

00-1388-CD
WOODWARD TOWNSHIP SEWAGE AND -vs- MUNICIPAL SEWER AUTHORITY OF
WATER AUTHORITY HOUTZDALE BOROUGH

FILED

DEC 10 2001

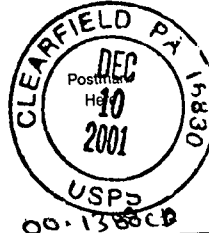
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William A. Shaw
Prothonotary

00-1388-CD

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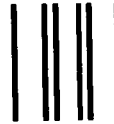
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00-1388-CD



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DEC 13 2001

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William A. Shaw
Prothonotary

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00-1388-00

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00-1388-00		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
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William A. Shaw
Prothonotary

E 3-28-03

W.A. Shaw

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Woodward Township Sewage
and Water Authority,
Appellant

v.

Municipal Sewer Authority of
Houtzdale Borough

No. 2447 C.D. 2001

Argued: April 8, 2002

BEFORE: HONORABLE JAMES GARDNER COLINS, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE SIMPSON

FILED: May 20, 2002

FILED

AUG 01 2002

W.A. Shaw
William A. Shaw
Prothonotary

Woodward Township Sewer and Water Authority (Woodward Authority) appeals an order of the Court of Common Pleas of Clearfield County (trial court), which declined declaratory judgment and determined that the sewage treatment rate charged by the Municipal Sewer and Water Authority of Houtzdale Borough (Houtzdale Authority) is permissible. We affirm.

Houtzdale Authority owns and operates a sewage treatment plant in the Borough of Houtzdale. In 1991, Houtzdale Authority entered into an intermunicipal service agreement (Agreement) with Woodward

Authority.¹ In general, the Agreement provides that Houtzdale Authority will treat and dispose of sewage generated and collected by Woodward Authority.

Upon payment of a \$211,037.44 capital contribution fee,² Woodward Authority obtained an allocated treatment capacity in Houtzdale Authority's plant of 105,000 gallons per day out of the total plant capacity of 300,000 gallons per day. Sewage commenced flowing from the Woodward Authority collection system into the Houtzdale Authority treatment plant in the fall of 1994.

The dispute involves Article V of the Agreement, which provides for the sewage treatment rate. Article V states in pertinent part:

SECTION 5.01. The [Houtzdale] Authority has adopted resolutions fixing and charging sewage treatment rates upon the [Brisbin] Borough Authority and [Woodward] Township Authority for use of the Sewage Treatment and Disposal System and for services rendered by the Authority in connection therewith. The Authority will charge rates according to the percentage of flow that the Borough Authority and Township Authority each contribute to the total flow received at the Sewage Treatment and Disposal System, and the Borough, Township and their respective authorities covenant and agree to pay their pro-rata share of expenses defined in Section 5.02 of this Agreement calculated on a yearly basis paid monthly

¹ Houtzdale Borough, Brisbin Borough, Woodward Township and the Brisbin Borough Sewage and Water Authority are also parties to the Agreement; they are, however, not parties to this action.

² This fee was set by Resolution 5-11-94. R.R 195a-96a.

SECTION 5.02. The parties hereto agree that sewage treatment rates imposed pursuant to the resolution or resolutions referenced in Section 5.01 hereof, as in effect at the time under Section 5.01 shall be at least such that the estimated amounts to be received by the Authority therefrom . . . will be sufficient to:

- A. Pay the reasonable Administrative Expenses of the Authority in connection with the Sewage Treatment and Disposal System
- B. Pay the reasonable Operating Expenses . . . of the Authority with respect to the Sewage Treatment and Disposal System; and
- C. Provide an amount equal to the Debt Service Requirements on the Additional Bonds outstanding under this Agreement

SECTION 5.03. The [Brisbin] Borough Authority and [Woodward] Township Authority acknowledge that the [Houtzdale] Authority has filed with them a schedule of the sewage treatment rates imposed pursuant to the resolutions of the Authority in effect under Section 5.01 hereof as of the effective date hereof. The Borough Authority and Township Authority hereby express their approval to such sewage treatment rates. (Emphasis added).

Houtzdale Authority adopted Resolution 104, which is referenced in Article V. Resolution 104 implements the sewage treatment rate in dispute here and provides in pertinent part:

- 1. Treatment Charges. [Woodward] Township Authority and [Brisbin] Borough Authority shall pay to the [Houtzdale] Authority in each Authority budget

year . . . a Sewage Treatment Charge for sewage treatment services rendered by the Authority. Said Sewage Treatment Charge shall be determined in the following manner:

Administrative, Operation And Maintenance Expenses of the Authority pursuant to Section 5.02 of the 1991 Agreement	X	Total Volume Sewage Discharged by Township Authority (or Borough Authority) into Authority's Sewage Treatment <u>and Disposal System</u> Total Volume of Sewage received at the Treatment Plant	X	110%
--	---	--	---	------

(Emphasis added.)

At the end of the first full service year under the Agreement (December 1994 - November 1995), Woodward Authority was charged at the 110% formula sewage treatment rate. Although Woodward Authority disputed the rate since the first service year, Houtzdale Authority has continued to charge at the 110% formula rate.

The trial court found that the Agreement and Resolution 104 are unambiguous and declined to consider parol evidence. The trial court cited Section 5.02, which provides that rates imposed pursuant to the resolution "shall be at least such" that will be sufficient to pay expenses and debt service. (Emphasis added.) The court concluded that, since Section 5.02 sets the minimum sewage treatment rate, the treatment rate is not limited to the enumerated administrative, operation and maintenance expenses in Section 5.02. Instead, the treatment rate of 110% of those

expenses is permissible. Additionally, the court opined that Woodward Authority acknowledged notice of the 110% rate in Section 5.03.

Before we attend to the merits of the appeal, we address Houtzdale Authority's assertion that the failure to file post-trial motions or exceptions to the trial court's opinion resulted in a waiver of Woodward Authority's arguments on appeal.

This issue is controlled by Nationwide Mutual Ins. Co. v. Wickett, 563 Pa. 595, 763 A.2d 813 (2000). In Wickett, the Pennsylvania Supreme Court held that pursuant to 42 Pa. C.S. §7532 an order in a declaratory judgment action that affirmatively or negatively declares rights, status, and other legal relations is a final order. Here, the trial court's September 24, 2001, order declared that the Agreement was unambiguous and that the treatment rate was permissible. The order affirmatively declared the rights and legal relationship between the parties, and it is a final order. Accordingly, Woodward Authority was not required to file post-trial motions or exceptions to preserve its arguments for appeal.

With regard to the merits of the appeal, Woodward Authority contends that because the Agreement is ambiguous the trial court erred in disregarding parol evidence of the parties' intent. In support of its contention, Woodward Authority advances several theories. First, Woodward Authority suggests that other provisions of the Agreement evince an intent that it would only pay its share of sewage treatment expenses, not that it would pay a premium to Houtzdale Authority. Second, Woodward Authority suggests that an ambiguity exists as to which expenses are to be

included in the minimum rate calculation referenced in Section 5.02. We disagree.

The fundamental rule of contract interpretation is to determine and give effect to the intention of the parties. Lower Frederick Township v. Clemmer, 518 Pa. 313, 543 A.2d 502 (1988). The intention of the parties must be ascertained from the document itself, if its terms are clear and unambiguous. Hutchison v. Sunbeam Coal Corp., 513 Pa. 192, 519 A.2d 385 (1986). A contract is ambiguous if it is reasonably susceptible to different constructions and capable of being understood in more than one sense. Id. Furthermore, we noted:

A contract is not ambiguous if the court can determine its meaning without any guide other than a knowledge of the simple facts on which, from the nature of language in general, its meaning depends; and a contract is not rendered ambiguous by the mere fact that the parties do not agree upon the proper construction.

Grant v. Southwestern Pennsylvania Water Auth., 601 A.2d 1359, 1361 (Pa. Cmwlth. 1992) (citation omitted).

“When a writing is clear and unequivocal its meaning must be determined by its contents alone. Where the intention of the parties is clear, there is no need to resort to extrinsic aids or evidence.” Latrobe Municipal Auth. v. Youngstown Borough Municipal Auth., 456 A.2d 234, 238 (Pa. Cmwlth. 1983) (citation omitted). Parol evidence must not be used to create ambiguity in an unambiguous contract. Department of Transportation v. Brozzetti, 684 A.2d 658 (Pa. Cmwlth. 1996).

After reviewing the documents, we agree with the trial court's conclusion that the Agreement and Resolution 104 are unambiguous.³ Section 5.01 incorporates Resolution 104 into the Agreement. Resolution 104 uses a ratio between the usage generated by the Woodward Authority and the overall usage of the treatment plant to establish a percentage of administrative, operation and maintenance expenses attributable to Woodward Authority. This is the process contemplated by Section 5.01. Resolution 104 also uses a factor of 110% to arrive at the final rate. This factor is permitted by Section 5.02.⁴ In Section 5.03, the parties acknowledge receipt and approval of the rates. Based on the plain language, and without reference to any other guide, we are able to determine the meaning of the Agreement and Resolution 104. Accordingly, the trial court did not err in disregarding parol evidence and looking only to the plain language of the Agreement. We likewise confine our review.

Woodward Authority suggests under the trial court's construction that the Agreement sets a minimum fee only, and no maximum fee is established. It contends that this construction could lead to an

³ Our review of a trial court's order in a declaratory judgment action is limited to determining whether the trial court's findings are supported by substantial evidence, whether an error of law was committed, or whether the trial court abused its discretion. Allegheny Intermediate Unit # 3 Education Ass'n. v. Bethel Park School Dist., 545 Pa. 78, 680 A.2d 827 (1996). In particular, the question of whether a contract is ambiguous is a question of law, completely reviewable on appeal. Hutchison v. Sunbeam Coal Corp., 513 Pa. 192, 519 A.2d 385 (1986).

⁴ Section 5.02(C) of the Agreement permits recovery toward estimated increased debt service in addition to administrative and operating expenses.

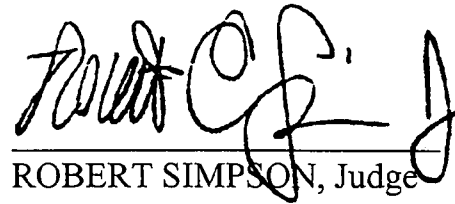
unreasonable result. However, we are not asked to determine whether the Agreement is reasonable.⁵ Rather, we are asked to determine whether it is clear and unambiguous. We agree with the trial court's conclusion that the fee structure is clear. We note, moreover, that another section of the Agreement constrains sewage treatment rate increases.⁶

We would be overstepping our role if we construed the Agreement according to Woodward Authority's contentions. We will not rewrite a contract or give it a meaning that conflicts with the plain language used. Steuart v. McChesney, 498 Pa. 45, 444 A.2d 659 (1982). "It is not proper, under the guise of construction, to alter the terms to which the parties, whether in wisdom or folly, expressly agreed." Delaware County v. County Prison Employees Union, 552 Pa. 184, 190, 713 A.2d 1135, 1138 (1998).

⁵ Although both parties are incorporated under the Municipality Authorities Act, 53 Pa. C.S. §§5601-5622, the Agreement is not subject to the limitation under Section 5607(b)(9), which requires that rates be "reasonable and uniform." Instead, the Agreement is authorized by Section 5607(b)(19), which allows municipal authorities to enter into contracts to supply water and other services to municipalities that are not members of that authority. Township of Raccoon v. Municipal Water Auth. of Aliquippa, 597 A.2d 757 (Pa. Cmwlth. 1991). Since Woodward Authority is not a member of the Houtzdale Authority, and is not within its service area, the terms of the Agreement are controlling. See id.

⁶ Section 5.04 of the Agreement prohibits sewage treatment rate increases without prior written approval, unless the consulting engineers project an immediate revenue insufficiency or unless extraordinary repairs are required.

In sum, the trial court did not err by concluding that the sewage treatment rate was permissible and denying declaratory judgment. Accordingly, we affirm.



ROBERT SIMPSON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Woodward Township Sewage
and Water Authority,
Appellant

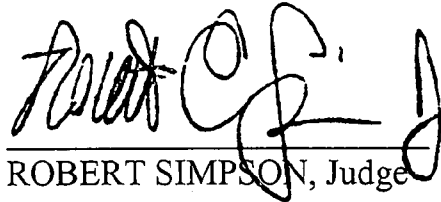
v.

Municipal Sewer Authority of
Houtzdale Borough

No. 2447 C.D. 2001

ORDER

AND NOW, this 20th day of May, 2002, the order of the Court of
Common Pleas of Clearfield County is affirmed.


ROBERT SIMPSON, Judge

FILED

AUG 01 2002

William A. Shaw
Prothonotary

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Woodward Township Sewage	:	
and Water Authority,	:	
Appellant	:	
	:	
v.	:	No. 2447 C.D. 2001
	:	
Municipal Sewer Authority of	:	Argued: April 8, 2002
Houtzdale Borough	:	

BEFORE: HONORABLE JAMES GARDNER COLINS, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE SIMPSON

FILED: May 20, 2002

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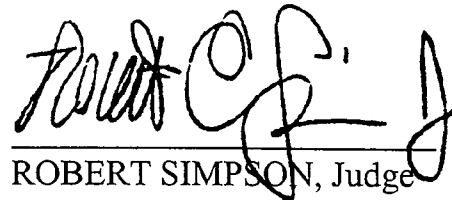
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In sum, the trial court did not err by concluding that the sewage treatment rate was permissible and denying declaratory judgment. Accordingly, we affirm.



ROBERT SIMPSON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Woodward Township Sewage
and Water Authority,
Appellant

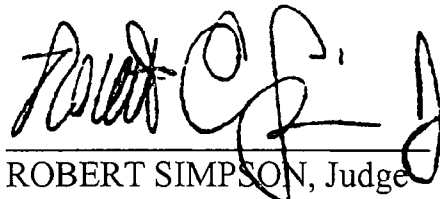
v.

Municipal Sewer Authority of
Houtzdale Borough

No. 2447 C.D. 2001

ORDER

AND NOW, this 20th day of May, 2002, the order the Court of
Common Pleas of Clearfield County is affirmed.


ROBERT SIMPSON, Judge

FILED

MAY 22 2002

William A. Shaw
Prothonotary

Certified from the Record

MAY 20 2002

Order Exit



Commonwealth Court of Pennsylvania

Charles R. Hostutler
Deputy Prothonotary/Chief Clerk

July 24, 2002

Room 624, Sixth Floor
Harrisburg, PA 17120
717-255-1650

TO:

RE: Woodward Twp Sewage & Water Auth v Mun. Sewer Auth
No.2447 CD 2001
Trial Court/Agency Dkt. Number: 2000-1388-CD
Trial Court/Agency Name: Clearfield County Court of Common Pleas
Intermediate Appellate Court Number:

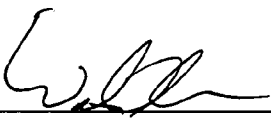
Annexed hereto pursuant to Pennsylvania Rules of Appellate Procedure 2571 and 2572 is the entire record for the above matter.

Contents of Original Record:

Original Record Item	Filed Date	Description
Trial Court record	December 11, 2001	1
supp record	January 11, 2002	1 w/record
Date of Remand of Record:		

Enclosed is an additional copy of the certificate. Please acknowledge receipt by signing, dating, and returning the enclosed copy to the Prothonotary Office or the Chief Clerk's office.


Commonwealth Court Filing Office


Signature

William A. Shaw

Printed Name

8-1-02

Date

FILED

AUG 01 2002

W/ 1.50/14
William A. Shaw
Prothonotary

Copy to Comm Court

Commonwealth Court of Pennsylvania

October 25, 2001

RE: Woodward Twp Sewage & Water Auth v Mun. Sewer Auth
No.: 2447 CD 2001
Agency Docket Number: 2000-1388-CD
Filed Date: October 22, 2001

FILED

OCT 29 2001
11:52 pm
William A. Shaw
Prothonotary

Notice of Docketing Appeal

A Notice of Appeal, a copy of which is enclosed, from an order of your court has been docketed in the Commonwealth Court of Pennsylvania. The docket number in the Commonwealth Court is endorsed on this notice. The Commonwealth Court docket number must be on all correspondence and documents filed with the court.

Under Chapter 19 of the Pennsylvania Rules of Appellate Procedure, the Notice of Appeal has the effect of directing the Court to transmit the certified record in the matter to the Prothonotary of the Commonwealth Court.

The complete record, including the opinion of the trial judge, should be forwarded to the Commonwealth Court within forty (40) days of the date of filing of the Notice of Appeal. Do not transmit a partial record.

Pa.R.A.P. 1921 to 1933 provides the standards for preparation, certification and transmission of the record.

The address to which the Court is to transmit the record is set forth on Page 2 of this notice.

Notice to Counsel

A copy of this notice is being sent to all parties or their counsel indicated on the proof of service accompanying the Notice of Appeal. The appearance of all counsel has been entered on the record in the Commonwealth Court. Counsel has thirty (30) days from the date of filing of the Notice of Appeal to file a praecipe to withdraw their appearance pursuant to Pa. R.A.P. 907 (b).

Appellant or Appellant's attorney should review the record of the trial court, in order to insure that it is complete, prior to certification to this Court. (Note: A copy of the Zoning Ordinance must accompany records in Zoning Appeal cases).

The addresses to which you are to transmit documents to this Court are set forth on Page 2 of this Notice.

If you have special needs, please contact this court in writing as soon as possible.

Attorney Name	Party Name	Party Type
Winifred H Jones-Wenger, Esq.	Municipal Sewer Authority of Houtzdale	Appellee
Girard Kasubick, Esq.	Woodward Township Sewage and	Appellant

2001 DEC 11 A 10:02

COMMONWEALTH COURT
OF PENNSYLVANIA

110

Address all written communications to:

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
P.O. Box 11730
Harrisburg, PA 17108
(717) 255-1650

Filings may be made in person at the following address (except on Saturdays, Sundays and holidays observed by Pennsylvania Courts) between 9:00 a.m. and 4:00 p.m.

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
Room 624
Sixth Floor
South Office Building
Harrisburg, PA 17120
(717) 255-1650

Pleadings and similar papers (but not paperbooks or certified records) may also be filed in person only at:

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
Filing Office
Suite 990
The Widener Building
One South Penn Square
Philadelphia, PA 19107
(215) 560-5742

The hours of the Philadelphia Filing Office are 9:00 a.m. to 4:00 p.m.

Under Pa.R.A.P. 3702, writs or other process issuing out of the Commonwealth Court shall exit only from the Harrisburg Office.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
EQUITY DIVISION

WOODWARD TOWNSHIP SEWAGE
AND WATER AUTHORITY,
Plaintiff

vs.

MUNICIPAL SEWER AUTHORITY
OF HOUTZDALE BOROUGH,
Defendant

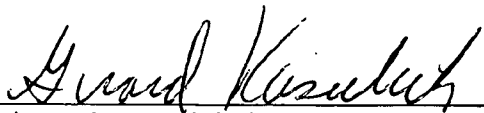
2447 CD 2001
No.: 2000-1388-CD
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NOTICE OF APPEAL

Notice is hereby given that Woodward Township Sewage and Water Authority, Plaintiff above named, hereby appeals to the Commonwealth Court of Pennsylvania from the Order entered by the Court in this matter on the 24th day of September, 2001. This Order has been entered in the docket as evidenced by the attached copy of the docket entry and also attached is copy of the September 24, 2001 Order.

Respectfully submitted,

Dated: 10/22/01


Girard Kasubick, Esq.,
Attorney for Plaintiff
LEHMAN & KASUBICK
611 Brisbin Street
Houtzdale, PA 16804
(814) 378-7840

hereby certify this to be a true
and attested copy of the original
statement filed in this case.

OCT 22 2001

Attest.


