

# Inter-Municipal Agreements Stay With The Basics And It Can Be Done!



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## How Long Has It Been?



The Dark Ages Was An Actual Band from Australia from 1965. If Your Sewer Agreements Date Back to That Era It's Time to Rethink.....



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## Why Talk About Agreements?

- ▶ The Majority of Sewer Agreements Are Dated and Need to be Updated.
- ▶ Anyone with a Sewer System Normally Has Some Type of Agreement.
- ▶ Implementation of the Regional Long Term Wet Weather Control Plan Will Require Updated Agreements.
- ▶ 3RWW Funded a Grant for the Chartiers Cooperative Agreement Committee.



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## Chartiers Cooperative Agreement Committee

### Committee Managers/Members

- ▶ Lori Collins, Bridgeville Borough
- ▶ Stephen Feller, Municipality of Mt. Lebanon
- ▶ Denise Fitzgerald, Scott Township
- ▶ Matthew Serakowski, The Township of Upper St. Clair (USC)
- ▶ George Kostelich, Public Works Director, USC
- ▶ Dave Kutschbach, Superintendent of Projects, USC

### Committee Engineers

- ▶ Lawrence J. Lennon, P.E., D. WRE, Lennon, Smith, Souleret Engineering, Inc.
- ▶ Ruthann L. Omer, P.E., The Gateway Engineers, Inc.

### Committee Solicitors

- ▶ Richard Ferris, Esquire
- ▶ Brock McCandless, Buchanan Ingersoll
- ▶ Gavin Robb, Tucker Arensberg
- ▶ Daniel Perry, Tucker Arensberg
- ▶ Philip Weis, Buchanan Ingersoll



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## Chartiers Cooperarive Agreement Committee

- ▶ **Purpose: Provide the Context for Discussion for Development of Inter-Municipal Service Agreements Among Various Communities that will Share Wet Weather Facilities**



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## Inter-Municipal Service Agreement

- ▶ **Basic Definition: Two or More Local Governments Can Join Together and Cooperate in the Performance of their Responsibilities.**
- ▶ **The Agreement Must be Adopted by an Ordinance of the Participating Municipality.**



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## Recitals

- ▶ Overview
- ▶ Operation and Maintenance
- ▶ Geographical Area
- ▶ Ownership
- ▶ Dispute Resolution
- ▶ Pro Rate Sharing of Costs
- ▶ Permits
- ▶ Agreement
- ▶ Shared Facilities
- ▶ Financing
- ▶ Terms



## Ancillary Items

- ▶ Approval of Unforeseen Expenditures
- ▶ Regulatory Directives (For Compliance with Future Directives and Cost Sharing)
- ▶ Meetings
- ▶ Insurance Requirements





# Memorandum of Understanding

- ▶ Project Scope
- ▶ Agreement Terms
- ▶ Project Cost
- ▶ Who Will Pay?
- ▶ Bidding
- ▶ Construction
- ▶ Project Ownership
- ▶ Project Maintenance
- ▶ Maintenance Costs
- ▶ Timeline
- ▶ Legal Effect of MOU
  - Binding or Not Binding?
  - Legal View?
  - DEP View?



# Recommended Agreement Items

- ▶ Ownership and Permitting
- ▶ Capacity Allocation and Planning Module Approval
- ▶ Cost Sharing and Billing
- ▶ Recitals
- ▶ Ancillary Items
- ▶ Memorandum of Understanding
- ▶ Maintenance: Responsibility and Budget/Cost
- ▶ Capital Improvements





# Ownership

## Elements of Risk

### *Regulatory/Environmental*

- ▶ Permit Violation
- ▶ Release of Noxious or Explosive Materials
- ▶ Third-Party Lawsuits (e.g. PEDF, Sierra Club)
- ▶ Compliance Orders for Modification/Upgrade
- ▶ Criminal Prosecution (Licensed Operator)

### *Liability*

- ▶ Tort
- ▶ Contract

### *Revenue*

- ▶ Initial Debt
- ▶ Cash Flow
- ▶ Future Capital Project Costs
- ▶ Source of Revenue



