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April 5, 2023

NOTICE TO PLEAD – AQUA PENNSYLVANIA WASTEWATER, INC. IS HEREBY ADVISED THAT IT MAY FILE A RESPONSE TO THIS LETTER REQUEST WITHIN 2 DAYS¹

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor (filing room)
Harrisburg, PA 17120

Dear Secretary Chiavetta:

Re: Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Section 507, 508, 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of the City of Beaver Falls; Docket No. A-2022-3033138;
Municipal Protestant’s Joint Verified Letter Request to Reject Application as Incomplete or Hold in Abeyance and Request for Expedited Response

Dear Secretary Chiavetta:

By this Letter, West Mayfield Borough, White Township, Patterson Township and Patterson Heights Borough (“Municipal Protestants”)² notify the Commission that Aqua Pennsylvania Wastewater Inc.’s (“Aqua WW”) Application in this proceeding is incomplete and should be rejected pursuant to the Pennsylvania Public Utility Commission’s (“Commission”) Section 1329 Implementation Orders, Application Checklist, and Section 1329 of the Public

¹ This Letter Request is submitted regarding the Commission’s current review of Aqua WW’s Application for completeness. The current deadline for the Commission’s review to be complete is April 7, 2023. Thus, Municipal Protestants have reflected the two days left for Commission decision as the time in which Aqua WW has to respond.

² Each Municipal Protestant individually filed a Protest with the Commission today in this proceeding.

Utility Code, 66 Pa. C.S. § 1329.³ In the alternative, the Application should be held in abeyance until the required, complete documentation is submitted.

The Application is incomplete because:

- a) Municipal Protestants have ownership rights in the wastewater system Aqua WW seeks to acquire and have not consented to sale of the system or use of the Section 1329 process.
- b) The Asset Purchase Agreement (“APA”) attached to the Application is not signed by all parties as the Commission’s Application Checklist requires because Municipal Protestants have not executed the APA.
- c) Contracts with municipalities that Aqua WW seeks to assume are not attached to the Application as the Commission’s Application Checklist requires.

It appears Aqua WW has failed to disclose to the Commission⁴ that Municipal Protestants each claim an ownership interest in the assets, properties and rights related to the wastewater collection and treatment system (“System”) allegedly owned by the City of Beaver Falls (“Beaver Falls”) for which the Application seeks Commission approval to, *inter alia*, acquire pursuant to 66 Pa. C.S. § 1329. Aqua may try to rely upon a contract with Patterson Township attached to the Application to argue that Municipal Protestants do not have an ownership interest in the System. Of note, Aqua did not attach agreements for all Municipal Protestants. Further, Municipal Protestants assert that any agreements entered are void due to the unilateral actions of Beaver Falls.

³ *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543139 (Tentative Implementation Order entered Jul. 21, 2016); (Final Implementation Order entered Oct. 27, 2016); (Tentative Supplemental Implementation Order entered Sept. 20, 2018); (Final Supplemental Implementation Order entered Feb. 28, 2019).

⁴ Aqua WW filed Preliminary Objections to the Municipal Complaint on March 7, 2023. Moreover, it appears Aqua WW was aware of potential ownership interest claims via Exhibit F9 to the Application, which is a “pro forma” contract Aqua WW expects Municipal Protestants to sign. The pro forma contract in Exhibit F9 expressly seeks to have Municipal Protestants waive their right to claiming ownership interests in the System to prevent the sale of the System. Exhibit F9 at ¶ 19 (“Effective as of the Execution Date, the Municipality (a) hereby consents to Aqua’s purchase and acquisition of the Acquired System and related assets, (b) hereby waives any and all objections it has or may have in regard to the City’s sale and Aqua’s acquisition of the Acquired System and related assets, and (c) shall take any and all actions reasonably requested by Aqua and/or the City to effectuate the City’s sale and Aqua’s acquisition of the Acquired System and related assets, including, without limitation, executing and delivering any consents or other documents or passing any ordinance or resolution; provided, however, nothing set forth in this Section 19 shall waive or affect the ability of the Municipality to seek payment from the City to the Municipality of a portion of the proceeds of the sale of Acquired System.”).