Prothonotary

CERTIFICATE AND TRANSMITTAL OF RECORD UNDER PENNSYLVANIA
RULE OF APPELLATE PROCEDURE 1931(C)

To the Prothonotary of the Appellate Court to which the within matter has been appealed:

THE UNDERSIGNED, Clerk (or Prothonotary) of the court of Common Pleas of Clearfield County, the said Court being a court of record, does hereby certify that annexed hereto is a true and correct copy of the whole and entire record, including an opinion of the Court as required by Pa. R.A.P. 1925, the original papers and exhibits, if any, on file, the transcript of the proceeding, if any, and the docket entries in the following matter:

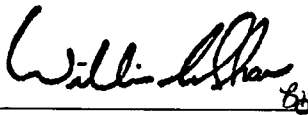
00-1388-CD

**Woodward Township Sewage and Water Authority
VS.
Municipal Sewer Authority of Houtzdale Borough**

In compliance with Pa. R.A.P. 1931 (c).

The documents comprising the record have been numbered from **No. 1 to No. 11**, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages comprising the document.

The date on which the record had been transmitted to the Appellate Court is
December 10, 2001.


Prothonotary/Clerk of Courts

(seal)

Date: 12/07/2001

Time: 09:53 AM

Page 1 of 1

Clearfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2000-01388-CD

Current Judge: Fredric J. Ammerman

Woodward Township Sewage and Water Authority vs. Municipal Sewer Authority of Houtzdale Borough
Civil Other

Date		Judge
11/09/2000	Filing: Complaint/Action for Declaratory Judgment Paid by: Kasubick, Girard Receipt number: 0051172 Dated: 11/09/2000 Amount: \$80.00 (Check) One Cert. to Sheriff & One Cert. to Atty.	No Judge
12/04/2000	Answer to Complaint for Declaratory Judgment and Certificate of Service. filed by s/WINIFRED H. JONES-WENGER, ESQ. NO CC	No Judge
12/13/2000	Sheriff Return, Complaint upon Plaintiff. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
03/07/2001	Certificate of Readiness and Praecept for Trial, filed by Atty. Kasubick Copy to C/A	No Judge
04/05/2001	ORDER, NOW this 3rd Day of April, 2001, Civil Call and conference with counsel for both parties, it is the ORDER of this Court that this matter is hereby scheduled as a NON-JURY TRIAL. s/ FJA, J 2 cc to Atty Kasubick and Atty Jones	Fredric J. Ammerman
08/02/2001	ORDER, NOW, this 25th day of July, 2001, re: Counsel for both parties shall have no more than 30 days from this date to supply the Court w/appropriate Briefs. by the Court, s/FJA,J. 1 cc Atty Kasubick, Wenger	Fredric J. Ammerman
09/24/2001	ORDER, NOW, this 24th day of Sept. 2001, re: Current rate being charged by the Defendant Authority pursuant to the resolution is permissible. Opinion to be filed in the event of an appeal. by the Court, s/FJA,J. 2cc Atty Kasubick, Wenger	Fredric J. Ammerman
10/22/2001	Filing: Notice of Appeal filed. Paid by: Kasubick, Girard (attorney for Woodward Township Sewage and Water Authority) Receipt number: 1833102 Dated: 10/22/2001 Amount: \$45.00 (Check) Cert. to Commonwealth Court w/\$55.00 Check.	Fredric J. Ammerman
	Request for Transcript, filed by Atty. Kasubick Cert. to Commonwealth Court	Fredric J. Ammerman
10/29/2001	Notice of Docketing Appeal, filed. Number: 2447 CD 2001 No CC	Fredric J. Ammerman
11/01/2001	Opinion. by the Court, s/FJA,J. 1 copy to CA, Judge Ammerman, Law Clerk, Law Library, Don Mikesell, 2 cc to Plaintiff's Counsel and Defendant's Counsel.	Fredric J. Ammerman

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

DEC 07 2001

Attest:

William L. Hines
Prothonotary

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA
CASE #00-1388-CD**

Woodward Township Sewage and Water Authority

VS

Municipal Sewer Authority of Houtzdale Borough

ITEM NO.	DATE of FILING	NAME of DOCUMENT	NO of PAGES
01	11/09/00	Complaint/Action for Declaratory Judgment	45
02	12/04/00	Answer to Complaint for Declaratory Judgment	07
03	12/13/00	Sheriff Return	01
04	03/07/01	Certificate of Readiness and Praecipe for Trial	04
05	04/05/01	Order, Re: civil call	01
06	08/02/01	Order, Re: briefs	01
07	09/24/01	Order, Re: rate being charged	01
08	10/22/01	Notice of Appeal	04
09	10/22/01	Request for Transcript	01
10	10/29/01	Notice of Docketing Appeal	03
11	11/01/01	Opinion	08

**COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD**

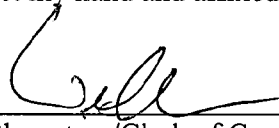
I, **William A. Shaw**, Prothonotary/Clerk of Courts of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the whole record of the case therein stated, wherein

**Woodward Township Sewage and Water Authority
VS**

**Municipal Sewer Authority of Houtzdale Borough
00-1388-CD**

So full and entire as the same remains of record before the said Court, at No. **00-1388-CD**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 7th Day of December, 2001.



Prothonotary/Clerk of Courts

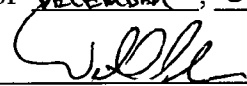
I, **Fredric J. Ammerman**, Judge of the Forty-sixth Judicial District, do certify that **William A. Shaw**, by whom the annexed record, certificate and attestation were made and given, and who in his own proper handwriting, thereunto subscribed his name and affixed the seal of the Court of Common Pleas of said county, was at the time of so doing and now is Prothonotary/Clerk of Courts in and for said County of Clearfield, the Commonwealth of Pennsylvania, duly commissioned and qualified; to all of whose acts as such, full faith and credit are and ought to be given, as well in Courts of Judicature, as elsewhere, and that the said record, certificate and attestation are in due form of law and made by proper officer.



Judge

I, **William A. Shaw**, Prothonotary/Clerk of Courts of the Court of Common Pleas in and for said county, do certify that the Honorable **Fredric J. Ammerman**, Judge, by whom the foregoing attestation was made and who has thereunto subscribed his name was at the time of making thereof and still is Judge, in and for said county, duly commissioned and qualified; to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere.

In Testimony Whereof, I have
hereunto set my hand and affixed
the seal of said Court, this 10th day
of December, 2001.



Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
EQUITY DIVISION

2000-1388-00

WOODWARD TOWNSHIP SEWAGE
AND WATER AUTHORITY,
Plaintiff

vs.

MUNICIPAL SEWER AUTHORITY
OF HOUTZDALE BOROUGH,
Defendant

: No.: 00- ~~EQU~~
: Type of Case: Equity
: Type of Pleading:
: Action for Declaratory
: Judgment
: Filed on behalf of:
: Plaintiff
: Counsel of Record for
: This Party:
: Girard Kasubick, Esq.
: Supreme Court #30109
: LEHMAN & KASUBICK
: 611 Brisbin Street
: Houtzdale, PA 16651
: (814) 378-7840

FILED

NOV 09 2000

6/ 11:20/43

William A. Shaw
Prothonotary

1 CRF to SHFF

1 CRF to ATT

#10

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
EQUITY DIVISION

WOODWARD TOWNSHIP SEWAGE	:	
AND WATER AUTHORITY,	:	No.: 00- -EQU
Plaintiff	:	
	:	ACTION FOR DECLARATORY
vs.	:	JUDGMENT
	:	
MUNICIPAL SEWER AUTHORITY	:	
OF HOUTZDALE BOROUGH,	:	
Defendant	:	

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

David Meholick
Court Administrator's Office
Clearfield County Court House
Clearfield, PA 16830
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
EQUITY DIVISION

WOODWARD TOWNSHIP SEWAGE	:	
AND WATER AUTHORITY,	:	No.: 00- -EQU
Plaintiff	:	
	:	ACTION FOR DECLARATORY
vs.	:	JUDGMENT
	:	
MUNICIPAL SEWER AUTHORITY	:	
OF HOUTZDALE BOROUGH,	:	
Defendant	:	

COMPLAINT FOR DECLARATORY JUDGMENT

AND NOW comes the Woodward Township Sewage and Water Authority, Plaintiff, by and through its attorney, Girard Kasubick, Esq., and files the following Complaint:

1. The Plaintiff, Woodward Township Sewage and Water Authority, is a municipal authority duly formed under the laws of the Commonwealth of Pennsylvania, having its principal place of business at P.O. Box 6, Houtzdale, PA 16651.

2. The Defendant, Municipal Sewer Authority of Houtzdale Borough, is a municipal authority duly formed under the laws of the Commonwealth of Pennsylvania, having its principal place of business at P.O. Box 277, Houtzdale, PA 16651.

3. In and about 1990 and 1991, the Plaintiff sought to construct a sewage collection system for the

citizens of Woodward Township in the West Moshannon, Franklin, and Houtzdale-Ramey Highway areas of Woodward Township.

4. In and about 1990 and 1991, the Plaintiff commenced negotiations with the Defendant to connect the proposed sewage collection system to the sewage treatment and disposal system operated by Defendant, and owned by Houtzdale Borough, in the Sterling area east of Houtzdale Borough.

5. As a result of the negotiations between Plaintiff and Defendant and the Brisbin Borough Sewage and Water Authority, who also sought to connect a sewage collection system to the Defendant's sewage treatment and disposal system, the respective authorities and the municipalities who formed said authorities entered into an Intermunicipal Service Agreement dated July 10, 1991, a copy of which is attached hereto and incorporated herein and marked Exhibit "A".

6. In Sections 4.02, 4.03, and 4.04 of the attached Intermunicipal Service Agreement, Plaintiff was to pay a capital contribution fee and acquire a reserve capacity in the Defendant's sewage treatment and disposal system.

7. The Defendant did adopt the Resolution required under Section 4.02 of the Intermunicipal Service Agreement on May 11, 1994, and Plaintiff was allocated a capacity of 105,000 gallons per day out of a total plant capacity of

300,000 gallons per day, as shown by Defendant's Resolution 5-11-94, attached hereto and incorporated herein and marked Exhibit "B".

8. The Plaintiff did pay to Houtzdale Borough, as requested by Defendant, the capital contribution fee, as required under Section 4.03 of the Intermunicipal Service Agreement, and the Resolution 5-11-94 under Section 4.02 of the Intermunicipal Service Agreement in the amount of Two Hundred Eleven Thousand Thirty-seven and 44/100 (\$211,037.44) Dollars in April or May 1994.

9. The Plaintiff started discharging sewage from its sewage collection system to Defendant's sewage treatment and disposal system in and about October through December 1994.

10. Under the Intermunicipal Service Agreement, Defendant can also charge sewage treatment rates to the Plaintiff, as is set forth in Sections 5.01 through 5.05, by Resolution adopted by Defendant.

11. In Section 5.01 of the Intermunicipal Service Agreement it states: "The Authority (defined as Defendant herein) will charge rates according to the percentage of flow that the Borough Authority (defined as Brisbin Authority) and Township Authority (defined as Plaintiff herein) each contribute to the total flow received at the sewage treatment and disposal system, and the Borough, Township, and their respective authorities covenant and

agree to pay their pro-rata share of expenses defined in Section 5.02 of this Agreement calculated on a yearly basis paid monthly.

12. The Defendant did present to Plaintiff a draft of the proposed Resolution to be enacted under Section 5.01 during negotiations of the Intermunicipal Service Agreement similar to the Resolution which was adopted by Defendant on December 21, 1994, a copy of which is attached hereto and incorporated herein and marked Exhibit "C".

13. The Resolution to establish the yearly sewage treatment rates for Plaintiff to pay to Defendant is calculated in Item 1 of the attached Resolution, incorporated herein and marked Exhibit "C".

14. The calculation in Item 1 of the Resolution attached hereto and marked Exhibit "C" follows exactly Section 5.01 and 5.02 of the attached Intermunicipal Service Agreement marked Exhibit "A", except the calculation adds a 110% component which in effect requires payment at 10% greater than the Intermunicipal Service Agreement states and requires.

15. In Item 5 of the attached Resolution, marked Exhibit "C", determining the sewage treatment rates has a year end adjustment to be based on the exact expenses of Defendant. This Item 5 in the Resolution for sewage treatment rates does not include the 110% component.

16. Plaintiff, at the time of negotiating the Intermunicipal Service Agreement when the proposed Resolutions were presented for review, understood this 110% was placed in the Resolution as a cushion to minimize any year end adjustment under Item 5 of said Resolution if flows or expenses significantly increased during any year.

17. The Intermunicipal Service Agreement, attached hereto and incorporated herein and marked Exhibit "A", contains no provision anywhere in it that the sewage treatment rates charged to Plaintiff by Defendant were to be at 110% of the pro-rata flow share of Defendant's expenses. It was to be a pro-rata flow share of the Defendant's actual expenses as defined in Section 5.02.

18. The Plaintiff does not object to the 110% to determine the monthly sewage treatment rates at the beginning of the fiscal year as a cushion, but the year end adjustment under Item 5 in the Resolution, attached hereto and incorporated herein and marked Exhibit "C", shall not include the 110% under the terms of the Intermunicipal Service Agreement, as set forth in Paragraph 17 above which is incorporated herein.

19. Since Plaintiff has discharged flow to Defendant's sewage treatment and disposal system in 1994, the Defendant upon making the year end adjustment under Item 5. of the Resolution, attached hereto and incorporated herein and marked Exhibit "C", has done the end calculation

including the 110%, which is in violation of the Intermunicipal Service Agreement, attached hereto and incorporated herein and marked Exhibit "A".

20. For the most recent year end adjustment the Defendant by letter of June 15, 2000, attached hereto and incorporated herein and marked Exhibit "D", has done its year end calculation for December 1998 to November 1999, the most recent completed fiscal year.

21. On the last page of Exhibit "D" incorporated herein by reference thereto in Column (4), the Defendant is still charging Plaintiff 110% of Plaintiff's pro-rata flow share of actual costs of Defendant, as defined in Section 5.02 of the Intermunicipal Service Agreement.


22. The Plaintiff has raised the issue of Defendant charging 110% of costs in previous fiscal year end adjustments, but Defendant has refused to remove the 110% calculation from the year end adjustment.

23. The Plaintiff and Brisbin Borough Sewage and Water Authority have been subsidizing the Defendant's share of pro-rata expenses under the Intermunicipal Service Agreement, as in shown by letter response of Plaintiff dated August 5, 2000 and attached hereto and marked Exhibit "E".

24. The sewage treatment rates based on pro-rata share of flows multiplied by 110% of the Defendant's actual costs is in violation of the attached Intermunicipal

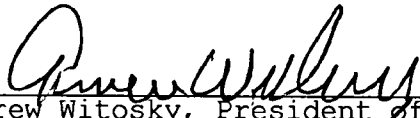
Service Agreement between the parties and the Defendant is making a profit by charging 110%.

WHEREFORE, Plaintiff requests your Honorable Court to issue a Declaratory Judgment that Defendant comply with the July 10, 1991 Intermunicipal Service Agreement and set sewage rates or year end adjustments to such rates according to each parties pro-rata share of flow multiplied by actual expenses of Defendant's as defined in Sections 5.01 and 5.02 of the Intermunicipal Service Agreement and not 110% of actual expenses of Defendant.


Girard Kasubick, Esq.
Attorney for Woodward
Township Sewage and Water
Authority

VERIFICATION

I verify that the statements made in the foregoing Complaint are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. 4904 relating to unsworn falsification to authorities.



Andrew Witosky, President of
Woodward Township Sewage and
Water Authority

INTERMUNICIPAL SERVICE AGREEMENT

between

**Houtzdale Borough, Brisbin Borough,
Woodward Township and their respective Authorities**

July 1991

INTERMUNICIPAL SERVICE AGREEMENT
(Final Document July 3, 1991)

THIS INTERMUNICIPAL SERVICE AGREEMENT, dated for convenience as _____ of July 10th, 1990, but effective as of the date of the Acknowledgments appearing at the end hereof, between the MUNICIPAL SEWER AUTHORITY OF HOUTZDALE BOROUGH, WOODWARD TOWNSHIP SEWAGE AND WATER AUTHORITY, and BRISBIN BOROUGH SEWAGE AND WATER AUTHORITY, municipality authorities existing under laws of the Commonwealth, HOUTZDALE BOROUGH, WOODWARD TOWNSHIP and BRISBIN BOROUGH, collectively the above hereto referred to as parties.

W I T N E S S E T H :

WHEREAS, The WOODWARD TOWNSHIP SEWAGE AND WATER AUTHORITY and BRISBIN BOROUGH SEWAGE AND WATER AUTHORITY have or will have acquired, constructed, and will maintain, own and operate their respective Sewage Collection Systems for rendering sewage collection services, but not sewage treatment or disposal services, for portions of WOODWARD TOWNSHIP and BRISBIN BOROUGH respectively; and

WHEREAS, The MUNICIPAL SEWER AUTHORITY OF HOUTZDALE BOROUGH has acquired and constructed, and maintains, owns and operates the Sewage Treatment and Disposal System, to provide sewage treatment and disposal for Sewage collected by, among others, the WOODWARD TOWNSHIP SEWAGE AND WATER AUTHORITY and the BRISBIN BOROUGH SEWAGE AND WATER AUTHORITY; and

WHEREAS, The MUNICIPAL SEWER AUTHORITY OF HOUTZDALE BOROUGH has in the past, continues in the present and will continue in the future to provide sewage treatment and disposal for sewage collected by HOUTZDALE BOROUGH; and

WHEREAS, The MUNICIPAL SEWER AUTHORITY OF HOUTZDALE BOROUGH, pursuant to authority vested in it by law and pursuant to the authorization, consent and approval of HOUTZDALE BOROUGH, the BRISBIN BOROUGH SEWAGE AND WATER AUTHORITY, pursuant to authority vested in it by law and pursuant to the authorization, consent and approval of BRISBIN BOROUGH, WOODWARD TOWNSHIP Water and Sewer

Authority, pursuant to authority vested in it by law and pursuant to the authorization, consent and approval of WOODWARD TOWNSHIP, all of Clearfield County, Pennsylvania, have agreed to undertake the Intermunicipal Service Agreement; and

WHEREAS, The MUNICIPAL SEWER AUTHORITY OF HOUTZDALE BOROUGH, the WOODWARD TOWNSHIP SEWAGE AND WATER AUTHORITY, and the BRISBIN BOROUGH SEWAGE AND WATER AUTHORITY have agreed that their respective sewage collection systems as defined in this agreement can be handled by the Sewage Treatment and Disposal System of the Municipal Sewer Authority of Houtzdale Borough and accordingly, the MUNICIPAL SEWER AUTHORITY OF HOUTZDALE BOROUGH shall allow the Sewage collected in the Municipalities' Sewage Collection Systems to be received by the MUNICIPAL SEWER AUTHORITY OF HOUTZDALE BOROUGH Sewage Treatment and Disposal System for treatment and disposal, and the parties desire to set forth terms and conditions relating thereto.

NOW, THEREFORE, the BOROUGH OF HOUTZDALE, The MUNICIPAL SEWER AUTHORITY OF HOUTZDALE BOROUGH, on the one hand, and WOODWARD TOWNSHIP and the WOODWARD TOWNSHIP SEWAGE AND WATER AUTHORITY and BRISBIN BOROUGH and the BRISBIN BOROUGH SEWAGE AND WATER AUTHORITY, on the other hand, in consideration of agreements, conditions and covenants herein contained, each intending to be legally bound, covenant and agree as follows:

ARTICLE I

Definitions

SECTION 1.01. The terms and phrases defined in this Section 1.01, for all purposes of this Agreement shall have the meanings herein specified, unless the context clearly otherwise requires:

"Act" means the Act of the Pennsylvania General Assembly, known as the "Municipality Authorities Act of 1945," approved May 2, 1945, P.L. 382, as amended and supplemented from time-to-time.