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# Ownership

## Ownership Options

- ▶ Resident Community Ownership
- ▶ Financing Authority Owns, Municipality Operates
- ▶ Joint Operating Authority Ownership and Operation
- ▶ Intergovernmental Cooperation Agreement (Act 177)
- ▶ Environmental Improvement Compact (EIC)

## Considerations

- ▶ Debt Underwriting
- ▶ Operations and Administrative Staffing Needs



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## Permitting

### Part II Water Quality Management

- ▶ Includes General and Specific Operating Requirements for O&M
- ▶ Regulates Actions and Creates Regulatory Exposure

### National Pollutant Discharge Elimination System (NPDES)

- ▶ Stormwater Discharges (Temporary and Permanent Facilities)
- ▶ Satellite Collection System Permit

### E&S Control



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## Permitting

### Agreement Should Address and Describe the Responsibilities of Each Party:

- ▶ Duty to Properly Operate Their Tributary System so as not to Contribute to a Permit Violation
- ▶ Compliance with Regulatory Orders
- ▶ Payment of Fines for Non-Compliance or Violation of the Federal Clean Water Act or Pennsylvania Clean Streams Law
- ▶ Duty to Defend



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# Cost Sharing and Billing

## Key Elements of Effective Durable Agreements

- ▶ Cost Sharing is Equitable
- ▶ Encourage Proper, in Many Cases Enhanced, O&M to Minimize the Operating Cost of Shared Facilities and to Facilitate Regulatory Compliance
- ▶ Transparent

## Four Potential "Levels" of Cost Sharing

- ▶ ALCOSAN (Transport and Treatment)
- ▶ PWSA (Pittsburgh Water and Sewer Authority) or Other Downstream Municipal Transport Fees
- ▶ Local Municipal Shared Facilities Fees
- ▶ Internal Municipal Collection System Fees



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# Cost Sharing

## Primary Elements of Cost to be Addressed

- ▶ Initial Costs
- ▶ Tap-In Costs
- ▶ Annual O&M Costs
- ▶ Annual Debt Service Costs
- ▶ Compliance Penalty Costs
- ▶ Future Capital Improvements



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## Cost Sharing

### Methods

- ▶ "Agreed Upon" Basis
- ▶ Capacity Basis
- ▶ Water Consumption
- ▶ Measured Wastewater Flow ("Pay to Play")
  - Area Velocity (AV) Monitors
  - Primary Element Based Meters
- ▶ Equivalent Dwelling Units (EDUs)
- ▶ Hydrologic and Hydraulic (H&H Model)
- ▶ Ratio Basis
  - Peak Wet Weather Flow/Dry Weather Flow (PWWF/DWF)
  - Wet Day/Dry Day
- ▶ Strength of Flow



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## Billing

- ▶ Frequency of Billing
  - Billing Period Function of Cash Flow
  - Needs the Level of Effort Required to Gather and Review the Data and Prepare the Bills
- ▶ Basis of Billing
  - Percentage of Adopted Budget
  - Wastewater Flow Surrogate (e.g. EDU's)
  - Actual Metered Wastewater Flows
  - Water Consumption
- ▶ Payment Terms
  - Time Allocated for Payment After Receipt
- ▶ Penalties
  - Interest Charges for Late Payment
  - Stipulated Penalties for Lack of Performance
  - Cash Fines for Refusal to Process Planning Modules



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## Billing

### Components of A Bill for Service

- ▶ Lump Sum
- ▶ Unit Price (\$1,000/Gal.)
- ▶ Base Rate Plus Unit Rate
- ▶ Fixed Debt Portion Plus Rate for Variable
- ▶ Surcharge

-Base Rate Component,  
Plus Allowance for Wet Weather  
and Surcharge for Volume Plus  
Allowance



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## Capacity Allocation

### Concept: Defined "Portion" of the Total Hydraulic Capacity of any Shared Facilities is "Owned" By Each Entity

▶ To the Extent that Entities Underwrite the Cost of the Facilities, They Own Proportional Share of the Capacity Which Will be Available for Current or Future Use or Resale

