

Milford Township

From: Rachel Hendricks (via Google Docs) [ravfhendricks@gmail.com]
Sent: Sunday, August 14, 2022 10:00 PM
To: milfrdtp@ptd.net
Cc: ssheldon@vancleefengineering.com; doug.manion@milfordpa.org; anthony@magnottalaw.com
Subject: Comments on Proposed IMA
Attachments: Comments on Proposed IMA.pdf

Rachel Hendricks attached a document

Rachel Hendricks (ravfhendricks@gmail.com) has attached the following document:


Dear Mr. Sheldon, thank you for sending me the most recent version of the proposed IMA. I have attached comments, suggestions and questions. I also have the following questions regarding this undertaking:

The MWA conducted outreach to ascertain interest in connecting to the sewer line among Milford Township users in the service area. What are the results? Have the results been incorporated into this Agreement or the Act 537 revisions?

Has an independent inspection of WMA facilities been done to ascertain the condition and a pre-existing need for capital additions or the schedule for capital additions?

Has WMA made any representations as to the potential cost increases relative to disposal of the solids, notably currently being handled at the M&S Plant, where the prior owner was charged with improperly disposing of solids on the property because there was too much volume previously for them to handle properly?

These are not an official response by the Milford Township Board of Supervisors. I am copying the Township office. At tomorrow's meeting these comments may be discussed with my fellow Supervisors but I wanted to forward them to you to avoid further delay. I apologize in advance that my comments may demonstrate my limited knowledge of this subject and appreciate your patience.
I look forward to your responses.

 Comments on Proposed IMA

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Article 1

Definition of Sewer System - 'owned by WMA or MWA...' - shouldn't *or MMA* be added?

Section 1.02 - 'all word imparting the singular number include the plural number' - this makes it very difficult to understand if the intent is to give one party any particular control

Definition of Capital Additions - joint use of *two or more* of the Parties

Definition of EDU - "with supporting documentation acceptable to the WMA, MWA or MMA" - here is an instance where Section 1.02 makes the intent unclear. This creates a huge potential for dispute. Can language be added to more clearly define this, ie. *such as.... ?*

"Any residence which is used for any purpose..." - add "*except a home based business with no employees other than the single family homeowners/tenant occupants and not generating wastewater by virtue of its business activities*"

Definition of Extraordinary Repairs - another instance where Section 1.02 makes the intent unclear. Combined with the term "desirable" this is potentially a source of dispute.

Definition of Intermunicipal Facilities - utilized by *two or more* of the...

Definition of Plant - there is a repeat at the end. "The term "Plant" includes the WMA Sewer and the WMA Sewer." - what is the second part supposed to say?

Definition of Service Area - no exhibits were attached to the draft

"Upon notice" - How much notice and how should the notice be given? How does the allocation of flow come into play; should there be a notice of intent then within so many days a response indicating acceptability and flow/capacity availability?

There is no definition of WMA Sewer System which term is used to calculate the annual service fee.

Article 2 - Allocation of Capacity

All blanks must be filled in.

"Based upon average daily reserved capacity" - this term is not defined.

Section 3.01 Capital Additions

"Report outline the purpose" - should it not be "detailing" rather than outlining?

"Such report to the MWA" *and/or MMA*

Section 3.02 WMA, MWA or MMA Identified Capital Additions

"At their sole discretion" plus "as deemed necessary by the WMA" lends itself to the other parties being dragged through expenses they may not feel are necessary and may be forced to pay.

Section 3.03 Payment for Capital Additions

The time schedule laid out here is not sufficient time for government contributions and is not long-term-planning-minded. How are the secondary agencies going to finance their portion of these costs when they do not own the infrastructure? Has the MWA checked in with its typical financing sources to inquire about this? Shouldn't the Participants have a schedule for replacement and Capital Additions, laying out the life of the item/facility/equipment and its current point in the lifespan and date of anticipated replacement for long-term planning? Has there been an independent inspection of the facilities to determine if there is already any short term need in this regard, or deferred maintenance? If not, shouldn't that be undertaken first? There are no representations here by the WMA as to the conditions of the facilities or point in the life cycle of anything at all that is referenced here.

Section 3.04 Emergency Capital Additions

Including *reasonable and necessary* administrative expenses.

There should be language here that the Participants agree to work together and cooperate to address any emergency capital additions timely and efficiently to keep costs down as they will be shared by the entire group of Participants and users.

Section 3.06 Actual Construction Cost

There is language here to collect if the actual cost exceeds the preliminary cost but there is nothing addressing if it is less than the preliminary. Rare, surely, but not having that language could result in inflated estimates benefiting the WMA. Refunds of overpayments should be delineated here.

Sections 3.07 and 3.07.1 Expansions at the Request

There should be language, perhaps 3.07.2 that "Nothing in Sections 3.07 and 3.071 is meant to prohibit MMA and MWA from making a joint request for expansion and sharing in the costs proportionately to their requested future allocations.