"Additional Bonds" means Bonds, other than the Authority's Series of 1976 Bonds, but shall not refer or apply to bonds issued under any

other indenture or resolution of the Authority with respect to any project other than those which are improvement projects to the MUNICIPAL SEWER AUTHORITY OF HOUTZDALE BOROUGH Sewage Treatment and Disposal System.

"Administrative Expenses" means compensation and expenses of officers and members of the Board of the Authority; legal, printing, advertising, engineering, architectural and auditing fees and expenses; fees and expenses of the Trustee and any authorized depository; and other items of general administrative expense incurred by the Authority, all of the foregoing being subject to proper allocation to various projects of the Authority, if applicable, as provided in the Indenture.

"Agreement" means this document and all modifications, alterations, amendments and supplements hereto made and delivered in accordance with provisions hereof and at such time constituting part hereof, which term sometimes is referred to in this document by use of such words as "hereto," "hereby," "herein," "hereof," "hereunder" or other descriptive words or phrases having similar import.

"Agreement Time Period" means the period beginning with the effective date hereof and ending on a date 50 years hence.

"Authority" means MUNICIPAL SEWER AUTHORITY OF HOUTZDALE BOROUGH, a municipal authority incorporated and existing under the Act, having control of and operating the Treatment and Disposal Facilities and the interceptor sewer running along Beaver Run from the Houtzdale/Woodward Township municipal boundary to the Treatment and Disposal Facilities.

"Average Annual Debt Service" means, with respect to additional Bonds which may be required, the sum of Debt Service Requirements (excluding, however, any Debt Service Requirements provided for from proceeds of any Bonds issued under the Indenture).

"Bonds" means all bonds authorized, executed, authenticated, issued and delivered under the Indenture, as provided in the Indenture.

"Borough" shall mean BRISBIN BOROUGH, Clearfield County, Pennsylvania.

"Borough Authority" shall mean the BRISBIN BOROUGH SEWAGE AND WATER AUTHORITY.

"Capital Additions" means new and additional property chargeable to plant or equipment account of the Authority under sound accounting or engineering practice, including, without intending to limit the generality of the foregoing, land, rights of way, easements, licenses, rights and similar interests in real property, and additions, extensions, alterations and improvements of or to the MUNICIPAL SEWER AUTHORITY OF HOUTZDALE BOROUGH Sewage Treatment and Disposal System, including, without intending to limit the generality of the foregoing, buildings, basins, machinery, mains, conduits, pipes, pipe lines, interceptor lines, outfall sewers, trunk lines, sewer plants and systems, tanks, shops, treatment plants and systems, pumping stations, ejector stations, force mains, fixtures, engines, boilers, pumps, meters and other equipment and personal property, and Extraordinary Repairs, in each case made, constructed or acquired by the Authority after the effective date hereof, and which are used or useful in connection with the MUNICIPAL SEWER AUTHORITY OF HOUTZDALE BOROUGH Sewage Treatment and Disposal System, including property in process of construction or erection, to the extent actually constructed or erected; Provided, however, that the term "Capital Additions" shall not include:

- A. Property acquired or constructed by the Authority from funds contributed or advanced by users, developers or other Persons, except that such property shall be deemed, notwithstanding anything elsewhere stated in this definition, to be Capital Additions to the extent and at the time that the Authority shall repay or shall be obligated to repay such funds so contributed or advanced; or

- B. Property constructed or acquired or improvements made in the course of completion of the Sewage Metering Facilities.

"Capital Contribution Fees" Means the funds that the parties pay to the Authority for reserved capacity in the Authority's Sewage Treatment and Disposal System.

"Certified Public Accountant" The governing bodies of the municipalities shall each appoint a person who shall be Independent; and will be actively engaged in the business of public accounting and duly certified as a certified public accountant under authority of laws of the Commonwealth.

"Commonwealth" means the Commonwealth of Pennsylvania.

"Consulting Engineers" means a Person, who shall be Independent, appointed by the Borough and Township Authorities, qualified to pass upon engineering questions relating to sewage collection systems and having a favorable reputation for skill and experience in supervising construction and operation of sewage collection systems. If such Person shall be an individual, he shall be a professional engineer duly registered under laws of the Commonwealth. If such Person shall be a partnership, corporation or association, it shall have a partner, officer, employee or member who is a professional engineer duly registered under laws of the Commonwealth.

"Debt Service Requirements" means the sum of amounts required to be set aside in such Debt Service Time Period for payment of interest on and principal of Bonds under consideration and amounts required to be deposited in such Debt Service Time Period to the credit of any sinking, purchase, redemption or analogous fund established for such Bonds; Provided, however, that Debt Service Requirements with respect to any Debt Service Time Period for a series of Bonds for which there shall have been established a sinking, purchase, redemption or analogous fund shall be determined after projecting operation of such fund to retirement of Bonds of such series to the extent that the same shall be

required to be retired and giving effect to reduction in interest payments to be made with respect to such Bonds by reason of such retirement.

"Extraordinary Repairs" means alterations, repairs, renewals, improvements or replacements with respect to the MUNICIPAL SEWER AUTHORITY OF HOUTZDALE BOROUGH Sewage Treatment and Disposal System which are necessary or desirable for proper operation and maintenance thereof, the costs of which reasonably cannot be paid by the Authority out of then current receipts and revenues from the Sewage Treatment and Disposal System as current Operating Expenses.

"Houtzdale Borough Sewage Collection System" means the sewage collection system in the confines of, owned, operated and maintained by Houtzdale Borough with the exception of the Beaver Run Interceptor as defined under "Authority."

"Improvement Project" means the undertakings necessary in connection with the acquisition, construction and equipping by the Authority of additions, alterations and improvements to the MUNICIPAL SEWER AUTHORITY OF HOUTZDALE BOROUGH Sewage Treatment and Disposal System and other related and necessary appurtenant facilities (such as but not limited to the Beaver Run Interceptor), as described in the plans and specification of the consulting engineer for the Authority, or in accordance with such changes, modifications and alterations of such plans and specifications, approved as provided in the Indenture.

"Indenture" means the Trust Indenture, dated as of December 9, 1976, between the Authority and the Trustee, including all modifications, alterations, amendments and supplements thereto made and delivered in accordance with provisions thereof.

"Independent" means, with respect to the Certified Public Accountant and the Consulting Engineers, a Person who is independent in fact and who is not a member of the Authority, or of the Borough or Township Authorities or an officer or employee of the Authority, or of

the Borough or Township Authorities, or which is not a partnership, corporation or association having a partner, director, officer, member or substantial stockholder who is a member of the Authority, or of the Borough or Township Authorities or an officer or employee of the Authority, or of the Borough or Township Authorities or an elected or appointed official or employee of the Authority or of either of the Borough or the Township; Provided, however, the fact that such Person is retained regularly by the Authority or by the Borough or Township Authorities shall not make such Person an employee within the meaning of this definition.

"Operating Expenses" means, with respect to the MUNICIPAL SEWER AUTHORITY OF HOUTZDALE BOROUGH Sewage Treatment and Disposal System or the Sewage Interceptor System, as appropriate, all expenses required in operating and maintaining the MUNICIPAL SEWER AUTHORITY OF HOUTZDALE BOROUGH Sewage Treatment and Disposal System or the Sewage Interceptor System, as appropriate, including, in each case, without intending to limit the generality of the foregoing:

- A. Expenses of operation, maintenance, repair, alteration, insurance and inspection;
- B. Expenses of managerial, supervisory, administrative, engineering, architectural, legal and auditing services;
- C. Sums payable to any Person, which sums, under sound accounting or engineering practice, constitute expenses of operation and maintenance; and
- D. All taxes, assessments and charges, including, without intending to limit the generality of the foregoing, income, profits, property, franchise and excise taxes.
- E. Any civil or criminal fines or penalties levied against the Authority.

#2

"Person" means an individual, a partnership, an association, a corporation, a joint stock company, a trust, an unincorporated association, a governmental body, a political subdivision, a municipality, a municipal authority or any other group or entity.

"Sewage" means domestic sewage and/or commercial industrial wastes, as such terms usually and customarily are used by sanitary engineers.

"Sewage Collection Systems" means the sewage collection facilities acquired, constructed, owned, maintained and operated separately by the Borough Authority and Township Authority and Houtzdale Borough, together with all appurtenant facilities and properties which have been acquired or hereafter shall be acquired by the Borough Authority and Township Authority and Houtzdale Borough in connection therewith, including all property, real, personal and mixed, rights, powers, licenses, easements, rights of ways, privileges, franchises and any and all other property or interests in property of whatsoever nature used or useful in connection with such facilities, and together with all additions, extensions, alterations and improvements which may be made or acquired by Borough Authority and Township Authority and Houtzdale Borough, from time to time; and the "Sewage Collection Systems," without intending to limit the generality of the foregoing, as of any particular time, shall include all buildings, basins, machinery, mains, conduits, pipes, pipe lines, interceptor lines, trunk lines, service lines, tanks, shops, pumping stations, ejector stations, force mains, fixtures, engines, boilers, pumps, meters and other equipment, all personal property and all franchises, land, rights of way, privileges, easements, licenses, rights and any other interests in real property, used or useful by the Borough Authority and Township Authority and Houtzdale Borough in connection with collection and transportation of Sewage, in and adjacent to portions of the Boroughs or Township.

"Sewage Metering Facilities" means the facilities acquired and constructed separately by the Borough Authority and Township Authority, owned, maintained and operated by the Authority without intending to

limit the generality of the foregoing, including all structures, machinery, conduits, pipes, fixtures, meter, and other equipment for the metering of sewage from portions of the Borough or the Township.

"Sewage Treatment and Disposal System" means the sewage treatment and disposal facilities acquired, constructed, owned, maintained and operated by the Authority, together with facilities to be acquired and/or constructed by the Authority as part of a future Improvement Project, together with all appurtenant facilities and properties which the Authority has acquired or hereafter shall acquire in connection with the foregoing, including all property, real, personal and mixed, rights, powers, licenses, easements, rights of way, privileges, franchises and any and all other property or interests in property of whatsoever nature used or useful in connection with such facilities, and together with all additions, extensions, alterations, and improvements which may be made or acquired, from time to time, and the *"Sewage Treatment and Disposal System,"* without intending to limit the generality of the foregoing, as of any particular time, means the facilities above described and contemplated by any Improvement Project and all property, real, personal and mixed, rights, powers, licenses, easements, rights of way, privileges, franchises and any and all other property or interests in property or whatsoever nature used or useful in connection with such facilities, and Capital Additions (including property in the nature of Capital Additions acquired or constructed from funds wholly or partially contributed or advanced by users, developers, or other Persons) acquired, owned, made or constructed by or for the Authority; and the *"Sewage Treatment and Disposal System,"* without intending to limit the generality of the foregoing, as of any particular time, shall include all buildings, basins, machinery, conduits, pipes, pipe lines, interceptor lines, outfall lines, trunk lines, sewer plants and systems, tanks, shops, treatment plants and systems, pumping stations, ejector stations, force mains, fixtures, engines, boilers, pumps, meters and other equipment, all personal property and all franchises, land, rights of way, privileges, easements, licenses, rights and any other interests in real property, used or useful by the Authority in connection with, transportation and disposition and/or treatment of Sewage.

"Sewer Fund" means fund created by Authority and in which all revenues collected by Authority shall be placed for the operation of the Sewage Treatment and Disposal System.

"Surplus Fund" means the funds collected by the Authority as Capital Contribution fees from parties to be placed in the Surplus Fund of Authority established under Section 4.05 of Indenture as to be used according to the provision under said Section of Indenture as well as other Funds.

"Township" means the WOODWARD TOWNSHIP, Clearfield County, Pennsylvania.

"Township Authority" shall mean the WOODWARD TOWNSHIP SEWAGE AND WATER AUTHORITY.

"Trustee" means County National Bank having its principal office in Clearfield, Pennsylvania, a party to the Indenture, and any successor thereto in the trust under the Indenture.

ARTICLE II

Service Covenant: Term of Agreement

SECTION 2.01. The Authority covenants that it will receive, transport, treat and dispose of Sewage from the Sewage Collection Systems within the service area delineated in Article VIII during the term hereof, subject to the terms and conditions hereof.

SECTION 2.02. The Authority hereby grants to the Borough Authority and Township Authority the right to connect their Sewage Collection Systems to the Sewage Treatment and Disposal System, at such point or points as have been or in the future may be agreed upon by the Authority and Borough Authority and Township Authority.

SECTION 2.03. The Borough Authority and Township Authority agree that the Authority shall be the sole and exclusive agency during the term hereof to treat and dispose of Sewage from the Sewage Collection Systems within the service areas as defined in Article VIII of this Agreement. The Borough Authority and Township Authority covenant neither to construct nor to permit or join in construction of sewage treatment facilities duplicating, as competing facilities, any Sewage Treatment and Disposal System which would serve the service areas as defined in Article VIII of this Agreement. #3

SECTION 2.04. This Agreement shall be for a term of fifty (50) years, beginning July 10th, 1991 and ending July 10th, 2041, which term may be changed by an amendment or supplement hereto as provided herein and in the indenture. However, at the end of said term, the Authority agrees not to terminate the service provided to the Borough Authority and the Township Authority provided they have complied with the terms of this agreement and the amendments hereto.

ARTICLE III

Implementation Prerequisites

SECTION 3.01. The Borough Authority and Township Authority covenant to acquire and complete the infrastructure necessary for the Intermunicipal Service Agreement. The Borough Authority and Township Authority further covenant that construction related to the Intermunicipal Service Agreement will be undertaken and completed in accordance with approval of this Agreement, or in accordance with such changes thereto and modifications or alterations thereof as shall be approved in the manner provided in the Agreement.

SECTION 3.02. The Borough Authority and Township Authority covenant to use their best efforts to implement and carry out the Intermunicipal Service Agreement with all reasonable dispatch and diligence.

SECTION 3.03. The Authority may issue Additional Bonds if necessary to pay for any improvement project which costs for such bonds shall be chargeable to any parties under the terms and conditions of this Agreement.

ARTICLE IV

Connections to the Sewage Treatment and Disposal System: Capital Contribution Fees, Tapping and Other Charges Imposed by the Authority

SECTION 4.01. The Borough Authority and Township Authority covenants and agrees to keep resolutions or ordinances in effect that they shall connect to the Authority's system for sewage treatment and disposal.

SECTION 4.02. The Authority covenants and agrees to adopt resolutions setting and charging the amount of the capital contribution fees as can be agreed to between Authority and Borough Authority and Township Authority for the amount of reserve capacity in the Sewage Treatment and Disposal System as can be agreed between the Authority and Brisbin Authority and the Authority and Woodward Authority. The Brisbin Authority and Woodward Authority agree to adopt such resolution also once the capital contribution fee figure and reserve capacity amounts in the resolution are agreed to. The Authority will

impose the capital contribution fee on the Borough Authority and Township Authority in accordance with the percentage of allocated treatment capacity to the Borough Authority and Township Authority to the total treatment capacity of the Sewage Treatment and Disposal System.

SECTION 4.03. The Borough Authority and Township Authority agree to pay the Capital Contribution fees to the Authority after the adoption of the resolutions by all parties and upon the date of bond closing from the Borough Authority's funding and the Township Authority's funding agencies. Borough Authority and Township Authority are seeking financing for this project. If either the Borough Authority or the Township Authority are denied financing through funding, then this agreement shall be null and void as to the party who has been denied such funding. 4

If the financing is made available to the Borough Authority and Township Authority by the funding source and they fail to pay the Capital Contribution fee as per the resolutions, the Authority may take all necessary actions to enforce payment available under the law.

SECTION 4.04. The Authority covenants that Capital Contribution Fees imposed pursuant to its resolution in effect at the time under Section 4.02 shall be at least such that amounts which reasonably may be collected therefrom by it together with:

1. any sums received by the Authority from any Person or Municipality who are not party to this agreement pursuant to any agreement between it and such Person or Municipality whereby Sewage of such Person or Municipality shall be accepted by it for transportation and ultimate disposal into the Sewage Treatment and Disposal System, if such agreement is permitted under provisions hereof; 5
2. any other sums received by the Authority on account of ownership and operation of the Sewage Treatment and Disposal System, including any tapping, connection or like fees charged to owners of property or municipal authorities who are not party to this agreement who connect to the Sewage Treatment Disposal System; and

3. any other monies required to be deposited in its Surplus Fund pursuant to provisions of the Agreement

will be sufficient to provide funds for the following purposes:

- A. Payment of portions of the Authority's actual cost incurment of the original construction cost of the Sewage Treatment and Disposal System and Beaver Run Interceptor as applicable plus interest as detailed in the attached resolution; and
- B. Payment in such Agreement Time Period to the Authority or its assigns of:
 - 1. taxes, if any, levied against the Authority with respect to the sums payable to the Authority hereunder, constituting additional sums payable hereunder; and
- C. Compliance with all covenants contained in this Agreement.

If such collections, receipts and deposits in any such Agreement Time Period shall be less than the sum of requirements of subparagraphs (A), (B), and (C) above, the Authority covenants that it will promptly adjust, in the manner permitted by law, the connection fees or other charges so that amounts thereafter to be collected therefrom, together with the other collections, receipts and deposits, as aforesaid, shall enable it to comply with requirements of this Section and to eliminate deficiencies of any prior Agreement Time Period.

SECTION 4.05. If ever the need arises that the Sewage Treatment and Disposal System requires capacity expansion, upgrade or any other renovation due to hydraulic, organic or solids overloading requiring capital expenditure, the party or parties exceeding their respective treatment capacity allotments or other related parameters shall bear the cost of such capital expenditure in

an amount commensurate with the share of their treatment capacity allotment exceedence, or their desired new allotted capacity, whichever is greater.

Any increase in capacity of the Sewage Treatment and Disposal System shall be allocated to the party or parties in proportion to their capital expenditures.

If ever the need arises that the Sewage Treatment and Disposal System requires upgrade or renovation due to effluent limit permit requirements, performance requirements or any other requirements not due to hydraulic, organic or solids overloading requiring capital expenditures, all of the municipalities shall bear the cost of such capital expenditure in an amount commensurate with their allotted capacity.

The capital expenditure requirements include those that are mandated by DER or other local state or federal agencies.

ARTICLE V

Sewage Treatment Rates; Method of Payment

SECTION 5.01. The Authority has adopted resolutions fixing and charging sewage treatment rates upon the Borough Authority and Township Authority for use of the Sewage Treatment and Disposal System and for services rendered by the Authority in connection therewith. The Authority will charge rates according to the percentage of flow that the Borough Authority and Township Authority each contribute to the total flow received at the Sewage Treatment and Disposal System, and the Borough, Township and their respective authorities covenant and agree to pay their pro-rata share of expenses defined in Section 5.02 of this agreement calculated on a yearly basis paid monthly. The Authority covenants to keep such resolutions or a subsequent resolution or resolutions in full force and effect continuously during the term hereof.

SECTION 5.02. The parties hereto agree that sewage treatment rates imposed pursuant to the resolution or resolutions referenced in Section 5.01 hereof, as in effect at the time, under Section 5.01 shall be at least such that the estimated amounts to be received by the Authority therefrom, together

with all other receipts, revenues and monies to be derived by the Authority or in behalf of the Authority in any manner from any source, except from Capital Contribution Fees, from or in connection with, operation of the Sewage Treatment and Disposal System (all of the foregoing hereinafter also being referred to as the "Receipts and Revenues from the Sewage Treatment and Disposal System"), will be sufficient to:

- A. Pay the reasonable Administrative Expenses of the Authority in connection with the Sewage Treatment and Disposal System and in connection with Bonds issued in each Agreement Time Period, to the extent that the same shall not otherwise be provided from Capital Contribution Fees.
- B. Pay the reasonable Operating Expenses, less all grants received from state agencies which are applicable to operation and maintenance costs, of the Authority with respect to the Sewage Treatment and Disposal System; and
- C. Provide an amount equal to the Debt Service Requirements on the Additional Bonds outstanding under this Agreement, plus any mandatory payments required to be made, to the extent that such Debt Service Requirements or mandatory payments otherwise shall not be provided for under this Agreement.