On February 17, 2023, Municipal Protestants jointly filed a Complaint with the Beaver County Court of Common Pleas against Beaver Falls and Aqua WW seeking, *inter alia*, to enforce their ownership rights in the System, declare the APA void, and enjoin the sale of the System to Aqua WW. The Complaint is attached hereto as **Exhibit A**. The Complaint proceeding will be referred to as the Municipal Complaint.

Because Municipal Protestants each have an ownership interest in the System, Municipal Protestants are “selling utilities.” Section 1329 requires consent of both the buyer and “selling utility” to use the Section 1329 process. 66 Pa. C.S. Section 1329(a). Selling utility is defined as: “A water or wastewater company located in this Commonwealth, owned by a municipal corporation or authority that is being purchased by an acquiring public utility or entity as the result of a voluntary arm's-length transaction between the buyer and seller.” *Id.* at 1329(f)(2) (emphasis added). Here, Municipal Protestants are municipal corporations with an ownership interest in the “wastewater company.” Municipal Protestants are thus selling utilities.

Municipal Protestants do not consent to the sale of the System nor the use of the Section 1329 process. Thus, Municipal Protestants have not executed the APA attached to the Application. The Commission’s Application Checklist expressly requires the applicant to “Provide a copy of the APA that is signed by all parties.” Application Checklist at 24.a. Because the APA is not signed by Municipal Protestants, who have ownership interests in the System being sold, the Application is not “signed by all parties” and is thus incomplete per the Commission’s Application checklist and cannot be accepted.⁵ The Commission has previously rejected applications seeking Section 1102 approval that fail to include an asset purchase agreement.⁶

The Application Checklist further requires: “Provide a copy of all municipal and affiliate contracts to be assumed by buyer as part of the acquisition.” Application Checklist at 25. Aqua WW has admitted that it has not attached service contracts with the Municipal Protestants that Aqua WW seeks to assume. Application at ¶ 25 (“the Company is submitting with this Application forms of pro-forma Wastewater Service Agreements which the Company will negotiate and enter into with the Contributing Municipalities to be executed upon Closing which will terminate and replace all prior agreements for the conveyance and treatment of wastewater.

⁵ *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543139 (Tentative Implementation Order entered Jul. 21, 2016), at 10; (Final Implementation Order entered Oct. 27, 2016), at 18, 25-26; (Tentative Supplemental Implementation Order entered Sept. 20, 2018), at 7-8; (Final Supplemental Implementation Order entered Feb. 28, 2019), at 3.

⁶ *Application of Pocono Waterworks Company, Inc. for the Approval of the (1) Transfer to Pocono Waterworks Company, Inc. of all Water Utility Property Used by Waterflow Pike, Inc. in the Provision of Water Service to the Public in Portions of Palmyra Township Pike County; (2) Right of Pocono Waterworks Company, Inc. to begin to Furnish Water Service to the Public in Those Portions of Palmyra Township, Pike County Currently Served by Waterflow Pike, Inc., and (3) Right of Waterflow Pike, Inc. to Abandon All Water Service to the Public in Pennsylvania*, Docket Nos. A-2019-3008945, *et al.* (Secretarial Letter issued Apr. 29, 2019).

The pro forma agreements are meant to standardize wastewater conveyance and treatment service to each of the Contributing Municipalities, including the Contributing Municipalities which do not have a conveyance and treatment agreement that could be located.”). Instead, Aqua WW has attached as Exhibit F9 to the Application, a “pro forma” contract Aqua WW admits Municipal Protestants have not executed. *See Application at ¶ 25.* Municipal Protestants do not consent to Aqua WW’s Exhibit F9 pro forma contract.

A proposed “pro forma” contract is not a “contract to be assumed by the buyer” which the Application Checklist requires for a complete application. The Application should be deemed incomplete and rejected on these grounds too.

Municipal Protestants understand that the Bureau of Technical Utility Services (“TUS”) has the duty to conditionally determine that the threshold requirements of the Application Checklist have been satisfied and not to resolve factual disputes. Municipal Protestants are not seeking resolution of a factual dispute – the Commission does not have jurisdiction to determine contractual validity or property rights associated with the System. Instead, Municipal Protestants are notifying the Commission that each has an ownership right in the System, which makes the Application incomplete unless and until documents can be provided to the Commission in compliance with the Checklist, which would include an APA executed by all parties (including the Municipal Protestants) and validly executed assignments of municipal contracts to Aqua WW.