Section 4.01 Treatment Service Charges

"Less any income or receipts....properly applicable to offsetting or paying such costs and expenses (other than the direct payments to be made by MWA and/or MMA pursuant to this Agreement or user charges collected by WMA" - doesn't that create a double dip? How is it truly the net expenses if this income to WMA is not considered? Doesn't that really exclude nearly all the revenue meant to cover these costs?

There is an extensive list of costs and then after accounting services it says "(but in the case of any of the same, only to the extent that same relates to the treatment and disposal facilities)." It is unclear if that lengthy clause refers "the same" to mean each of those items or any of those items. This needs to be more clear.

It is noted that the other entities have zero control over these costs, zero say in the costs. Have the other Authorities been given any baseline reference? Shouldn't a baseline reference be incorporated as an exhibit? Do the other Authorities even know a range of what this expense is they are agreeing to? Shouldn't language be added that WMA will endeavor to keep these expenses down or obligate them to be looking for ways to be most efficient and

cost-effective? The WMA is less apt to keep a tight rein on these expenses when in fact they are chargeable to other entities for payment and the change-over to this system will make more funds potentially available to WMA, possibly triggering more/increasing expenses and if there is a baseline for now is there an estimate by WMA of what it will be with any additional staff etc. that may be needed to handle the additional infrastructure, reporting etc. triggered by the expansions?

Section 4.02 Calculation of Treatment Service Charges

There is no language here that provides for proration in the initial year of service, when the full year's service, or even full quarter's service, may not be provided. Such language should be added.

B. "Shall each pay with WMA within 45 days after receipt of the invoice for the quarterly fee." - Does that work for the MWA cash flow? That is approximately when water bills are due; presumably the sewer bills will have that due date as well. Does it give you enough time for cash flow or are you going to have a working capital fund?

C. "Shall be due and payable 45 days after the WMA issues its invoice" - the dates are not consistent. Should say again 45 days after receipt of the invoice, like B. This should specify how the invoices will be sent, fax, email, or mail. If it goes in the mail, the MWA could lose a week between the mail going out and being received.

F. "Adjustment on the basis of actual Flow shall be made if actual Flow data becomes available." Within what time period?

Section 4.03 Annual Service Fee

"MWA and MMA shall each calculate their flow through unmetered connection points" - Shouldn't WMA also be included in this? If they are representing they don't have any that should be stated but if broken meters is the usual causation, they are just as susceptible.

Again, the 1st year should be prorated and not actual annual cost.

Won't nearly all of Westfall's system be joint use now?

Exhibits B-1 and B-2 were not attached.

Has MWA figured out its cost under this Agreement, per EDU and the economic feasibility for itself / break even analysis?

Section 5.03 Right to Sample and Monitor

"...Establish an informal protocol to allow this monitoring and sampling to proceed unimpeded." Unimpeded is a high standard. Why should it be informal? Will this require access to the industrial user's facility? If so, then a more standardized protocol is required and would likely have to be included in the user's agreement with the Participant.

Shouldn't the WMA's current WMA Industrial Wastes protocol be added as an Exhibit? With this blank it does not give the impression the document has been circulated to the other Authorities. Has it?

Section 5.07 Waste Samples

“...and shall be at the cost of the Industrial User.” - what are the costs associated accounted under and will they be entirely separated out for the purposes of net operating and maintenance fees?

Article 6 Section 6.03 Specifications for Meters

“...WMA will determine the type, manufacturer and model of each meter required” - Why is this control necessary? Shouldn't there be limiting language to this control? Why wouldn't the engineer for the other authority be equally able to make the appropriate determination?

Section 7.04 Flow Surcharge

C. So, under this language, if there is a seasonal peak over the capacity during summer months, in fall the Participant would have to stop issuing permits. By close of winter, they could issue permits again, which would make the Participant likely to have an even higher excess Flow the following summer, correct?

D. “...is the result of a natural disaster or other event not within the control of such Participant and which affects **all Participants**.” This language is dangerous because we are all aware that storm damage for example can seriously affect one community while not seriously affecting another. Power outages can be very localized. River flooding has a much more drastic effect in Westfall and Matamoras than in Milford. If there is a multi-day power outage at the end of one month and the power comes back on at the beginning of the next month and stored waste bumps the new month's flow above the allocation, that may not affect ALL Participants however it is not within the Participant's control. Perhaps this could just say in the even of a municipal state of emergency, natural disaster or other event not within the control of such Participant, ending the sentence there?

Section 7.05 Review of Monthly Flow Data and Imposition of Flow Surcharge

“...the WMA may recover the costs of its Consulting Engineer from the Flow Surcharge Fund.” - This is the only reference to such a fund in the document, if I am not mistaken. There is no definition for the same. What fund? How is it created and is this the only thing it can be used for?

Section 8.09 Pass Through

“...A geographic area not serviced by the Plant” - why must this be treated differently than the other municipalities' service areas, such as guided by the definition of Service Area?

Did the MWA receive any position responses to the outreach effect indicating anyone in the area of the pass thru line wishes to be incorporated into the plan from its initial construction, from Milford Township?