SECTION 5.03. The Borough Authority and Township Authority acknowledge that the Authority has filed with them a schedule of the sewage treatment rates imposed pursuant to the resolutions of the Authority in effect under Section 5.01 hereof as of the effective date hereof. The Borough Authority and Township Authority hereby express their approval to such sewage treatment rates.

The Authority covenants to keep on file with the Borough Authority and Township Authority, all times, a schedule of its then current sewage treatment rates, together with a copy of the resolution or resolutions of the Authority establishing and adopting rules and regulations, including alterations,

amendments and additions thereto, as from time to time adopted by the Authority, relating to the use of the Sewage Disposal and Treatment System.

SECTION 5.04. The Authority covenants that it will not increase its sewage treatment rates without prior written consent of the Borough Authority and Township Authority; Provided, however, that if effective December 1 of any Authority Fiscal Year, the Authority's consulting engineers shall advise the Authority, in writing, that the Receipts and Revenues from the Sewage Treatment and Disposal System estimated to be received by the Authority during the next succeeding Authority Fiscal Year will be insufficient to meet the requirements of Section 5.02 hereof, the parties agree that the Authority immediately shall revise its sewage treatment rates and other charges so as to enable it to meet the requirements of Section 5.02 hereof, which revision shall not require the consent of the Borough Authority and Township Authority. In the event of the occurrence of Extraordinary Repairs, as defined in Section 1.01 of this Agreement, during any Authority Fiscal Year that are certified by the Authority's Consulting Engineers to require immediate action, the Authority shall complete the Extraordinary Repairs without the consent of the Borough Authority and Township Authority. All parties hereto shall bear the cost of such Extraordinary Repairs in an amount commensurate with their allotted capacity. The Authority shall submit a written statement to the Borough Authority and Township Authority setting forth the total cost of the Extraordinary Repairs and each party's share of that cost. The Borough Authority and Township Authority shall pay their share of the cost of the Extraordinary Repairs within thirty (30) days after receipt of said statement from the Authority.

In the event of any revision of the Authority's sewage treatment rates and other charges, a schedule of the revised sewage treatment rates and other charges shall be filed with the Borough Authority and Township Authority, as required by Section 5.03 hereof.

SECTION 5.05. The Borough and Township and their respective Authorities covenant to pay the Authority's sewage treatment rates for use of the Sewage Treatment and Disposal System and for services rendered by the Authority in connection therewith at the times and in the manner set forth in the

resolution or resolutions of the Authority in effect at the time under SECTION 5.01 hereof.

The Borough Authority and Township Authority covenant to supply promptly to the Authority all information deemed necessary by the Authority in order to compute the sewage treatment rates and charges to the Borough Authority and Township Authority for use of the Sewage Treatment and Disposal System and for services rendered by the Authority in connection therewith, including, but not limited to, information concerning number and types of physical connections to the Sewage Collection Systems and strength, character and volume of Sewage discharged into the Sewage Collection Systems.

SECTION 5.06. The Borough Authority and Township Authority covenant to pay, as if it primarily were liable for the same, all taxes and assessments, including, without intending to limit the generality of the foregoing, income, profits, property, franchises, excise and/or other taxes, which now or hereafter properly may be levied or assessed by the Federal, State or any municipal government against the Authority upon or by reason of payment or receipt of any sums payable by the Borough Authority and Township Authority hereunder to the Authority or its assigns.

SECTION 5.07. If the Authority shall issue Additional Bonds to complete an Improvement Project or for repair or replacement of any portion of the Sewage Treatment and Disposal System or for Capital Additions to the Sewage Treatment and Disposal System required by any governmental regulatory body having jurisdiction, the parties hereto agree to take such action as shall be required by the Agreement in connection therewith.

SECTION 5.08 The Authority covenants to enforce the resolution or resolutions in effect at any particular time under Section 5.02 and to collect all amounts becoming due thereunder, and the Borough and the Township and their respective Authorities covenant to agree to make all payments to the Authority in a timely fashion. If any amounts becoming due thereunder shall not be paid in accordance with provisions of such resolution or resolutions at the time in effect, the Authority covenants to take all necessary action to

enforce such payment, including the filing of proper municipal claims or liens in accordance with law.

SECTION 5.09 The Borough and Township covenants that they have enacted, or will have enacted, by completion of construction of their sewage collection system, ordinances requiring all owners of improved property located within the Borough and Township which legally can be required to be connected to the Sewage Collection Systems to be operated by the Borough Authority and Township Authority to connect therewith and providing for enforcement of such ordinances as permitted by law. The Borough and Township also covenant to keep such ordinances or subsequent ordinances requiring such connections in full force and effect continuously during the term hereof and to enforce the same as may be permitted by law.

SECTION 5.10 Borough Authority and Township Authority covenant that they have enacted, or will have enacted, by completion of construction of their sewage collection system, resolutions imposing sewer rentals or charges upon owners of improved property which shall be connected to the Sewage Collection Systems to be operated by the Borough Authority and Township Authority for use thereof. The Borough Authority and Township Authority also covenant to keep such resolutions or subsequent resolutions imposing such sewer rentals or charges in full force and effect continuously during the term hereof.

SECTION 5.11 The Borough Authority and Township Authority covenant to enforce the resolutions in effect at any particular time under Section 5.10 and to collect all amounts becoming due thereunder. If any amounts become due thereunder shall not be paid, in accordance with provisions of such resolutions at the time in effect, the Borough Authority and Township Authority covenant to take all necessary action to reduce the same to liens and to enforce payment of the liens and/or to enforce payment of such sewer rentals or charges in any other manner permitted by law.

SECTION 5.12 The Borough Authority and Township Authority covenant that sewer rentals or charges imposed pursuant to their resolutions in effect at the time under Section 5.10, together with any fees, fines, and/or penalties

resulting from enforcement of Borough and Township ordinances in effect at the time under Section 5.09, shall be at least such that amounts which reasonably may be collected therefrom by Borough Authority and Township Authority in each Agreement Year, together with: (1) other sewer revenues received by Borough Authority and Township Authority; and (2) any sums appropriate by Borough, Borough Authority, Township and Township Authority for the purposes from current revenues, within limits then provided by law, or from other legally available funds will be sufficient to provide funds for the following purposes:

- A. Payment by Borough Authority and Township Authority in such Agreement Year of Operating Expenses relating to the Sewage Collection Systems to be operated by Borough Authority and Township Authority; and
- B. Payment by Borough Authority and Township Authority in such Agreement Year to the Authority or its assigns of:
 - 1. The Authority's rates and charges for use of the Sewage Treatment and Disposal System and for services rendered by the Authority in connection therewith; and
 - 2. Taxes, if any, levied against the Authority with respect to the sums payable to the Authority by Borough Authority and Township Authority hereunder, constituting additional sums payable hereunder.
- C. Establishment of a margin of safety of at least ten percent (10%) of subparagraph B.1 above.

If such collections, receipts, and appropriations in any such Agreement Year for the Borough Authority and/or the Township Authority shall be less than the sum of requirements of subparagraphs A, B, and C above, the Borough Authority and/or the Township Authority covenant that they promptly will adjust, in the manner permitted by law, the sewer rentals or charges so that amounts thereafter to be collected therefrom, together with the other collections, receipts and appropriations, as foresaid, shall enable them to

comply with requirements of this Section and to eliminate deficiencies of any prior Agreement Year; and, to the extent necessary, Borough Authority and Township Authority also covenant that if collections, receipts, and appropriations in any such Agreement Year for the Borough Authority and Township Authority shall be less than the sum of requirements of subparagraphs A, B, and C above, such Borough Authority and/or Township Authority will provide from their other available current revenues, funds, an amount which, when added to such collections, receipts and appropriations, will be sufficient to enable them to meet such requirements.

SECTION 5.13 Borough Authority and Township Authority covenant to deposit in their respective "Sewer Revenue Account", which hereby are created for the Borough Authority and Township Authority, all Sewer Revenues, together with all moneys appropriated by the Borough and Township for the purposes out of their current revenues, within limits then provided by law, or from other legally available funds.

Each Sewer Revenue Account shall be maintained with an incorporated bank or trust company doing business in the Commonwealth which is not unsatisfactory to the Authority and which may be the Trustee.

SECTION 5.14 Moneys in their respective Sewer Revenue Account shall be and are pledged by Borough Authority and Township Authority for prompt and full satisfaction of all their obligations under this Agreement and shall be withdrawn, from time to time, by Borough Authority and Township Authority to satisfy such obligations.

SECTION 5.15 Borough Authority and Township Authority, at the end of each Agreement Year, shall accumulate amounts remaining in their respective Sewer Revenue Account, after withdrawals required or permitted under Section 5.14, as a reserve fund in the Sewer Revenue Account, until the balance in the Borough Authority's reserve fund shall equal the sum of \$16,667 and the balance in the Township Authority's reserve fund shall equal the sum of \$35,000, which sums shall constitute the reserve fund for the following Agreement Year.

SECTION 5.16 The parties hereto agree that all moneys held by the Trustee in the Authority's Surplus Fund, as established under Section 4.05 of the Authority's Trust Indenture, whether on deposit as of the effective date hereof or deposited subsequently, shall be held solely for the benefit of the Authority and the holders of Authority Bonds. Authority agrees to accumulate moneys in its Surplus Fund, until the balance in said Surplus Fund shall equal the sum of \$48,333, which sum shall constitute the reserve fund for the benefit of the sewerage system users of the Borough of Houtzdale as defined in SECTION 8.02. Moneys in said Surplus Fund shall be disbursed in accordance with the provisions of Section 4.05 of the Authority's Trust Indenture. In the event of such disbursements, such reserve fund shall be restored to the amount required as expeditiously as possible. #9

SECTION 5.17 If amounts in the Borough Authority's and/or Township Authority's Sewer Revenue Account, exclusive of moneys in the reserve fund required under Section 5.15, shall not be sufficient to enable the Borough Authority and/or Township Authority to meet promptly and fully all obligations of the Borough Authority or Township Authority hereunder, as provided in Section 5.14, Borough Authority and/or Township Authority shall withdraw, from time to time, from such reserve fund, amounts which will enable it to meet all such obligations promptly and fully. In the event of such withdrawals, such reserve fund shall be restored to the amount required as expeditiously as possible.

SECTION 5.18 Borough Authority and Township covenant that moneys in their respective Sewer Revenue Accounts, to the extent not insured or, as hereinafter authorized, invested, will be secured continuously by the depository by a pledge of direct obligations of the United States of America or the Commonwealth having an aggregate market value, exclusive of accrued interest, at all times at least equal to the balance not so insured or invested.

SECTION 5.19 Borough Authority and Township Authority may withdraw the balance, except as hereinafter provided, remaining in their respective Sewer Revenue Account at the end of such Agreement Year which is not required under

provisions hereof to be retained as a reserve fund in their respective Sewer Revenue Account.

ARTICLE VI

Sewer Fund and Surplus Fund of the Authority

SECTION 6.01. The Authority covenants to deposit in its "Sewer Fund":

1. all monies realized from collection of Sewage Treatment Rates or other charges imposed by its resolution or resolutions in effect at the time under Section 5.01;
2. all other monies received by it from any Person pursuant to any agreement between it and such Person whereby Sewage of such Person shall be accepted by it for transportation and ultimate disposal into the Sewage Treatment and Disposal System, if such agreement is permitted under provisions hereof;

SECTION 6.02 The Authority covenants to deposit in its "Surplus Fund" which hereby is created:

1. all monies received by it on account of ownership and operation of the Sewage Treatment and Disposal Systems, including capital contributions or like fees; and
2. any other monies required to be deposited in its Surplus Fund Account pursuant to provisions of the Authority's Indenture.

SECTION 6.03. The Surplus Fund shall be maintained with the Trustee in accordance with the Trust Indenture.

SECTION 6.04. Monies in the Sewer Fund shall be and are pledged by the Authority for prompt and full satisfaction of the expenses to be paid under Section 5.02 of this Agreement, and any obligations under the Authority's Indenture covering said expenses and monies shall be withdrawn from Sewer Fund as necessary to satisfy those expenses.

SECTION 6.05. The Authority covenants that monies in its Sewer Fund, to the extent not insured or, as hereinafter authorized, invested, will be secured continuously by the depository by a pledge of direct obligations of the United States of America or the Commonwealth having an aggregate market value, exclusive of accrued interest, at all times at least equal to the balance not so insured or invested.

SECTION 6.06. The Authority, for its own benefit, may invest and reinvest all or part of the monies in its Sewer Fund in obligations at the time permitted by law and the Authority's Indenture, for the periods permitted by the Authority's Indenture, and shall, to the extent not insured, be continuously secured as provided in Section 6.05 hereof for uninvested monies. Any income and/or profits realized and any losses sustained from such investments shall be credited or charged, as appropriate, to its Sewer Fund.

ARTICLE VII

Measurement of Wastewater Flows

SECTION 7.01 The Borough Authority and Township Authority shall each procure and construct similar sewage metering facilities in conjunction with the construction of their respective collection systems. The sewage metering facilities shall be designed and specified to the satisfaction of the Authority's Consulting Engineer. After inspection and acceptance, the sewage metering facilities will be transferred to the Authority for ownership and operation.

The sewage metering facilities will be similar in design, equipment and construction for purposes of metering compatibility and accuracy and will include, as a minimum, remote data telemetry to the Authority's Treatment and Disposal Facilities.

The location of the sewage metering facilities shall be such that all of the sewage of the respective municipality will flow by gravity to the metering facility to the fullest extent practical and shall generally be located at the

Houtzdale Borough corporate limits and as approved by the Authority's Consulting Engineer.

SECTION 7.02 The quantity of sewage emanating from Woodward's and Brisbin's Sewage Collection Systems into the Sewage Treatment and Disposal System shall be based upon the readings of the meters installed pursuant to Section 7.01 above. The quantity of sewage flowing through the Sewage Treatment and Disposal System shall be based upon the readings of the metering system which has been installed by the Authority at the Sewage Treatment Plant.

SECTION 7.03 The Authority will record meter readings each day of the sewage flowing through the Sewage Treatment and Disposal System. The Authority will maintain, or cause to be maintained, the meters metering flow through the Sewage Treatment and Disposal System and will cause the meter to be inspected and calibrated for accuracy at least semi-annually by the manufacturer thereof or by some other company or person qualified to make such inspections.

The Authority will record meter readings each day of the sewage flowing through the meters installed at or near the points of connection from the Woodward and Brisbin Sewage Collection Systems to the Authority's Sewage Treatment and Disposal System as set forth in Section 7.01. The Authority will maintain, or cause to be maintained, the meters metering flow from the Woodward and Brisbin Sewage Collection Systems and will cause them to be inspected and calibrated at least semi-annually by the manufacturer thereof or by some other company or person qualified to make such inspections. All parties hereto shall be notified by the Authority at least 48 hours in advance of the time and location at which the meters will be calibrated. If representatives of Woodward and Brisbin fail to appear in response to such notices, the tests shall be binding upon them. The costs of operation, maintenance and calibration of all metering installations shall be considered Operating Expenses of the Authority.

SECTION 7.04 Woodward and Brisbin shall have access to all meters operated and maintained by the Authority at all reasonable times for the

purpose of reading them and checking them in place for accuracy, at Woodward's and/or Brisbin's expense.

SECTION 7.05 In the case of missing or inaccurate flow records due to faulty meter operation or otherwise, an estimate of flows shall be made by the Authority's Consulting Engineers, based upon records of past flow as applied to the current conditions, for use in place of meter readings. The Authority's Consultant shall provide Brisbin Authority and Woodward Authority documentation justifying such estimates.

SECTION 7.06 It is understood and agreed among the parties hereto that sewage flow from the Sewage Collection Systems of Woodward and Brisbin may enter the Sewage Treatment and Disposal System at numerous points of connection and that the flow to certain of these points of connection may be insufficient to justify (either for economic or for engineering reasons) the construction of metering stations. Accordingly the parties hereto agree that Woodward and Brisbin shall be entitled to make connections to the Sewage Treatment and Disposal System without installation of a metering station until such time as the Authority's Consulting Engineers deem it necessary to install meters, based upon sound engineering standards.

Sources that generate sewage that ultimately does not flow through metering facilities will require individual metering of water consumption. Total use as metered by these water meters will be added to master meter volumes for each respective municipality for purposes of billing and allotment of capacity.

All such persons so connected shall caused to be installed a water meter acceptable to the Authority's Consulting Engineers and shall meter all water used on or in conjunction with such premises and the additional Sewage Treatment Charge in respect of the unmetered sewage flow discharged by any such person shall be based upon the actual quantity of water used upon or in conjunction with such premises.

ARTICLE VIII
Service Areas

SECTION 8.01 The Borough Authority and Township Authority covenant to maintain areas of sewerage service to portions of their respective municipalities which includes areas in accordance with their respective adopted and approved Act 537 plans. These areas are graphically delineated in the attached Figures 8-01. These areas do not contain the residences detailed in Section 8.02 below.

SECTION 8.02 The Borough of Houtzdale covenants to maintain areas of sewerage service to residents within its municipal boundary and to certain residences in Woodward Township and Brisbin Borough that are currently connected to the Houtzdale Borough collection system as listed in the attached Table 8-01.

SECTION 8.03 If connection to sewerage within the boundaries of the Brisbin Borough or Woodward Township is considered and if the connection is most feasible to be made to the Houtzdale Borough Collection System, and the sewage flow from the connection does not flow through the master metering facility of the respective municipal authority then the connection shall be considered the customer of the respective municipal authority where the connected property is located. This condition does not apply to customers in Brisbin Borough and Woodward Township "Grandfathered" in accordance with Table 8-01.

SECTION 8.04 Sewer connections or extensions shall be the responsibility of the municipality or municipal authority that constructed or accepted the connection or extension and shall be a part of its sewage collection system that will serve the connections served by the said sewer extension.

TABLE 8-01
Grandfathered Connections

Woodward Township

Donald Quade
Richard Washic
Ronald Archer
James Callovini
Houtzdale Apartments
David Dotts
Carol Flango
Harold Bratton
Dick Reed
McAteer Village
Moshannon Valley Health
National Bank of Comm.
Woodward Pharmacy
Woodward Auto Parts
Howard's BiLo Foods
Marie Freeburg
Freeburg Funeral Home
Dr. William Ronan
Richard Ohs

Brisbin Borough

Russ Christoff

ARTICLE IX

Insurance

SECTION 9.01. The Borough Authority and Township Authority covenant to maintain adequate insurance upon physical structures constituting parts of the Sewage Collection Systems in amounts, which, as a trade practice in operation of sewage collection systems, normally are carried. The Borough Authority and Township Authority covenant to maintain such insurance against fire and such other risks as usually and generally are included in extended coverage endorsements.

All policies of insurance shall be issued by a responsible insurance company or companies, duly qualified to do business in the Commonwealth.

SECTION 9.02. The Borough Authority and Township Authority covenant that if their Sewage Collection Systems shall be wholly or partially destroyed, damaged or injured by fire or other casualty covered by insurance it will take all actions and do all things which may be necessary to enable recovery to be made upon such policies of insurance in order that insurance monies may be collected. The total amount recovered, from time to time, shall be applied by the Borough Authority and Township Authority for the sole purpose of reconstructing, replacing or repairing such Sewage Collection Systems, unless the Borough Authority and Township Authority determine that such reconstruction, replacement or repair is not required for proper and efficient operation of the Sewage Collection Systems.

SECTION 9.03. The Borough Authority and Township Authority covenant to maintain public liability insurance, property damage insurance and workers' compensation insurance with respect to the Sewage Collection Systems in such amounts as a trade practice for the size of such sewage collection system are normally carried.