### Capacity Allocation Section

- ▶ Establish the Foundation for Regulation of Current and Future Use of Constructed Share Facilities
- ▶ Appropriately Distribute the Capacity Granted to or Bought by Each Participant in the Agreement, and
- ▶ Define Reserve Pipe or Basin Capacity, if any, and How that Reserve Capacity is to be Utilized



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## Capacity Allocation

- ▶ Allocate Capacity on Measurable Well-Defined Parameters that Have Some Relationship to the Size, Usage and Cost of the Facilities
- ▶ Part II WQM Permit Design Engineer's Report
  - Start With a Schematic Design
- ▶ Methods
  - Agreed Upon Basis
  - Negotiated Percent
  - Gross or Net Acreage
  - Land Use
  - MHI Ratio
- ▶ Water Consumption



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## Capacity Allocation

- ▶ Wastewater Flow ("Pay to Play"), Monitored or Unmonitored
  - Monitored
    - Peak Instantaneous Rate of Flow (mgd)
    - Average Daily Volume (MG), Maximum Day Flow Volume (MG)
  - Unmonitored
    - Average or Maximum Daily Flow Volume (MG) Based on FSWG Document 028
- ▶ Equivalent Dwelling Units (EDUs) or Population
- ▶ Hydrologic and Hydraulic (H&H) Model
  - Base Water Flow (BWFF), i.e. "Sewage" Allocation
  - Ground Water Infiltration (GWI) Allocation
  - Rainfall Derived Infiltration and Inflow (RDI/I) Allocation
- ▶ Ratio Basis
  - Peak Wet Weather Flow/Dry Weather Flow (PWWF/DWF)
  - Wet Day/Dry Day



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# Planning Module Processing

▶ Section J, Chapter 94 Consistency Determination of PADEP Sewage Facilities Planning Module Component 3 Requires Certification and Sign Off Regarding System Capacity at Three Levels:

- Collection System
- Conveyance System
- Treatment Facility

▶ Agreement

- Provide for a Defined Approval Process and Schedule for Planning Modules for Land Developments
- Where Allocated Capacity Remains, Approval Should NOT be Withheld
- Where Capacity has been Exceeded, Provide for Sale of and Available "Reserve Capacity"



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# Maintenance: Responsibility And Budget/Cost

## Overview

- ▶ Goals
- ▶ Legal Authority
- ▶ Measures and Activities
- ▶ Design and Performance Provisions
- ▶ SSO Emergency Response Plan
- ▶ Evaluation
- ▶ Capacity Measurement Measures
- ▶ Plan Updates
- ▶ Plan Audits
- ▶ Funding of Plan

# O&M



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## Maintenance: Responsibility And Budget/Cost

### Shared/Common Facilities

- ▶ Manhole Inspections
- ▶ Televising
- ▶ Repairs
- ▶ General Work
- ▶ Point of Connection Maintenance and Inspection
- ▶ Reporting
- ▶ Performance of Verification
  - Assessment
  - Capacity Analysis



Shared Maintenance Responsibilities  
Should Be Agreed Upon So Major Pipe  
Deficiencies Can Be Addressed Quickly!



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## Maintenance: Responsibility And Budget/Cost

### Annual Budget Considerations

- ▶ Outside Construction Maintenance Repairs
- ▶ Should Force Account Work be Included?
  - Includes Labor and Payment, Taxes and Benefits
- ▶ Use of Equipment
- ▶ Maintenance and Supply Costs
- ▶ Rental of Equipment
- ▶ Consultant Fee
- ▶ Debt Service
- ▶ Approval Process



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# Capital Improvements

- ▶ Administration
- ▶ One or Two Entities?
- ▶ Bidding
- ▶ Pre-Qualification Regulations
- ▶ Design and Bidding
- ▶ Permits
- ▶ Cost Sharing
- ▶ Design and Construction Standards
- ▶ Change Orders
- ▶ Payment Processing
- ▶ Final Bonds
- ▶ Financing of Projects



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# Questions And Comments



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