Accordingly, Municipal Protestants request the Commission find the Application is incomplete and reject it or hold the Application in abeyance until Aqua WW can satisfy the Application Checklist requirements.

Municipal Protestants request an expedited response time of 2 days because the Commission’s review period of the Application for completeness currently expires on April 7, 2023 (two days after the filing of this Letter Request).

Respectfully,

/s/ Whitney E. Snyder

Thomas J. Sniscak
Whitney E. Snyder
Phillip D. Demanchick Jr.

Counsel for Municipal Protestants

cc: Paul Diskin (pdiskin@pa.gov)
Sean Donnelly (sdonnelly@pa.gov)
Daniel Searfoorce (dsearfoorc@pa.gov)
Matthew Lamb (mlamb@pa.gov)
Patricia Wiedt (pwiedt@pa.gov)
Per Certificate of Service

Exhibit A

IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY
PENNSYLVANIA

PATTERSON TOWNSHIP, PATTERSON
HEIGHTS BOROUGH, WEST MAYFIELD
BOROUGH, and WHITE TOWNSHIP,

Plaintiffs,

vs.

CITY OF BEAVER FALLS and
AQUA PENNSYLVANIA WASTEWATER, INC.,
a Pennsylvania Public Utility Company,

Defendants.

CIVIL DIVISION - LAW

No. 11219 of 2022

TYPE OF PLEADING:

Complaint

FILED ON BEHALF OF:

Plaintiffs

COUNSEL OF RECORD:

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FILED OR ISSUED
2023 FEB 17 P 1:00
MICHAEL ROSSI
PROTHONOTARY
BEAVER COUNTY, PA.

IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY
P E N N S Y L V A N I A

PATTERSON TOWNSHIP, PATTERSON : CIVIL DIVISION - LAW
HEIGHTS BOROUGH, WEST MAYFIELD :
BOROUGH, and WHITE TOWNSHIP, : No. 11219 of 2022
Plaintiffs, :
vs. :
CITY OF BEAVER FALLS and :
AQUA PENNSYLVANIA :
WASTEWATER, INC. a Pennsylvania :
Public Utility Company, :
Defendants. :

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claim set forth in the following pages, you must take action within twenty (20) days after this pleading and notice are served by entering a written appearance personally or by attorney to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and judgment may be entered against you by the Court without further notice for any money claimed in the pleading 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, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Lawyer Referral Service of the Beaver County Bar Association
788 Turnpike Street
Beaver, PA 15009
724-728-4888
<http://bcba-pa.org/lawyer-referral-service>

IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY
P E N N S Y L V A N I A

PATTERSON TOWNSHIP, PATTERSON HEIGHTS BOROUGH, WEST MAYFIELD BOROUGH, and WHITE TOWNSHIP,	:	CIVIL DIVISION-LAW
	:	No. 11219 of 2022
Plaintiffs,	:	
vs.	:	
CITY OF BEAVER FALLS and AQUA PENNSYLVANIA WASTEWATER, INC. a Pennsylvania Public Utility Company,	:	
	:	
Defendants.	:	

COMPLAINT

AND NOW COMES, the above-named Plaintiffs, by their undersigned attorneys, and for their causes of action, aver, complain and say:

1. The Plaintiff, Patterson Township (hereinafter "Patterson"), is a municipal entity organized and existing under the laws of the statutes of the Commonwealth of Pennsylvania with offices located at 1600 19th Avenue, Beaver Falls, Beaver County, Pennsylvania 15010.

2. The Plaintiff, Patterson Heights Borough (hereinafter "Patterson Heights"), is a municipal entity organized and existing under the laws of the statutes of the Commonwealth of Pennsylvania with offices located at 600 7th Avenue, Beaver Falls, Beaver County, Pennsylvania 15010.

3. The Plaintiff, White Township (hereinafter "White"), is a municipal entity organized and existing under the laws of the statutes of the Commonwealth of

Pennsylvania with offices located at 2511 13th Avenue, Beaver Falls, Beaver County, Pennsylvania 15010.