ARTICLE X
Additional Covenants of the Borough
and Township Authorities

SECTION 10.01. The Borough Authority and Township Authority covenant to each prepare on or before February 1 of each year, beginning February 1, 1992, a report setting forth:

- A. Advice and recommendations as to:
 - 1. Proper maintenance, repair and operation of the Sewage Collection Systems during the next Calendar Year; and
 - 2. Estimated expenditures that should be made by it during such next Calendar Year to keep the Sewage Collection System in good repair and operating condition;
- B. An estimate of expenditures that should be made by it during such next Calendar Year to comply with recommendations set forth in such report and to enable it to meet all its obligations hereunder and its obligations under this Agreement.
- C. An estimate of receipts and revenues to be received by it from operation of the Sewage Collection Systems during such next Calendar Year; and
- D. Projections of average sewage flow rates from the Township or Borough as applicable for the next Calendar Year.

Copies of such reports shall be filed promptly by the Borough Authority and Township Authority with the Authority.

The report made by the Borough Authority and Township Authority may be used as a basis for preparing their budgets for the next Calendar Year relating to the Sewage Collection Systems covered in this Agreement. The Borough Authority and Township Authority shall file copies of its budget with

Authority upon adoption of the budget by the Borough Authority and Township Authority.

SECTION 10.02. The Borough Authority and Township Authority covenant to keep accurate records of its Revenue Accounts and within ninety (90) days after each Calendar Year, to have made a complete audit made of its Revenue Account by its Certified Public Accountant or other audit as required by law. Such audit shall show, among other things, the monies in the Revenue Account, at the end of the Calendar Year. A signed counterpart of such audit shall be furnished to the Authority and the Authority's Engineer, if necessary.

SECTION 10.03. The Borough Authority and Township Authority covenant to maintain their Sewage Collection Systems within the areas defined under this Agreement in good repair and operating condition, to operate the same continuously in an economical and efficient manner and to make all repairs, renewals, replacements and improvements in order to maintain adequate service and to prevent excessive infiltration of ground and surface waters.

SECTION 10.04. The Borough Authority and Township Authority covenant to comply with all valid acts, rules, regulations, orders, and directives of any legislative, executive, administrative or judicial body applicable to acquisition, construction, operation, repair or maintenance related to the Sewage Collection Systems.

SECTION 10.05. The Authority has adopted uniform sewage quality standards which comply with the present requirements of all regulatory authorities. The Borough Authority and Township Authority shall refrain from discharging or permitting the discharge of sewage from their respective Sewage Collection Systems into the Sewage Treatment and Disposal System that would violate any of such standards. The Authority will make no changes in said standards except upon sixty (60) days, or shorter period as any governmental authority having jurisdiction may require, prior notice to the Borough Authority and Township Authority and all such changes will apply equally to all municipalities served by the Sewage Treatment and Disposal System. The Authority agrees to provided the Borough Authority and Township Authority with a copy of the uniform sewage quality standards adopted by the Authority.

The Borough Authority and Township Authority shall enact and keep in full force and effect at all times resolutions or ordinances prohibiting, and providing penalties for, the discharge into their respective Sewage Collection Systems of anything violating the above-mentioned quality restrictions of the Authority. Such resolutions or ordinances shall also prohibit or regulate the discharge into their respective Sewage Collection Systems by industries of industrial waste as defined in the applicable regulations of the Authority. The Borough Authority and Township Authority shall not permit, and shall use all reasonable means to prevent, any discharge into their respective Sewage Collection Systems except in the manner and in accordance with the provisions of said resolutions and ordinances. The Borough Authority and Township Authority shall deliver copies of all such resolutions and ordinances to the Authority and shall make no changes therein relating to quality standards except upon sixty (60) days (or such shorter period as any governmental authority having jurisdiction may require) prior notice to the Authority.

The Borough Authority and Township Authority shall take all action in their power as may be necessary to enforce compliance with the discharge standards from time to time in effect.

When requested by the Authority, the Borough Authority and Township Authority shall install, maintain and operate, at their own expense, sampling equipment or facilities at or near the point that their respective Sewage Collection Systems discharge into the Sewage Treatment and Disposal System, and, upon request of the Authority, will have samples collected, analyzed and the results submitted to the Authority and will permit the Authority to collect samples. It is not the intent of this paragraph to require the Borough Authority and Township Authority to install and maintain automatic proportional sampling equipment without the Authority providing documented evidence that such automatic proportional sampling equipment is necessary for the proper and efficient operation of the Sewage Treatment and Disposal System or that there is evidence of industrial wastes entering the system which would be undetectable except by such equipment.

In the event that any report submitted to the Authority analyzing any sample shall state that sewage discharged from the Borough Authority and Township Authority' Sewage Collection Systems violates the quality standards and restrictions of the Authority, Woodward and/or Brisbin shall have the right to submit the question to an independent registered professional engineer, acceptable to the Authority, for determination. The determination of said engineer shall be final. The expense of such engineering determination shall be borne by the Authority, if the determination is favorable to the Borough Authority and Township Authority and by Woodward and/or Brisbin if such determination supports the findings of a violation of the above-mentioned standards and restrictions.

If any analysis of samples indicates that the sewage discharged by the Borough Authority and Township Authority into the Sewage Treatment and Disposal System requires special treatment or would be harmful to the Sewage Treatment and Disposal System, and such analysis is confirmed if questioned by the Borough Authority and Township Authority as provided above, then, upon request by the Authority, the Borough Authority and Township Authority shall either (i) pay the Authority the entire cost of such special treatment, or (ii) provide or require pretreatment of such waste in such manner as the Authority shall specify, or (iii) compel disconnection from the sewage collection system of the person from which the harmful waste is being discharged. Failure by the Borough Authority and Township Authority to compel disconnection or pretreatment upon thirty (30) days notice from the Authority shall entitle the Authority to suspend the acceptance of sewage under this Agreement until the Borough Authority and Township Authority comply with the request.

The Borough Authority and Township Authority shall pay the full amount of any costs incurred by the authority, or fines and the amount of any damage to the Sewage Treatment and Disposal System resulting from the discharge of improper waste from the Borough Authority and Township Authority' Sewage Collection Systems in violation of the above-mentioned quality standards and restrictions, and shall indemnify and hold harmless the Authority with respect thereto.

SECTION 10.06. The Borough and Township and their respective Authorities covenant to comply fully with all covenants and conditions of their funding agreements and Indentures, if existing.

SECTION 10.07. If, during the term hereof, either the Borough or Township or any successor municipality or municipalities or any trustee, receiver, officer, board, commission, agency, instrumentality or other Person to whom or which any right, power or duty of the Borough Authority and Township Authority may be transferred, voluntarily or involuntarily, shall come into possession of the Sewage Collection Systems within the area defined under this Agreement, then all covenants herein by, in behalf of or for the benefit of the Borough Authority and Township Authority, to the extent permitted by law, shall bind or inure to the benefit of such successor in possession of the Sewage Collection Systems.

SECTION 10.08. The Borough Authority and Township Authority covenant that they will not voluntarily assign their interest in this Agreement without written consent of the Authority or its assigns and, if such consent shall be given then only subject to conditions which may be set forth in such consent.

SECTION 10.09. The Borough Authority and Township Authority covenant that the Authority, by its duly authorized representatives, at reasonable times, may inspect any part of the Sewage Collection Systems within the areas defined under this Agreement.

ARTICLE XI

Additional Covenants of the Authority

SECTION 11.01. The Authority covenants to maintain the Sewage Treatment and Disposal System in good repair and operating condition, to operate the same continuously in an economical and efficient manner and to make all repairs, renewals, replacements and improvements in order to maintain adequate service.

SECTION 11.02. The Authority covenants to comply with all valid acts, rules, regulations, orders, and directives of any legislative, executive, administrative or judicial body applicable to construction, operation, repair and maintenance related to the Sewage Treatment and Disposal System.

SECTION 11.03. The Authority covenants that it will maintain adequate insurance against fire and such other risks as usually and generally are included in extended coverage endorsements, and also insurance against such other risks as shall be deemed proper by the Authority and the Consulting Engineers, upon physical structures constituting parts of the Sewage Treatment and Disposal System upon which such insurance, as a trade practice in operation of sewage disposal systems, normally is carried, in such amounts and with such responsible insurance company or companies, duly qualified to do business in the Commonwealth, as may be satisfactory to the Trustee.

Policies of insurance maintained by the Authority shall be issued by a responsible company or companies, duly qualified to do business in the Commonwealth, satisfactory to the Trustee, shall be nonassessable, shall be for benefit of the Authority and the Trustee, as their respective interests may appear, and shall be deposited with the Trustee. Moneys recovered under such policies of insurance shall be payable to and deposited with the Trustee, which shall hold such moneys, in trust, as security for Bonds until such shall be disbursed as provided in the Trust Indenture.

The Authority covenants that it will maintain such public liability insurance, property damage insurance and workmen's compensation insurance with

respect to the Sewage Treatment and Disposal System and operation thereof in such amounts and with such companies as shall be approved by the Authority's Consulting Engineers and as shall be satisfactory to the Trustee.

ARTICLE XII

Miscellaneous

SECTION 12.01. The Authority may issue Additional Bonds, from time to time, for purposes and in the manner provided in the Indenture; Provided, however, that if in connection with issuance of such Additional Bonds provisions of the Indenture shall require an increase in the sewage treatment rates and other charges of the Authority in effect at the time under Section 5.01 hereof, such Additional Bonds shall be issued only with the prior written consent of the Borough Authority and Township Authority, except in the case of issuance of Additional Bonds to complete the requirements of this Agreement, or in the case of issuance of Additional Bonds for repair or replacement of any portion of the Sewage Treatment and Disposal System which has been destroyed or damaged and the Authority, determines that such repair or replacement is required for proper and efficient operation of the Sewage Treatment and Disposal System, or in the case of issuance of Additional Bonds for Capital Additions to the Sewage Treatment and Disposal System required by any governmental regulatory body having jurisdiction, in each of which cases, the Authority may issue Additional Bonds without prior written consent of the Borough Authority and Township Authority. If the Authority shall issue Additional Bonds, the Borough Authority and Township Authority covenant to take such action as may be required under this Agreement.

SECTION 12.02. The Authority shall furnish to the Borough Authority and Township Authority a copy of each annual statement relating to the Sewage Treatment and Disposal System and the Indenture, prepared by its Certified Public Accountant, appointed as provided in the Indenture, as required by the Act and Indenture, and, if requested, shall permit any duly authorized representative of the Borough Authority and Township Authority to make reasonable examinations of its accounts and records relating to the Sewage Treatment and Disposal System and the Indenture. The Authority also shall

furnish to the Borough Authority and Township Authority a copy of each annual report relating to the Sewage Treatment and Disposal System and the Indenture.

SECTION 12.03. Nothing herein shall be construed to limit or restrict the right of the Borough Authority and Township Authority to employ, from time to time, to the extent permitted by law, such Person as it shall deem advisable and in its best interests to manage or operate the Sewage Collection Systems in their behalf or to perform other functions of the Borough or Township Authorities with respect to the Sewage Collection Systems and to delegate to such Person such duties of the Borough or Township Authorities hereunder as it shall deem advisable and as they lawfully may delegate; Provided, however, that such employment and delegation shall not relieve the Borough or Township Authority of its obligations hereunder.

SECTION 12.04. The Borough Authority and Township Authority covenant that during the term of this Agreement they will not voluntarily discontinue operation of the Sewage Collection Systems within the areas defined under this Agreement.

SECTION 12.05. The Authority, immediately following execution and delivery hereof, shall assign this Agreement and all applicable monies in accordance with Section 4.04 of this Agreement to be derived by the Authority hereunder to the Trustee, IN TRUST, to be held and applied pursuant to provisions of this Agreement. The Borough Authority and Township Authority consent to such assignment and accept notice thereof with the same legal effect as though such acceptance were embodied in a separate instrument, separately executed after execution of such assignment.

SECTION 12.06. If any provisions hereof shall be held to be invalid, such invalidity shall not affect any other provision hereof, and the remaining provisions hereof shall be construed and enforced as if such invalid provisions had not been contained herein. Laws of the Commonwealth shall govern construction hereof.

SECTION 12.07. This Agreement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original; and such counterparts shall constitute but one and the same instrument.

SECTION 12.08. This Agreement is the sole agreement between the parties hereto regarding the subject matter herein set forth and, upon execution hereof, and upon the date of execution.

SECTION 12.09. It is anticipated that all parties described in this agreement shall become signatories; however, in the event either Brisbin Borough and Brisbin Borough Sewage and Water Authority or Woodward Township and Woodward Township Sewage and Water Authority fail to execute this agreement, then such agreement shall be valid and binding as to such party who has executed such agreement.

IN WITNESS WHEREOF, HOUTZDALE BOROUGH, the MUNICIPAL SEWER AUTHORITY OF HOUTZDALE BOROUGH, BRISBIN BOROUGH, BRISBIN BOROUGH SEWAGE AND WATER AUTHORITY, WOODWARD TOWNSHIP, and WOODWARD TOWNSHIP SEWAGE AND WATER AUTHORITY each has caused this Agreement to be executed in its name and in its behalf by its President, Chairman or Vice Chairman as applicable and its corporate seal to be affixed hereunto and attested by its Secretary or Assistant Secretary.

MUNICIPAL SEWER AUTHORITY OF HOUTZDALE BOROUGH

By:

John S. Bumbarger
(Chairman)

Attest:

Paul Chmiec
(Secretary)

(SEAL)

BRISBIN BOROUGH SEWAGE AND WATER AUTHORITY

By:

Charles Loose
(Chairman)

Attest:

Julian Whiskell
(Secretary)

(SEAL)

WOODWARD TOWNSHIP SEWAGE AND WATER AUTHORITY

By:

John R. Kitchell
(Chairman)

Attest:

Stephen W. Belin
(Secretary)

(SEAL)

ATTEST:

Doris E. Miller
Secretary

(SEAL)

ATTEST:

Mary Ann Albright
(SEAL)

ATTEST:

Marcella Love
(SEAL)

HOUTZDALE BOROUGH

BY: Dennis Kaschid
Council President

BRISBIN BOROUGH

BY: Rudolph Albright
Council President
VICE

WOODWARD TOWNSHIP

BY: Marcella Love
Supervisor

ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS, that the MUNICIPAL SEWER AUTHORITY OF HOUTZDALE BOROUGH, a municipal authority existing under Pennsylvania laws (the "Authority"), for value received, hereby does assign, transfer and set over unto COUNTY NATURAL PARK (CLEARFIELD), Pennsylvania (the "Trustee"), as trustee under a Trust Indenture, dated as of DECEMBER ¹⁹⁷⁶ 1, 1991 (the "Indenture"), between the Authority and the trustee and its successors in said trust, all right, title and interest in and all receipts, revenues and monies to be derived by the Authority under the foregoing Service Agreement, dated as of JULY 10, 1971 (the "Agreement") between the Authority, on the one hand, and the BRISBIN BOROUGH SEWAGE AND WATER AUTHORITY and the WOODWARD TOWNSHIP SEWAGE AND WATER AUTHORITY, on the other hand, to have, hold and apply such receipts, revenues and monies in accordance with the Indenture.

Notwithstanding such assignment and transfer, so long as the Authority shall not be in default under the Indenture:

- a. The Authority shall have the right and duty to give all approvals and consents permitted or required under the Agreement;
- b. The Authority shall have the right to execute supplements and/or amendments to the Agreement to the extent and in the manner permitted by the Indenture;
- c. The Authority shall have the right to execute supplements and/or amendments to the Agreement containing terms not adversely inconsistent with the Agreement or the Indenture; Provided, however, that the Agreement, as so supplemented and/or amended, shall provide at least the same security for holders or bonds of the Authority issued under the Indenture as the Agreement in the foregoing form;

- d. There shall be no responsibility on the part of the Trustee for duties or responsibilities of the Authority contained in the Agreement and in any supplements and/or amendments thereto.

IN WITNESS WHEREOF, the MUNICIPAL SEWER AUTHORITY OF HOUTZDALE BOROUGH has caused this Assignment to be duly executed in its name and in its behalf by its Chairman or Vice Chairman and its corporate seal to be affixed hereunto and attested by its Secretary or Assistant Secretary.

MUNICIPAL SEWER AUTHORITY OF HOUTZDALE BOROUGH

By: *John O. Bumbarger*
Chairman

Attest:

Paul Cheney
Secretary

(SEAL)

• • • • •

COUNTY OF ~~GLEARFIELD~~ ^{CENTRE}

SS:

who acknowledged himself to be (Vice) Chairman of MUNICIPAL SEWER AUTHORITY OF HOUTZDALE BOROUGH and that he, as such officer, being authorized to do so, executed the foregoing Service Agreement and Assignment, respectively, for purposes therein contained, by signing the name of such Authority by himself as such officer.

Winifred H. Jones-Kenney

NOTARY PUBLIC
WILLIAM H. JONES, Notary Public
Phippsburg Boro, Centre County, Pa.
My Commission Expires July 15, 1991

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA))
COUNTY OF CLEARFIELD) SS:

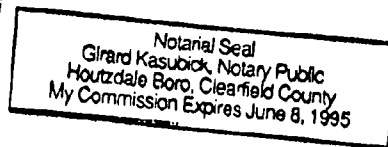
On this 12th day of September, 1991, before me, the undersigned officer, personally appeared Charles Loase

who acknowledged himself to be (Vice) Chairman of BRISBIN BOROUGH SEWAGE AND WATER AUTHORITY and that he, as such officer, being authorized to do so, executed the foregoing Service Agreement, respectively, for purposes therein contained, by signing the name of such Authority by himself as such officer.

IN WITNESS WHEREOF, I set my hand and official seal.

Girard Kasubick

(SEAL)



ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF CLEARFIELD)

SS:

On this 15th day of July, 1991, before me, the undersigned officer, personally appeared John K. Kuptchak

who acknowledged himself to be (Vice) Chairman of WOODWARD TOWNSHIP SEWAGE AND WATER AUTHORITY and that he, as such officer, being authorized to do so, executed the foregoing Service Agreement, respectively, for purposes therein contained, by signing the name of such Authority by himself as such officer.

IN WITNESS WHEREOF, I set my hand and official seal.

Girard Kasubick

(SEAL)



TABLE 8-01
Grandfathered Connections

Woodward Township

Donald Quade
Richard Washic
Ronald Archer
James Callovini
Houtzdale Apartments
David Dotts
Carol Flango
Harold Bratton
Dick Reed
McAteer Village
Moshannon Valley Health
National Bank of Comm.
Woodward Pharmacy
Woodward Auto Parts
Howard's BiLo Foods
Marie Freeburg
Freeburg Funeral Home
Dr. William Ronan
Richard Ohs

Brisbin Borough

Russ Christoff

MUNICIPAL SEWER AUTHORITY OF HOUTZDALE BOROUGH

RESOLUTION 5-11-94

WHEREAS, the Authority has entered into an Intermunicipal Service Agreement with Houtzdale Borough, Woodward Township Sewage and Water Authority, Woodward Township, Brisbin Borough Sewage and Water Authority and Brisbin Borough dated July 10, 1991; and

WHEREAS, under Article IV, Section 4.02 of said Intermunicipal Service Agreement, the Authority covenants and agrees to adopt resolutions setting and charging the amount of the capital contribution fees payable by Woodward Township Sewage and Water Authority (hereinafter referred to as "Township Authority") and Brisbin Borough Sewage and Water Authority (hereinafter referred to as "Borough Authority") for the amount of reserve capacity in the Authority's Sewage Treatment and Disposal System allocated to the Township Authority and Borough Authority.

