,344	854,350	2,638,463	1,978,847
C18074706	594,484	1,340	472,181	122,303	91,727
Subtotal	5,633,625	1,414,582	1,398,497	4,235,128	3,176,346
C18086502	0	0	0	0	0
C18086503	20,982*	2,109	1,095	19,887**	14,915**
C18086504	70,733	1,435	2,616	68,117	51,088
C18086505	552,400	10,458	101,663	450,737	338,053
Subtotal	644,115	14,002	105,374	538,741	404,056
Total for Basic Grant	6,277,740	1,428,584	1,503,871	4,773,869	3,580,402
			Net Adjusted Unallowable	-19,887**	-14,915**
				4,753,982	3,565,487
C18086505 Innovative	842,642	567,916	7,370	835,272	83,527
				Total Federal Share	3,649,014

*Unallowable costs offset with $138,058 of previously unclaimed costs.
**Unallowable costs offset in this review by $138,058. Leaves a balance of $118,171 unfunded. (Not subject to RA review.)

Respectfully submitted,

Date: 9/4/98

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Regional Counsel
U.S. Environmental Protection Agency,
Region 5

Date: 9/15/98

Robert L. Springer
Assistant Regional Administrator
Resources Management Division
U.S. Environmental Protection Agency,
Region 5

Date: 9/22/98

Robert L. Thompson
Associate Regional Counsel
U.S. Environmental Protection Agency,
Region 5

ADDENDUM

Grant No. C180747-01 was awarded on May 30, 1975, and was completed on August 31, 1984. The grant provided funds for a feasibility study, a pilot plant study, cost-effective analysis, an environmental assessment, a facilities plan addendum, and a municipal pretreatment program. The U.S. EPA payments under the grant were $2,466,041.

Grant No. C180747-03 was awarded on May 28, 1976, and was completed on December 31, 1983. The grant provided funds for the preparation of plans and specifications for modifications and additions to the Belmont Wastewater Treatment Plant. The U.S. EPA payments under the grant were $2,688,859.

Grant No. C180747-04 was awarded on June 30, 1977. The grant provided funds for Phase II of the construction of additions and modifications to provide tertiary treatment facilities at the Belmont Wastewater Treatment Plant. The U.S. EPA payments under the grant were $16,363,439. Construction under this grant was inspected and accepted by the U.S. Army Corps of Engineers on May 14, 1987.

Grant No. C180747-05 was awarded on July 25, 1977. The grant provided funds for Phase III of the construction of tertiary treatment facilities at the Belmont Wastewater Treatment Plant and construction program management for the construction of biological roughing, oxygen nitrification, disinfection, main control, electrical distribution systems, and effluent filter buildings and air nitrification systems at the Southport Wastewater Treatment Plant. The U.S. EPA payments under the grant were $33,361,779. The construction under this grant was inspected and accepted by the U.S. Army Corps of Engineers on March 26, 1987.

Grant No. C180747 was awarded on September 27, 1977. The grant provided funds for Phase IV of the construction of additions and modifications to the Belmont wastewater Treatment Plant including electrical distribution, the biological roughing system, the main control systems, and the training of personnel in the operation of the modified treatment plants. The U.S. EPA payments under the grant were $17,969,726. The construction under this grant was inspected and accepted by the U.S. Army Corps of Engineers on July 19, 1987.

Grant No. C180865-02 was awarded on May 28, 1976, and was completed on December 31, 1983. The grant provided funds for the preparation of plans and specifications for modifications and additions to the Southport Wastewater Treatment Plant. The U.S. EPA payments under the grant were $2,428,496.

Grant No. C180865-03 was awarded on June 30, 1977. The grant provided funds for Phase II of the construction of additions and modifications to provide tertiary treatment facilities at the Southport Wastewater Treatment Plant. The U.S. EPA payments under the grant were $15,913,337. The construction under this grant was inspected and accepted by the U.S. Army Corps of Engineers on August 20, 1986.

Grant No. C180865-04 was awarded on August 15, 1977. The grant provided funds for Phase III of the construction of additions and modifications to provide tertiary treatment facilities at the Southport Wastewater Treatment Plant. The U.S. EPA payments under the grant were $8,061,298. The construction under this grant was inspected and accepted by the U.S. Army Corps of Engineers on December 5, 1985.

Grant No. C180865-05 was awarded on July 19, 1978. The grant provided funds for Phase IV of the construction of additions and modifications to the Southport Wastewater Treatment Plant including the biological roughing system, the nitrification system, the electrical distribution system, and the main control system. The U.S. EPA payments under the grant were $45,779,012. The construction under this grant was inspected and accepted by the U.S. Army Corps of Engineers on August 13, 1987.

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing Determination of the Regional Administrator to be sent by Certified Mail, Return Receipt requested, to:

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Date: 30 September 1998

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