4. The Plaintiff, West Mayfield Borough (hereinafter "West Mayfield"), is a municipal entity organized and existing under the laws of the statutes of the Commonwealth of Pennsylvania with offices located at 4609 W. 8th Avenue, Beaver Falls, Beaver County, Pennsylvania 15010.

5. The Defendant, The City of Beaver Falls (hereinafter "Beaver Falls"), is a municipal entity organized and existing under the law of the statutes of the Commonwealth of Pennsylvania with offices located at 715 15th Street, Beaver Falls, Beaver County, Pennsylvania 15010.

6. The Defendant, Aqua Pennsylvania Wastewater, Inc. (hereinafter "Aqua") is a Pennsylvania Public Utility Company with a registered address at 762 West Lancaster Avenue, Bryn Mawr, Montgomery County, Pennsylvania 19010.

7. The four (4) Plaintiffs, along with Beaver Falls, have, since at least the 1930's, jointly funded the construction and operation of a sewage treatment plant within the City of Beaver Falls.

8. That it is believed and therefore averred that beginning in at least the mid 1930's, Beaver Falls, Patterson, Patterson Heights, West Mayfield, and White (hereinafter referred to as "The Joint Sewer Users"), have engaged in the joint construction, operation and maintenance of the sewer plant located within the City of Beaver Falls.

9. It is believed and therefore averred that in the mid 1930's, Patterson, Patterson Heights, West Mayfield, White, and Beaver Falls jointly constructed and

thereafter connected to a sewer plant within the City of Beaver Falls, constructed as a Federal Work Relief Program Project.

10. That it is believed and therefor averred that each of the Plaintiffs agreed to and paid a proportionate share of the cost of the construction of the sewer plant.

11. It is believed and averred that thereafter each of the Joint Sewer Users paid for construction, maintenance, expansion, and all costs of the operation of the plant based upon their respective proportionate share of the volume of wastewater treated.

12. It is believed and therefore averred that in the 1960's, the Joint Sewer Users improved and enlarged the sewer plant, including the acquisition of additional property, with all costs of improvements, enlargements, and property acquisition allocated between the five (5) municipalities based on a proportionate share of the volume of wastewater treated.

13. That at the time of the improvement and enlargement that occurred in the 1960's, the allocation of costs are believed to have been as follows:

Beaver Falls	67%
West Mayfield	12%
White	7%
Patterson Heights	3.5%
Patterson Township	10.5%

14. That over a course of years, the Joint Sewer Users met on a regular basis, reviewed and adopted budgets, and reviewed and approved plant operations.

15. That over the course of nearly one hundred (100) years, the Joint Sewer Users have consistently paid, based upon their respective proportionate share of wastewater treated, for all maintenance, expansions, additions, and operating costs of

the wastewater treatment plant located in the City of Beaver Falls and relied upon by all users for the treatment of wastewater.

16. That the Joint Sewer Users have expended significant sums of money for the construction, maintenance, and operation of the sewer treatment plant located in the City of Beaver Falls.

17. That sometime in or about 2020, Beaver Falls, without consulting any of the Plaintiffs, entered into and obtained bids for the sale of the wastewater treatment plant located in the City of Beaver Falls, as well as Beaver Falls' own wastewater treatment lines and facilities.

18. That in or about September 2021, Beaver Falls adopted an Ordinance, Ordinance No. 4049, approving the tentative sale of the wastewater treatment plant, as well as its own wastewater treatment lines and systems to Aqua.

19. That at no time did Beaver Falls seek approval from any of the Plaintiffs for the sale of the wastewater treatment facility.

20. That at no time has Beaver Falls recognized or acknowledged the value of the investment made by the Plaintiffs in the construction, maintenance, and operation of the wastewater treatment facility.

21. That Beaver Falls is being unjustly enriched to the great expense of the Plaintiffs and their residents from the sale of the wastewater treatment plant paid for in part by the Plaintiffs.

COUNT I
Breach of Contract Implied in Fact
Plaintiffs v City of Beaver Falls

22. Plaintiffs incorporate Paragraphs One (1) through Twenty-One (21) as if set forth at full herein.

23. That Beaver Falls induced the Plaintiffs to continue their involvement as Joint Sewer Users for nearly one hundred (100) years, in the construction, maintenance, expansion, and all costs of the operation of the wastewater treatment facility located in the City of Beaver Falls based upon the implication that they were joint owners/had an ownership interest in the sewer plant.