NOW THEREFORE BE IT RESOLVED,

1. Allocation of Capacity. The Authority's Sewage Treatment and Disposal System is designed to accept 300,000 gallons per day of sanitary sewage flow. The capacity allocated to the Township Authority shall be 105,000 gallons per day. The capacity allocated to the Borough Authority shall be 50,000 gallons per day. Said capacities shall be considered as the capacities guaranteed to the Township Authority and Borough Authority. The capacity guaranteed to the Township Authority, expressed as a percentage, shall be 35%. The capacity guaranteed to the Borough Authority, expressed as a percentage, shall be 16.666667%.

2. Payment by Township Authority. Township Authority shall pay to the Authority upon the date of bond closing from Township Authority's funding agencies, the sum of Two Hundred Eleven Thousand Thirty-Seven Dollars and Forty-Four Cents (\$211,037.44), it being the proportion of the Authority's actual cost incurment of the original construction cost of the Sewage Treatment and Disposal System, plus interest, which shall be based upon the proportionate part of the capacity of the Sewage Treatment and Disposal System reserved for the Township Authority pursuant to Paragraph 1 herein. The interest charge shall be an amount equal to 35% of the total net interest cost (including bond discount) payable by the Authority for carrying the bonds issued and sold by the Authority to finance the construction of the Sewage Treatment and Disposal System from the date of issuance of said bonds to the date of payment of the capital contribution to the Authority by the Township Authority. It is hereby stated that said bonds are the Authority's Guaranteed Sewer Revenue Bonds, Series of 1976, dated December 1, 1976, and that the net interest cost thereof is 7.331 percent.

It is further resolved that the Township Authority shall pay to the Authority upon the date of bond closing from Township Authority's funding agencies, the sum of Two Hundred Eleven Thousand Thirty-Seven Dollars and Forty-Four Cents (\$211,037.44), it being the proportion of the Authority's actual cost incurment of the original construction cost of the Sewage Treatment and Disposal System, plus interest, which shall be based upon the proportionate part of the capacity of the Sewage Treatment and Disposal System reserved for the Township Authority pursuant to Paragraph 1 herein. The interest charge shall be an amount equal to 35% of the total net interest cost (including bond discount) payable by the Authority for carrying the bonds issued and sold by the Authority to finance the construction of the Sewage Treatment and Disposal System from the date of issuance of said bonds to the date of payment of the capital contribution to the Authority by the Township Authority. It is hereby stated that said bonds are the Authority's Guaranteed Sewer Revenue Bonds, Series of 1976, dated December 1, 1976, and that the net interest cost thereof is 7.331 percent.

MUNICIPAL SEWER AUTHORITY OF HOUTZDALE BOROUGH

RESOLUTION NO. 5-11-94

Page Two

3. Payment by Borough Authority. Borough Authority shall pay to the Authority upon the date of bond closing from the Borough Authority's funding agencies, the sum of Seventy Three Thousand Seven Hundred Twenty-Nine Dollars and Eighty-Four Cents (\$73,729.84), it being the proportion of the Authority's actual cost incurment of the original construction cost of the Sewage Treatment and Disposal System, plus interest, which shall be based upon the proportionate part of the capacity of the Sewage Treatment and Disposal System reserved for the Borough Authority pursuant to Paragraph 1 herein. The interest charge shall be an amount equal to 16.6666667% of the total net interest cost (including bond discount) payable by the Authority for carrying the bonds issued and sold by the Authority to finance the construction of the Sewage Treatment and Disposal System from the date of issuance of said bonds to the date of payment of the capital contribution to the Authority by the Borough Authority. It is hereby stated that said bonds are the Authority Guaranteed Sewer Revenue Bonds, Series of 1976, dated December 1, 1976, and that the net interest cost thereof is 7.331 percent.

4. Capital Contributions. Attached hereto and made a part hereby are itemized statements setting forth the Authority's actual cost incurment of the original construction cost of the Sewage Treatment and Disposal System and capital contribution fees payable by Township Authority and Borough Authority.

Duly adopted by the Municipal Sewer Authority of Houtzdale Borough this 11th day of May, 1994.

I, Paul Clancy, duly qualified Secretary of the Municipal Sewer Authority of Houtzdale Borough, Clearfield County, Pennsylvania, hereby certifies that the foregoing is a true and correct copy of a Resolution duly adopted by majority vote of the Municipal Sewer Authority of Houtzdale Borough at the regular meeting of the Authority held on May 11, 1994 and said Resolution has been recorded in the Minutes of the Municipal Sewer Authority of Houtzdale Borough and remains in effect as of this date.

IN WITNESS THEREOF, I affix my hand and attach the seal of the Municipal Sewer Authority of Houtzdale Borough, this 11th day of May, 1994.

MUNICIPAL SEWER AUTHORITY OF HOUTZDALE BOROUGH
Clearfield County


Secretary 2 of 2
EXHIBIT "B"

RESOLUTION

104

WHEREAS, the AUTHORITY has entered into an Intermunicipal Service Agreement (the "1991 Agreement") with WOODWARD TOWNSHIP SEWAGE AND WATER AUTHORITY, BRISBIN BOROUGH SEWAGE AND WATER AUTHORITY, HOUTZDALE BOROUGH, WOODWARD TOWNSHIP and BRISBIN BOROUGH dated July 10, 1991; and

WHEREAS, under Article V, Section 5.01 of the 1991 Agreement, the Authority covenants that it will adopt a resolution or resolutions fixing and charging Sewage Treatment Rates upon Woodward Township Sewage and Water Authority (hereinafter "Township Authority") and Brisbin Borough Sewage and Water Authority (hereinafter "Borough Authority") which shall be connected to the Authority's Sewage Treatment and Disposal System for use thereof and for services rendered by the Authority in connection therewith.

NOW THEREFORE BE IT RESOLVED,

1. Treatment Charges. Township Authority and Borough Authority shall pay to the Authority in each Authority budget year or portion thereof beginning when the first sewage is delivered hereunder, and continuing thereafter for as long as the 1991 Agreement is in effect, a Sewage Treatment Charge for sewage treatment services rendered by the Authority. Said Sewage Treatment Charge shall be determined in the following manner:

Administrative, Operation and Maintenance Expenses of the Authority pursuant to Section 5.02 of the 1991 Agreement	X	Total Volume Sewage Discharged by Township Authority (or (Borough Authority) into Authority's Sewage Treatment and Disposal System	X	110%
		Total Volume of Sewage received at the Treatment Plant		

2. Estimates of Treatment Charges. On or before December 31, 1994 and December 1 of each succeeding year, Authority will prepare and submit to Township Authority and Borough Authority a statement, approved by the Authority's Consulting Engineer, showing, in reasonable detail, for the next succeeding Authority budget year: (i) the estimated amounts to be paid by Township Authority and Borough Authority during such year as its estimated Sewage Treatment Charge, determined in accordance with the provisions hereof; (ii) the amount, if any, to be credited against the estimated Sewage Treatment Charge for such year as the result of any overpayments or adjustments of payments for any preceding year, as provided in this Resolution; and (iii) the amount of any bill not paid pursuant to this Resolution plus a penalty as provided for in this Resolution.

3. Payment on Estimates. Township Authority and Borough Authority shall pay their estimated Sewage Treatment Charge for each Authority budget year in twelve (12) equal installments to be paid on or before December 15, January 15, February 15, March 15, April 15, May 15, June 15, July 15, August 15, September 15, October 15, November 15 of such year.

4. Audited Statements. The Authority shall cause to be prepared and certified by a Certified Public Accountant on or before March 31 of each year commencing in 1996 a report setting forth in reasonable detail (i) the Administrative, Operation and Maintenance Costs of the Sewage Treatment and Disposal System, pursuant to Section 5.02 of the 1991 Agreement, for the preceding Authority budget year and (ii) the final Sewage Treatment Charge payable by Township Authority and Borough Authority for such year determined in accordance with the provisions of this Resolution. Such report shall contain statements setting forth the payment theretofore made by Township Authority and Borough Authority as estimated Sewage Treatment Charges and the amount by which the final charge exceeds or is less than the aggregate of the payments and credits theretofore made by or allowed to Township Authority and Borough Authority on account of such estimated charge.

5. Payment of Final Treatment Charge: Repayments or Credit for Overpayments. If the final Sewage Treatment Charge to Township Authority and/or Borough Authority for any Authority budget year as shown by such certified report differs from the aggregate of the payments and credits theretofore made by them based upon the aforesaid estimates, then Township Authority and/or Borough Authority shall pay, subject to the provisions of this Resolution, the amount of any deficiency within thirty (30) days after the delivery of said certified report, and any excess of such payments and credits on account of estimates over the final Sewage Treatment Charge shall be repaid to Township Authority and/or Borough Authority within thirty (30) days after delivery of the aforesaid certified report or, at the option of Township Authority and/or Borough Authority, applied on account of the next succeeding monthly installment or installments of the estimated Sewage Treatment Charge in chronological order thereof.

6. Penalty on Late Payments. If Township Authority and/or Borough Authority shall not make full payment of any such monthly installments or additional charges on or before the specified payment date, there shall be added to the amount thereof a penalty equal to ten (10) percent of the unpaid amount.

Duly adopted by the Municipal Sewer Authority of Houtzdale Borough this 21st day of December, 1994.

Page Three

I, Paul Clancy, duly qualified Secretary of the Municipal Sewer Authority of Houtzdale Borough, Clearfield County, Pennsylvania, hereby certifies that the foregoing is a true and correct copy of a Resolution duly adopted by majority vote of the Municipal Sewer Authority of Houtzdale Borough at the regular meeting of the Authority held on December 21, 1994 and said Resolution has been recorded in the Minutes of the Municipal Sewer Authority of Houtzdale Borough and remains in effect as of this date.

IN WITNESS THEREOF, I affix my hand and attach the seal of the Municipal Sewer Authority of Houtzdale Borough, this 21st day of December, 1994.

MUNICIPAL SEWER AUTHORITY OF HOUTZDALE BOROUGH
Clearfield County


Paul Clancy, Secretary

**MUNICIPAL SEWER AUTHORITY
of
HOUTZDALE BOROUGH**

P.O. BOX 277
HOUTZDALE, PENNSYLVANIA 16651

Business Office: (814) 378-5739
Fax: (814) 378-6169

June 15, 2000

Mr. David Stodart
Plant Manager
Woodward Township Sewage
and Water Authority
PO Box 6
Houtzdale, PA 16651

RE: End of Year Adjustment


Dear Dave:

The following fax is the proposed "End of the Year Adjustment" as calculated by Richard H. Bulger, Jr., Engineer for the Municipal Sewer Authority of Houtzdale Borough.

Per our authority's regular monthly meeting last night, we wish for you to review this and advise our board members as to how your authority would like this issue addressed: payment of the amount due to your authority by check or a delay of billings issued until the adjustment is reached.

Please contact the Business Office at the Houtzdale Treatment Plant so that the Business Manager may inform our Authority as to your decision. Thank you.

Sincerely,


John O. Bumbarger, II
President

JOB:msh

DRAFT

**MUNICIPAL SEWER AUTHORITY OF HOUTZDALE BOROUGH
ACTUAL SEWAGE TREATMENT CHARGES
TO
BRISBIN BOROUGH SEWAGE AND WATER AUTHORITY
AND
WOODWARD TOWNSHIP SEWAGE AND WATER AUTHORITY
FOR THE 1999 FISCAL YEAR
(DECEMBER 1, 1998 - NOVEMBER 30, 1999)**

**MUNICIPAL SEWER AUTHORITY OF HOUTZDALE BOROUGH
ACTUAL SEWAGE TREATMENT CHARGES
DECEMBER 1, 1999 TO NOVEMBER 30, 1999**

DRAFT

	MSA of HB AUDITED 1999 Fiscal Year Costs (a)	Percentage Allocable To Borough and Township	Amount Allocable To Borough and Township
EXPENDITURES			
<u>Operation and Maintenance</u>			
Salaries & Wages-Plant Operator	\$ 24,853.00	100	\$ 24,853.00
Salaries & Wages-Assistants	0.00 (b)	100	0.00
Materials & Supplies	3,158.00	100	3,158.00
Chemicals	0.00 (c)	100	0.00
General Expense	0.00	100	0.00
Communication Expense	2,063.00	75	1,547.25
Telemetry Expenses	0.00 (d)	100	0.00
Electricity Expense	17,720.00	100	17,720.00
Maintenance & Repair	12,579.00	100	12,579.00
Sludge Removal & Disposal (Testing & Permits)	31,018.00 (e)	100	31,018.00
Fuel - Heat - Water	0.00 (f)	100	0.00
Minor Equipment Purchase/Replacement	0.00 (g)	100	0.00
<u>Administration</u>			
Salaries & Wages-Business Manager	19,154.00	85	12,450.10
Salaries & Wages-Office Assistant	0.00 (h)	85	0.00
Materials & Supplies	1,233.00	85	801.45
General Expense	212.00	85	137.80
Advertising & Printing	482.00	85	313.30
Legal and Engineering Fees	2,505.00	100	2,505.00
Audit Fees	1,825.00	85	1,186.25
Trustee Fees	1,550.00	0	0.00
Maintenance & Repair	1,455.00	85	945.75
Miscellaneous Expense	0.00	85	0.00
Minor Equipment Purchase/Repair	0.00	100	0.00
<u>Insurance</u>			
Fire Insurance	0.00 (i)	100	0.00
Workers Compensation	7,381.00	85	6,273.85
Casualty & Liability	0.00 (i)	85	0.00
Bonding	0.00	85	0.00
<u>Employee Benefits & Taxes</u>			
Social Security Contributions	3,852.00	85	3,104.20
Unemployment Compensation Contributions	0.00 (j)	85	0.00
Hospitalization	6,421.00	85	5,457.85
TOTAL EXPENDITURES	\$ 137,059.00		\$ 123,848.80
LESS State Subsidy-Act 339			(4,838.00)
TOTAL ALLOCABLE EXPENDITURES			\$ 119,010.80

Footnotes

- (a) Taken from Audit Report of Walter Hopkins & Company dated February 23, 2000
- (b) Included under Plant Operator
- (c) Included under Materials and Supplies
- (d) Included under Communication Expense
- (e) Does not include payments by Moshannon Valley School District
- (f) Included under Electricity Expense
- (g) Included under Maintenance and Repair
- (h) Included under Business Manager's Salaries & Wages
- (i) Included under Workers Compensation
- (j) Included under Social Security Contributions

**MUNICIPAL SEWER AUTHORITY OF HOUTZDALE BOROUGH
ACTUAL SEWAGE TREATMENT CHARGES
DECEMBER 1, 1998 TO NOVEMBER 30, 1999**

DRAFT

I. ACTUAL 1999 FISCAL YEAR WASTEWATER FLOWS

<u>Municipality</u>	<u>Actual 1999 Fiscal Year Wastewater Flow (Gallons)</u>	<u>Percentage of Total Wastewater Flow</u>
Borough of Houtzdale	69,459,200	71.270
Borough of Bristle	8,499,900 (a)	8.722
Township of Woodward	19,499,900 (b)	20.008
TOTALS	97,459,000 (c)	100.000

Footnotes

- (a) Borough metered wastewater flow plus 685,000 gallons of wastewater from the Hilltop Acres Area
 (b) Township metered wastewater flow plus 1,314,000 gallons of wastewater from miscellaneous unmetered connections.
 (c) Total metered wastewater flow (includes the wastewater discharged through the combined sewer overflow at the treatment plant).

II. SUMMARY OF 1999 FISCAL YEAR METERED WASTEWATER FLOWS

<u>Month</u>	<u>Total Wastewater Flow (Gallons) (*)</u>	<u>Borough Wastewater Flow (Gallons)</u>	<u>Township Wastewater Flow (Gallons)</u>
December 1998	6,851,000	612,900	1,326,400
January 1999	11,435,000	731,200	1,870,800
February 1999	8,661,000	668,800	1,428,900
March 1999	10,729,000	737,400	1,745,000
April 1999	9,546,000	503,500	1,708,800
May 1999	7,731,000	583,200	1,575,000
June 1999	6,855,000	573,000	1,558,000
July 1999	6,838,000	691,300 (**)	1,336,000
August 1999	6,857,000	706,800	1,450,000
September 1999	6,895,000	654,000	1,159,000
October 1999	6,735,000	679,800	1,441,000
November 1999	8,898,000	675,000	1,579,000
TOTALS	97,459,000	7,814,900	18,185,900

Footnotes

- (*) Includes the wastewater discharged through the combined sewer overflow at the treatment plant.
 (**) Estimated

**MUNICIPAL SEWER AUTHORITY OF HOUTZDALE BOROUGH
ACTUAL SEWAGE TREATMENT CHARGES
DECEMBER 1, 1998 TO NOVEMBER 30, 1999**

DRAFT

III. ACTUAL 1999 FISCAL YEAR SEWAGE TREATMENT CHARGES

Column ==>>	(1)	(2)	(3)	(4)
	Percentage of Total Wastewater Flow	Total 1999 Fiscal Year Allocable Expenditures	[(1) x (2)]	Actual 1999 Fiscal Year Treatment Charge [(3) x 110%]
<u>Municipality</u>				
Borough of Bristlin	8.722	\$119,010.80	\$10,380.12	\$11,418.13
Township of Woodward	20.008	\$119,010.80	\$23,811.68	\$26,192.85

IV. 1999 FISCAL YEAR SEWAGE TREATMENT CHARGE ADJUSTMENT

<u>Municipality</u>	Estimated 1999 Fiscal Year Sewage Treatment Charge Paid	Actual 1999 Fiscal Year Sewage Treatment Charge	Additional or (Credit) for the 1999 Fiscal Year Sewage Treatment Charge
Borough of Bristlin	\$14,216.66	\$11,418.13	(\$2,798.73)
Township of Woodward	\$31,647.70	\$26,192.85	(\$5,454.85)

Woodward Township Sewage
And Water Authority

P.O. Box 6
Houtzdale, PA 16651
Phone: (814) 378-8211
Fax: (814) 378-8245

COPY

August 3, 2000

Municipal Sewer Authority
Of Houtzdale Borough
P.O. Box 277
Houtzdale, PA 16651

RE: Year-End Adjustment

Dear Members of the Board:

Upon evaluation, the draft "end of year adjustment" appears to be correct as calculated by the formula utilized on page 3 of 3. The Woodward Township Sewage And Water Authority agrees with the flows contributed and budget amounts allocable. However, we disagree with the treatment charges at 110%. An Authority review of the Intermunicipal Agreement does not identify/state that HMSA will receive 110% of the WTSWA % contribution payment due. Please forward by check the amount of overpayment indicated on page 3..... \$5454.85.

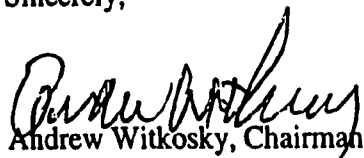
If this Authority contributes 20.008% of the actual flow, it should be billed only for that amount. By requesting payment at 110%, it appears that HMSA does not pay its fair share of the allocable expenditures. Please review the table presented below:

1. Allocable Expenditures (page 1 of 3)....\$119,010.80

	% Contributed	Payment Due	Payment Requested	Difference
2. HMSA ...	71.270	\$84,819.00	\$81,399.82	+\$3,419.18
BSA.....	8.722	\$10,380.12	\$11,418.13	-\$1,038.01
WTSWA..	20.008	\$23,811.68	\$26,192.85	-\$2,381.17
TOTAL ..	100.00%	\$119,010.80	\$119,010.80	

This table indicates that the WTSWA and BSA are subsidizing HMSA by \$3,419.18 and actual end of year adjustment should include the negative amounts listed in the difference column. The payment requested \$26,192.85 represents 22.009% of the allocable expenditures.

Sincerely,


Andrew Witkosky, Chairman

DAS/jd

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
EQUITY DIVISION

WOODWARD TOWNSHIP SEWAGE
AND WATER AUTHORITY,
Plaintiff

vs.