24. That where the parties' assent to the formation of a contract, but instead of being expressed in words, the intention to incur an obligation is inferred from the conduct of the parties in light of the surrounding circumstances, a contract implied in fact exists. *Crawford's Auto Ctr., Inc. v. Com., Pennsylvania State Police*, 655 A.2d 1064, 1066 (Pa. Cmwlth. 1995)

25. That the Joint Sewer Users, including Beaver Falls, by their conduct, including their course of dealing and course of performance, assented to the formation of a contract, such that each of them were jointly responsible for their proportionate cost of the wastewater facility and also jointly entitled to any profits from it or any proceeds from any sale.

26. That Beaver Falls breached the contract implied in fact with the Plaintiffs by negotiating and approving the tentative sale of the wastewater treatment plant, as well as its own wastewater treatment lines and systems to Aqua without notice or consent of the other Joint Sewer Users, the Plaintiffs herein.

27. That Plaintiffs seek damages, in an amount equal to their proportionate share in the wastewater treatment plant, as Joint Sewer Users, from the purchase price of the plant, plus interest, penalties, costs and attorney's fees as may be applicable under the law.

WHEREFORE, Plaintiffs request judgment for damages against Defendant City of Beaver Falls in an amount in excess of the jurisdictional limits of compulsory arbitration, together with court costs, interest and such other and further relief as the Honorable Court may deem just and equitable.

COUNT II
Breach of Contract Implied at Law
Plaintiffs vs. City of Beaver Falls

28. Plaintiffs incorporate Paragraphs One (1) through Twenty-Seven (27) as if set forth at full herein.

29. That from as early as the mid 1930's the Plaintiffs have each paid its proportionate share of the cost of construction, expansion, maintenance and operation of the wastewater treatment plant in the City of Beaver Falls to the great benefit of Beaver Falls and its residents.

30. That Beaver Falls could not have paid for the construction, expansion, maintenance and operation of the wastewater treatment facility without the participation of Plaintiffs.

31. That Beaver Falls relied upon and the contributions of the Plaintiffs to its great benefit and use.

32. That a contract implied at law imposes a duty, despite the absence of either an express or implied agreement, when one party receives an unjust enrichment at the expense of another party. *Highland Sewer and Water Auth. v. Forest Hills Mun. Auth.*, 797 A.2d 385, 391 (Pa. Cmnlth. 2002)

33. That Beaver Falls by its acts and omissions induced the Plaintiffs to continue their involvement as Joint Sewer Users for nearly one hundred (100) years, in the construction, maintenance, expansion, and all costs of the operation of the wastewater treatment facility located in the City of Beaver Falls based upon the implication that they were joint owners/had an ownership interest in the sewer plant.

34. That Beaver Falls is estopped to deny that a contract between the Joint Sewer Users did not exist as a matter of law because to do so would confer an unjust enrichment upon the City of Beaver Falls and penalize the Plaintiffs in a manner which is inequitable.

35. That Plaintiffs seeks damages, in an amount equal to their proportionate share in the wastewater treatment plant, as Joint Sewer Users, from the purchase price of the plant, plus interest, penalties, costs and attorney's fees as may be applicable under the law.

WHEREFORE, Plaintiffs request judgment for damages against Defendant City of Beaver Falls in an amount in excess of the jurisdictional limits of compulsory arbitration, together with court costs, interest and such other and further relief as the Honorable Court may deem just and equitable.

COUNT III
Declaratory Judgment Pursuant to the Pennsylvania Declaratory Judgments Act
(42 Pa.C.S.A. §§ 7531, et seq.)
Plaintiffs vs. City of Beaver Falls and AQUA Pennsylvania Wastewater, Inc.

36. Plaintiffs incorporates Paragraphs one (1) through Thirty-Five (35) as if set forth at full herein.

37. That this action is filed, in part, pursuant to the Declaratory Judgment Act, 42 Pa.C.S.A. § 7531, et seq., to determine an actual and justiciable controversy regarding the parties' rights as Joint Sewer Users.

38. That Section 7541(a) of the Pennsylvania Declaratory Judgments Act states that "[i]ts purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered." 42 Pa.C.S.A. § 7541(a).

39. That this Court has the power to "declare rights, status, and other legal relations, whether or not further relief is or could be claimed." 42 Pa.C.S.A. § 7532.

40. An actual and justiciable controversy exists between these parties regarding ownership interests in the wastewater treatment facility located in Beaver Falls based upon the parties' participation in the construction, maintenance, expansion, and all costs of the operation of the wastewater treatment facility.

41. The Court can resolve the controversy by issuing a declaration of the rights of the parties regarding the wastewater treatment facility located in Beaver Falls and the Plaintiffs' ownership interests therein.

42. Alternatively, the Court can declare the purchase agreement between Beaver Falls and Aqua null and void.

WHEREFORE, Plaintiffs request judgment for damages against Defendant City of Beaver Falls as follows:

- a. Declaring that Plaintiffs have an ownership interest in the wastewater treatment facility in proportion to their allocation of costs as follows:

West Mayfield	12%
White	7%
Patterson Heights	3.5%
Patterson Township	10.5%

- b. Declaring that Plaintiffs are entitled to damages in the form of compensation from the purchase price of the wastewater treatment facility in the proportions listed above;
- c. Awarding to Plaintiffs attorneys' fees, all of its costs of suit and such other relief, in law and equity, as this Honorable Court deems just and appropriate or as is otherwise permitted by law.
- d. Alternatively, declaring the purchase agreement between the City of Beaver Falls and Aqua Pennsylvania Wastewater, Inc. null and void.

COUNT IV
Constructive Trust
Plaintiffs vs. City of Beaver Falls

43. Plaintiffs incorporate Paragraphs One (1) through Forty-Two (42) of this Complaint as if set forth in full herein.

44. That by accepting payment from the Plaintiffs, both for any original construction of the sewage infrastructure and subsequent improvements, Beaver Falls created a confidential and dependent relationship with the Plaintiffs.

45. Pursuant to said relationship, Beaver Falls received the benefit of the

payment by each of the Plaintiffs in regard to the property titled solely in the City of Beaver Falls.

46. That Beaver Falls has been enriched by the contributions of the Plaintiffs to the original construction and all subsequent improvements and maintenance that they have paid for in their proportionate share.

47. That by their acceptance of the contributions of the Plaintiffs over these many years, a confidential relationship arose in fact between Beaver Falls and the Plaintiffs.

48. That with the sale of the wastewater infrastructure, including treatment lines and facilities of Beaver Falls to Aqua, Beaver Falls is reaping financial benefits based in part on the contributions of the Plaintiffs.

49. That Beaver Falls is being unjustly enriched as to at least a portion of the proceeds from the sale of the infrastructure to Aqua.

WHEREFORE, Plaintiffs request judgment for damages against Defendant City of Beaver Falls in an amount in excess of the jurisdictional limits of compulsory arbitration, together with the court costs, interest, and such other and further relief as the Honorable Court may deem just and equitable.

COUNT V
Unjust Enrichment
Plaintiffs v. City of Beaver Falls

50. Plaintiffs incorporate and make a part hereof Paragraphs One (1) through Forty-Nine (49) of this Complaint as if set forth in full herein.

51. That Beaver Falls will reap benefits from the sale of the wastewater

infrastructure, that are, at least in part, the result of the contributions of the Plaintiffs.

52. That retention of these benefits without compensating Plaintiffs for their proportionate share would be inequitable.

53. That the acceptance of the contributions of the Plaintiffs over all the years and then the subsequent sale of the same to Aqua without compensation to the Plaintiffs results in an unjust enrichment on the part of Beaver Falls.

WHEREFORE, Plaintiffs request judgment for damages against Defendant City of Beaver Falls in an amount in excess of the jurisdictional limits of compulsory arbitration together with court costs, interest, and such other and further relief as the Honorable Court may deem just and equitable.

COUNT VI
Application for Injunctive Relief
Plaintiffs vs. City of Beaver Falls and Aqua Pennsylvania Wastewater, Inc.