MUNICIPAL SEWER AUTHORITY OF
HOUTZDALE BOROUGH
Defendant

:
: No. 2000-1388-CD
:
: ACTION FOR DECLARATORY
: JUDGMENT
:

:
: Type of Pleading:
: Answer to Complaint for
: Declaratory Judgment and
: Certificate of Service
:

:
: Filed on behalf of Defendant
:

:
: Counsel of Record for Defendant:
: Winifred H. Jones-Wenger
: Attorney for Defendant
: 333 Laurel Street
: P. O. Box 469
: Philipsburg, PA 16866
: (814) 342-4330
: Pa. ID. # 23751
:

FILED

DEC 04 2000

William A. Shaw
Prothonotary

(#2)

FILED

DEC 14 1960

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
EQUITY DIVISION

WOODWARD TOWNSHIP SEWAGE
AND WATER AUTHORITY,
Plaintiff

vs.

MUNICIPAL SEWER AUTHORITY OF
HOUTZDALE BOROUGH
Defendant

:
: No. 2000-1388-CD
:
: ACTION FOR DECLARATORY
: JUDGMENT
:
:
:

ANSWER TO COMPLAINT FOR DECLARATORY JUDGMENT

NOW COMES the Municipal Sewer Authority of Houtzdale Borough, Defendant,
by and through its attorney, Winifred H. Jones-Wenger, and files the following Answer to the
Complaint for Declaratory Judgment:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted.
9. Admitted.
10. Admitted
11. Admitted.
12. Admitted.

13. Admitted.

14. Denied. On the contrary the Agreement provides that the Defendant shall adopt rates that are based on the percentage of flow, which the Defendant has done. Furthermore, the Agreement provides in Section 5.02 that “the sewage treatment rates imposed . . . shall be at least” (emphasis added) such amount that will be sufficient to pay the reasonable administrative expenses, operating expenses and pay debt service on outstanding bonds. There is no place in the Agreement that limits the rates to be charged to Plaintiff to the precise, actual percentage of the expenses.

15. Denied. On the contrary the Resolution defines what the “Treatment Charges” are and provides for estimated payments to be made during any fiscal year based on prior year’s usage. The Resolution further provides for an adjustment to be made at the end of the year based on the final “Sewage Treatment Charge”, all of which include by definition the 110% component of the rate.

16. Denied. It is clear from reading the Agreement and the Resolution that the Defendant has the right to set rates and that Plaintiff would pay based on its actual flow. The Agreement further provides that “the sewage treatment rates imposed . . . shall be at least” (emphasis added) such amount that will be sufficient to pay the reasonable administrative expenses, operating expenses and pay debt service on outstanding bonds. There is no place in the Agreement that limits the rates to be charged to Plaintiff to the precise, actual percentage of the expenses.

17. Denied. On the contrary the Agreement provides that the Defendant shall adopt rates that are based on the percentage of flow—which the Defendant has done. Furthermore, the Agreement provides in Section 5.02 that “the sewage treatment rates imposed . .

. shall be at least" (emphasis added) such amount that will be sufficient to pay the reasonable administrative expenses, operating expenses and pay debt service on outstanding bonds. There is no place in the Agreement that limits the rates to be charged to Plaintiff to the precise, actual percentage of the expenses.

18. Denied as to Plaintiff's objections. The Defendant is acting and has acted properly and responsibly in all respects in providing treatment services to Plaintiff and has charge a rate for such services totally in compliance with the Agreement and its Resolution. Plaintiff has been charged a fair rate in accordance with the Agreement and the Resolution. Furthermore, since the inception of service to Plaintiff, Defendant has incurred a number of costs for extraordinary repairs and maintenance which sums should have been borne by Plaintiff in accordance with the capacity of allocation that Plaintiff has in the treatment plant which is 35%. Plaintiff has failed to pay its proper proportionate share of such extraordinary expenses and Defendant has had to subsidize Plaintiff.

19. Denied. It is admitted that since 1994, or when the first billings to Plaintiff actually occurred, that Plaintiff has been billed at the rate as described by Plaintiff. However it is denied that such rate is in violation of the Agreement. On the contrary, the Agreement only provides that the rates shall be based on the percentage of the flow and that "the sewage treatment rates imposed . . . shall be at least" (emphasis added) such amount that will be sufficient to pay the reasonable administrative expenses, operating expenses and pay debt service on outstanding bonds.

20. Admitted.

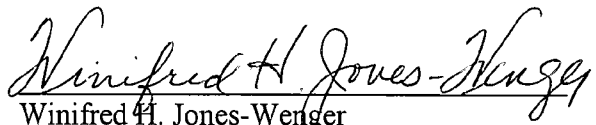
21. Admitted.

22. Admitted. By way of further answer, Defendant is entitled to set rates.

23. Denied. On the contrary, since the inception of service to Plaintiff, Defendant has incurred a number of costs for extraordinary repairs and maintenance which sums should have been borne by Plaintiff in accordance with the capacity of allocation that Plaintiff has in the treatment plant which is 35%. Plaintiff has failed to pay its proper proportionate share of such extraordinary expenses and Defendant has had to subsidize Plaintiff.

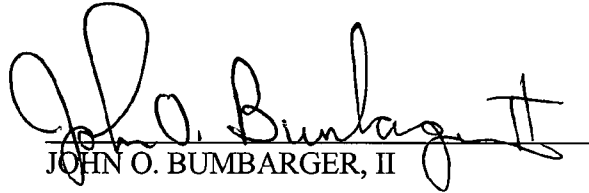
24. Denied. On the contrary the Agreement gives Defendant the right to set rates for treatment through resolution and further provides that the rates shall be based on the percentage of the flow and that "the sewage treatment rates imposed . . . shall be at least" (emphasis added) such amount that will be sufficient to pay the reasonable administrative expenses, operating expenses and pay debt service on outstanding bonds. Nothing in the Agreement provides that the rate imposed cannot be in excess of the expenses incurred. Furthermore, the Defendant is not "making a profit". On the contrary Defendant has incurred a number of costs for extraordinary repairs and maintenance which sums should have been borne by Plaintiff in accordance with the capacity of allocation that Plaintiff has in the treatment plant which is 35%. Plaintiff has failed to pay its proper proportionate share of such extraordinary expenses and Defendant has had to subsidize Plaintiff.

WHEREFORE, Defendant request that the action filed by Plaintiff be dismissed or in the alternative that the Honorable Court declare that the rates as charged to Plaintiff are lawful and in accordance with the Agreement between the parties and the Resolution adopted by Defendant.


Winifred H. Jones-Wenger
Attorney for Defendant

VERIFICATION

The undersigned, JOHN O. BUMBARGER, II, President of the Board of the Municipal Authority of Houtzdale Borough, verifies that the statements made in the foregoing Answer are true and correct to the best of his knowledge, information and belief. The undersigned understands that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.


JOHN O. BUMBARGER, II

Date: 12/1/00

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
EQUITY DIVISION

WOODWARD TOWNSHIP SEWAGE
AND WATER AUTHORITY,
Plaintiff

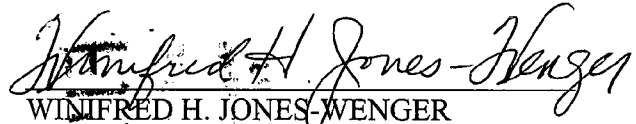
vs.

MUNICIPAL SEWER AUTHORITY OF
HOUTZDALE BOROUGH
Defendant

:
: No. 2000-1388-CD
:
: ACTION FOR DECLARATORY
: JUDGMENT
:
:
:
:

CERTIFICATE OF SERVICE

I, Winifred H. Jones-Wenger, the undersigned, certify that I did serve a true and correct copy of the ANSWER TO COMPLAINT FOR DECLARATORY JUDGMENT filed in the above captioned case, on Girard Kasubick, Esq., Attorney of Record for Plaintiff, at his place of business at LEHMAN & KASUBICK, 611 Brisbin Street, Houtzdale, PA 16651 by depositing same with the U.S. Postal Service on December 4, 2000, for delivery by U.S. mail, first class, postage prepaid.


WINIFRED H. JONES-WENGER
Attorney for Defendant

Dated: Dec. 4, 2000

FILED

DEC 10 10:33 AM '84

William A. Shaw
Prothonotary

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket #

10390

WOODWARD TOWNSHIP SEWAGE AND WATER AUTHORITY

00-1388-CD

VS.

MUNICIPAL SEWER AUTHORITY OF HOUTZDALE BOROUGH

COMPLAINT FOR DECLARATORY JUDGMENT

SHERIFF RETURNS

NOW NOVEMBER 13, 2000 AT 2:01 PM EST SERVED THE WITHIN COMPLAINT FOR DECLARATORY JUDGMENT ON MUNICIPAL SEWER AUTHORITY OF HOUTZDALE BOROUGH, DEFENDANT AT EMPLOYMENT, P.O. BOX 277 (STERLING PLANT), HOUTZDALE, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING MARY STODART-HUGHES, BUSINESS MANAGER A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT FOR DECLARATORY JUDGMENT AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: NEVLING

Return Costs

Cost	Description
27.69	SHFF. HAWKINS PAID BY ATTORNEY
10.00	SURCHARGE PAID BY ATTORNEY

FILED

DEC 13 2000

011104

William A. Shaw
Prothonotary

Sworn to Before Me This

13th Day Of December 2000.

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2002
Clearfield Co. Clearfield, PA.

So Answers,

Chester A. Hawkins
by *Marilyn Hampton*
Chester A. Hawkins
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
EQUITY DIVISION

WOODWARD TOWNSHIP SEWAGE
AND WATER AUTHORITY,
Plaintiff

vs.

MUNICIPAL SEWER AUTHORITY
OF HOUTZDALE BOROUGH,
Defendant

: No.: 2000-1388-CD
: Type of Case: Equity
: Type of Pleading:
: Certificate of
: Readiness and Praeipe
: for Trial
: Filed on behalf of:
: Plaintiff
: Counsel of Record for
: This Party:
: Girard Kasubick, Esq.
: Supreme Court #30109
: LEHMAN & KASUBICK
: 611 Brisbin Street
: Houtzdale, PA 16651
: (814) 378-7840

FILED

MAR 07 2001

0/8:50/1247

William A. Shaw
Prothonotary

NO CAMP CORIN

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
EQUITY DIVISION

WOODWARD TOWNSHIP SEWAGE :
AND WATER AUTHORITY, :
Plaintiff :
: No.: 2000-1388-CD
vs. :
: :
MUNICIPAL SEWER AUTHORITY :
OF HOUTZDALE BOROUGH, :
Defendant :

CERTIFICATE OF READINESS

TO: William A. Shaw, Prothonotary

DATE PRESENTED: March 7, 2001

CASE NUMBER: 2000-1388-CD

Date Complaint Filed: November 9, 2000

TYPE OF TRIAL REQUESTED:

() Jury (X) Non-Jury () Arbitration

ESTIMATED TRIAL TIME:

3 days/hours

PLAINTIFF(S): Woodward Township Sewage and Water Authority () Check Block
if a Minor
is a Party
DEFENDANT(S): Municipal Sewer Authority of Houtzdale Borough () to the Case

ADDITIONAL
DEFENDANT(S): None ()

AMOUNT AT ISSUE: 0.00

CONSOLIDATION: () yes (X) no

DATE CONSOLIDATION ORDERED: N/A

PRAECIPE FOR TRIAL

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST.

I certify that all discovery in the case has been completed; all necessary parties and witnesses are available; serious settlement negotiations have been conducted; there are no outstanding motions; the case is ready in all respects for trial, and a copy of this Certificate has been served upon all counsel of record and upon all parties of record who are not represented by counsel:

Girard Kasubick, Esq.
611 Brisbin Street
Houtzdale, PA 16651

(814) 378-7840

FOR THE PLAINTIFF

TELEPHONE NUMBER

Winifred H. Jones-Wenger, Esq.
333 Laurel Street, P.O. Box 469
Philipsburg, PA 16866

(814) 342-4330

FOR THE DEFENDANT

TELEPHONE NUMBER

N/A

FOR ADDITIONAL DEFENDANT

TELEPHONE NUMBER

Respectfully Submitted,



Girard Kasubick, Esq.,
Attorney for Plaintiff

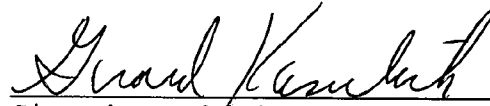
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
EQUITY DIVISION

WOODWARD TOWNSHIP SEWAGE :
AND WATER AUTHORITY, :
Plaintiff :
vs. : No.: 2000-1388-CD
MUNICIPAL SEWER AUTHORITY :
OF HOUTZDALE BOROUGH, :
Defendant :

CERTIFICATE OF SERVICE

I hereby certify that I, Girard Kasubick, Esq.,
served a true and correct copy of the Certificate of
Readiness and Praeipce for Trial by United States First
Class Mail, postage prepaid, on March 7, 2001 on the
following counsel of record:

Winifred H. Jones-Wenger, Esq.
333 Laurel Street
P.O. Box 469
Philipsburg, PA 16866


Girard Kasubick, Esquire,
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WOODWARD TOWNSHIP SEWAGE
AND WATER AUTHORITY,
Plaintiff

vs.

MUNICIPAL SEWER AUTHORITY
OF HOUTZDALE BOROUGH,
Defendant


*
*
*
*
*
*
*
*

NO. 2000-1388-C.D.

O R D E R

NOW, this 3rd day of April, 2000, following Civil Call and conference with counsel for both parties, it is the ORDER of this Court that this matter be and is hereby scheduled as a Non-Jury Trial for two hours, July 25, 2001 commencing at 9 o'clock a.m. in Courtroom No. 2 at the Clearfield County Courthouse, Clearfield, Pennsylvania.

By the Court,



FREDRIC J. AMMERMAN, JUDGE

FILED

APR 05 2001

William A. Shaw
Prothonotary

#5

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

WOODWARD TOWNSHIP SEWAGE :

AND WATER AUTHORITY :

VS. : NO. 00-1388-CD

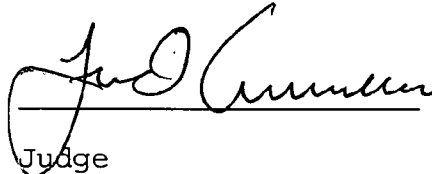
MUNICIPAL SEWER AUTHORITY :

OF HOUTZDALE BOROUGH :

O R D E R

NOW, this 25th day of July, 2001, following the conclusion of taking testimony relative the above-captioned civil non-jury trial; it is the ORDER of this Court that counsel for both parties shall have no more than thirty (30) days from this date to supply the Court with appropriate briefs.

BY THE COURT,


Judge

FILED

AUG 02 2001

William A. Shaw
Prothonotary

#19

FILED ICC Atty Kosobick
2/10/42
AUG 22 2001
William A. Shaw
Prothonotary
EAS

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

WOODWARD TOWNSHIP SEWAGE :
AND WATER AUTHORITY :
: *1388*
-vs- : No. 00-~~2388~~-CD
:
MUNICIPAL SEWER AUTHORITY :
OF HOUTZDALE BOROUGH :

O R D E R

NOW, this *24th* day of September, 2001, following nonjury trial and the timely receipt of briefs from counsel for both parties, it is the Finding of the Court that the Intermunicipal Service Agreement entered into between the parties contains language free from any ambiguity and does not contain a limitation as to the rate structure which can be imposed by the Defendant. As the said service agreement is free from any ambiguity, parole evidence concerning either party's intention or understanding is not admissible. The Plaintiff having not met its burden to show that the rate charged by the Defendant violates the terms of the service agreement, the Court hereby orders and declares that the current rate as being charged by the Defendant Authority pursuant to the resolution is permissible. Opinion to be filed in the event of an appeal.

FILED

SEP 24 2001

William A. Shaw
Prothonotary

BY THE COURT,

[Signature]
Judge

FILED

SEP 24 2001

9/3/01 atty Kaubick
William A. Shaw
Prothonotary

Dec atty Wengert

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
EQUITY DIVISION


WOODWARD TOWNSHIP SEWAGE :
AND WATER AUTHORITY, : No.: 2000-1388-CD
Plaintiff :
vs. :
MUNICIPAL SEWER AUTHORITY :
OF HOUTZDALE BOROUGH, :
Defendant :

NOTICE OF APPEAL

Notice is hereby given that Woodward Township Sewage and Water Authority, Plaintiff above named, hereby appeals to the Commonwealth Court of Pennsylvania from the Order entered by the Court in this matter on the 24th day of September, 2001. This Order has been entered in the docket as evidenced by the attached copy of the docket entry and also attached is copy of the September 24, 2001 Order.

Respectfully submitted,

Dated: 10/22/01


Girard Kasubick, Esq.,
Attorney for Plaintiff
LEHMAN & KASUBICK
611 Brisbin Street
Houtzdale, PA 16651
(814) 378-7840

FILED

OCT 22 2001
William A. Shaw
Prothonotary

28

Date: 10/18/2001

Clarendon County Court of Common Pleas

User: BILLSHAW

Time: 12:51 PM

ROA Report

Page 1 of 1

Case: 2000-01388-CD

Current Judge: Fredric J. Ammerman

Woodward Township Sewage and Water Authority vs. Municipal Sewer Authority of Houtzdale Borough

Civil Other

Date		Judge
11/09/2000	New Case Filed.	No Judge
	Filing: Complaint/Action for Declaratory Judgment. Paid by: Kasubick, Girard. Receipt number: 0051172. Dated: 11/09/2000. Amount: \$80.00 (Check) One Cert. to Sheriff & One Cert. to Atty.	No Judge
12/04/2000	Answer to Complaint for Declaratory Judgment and Certificate of Service. filed by s/WINIFRED H. JONES-WENGER, ESQ. NO CC	No Judge
12/13/2000	Sheriff Return, Complaint upon Plaintiff. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
03/07/2001	Certificate of Readiness and Praeipce for Trial, filed by Atty. Kasubick Copy to C/A	No Judge
04/05/2001	ORDER, NOW this 3rd Day of April, 2001, Civil Call and conference with counsel for both parties, it is the ORDER of this Court that this matter is hereby scheduled as a NON-JURY TRIAL. s/ FJA, J 2 cc to Atty Kasubick and Atty Jones	Fredric J. Ammerman
08/02/2001	ORDER, NOW, this 25th day of July, 2001, re: Counsel for both parties shall have no more than 30 days from this date to supply the Court w/appropriate Briefs. by the Court, s/FJA.J. 1 cc Atty Kasubick, Wenger	Fredric J. Ammerman
09/24/2001	ORDER, NOW, this 24th day of Sept. 2001, re: Current rate being charged by the Defendant Authority pursuant to the resolution is permissible. Opinion to be filed in the event of an appeal. by the Court, s/FJA,J. 2cc Atty Kasubick, Wenger	Fredric J. Ammerman

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

WOODWARD TOWNSHIP SEWAGE
AND WATER AUTHORITY

-vs-

MUNICIPAL SEWER AUTHORITY
OF HOUTZDALE BOROUGH

:
:
:
: No. 00-¹³⁸⁸~~2388~~-CD
:
:

O R D E R

NOW, this 24th day of September, 2001, following nonjury trial and the timely receipt of briefs from counsel for both parties, it is the Finding of the Court that the Intermunicipal Service Agreement entered into between the parties contains language free from any ambiguity and does not contain a limitation as to the rate structure which can be imposed by the Defendant. As the said service agreement is free from any ambiguity, parole evidence concerning either party's intention or understanding is not admissible. The Plaintiff having not met its burden to show that the rate charged by the Defendant violates the terms of the service agreement, the Court hereby orders and declares that the current rate as being charged by the Defendant Authority pursuant to the resolution is permissible. Opinion to be filed in the event of an appeal.

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

BY THE COURT,
/s/ Fredric J. Ammerman

Judge

SEP 24 2001

Attest.