54. Plaintiff incorporates Paragraphs One (1) through Fifty-Three (53) as if set forth at full herein.

55. That the Defendants should be enjoined from the sale of the wastewater treatment plant, wastewater treatment lines, and wastewater treatment facilities located in the City of Beaver Falls, as a result of their failure to communicate and negotiate with the Plaintiffs.

56. Alternatively, that Beaver Falls should be enjoined from the proceeds of the sale of the wastewater treatment plant, wastewater treatment lines, and wastewater treatment facilities located in the City of Beaver Falls, as a result of its failure to communication with the Plaintiffs regarding the sale.

57. That the Defendants should be enjoined on the following bases:
- a. The actions of the Defendants will cause great irreparable and immediate harm to the Plaintiffs as Plaintiffs will lose valuable consideration, contractual, and property rights from the sale;
 - b. The Defendants have failed and refused to acknowledge Plaintiffs' rights in and to the sale of the wastewater treatment plant, wastewater treatment lines, and wastewater treatment facilities, the subject of the herein Complaint;
 - c. The Defendants' actions are contrary to law, public welfare, and prejudicial to the interests of the Plaintiffs, their residents, and the public;
 - d. There is substantial likelihood of success on the merits of the Plaintiffs' causes of actions as set forth herein;
 - e. The Defendants' actions threaten a significant monetary loss to the Plaintiffs such that when said sale is completed, damages suffered by Plaintiffs will be incapable of compensation;
 - f. The Defendants' actions threaten possible crippling wastewater/sewer charges to hundreds of customers; and
 - g. The Defendants' actions would otherwise go unchallenged.
58. That relief is necessary to prevent immediate injury to the Plaintiffs and their property.
59. That the anticipated actions of the Defendants constitute irreparable harm as a matter of law.
60. That the Plaintiffs' rights to relief are clear and free from doubt and the activity sought to be restrained, the sale of the wastewater treatment plant, wastewater

treatment lines, and wastewater treatment facilities, is actionable.

61. That greater injury would be caused to the Plaintiffs, their residents, and the public from the Court refusing an injunction than granting an injunction.

62. That the Plaintiffs have a direct, immediate, and substantial interest in the action, the sale of the wastewater treatment plant, wastewater treatment lines, and wastewater treatment facilities, to be enjoined.

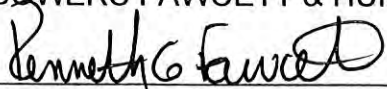
63. That the unfettered continuation of the Defendants' sale of the wastewater treatment plant, wastewater treatment lines, and wastewater treatment facilities and the resultant damage constitutes justification for equitable intervention by the Court.

64. That Plaintiffs' remedy at law is inadequate.

65. That the entry of an injunction will maintain the status quo of the parties.

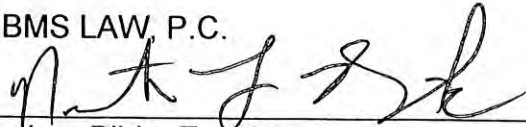
WHEREFORE, Plaintiffs respectfully request this Honorable Court issue an injunction, restraining the Defendants from allowing to proceed in the continuation of the sale of the wastewater treatment plant, wastewater treatment lines, and wastewater treatment facilities, or in the alternative, enjoin the Defendants, specifically Beaver Falls, from expending or distributing any proceeds received from the sale of the wastewater treatment plant, wastewater treatment lines, and wastewater treatment facilities to Aqua Pennsylvania Wastewater, Inc.

Respectfully Submitted,
BOWERS FAWCETT & HURST, LLC



Kenneth G. Fawcett, Esquire

NBMS LAW, P.C.

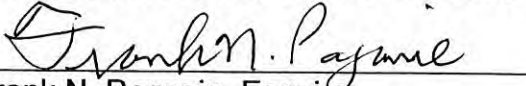


Nathan Bible, Esquire



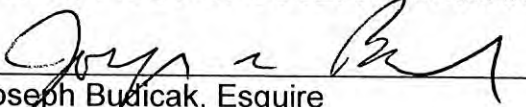
Max Schmierer, Esquire

MCMILLEN, URICK, TOCCI & JONES



Frank N. Paganie, Esquire

LAW OFFICES OF JOSEPH BUDICAK

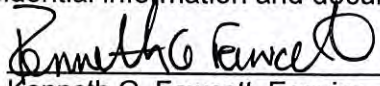


Joseph Budicak, Esquire
Attorney for Plaintiff

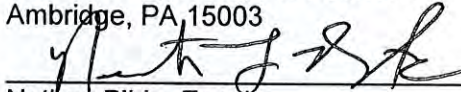
CERTIFICATE OF COMPLIANCE

I, KENNETH G. FAWCETT, ESQUIRE, NATHAN BIBLE, ESQUIRE, MAX SCHMIERER, ESQUIRE, FRANK N. PAGANIE, ESQUIRE, AND JOSEPH BUDICAK, ESQUIRE, certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than nonconfidential information and documents.


Date: 2-16-2023


Kenneth G. Fawcett, Esquire
PA ID # 74527
Bowers Fawcett & Hurst, LLC
820 Kennedy Drive, P.O. Box 280
Ambridge, PA, 15003

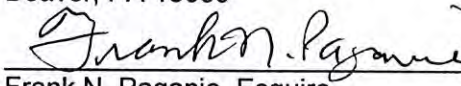
Date: 2-16-2023


Nathan Bible, Esquire
PA ID #313277
NBMS Law, P.C.
650 Corporation Street, Suite 304
Beaver, PA 15009

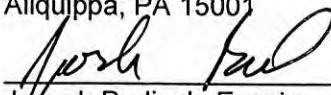
Date: 2-16-2023


Max Schmierer, Esquire
PA ID #321437
NBMS Law, P.C.
650 Corporation Street, Suite 304
Beaver, PA 15009

Date: 02/16/2023


Frank N. Paganie, Esquire
PA ID # 310488
McMillen, Urick, Tocci & Jones
2131 Brodhead Road
Aliquippa, PA 15001

Date: 2-16-2023


Joseph Budicak, Esquire
PA ID # 25070
401 Thirteenth Street
New Brighton, PA 15066

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Plaintiff's Complaint was served upon the following via USPS First Class Mail and via email on this 17 day of February, 2023:

Samuel H. Simon, Esquire
Matthew J. Lautman, Esquire
Erik M. Bergenthal, Esquire
Houston Harbaugh
Three Gateway Center
401 Liberty Avenue, 22nd Floor
Pittsburgh, PA 15222

Vincent A. Tucceri, Esquire
CharLee Rosini, Esquire
Gaitens, Tucceri & Nicholas, PC
519 Court Place
Pittsburgh, PA 15219

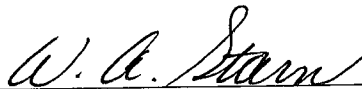
BOWERS FAWCETT & HURST, LLC



Kenneth G. Fawcett, Esquire
Attorney for Plaintiff

VERIFICATION

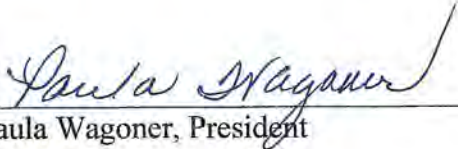
I, William A. Starn, on behalf of Patterson Heights Borough, hereby state that the facts set forth in the foregoing Joint Letter Request dated April 5, 2023 are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing in this matter. This verification is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



William A. Starn, President

VERIFICATION

I, Paula Wagoner, on behalf of Patterson Township, hereby state that the facts set forth in the foregoing Joint Letter Request dated April 5, 2023 are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing in this matter. This verification is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



Paula Wagoner, President

VERIFICATION

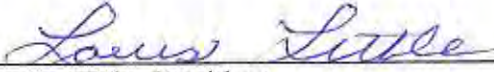
I, Ray A. Evans Jr., on behalf of White Township, hereby state that the facts set forth in the foregoing Joint Letter Request dated April 5, 2023 are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing in this matter. This verification is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



Ray A. Evans Jr., Chairman

VERIFICATION

I, Louis Little, on behalf of West Mayfield Borough, hereby state that the facts set forth in the foregoing Joint Letter Request dated April 5, 2023 are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing in this matter. This verification is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



Louis Little, President

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

BY ELECTRONIC MAIL ONLY

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/s/ Whitney E. Snyder
Thomas J. Sniscak
Whitney E. Snyder
Phillip D. Demanchick Jr.

Dated this 5th day of April, 2023