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
EQUITY DIVISION

WOODWARD TOWNSHIP SEWAGE	:	
AND WATER AUTHORITY,	:	No.: 2000-1388-CD
Plaintiff	:	
	:	
vs.	:	
	:	
MUNICIPAL SEWER AUTHORITY	:	
OF HOUTZDALE BOROUGH,	:	
Defendant	:	

PROOF OF SERVICE


I hereby certify that I, Girard Kasubick, Esq.,
mailed a copy of the Notice of Appeal and Request For
Transcript in the captioned matter by regular U.S. mail on
October 22, 2001, upon the following persons at the
following addresses:

The Honorable Fredric J. Ammerman
CLEARFIELD COUNTY COURTHOUSE
230 East Market Street
Clearfield, PA 16830

Court Reporter's Office
CLEARFIELD COUNTY COURTHOUSE
230 East Market Street
Clearfield, PA 16830

David Meholick
Court Administrator
CLEARFIELD COUNTY COURTHOUSE
230 East Market Street
Clearfield, PA 16830

Winifred H. Jones-Wenger
Attorney for Defendant
333 Laurel Street
P.O. Box 469
Philipsburg, PA 16866


Girard Kasubick, Esquire,
Attorney for Plaintiff

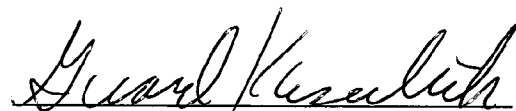
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
EQUITY DIVISION

WOODWARD TOWNSHIP SEWAGE :
AND WATER AUTHORITY, : No.: 2000-1388-CD
Plaintiff :
vs. :
MUNICIPAL SEWER AUTHORITY :
OF HOUTZDALE BOROUGH, :
Defendant :

REQUEST FOR TRANSCRIPT

A Notice of Appeal having been filed in this matter,
the official court reporter is hereby ordered to produce,
certify and file the transcript of the Trial held on July
25, 2001 in this matter in conformity with Rule 1922 of
the Pennsylvania Rules of Appellate Procedure.

Dated: 10/22/01


Girard Kasubick, Esquire,
Attorney for Plaintiff
LEHMAN & KASUBICK
611 Brisbin Street
Houtzdale, PA 16651
(814) 378-7840

FILED

OCT 22 2001

01:05 PM
William A. Shaw
Prothonotary

(JK) Sent to Comm. Comm.

(49)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WOODWARD TOWNSHIP SEWAGE
AND WATER AUTHORITY,
Plaintiff

vs.

MUNICIPAL SEWER AUTHORITY
OF HOUTZDALE BOROUGH,
Defendant

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No. 2000-1388-C.D.

FILED

NOV 01 2001

William A. Shaw
Prothonotary

O P I N I O N

This matter comes before the Court pursuant to a Complaint for Declaratory Judgment filed by Woodward Township Sewage and Water Authority ("Woodward Authority") against the Municipal Sewer Authority of Houtzdale Borough ("Houtzdale Authority"). Houtzdale Authority filed an Answer to the Complaint and on July 25, 2001 a non-jury trial was held. Briefs were timely received and the Court issued an Order dated September 24, 2001 ruling in favor of the Houtzdale Authority. The Woodward Authority thereafter timely filed an Appeal to the Commonwealth Court. This Opinion is issued pursuant to the requirements of Rule of Appellate Procedure 1927.

The Houtzdale Authority owns and operates a sewage treatment plant in Houtzdale. In 1991, in order to provide sewage treatment services to the adjoining municipalities of Woodward Township and Brisbin Borough, the Houtzdale Authority entered into an Intermunicipal Service Agreement ("Service Agreement") with those municipalities and their respective authorities, including the Woodward Authority. Essentially the

Service Agreement set forth that Woodward Authority would provide its own collection system and Houtzdale Authority would treat and dispose of the sewage generated, and collected, by Woodward Authority.

The Service Agreement further provides in Article V for rates to be charged for the treatment services provided, the pertinent language being as follows:

SECTION 5.01. The Authority has adopted resolutions fixing and charging sewage treatment rates upon the Borough Authority and Township Authority for use of the Sewage Treatment and Disposal System and for services rendered by the Authority in connection therewith. The Authority will charge rates according to the percentage of flow that the Borough Authority and Township Authority each contribute to the total flow received at the Sewage Treatment and Disposal System, and the Borough, Township and their respective authorities covenant and agree to pay their pro-rata share of expenses defined in Section 5.02 of this agreement calculated on a yearly basis paid monthly. The Authority covenants to keep such resolutions or a subsequent resolution or resolutions in full force and effect continuously during the term hereof.

SECTION 5.02. The parties hereto agree that sewage treatment rates imposed pursuant to the resolution or resolutions referenced in Section 5.01 hereof, as in effect at the time, under Section 5.02 shall be at least such that the estimated amounts to be received by the Authority therefrom, together with all other receipts, revenues and monies to be derived by the Authority or in behalf of the Authority in any manner from any source, except from Capital Contribution Fees, from or in connection with, operation of the Sewage Treatment and Disposal System (all of the foregoing hereinafter also being referred to as the "Receipts and Revenues from the Sewage

Treatment and Disposal System"), will be sufficient to:

- A. Pay the reasonable Administrative Expenses of the Authority in connection with the Sewage Treatment and Disposal System and in connection with Bonds issued in each Agreement Time Period, to the extent that the same shall not otherwise be provided from Capital Contribution Fees.
- B. Pay the reasonable Operating Expenses, less all grants received from state agencies which are applicable to operation and maintenance costs, of the Authority with respect to the Sewage Treatment and Disposal System; and
- C. Provide an amount equal to the Debt service Requirements on the Additional Bonds outstanding under this Agreement, plus any mandatory payments required to be made, to the extent that such Debt Service Requirements or mandatory payments otherwise shall not be provided for under this Agreement.

SECTION 5.03. The Borough Authority and Township Authority acknowledge that the Authority has filed with them a schedule of the sewage treatment rates imposed pursuant to the resolutions of the Authority in effect under Section 5.01 hereof as of the effective date hereof. The Borough Authority and Township Authority hereby express their approval to such sewage treatment rates.

It is undisputed that pursuant to Article V the Houtzdale Authority adopted a resolution which established the rates in pertinent part as follows:

1. Treatment Charges. Township Authority and Borough Authority shall pay to the Authority in each Authority budget year or portion thereof beginning when the first sewage is delivered hereunder, and continuing thereafter for as long as the 1991 Agreement is in effect, a Sewage Treatment Charge for sewage treatment services rendered by the Authority. Said Sewage Treatment Charge shall be determined in the following manner:

Administrative, Operation And Maintenance Expenses of the Authority pursuant to Section 5.02 of the 1991 Agreement

X

Total Volume Sewage Discharged by Township Authority (or Borough Authority) into Authority's Sewage Treatment and Disposal System

Total Volume of Sewage received at the Treatment Plant

X 110%

Houtzdale Authority has strictly applied the rate as described in Article V and the Rate Resolution in charging Woodward Authority for treatment services. In December of every year, at the time the budget is adopted for the following fiscal year, Houtzdale Authority determines what its expenses will be for that time period. Then it charges the Woodward Authority for the subsequent year based on the percentage of the flow that Woodward utilized in the prior year times the estimated expense times a factor of 110%. At the end of the year an adjustment is made based on the actual flow of Woodward Authority times the actual audited expense times the factor of 110%. If Woodward Authority has overpaid it receives a credit or a check; if it has underpaid, it will owe an additional sum.

Woodward Authority objects to the utilization of the factor of 110% in calculating its payment and complains that

this factor is not contained in the Service Agreement and therefore is not the proper rate and seeks the Court's determination that Woodward Authority does not have to pay sewage rates based on the 110% factor. Houtzdale Authority submits that its application of the rate is proper and should be upheld.

It was stipulated at the hearing in this case that the matter is a simple contract interpretation. It is not a rate case with the Court acting as a quasi-Public Utility Commission, determining whether the rates are arbitrary or reasonable. This is keeping with the law. In The Township of Raccoon vs. Municipal Water Authority of Aliquippa, 597 A.2d 757 (Pa Cmwlth. 1991) the Commonwealth Court held that the rate a municipal authority charged to an independent municipal authority outside its own service area was not subject to statutory limitation that rates be "reasonable and uniform" but was determined by the agreement between the parties. In the case at hand, Woodward Authority was not a member of the Houtzdale Authority, nor was the service area of the Woodward Authority within the service area of Houtzdale.

Furthermore, the Court in Raccoon, in Footnote 14 stated as follows:

14. In Steuart v. McChesney, 498 Pa 45, 444 A.2d 659 (1981), the Supreme Court said:

" [T]his Court long ago emphasized that '[t]he parties [have] the right to make their own contract, and it is not the function of this Court to re-write it, or to give it a construction in conflict with...the accepted and plain meaning of the language used.'" (Citations omitted.)
"It is not the province of the court to alter a contract by construction or to make a new contract for the parties; its duty is confined to the interpretation of the one which they have made for themselves, without regard to is wisdom or folly.'" (Citation omitted.)

Where a contract between the parties is not ambiguous, it is error to admit and interpret it based on parol evidence. Latrobe Municipal Authority vs. Youngstown Borough Municipal, 456 A.2d 234 (Pa Cmwlth. 1983). The Court believes the rates set forth in the Service Agreement and the Resolution are not ambiguous.

Section 5.01 states that the Houtzdale Authority will adopt resolutions fixing rates, that it "will charge rates according to the percentage of flow"...and that the Woodward Authority "agree[s] to pay [its] pro-rata share of expenses defined in section 5.02.

Section 5.02 states that the rates imposed pursuant to resolution referenced in 5.01 "shall be at least such" (emphasis added) that will be sufficient to pay administrative expenses, operating expenses and debt service requirements (if applicable).

Section 5.03 states that Woodward Authority acknowledges receiving a copy of the rate resolution. In fact Woodward Authority stipulated that it received a copy of the proposed resolution at the time the Service Agreement was developed and executed, despite the fact that it was not formally adopted until 1994. Therefore Woodward Authority cannot say it was surprised by the contents or did not have the opportunity to know the contents of the rate resolution in advance.

Section 5.05 states that the Woodward Authority covenants to pay the treatment rates in accordance with the resolution described in 5.01.

It is clear that the Service Agreement intends to incorporate another document into its provisions--that is the rate resolution. The rate resolution itself is likewise straightforward. It is divided into six numbered paragraphs titled as follows:

1. Treatment Charges
2. Estimate of Treatment Charges
3. Payment on Estimates
4. Audited Statements
5. Payment of Final Treatment Charges; Repayment or Credit for Overpayment
6. Penalty on Late Payments

Paragraph one clearly sets forth that the Woodward Authority shall pay to the Houtzdale Authority each year and continuing as long as the Service Agreement is in effect a charge for services which "sewage treatment charge shall be determined in the following manner" followed by the provision that incorporates the 110% factor (emphasis added).

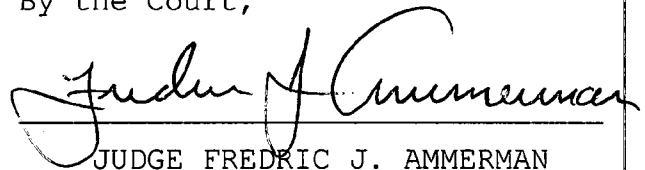
From a review of the documents it is clear that the rate charge includes a factor of 110% and that such factor is not merely applied to the estimated payments. The language is clear and unambiguous and Woodward Authority had notice of its provision at the time it executed the Service Agreement. Furthermore, it is the charge that the Houtzdale Authority is entitled to make for the services rendered to the Woodward Authority. In Township of Hopewell vs. Municipal Water Authority of Aliquippa, 475 A.2d 878 (Pa. Cmwlth. 1984) the Commonwealth Court stated in Footnote 6 as follows:

Hopewell finally argues that the court below committed an error of law in permitting Aliquippa Authority to include a profit factor, sinking fund factor, and depreciation fraction in its rate structure calculation. We find no merit in these contentions. A municipal authority clearly has the power to recover its full operating costs, including a just and reasonable return. "[I]t may forego such profits as respects its consumers within its limits and

demand it of its consumers outside its limits." Ambridge Borough, 137 Pa. Superior Ct. at 58, 8 A.2d at 433. (Portion of footnote omitted) Hopewell has failed to present any legal support which limits the discretion of a municipal authority to include any of these three factors in its rate structure calculation.

In conclusion, the plain language of the Service Agreement and the Rate Resolution which comprise the contract between the parties is clear and unambiguous and supports Houtzdale Authority's contention that the rate structure contains a factor of 110%. Because it is unambiguous, parol evidence concerning the intentions of the parties is improper. Lastly, the Courts support the right of the Houtzdale Authority to include a factor over and above its actual expenses. Plaintiff has failed to bear its burden.

By the Court,


JUDGE FREDRIC J. AMMERMAN

FILED

NOV 01 2001

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William A. Shaw
Prothonotary

E
K

1 copy to Court Administrator

1 copy to Judge Ammerman

1 copy to Law Clerk

1 copy to Law Library

1 copy to Don Mikesell, Esquire

~~2~~ 2 certified copies to Plaintiff's counsel

~~2~~ 2 certified copies to Defendant's counsel

OFFICE OF PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW

PROTHONOTARY
AND
CLERK OF COURT

CLEARFIELD COUNTY



P.O. Box 549
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-2641 Ext. 1330

DAVID S. AMMERMAN

SOLICITOR

COPY

JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

January 8, 2002

Commonwealth Court of Pennsylvania
Office of Prothonotary
P.O. Box 11730
Harrisburg, PA 17108

RE: Woodward Township Sewage and Water Authority
vs
Municipal Sewer Authority of Houtzdale Borough
No. 00-1388-CD
Commonwealth Court No. 2447 CD 2001

Dear Prothonotary:

On December 10, 2001, the record of the above referenced case was forwarded to your office with a transcript to follow. Enclosed, please find that transcript, filed on record January 2, 2002.

Sincerely,

A handwritten signature in cursive script, appearing to read 'William A. Shaw'.

William A. Shaw
Prothonotary

OFFICE OF PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW

PROTHONOTARY
AND
CLERK OF COURT

CLEARFIELD COUNTY



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The Honorable Fredric J. Ammerman, Judge
Clearfield County Courthouse
Clearfield, PA 16830

Girard Kasubick, Esq.
611 Brisbin Street
Houtzdale, PA 16651

Winifred H. Jones-Wenger
PO Box 469
Philipsburg, PA 16866

Woodward Township Sewage and Water Authority
Vs.
Municipal Sewer Authority of Houtzdale Borough

Court No. 00-1388-CD; Commonwealth Court No. 2447 CD 2001

Dear Counsel:

Please be advised that the transcript filed to the above referenced record January 2, 2002, was forwarded to Commonwealth Court of Pennsylvania on January 8, 2002.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

OFFICE OF PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW

PROTHONOTARY
AND
CLERK OF COURT

CLEARFIELD COUNTY



DAVID S. AMMERMAN

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JACQUELINE KENDRICK

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COF 7

The Honorable Fredric J. Ammerman, Judge
Clearfield County Courthouse
Clearfield, PA 16830

Girard Kasubick, Esq.
611 Brisbin Street
Houtzdale, PA 16651

Winifred H. Jones-Wenger
PO Box 469
Philipsburg, PA 16866

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Vs.
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Court No. 00-1388-CD; Commonwealth Court No. 2447 CD 2001

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Sincerely,

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Prothonotary/Clerk of Courts

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CLEARFIELD COUNTY



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COPY

December 10, 2001

The Honorable Fredric J. Ammerman, Judge
Clearfield County Courthouse
Clearfield, PA 16830

Girard Kasubick, Esq.
611 Brisbin Street
Houtzdale, PA 16651

Winifred H. Jones-Wenger
PO Box 469
Philipsburg, PA 16866

Re: Woodward Township Sewage and Water Authority
Vs.
Municipal Sewer Authority of Houtzdale Borough
00-1388-CD
Commonwealth Court #2447 CD 2001

Dear Counsel:

Please be advised that the above-referred records have been forwarded to the Commonwealth Court of Pennsylvania on the 10th day of December, 2001.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

WAS

OFFICE OF PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW

PROTHONOTARY
AND
CLERK OF COURT

CLEARFIELD COUNTY



DAVID S. AMMERMAN

SOLICITOR

JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

P.O. Box 549
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-2641 Ext. 1330

COPY

December 10, 2001

The Honorable Fredric J. Ammerman, Judge
Clearfield County Courthouse
Clearfield, PA 16830

Girard Kasubick, Esq.
611 Brisbin Street
Houtzdale, PA 16651

Winifred H. Jones-Wenger
PO Box 469
Philipsburg, PA 16866

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Municipal Sewer Authority of Houtzdale Borough
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Commonwealth Court #2447 CD 2001

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Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

WAS

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COPY

December 10, 2001

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P.O. Box 11730
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RE: Woodward Township Sewage and Water Authority
vs
Municipal Sewer Authority of Houtzdale Borough
No. 00-1388-CD
Commonwealth Court No. 2447 CD 2001

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your office. A transcript was requested on October 22, 2001 by Girard Kasubick, Esq. Once it is filed into the record, I will forward it on to your office.

Sincerely,

William A. Shaw
Prothonotary

Date: 11/05/2001

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 10:18 AM

ROA Report

Page 1 of 1

Case: 2000-01388-CD

Current Judge: Fredric J. Ammerman

Woodward Township Sewage and Water Authority vs. Municipal Sewer Authority of Houtzdale Borough

Civil Other

Date	Judge
11/09/2000 ① Filing: Complaint/Action for Declaratory Judgment Paid by: Kasubick, Girard Receipt number: 0051172 Dated: 11/09/2000 Amount: \$80.00 (Check) One Cert. to Sheriff & One Cert. to Atty.	No Judge 45
12/04/2000 ② Answer to Complaint for Declaratory Judgment and Certificate of Service. filed by s/WINIFRED H. JONES-WENGER, ESQ. NO CC	No Judge 7
12/13/2000 ③ Sheriff Return, Complaint upon Plaintiff. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge 1
03/07/2001 ④ Certificate of Readiness and Praecipe for Trial, filed by Atty. Kasubick Copy to C/A	No Judge 4
04/05/2001 ⑤ ORDER, NOW this 3rd Day of April, 2001, Civil Call and conference with counsel for both parties, it is the ORDER of this Court that this matter is hereby scheduled as a NON-JURY TRIAL. s/ FJA, J 2 cc to Atty Kasubick and Atty Jones	Fredric J. Ammerman 1
08/02/2001 ⑥ ORDER, NOW, this 25th day of July, 2001, re: Counsel for both parties shall have no more than 30 days from this date to supply the Court w/appropriate Briefs. by the Court, s/FJA.J. 1 cc Atty Kasubick, Wenger	Fredric J. Ammerman 1
09/24/2001 ⑦ ORDER, NOW, this 24th day of Sept. 2001, re: Current rate being charged by the Defendant Authority pursuant to the resolution is permissible. Opinion to be filed in the event of an appeal. by the Court, s/FJA,J. 2cc Atty Kasubick, Wenger	Fredric J. Ammerman 1
10/22/2001 ⑧ Filing: Notice of Appeal filed. Paid by: Kasubick, Girard (attorney for Woodward Township Sewage and Water Authority) Receipt number: 1833102 Dated: 10/22/2001 Amount: \$45.00 (Check) Cert. to Commonwealth Court w/\$55.00 Check.	Fredric J. Ammerman 4
⑨ Request for Transcript, filed by Atty. Kasubick Cert. to Commonwealth Court	Fredric J. Ammerman 1
10/29/2001 ⑩ Notice of Docketing Appeal, filed. Number: 2447 CD 2001 No CC	Fredric J. Ammerman 3
11/01/2001 ⑪ Opinion. by the Court, s/FJA,J. 1 copy to CA, Judge Ammerman, Law Clerk, Law Library, Don Mikesell, 2 cc to Plaintiff's Counsel and Defendant's Counsel.	Fredric J. Ammerman 8