

**Second Response to
Chester Water Authority's Right to Know Law Request
of
the Pennsylvania Department of Community and Economic Development ("DCED")
dated August 16, 2017**

this Response was received November 16, 2017

Part 2 of 3

1. One page transmittal email from Adam L. Santucci, Esq. of McNees, Wallace & Nurick, LLC (Chester Act 47 consultant) to other Chester's Act 47 consultants memorializing their telephone conversation and transmitting a four (4) page letter from Attorney Santucci to Kenneth Schuster, Esq., Chester City Solicitor dated May 23, 2017.
2. One page email from Adam L. Santucci, Esq. of McNees, Wallace & Nurick, LLC (Chester Act 47 consultant) to Kenneth Schuster, Esq., Chester City Solicitor, recommending two attorneys that "may be able to help with the proposed acquisition of the Chester Water Authority" ... and stating "we will be happy to participate in the discussion" dated May 25, 2017.
3. Letter from Econsult Solutions (Chester Act 47 Coordinator) to the Honorable Thaddeus Kirkland (four (4) pages) with the reference "Recovery Plan Implementation" dated July 5, 2017 .

Note that;

(a) the unsolicited offer letter that Aqua submitted to the Chester Water Authority was delivered to the Authority on May 8, 2017;

(b) the Board of the Chester Water Authority voted unanimously (9-0) to reject Aqua's offer at their May 18, 2017 Board meeting.

One page transmittal email from Adam L. Santucci, Esq. of McNees, Wallace & Nurick, LLC (Chester Act 47 consultant) to other Chester's Act 47 consultants memorializing their telephone conversation and transmitting a four (4) page letter from Attorney Santucci to Kenneth Schuster, Esq., Chester City Solicitor dated May 23, 2017.

Santucci, Adam

From: Santucci, Adam
Sent: Tuesday, May 23, 2017 4:26 PM
To: Kenneth Schuster
Cc: Unkovic, David; Kelley, Marita; Dan Connelly; Mullin, Stephen; Queenan, Brooke
Subject: Proposal Regarding Acquisition of Chester Water Authority Assets
Attachments: Ltr. to K. Schuster re Aqua proposal (A5770757).PDF

Ken,

Please see the attached correspondence in follow up to our telephone conversation regarding the above referenced matter.

If you have any questions, please let us know.

Thank you,
Adam
Adam L. Santucci



McNees

McNees Wallace & Nurick LLC

100 Pine Street | Harrisburg, PA 17101

Tel: 717.237.5388 | Fax: 717.260.1655

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The foregoing message may be protected by the attorney-client privilege. If you believe it has been sent to you in error, do not read it. Please reply to the sender that you have received the message in error, then delete it. Thank you.



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Adam L. Santucci
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Direct Fax: 717.260.1855
asantucci@mcneeslaw.com

May 23, 2017

VIA EMAIL AND FIRST CLASS MAIL

Kenneth R. Schuster, Esq.
Solicitor
City of Chester
1 E. 4th Street
Chester, PA 19013

RE: Aqua Proposal for the Acquisition of the Assets of Chester Water Authority

Dear Mr. Schuster:

As we discussed, we wanted to provide some additional information regarding the proposal put forth by Aqua Pennsylvania ("Aqua") regarding the acquisition of the assets of the Chester Water Authority ("Authority"). Although the Authority recently rejected the proposal, the Authority did indicate that it will be evaluating a potential sale of its assets over the next 60 to 90 days. We believe that the City of Chester ("City") has a strong argument that it is entitled to a significant portion of the proceeds of any sale of the Authority's assets; and therefore, we strongly suggest that the City obtain a seat at the table for any further discussions or consideration of the potential sale of the Authority's assets.

The Authority was organized by the City of Chester (the "City") in 1939 under a predecessor statute, the Municipality Authorities Act of 1935. The Authority is now operated in accordance with the provisions of the current Municipality Authorities Act, 53 Pa.C.S. § 5601, *et. seq.* The Authority is an operating authority; it does not lease back the water system to the City.

The Authority is somewhat unique in comparison to other municipal authorities. Most authorities are organized either by a single municipality, or by multiple municipalities where each municipality is a member of the authority, and by virtue of such membership has certain rights and responsibilities in regard to the authority. Most importantly, the entire board of directors of a single-member authority is appointed by the municipality. In contrast, each member municipality of a joint authority has the right to appoint an equal number of members to the board of the joint authority.

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The Authority was organized in 1939 as a single-member authority, and prior to 2012 its board was appointed solely by the City in accordance with the Act. However, in 2012 the General Assembly passed Act 73, which amended two sections of the Act: Section 5612, which deals with the money of an authority, and Section 5610, which deals with the appointment of the members of the board of an authority. Essentially, the amendment to Section 5610 impacted only the Authority.¹

Upon the effective date of Act 73, the board of directors of the Authority was made up of (1) three members appointed by the City; (2) three members appointed by the County of Delaware; and (3) three members appointed by the County of Chester (the County of Delaware and the County of Chester are collectively referred to herein as the "Counties"). The City therefore lost its ability to control the Authority indirectly through the appointment of its board once Act 73 went into effect.

Generally speaking, the municipality or municipalities that create an authority have the right to terminate the authority, and upon such termination the assets of the authority automatically become the assets of the municipality or municipalities. Sections 5619 and 5622 of the Authorities Act deal with the termination of an authority and the transfer of its assets. Under the Authorities Act, a municipality which organized a single-member authority has a clear right to terminate the authority and reclaim the assets held by the authority, so long as there are no "impediments" to the termination and transfer of assets. An impediment to termination can take a variety of forms, and may include outstanding loans, or the need for clearance from another governmental body, such as the Pennsylvania Public Utility Commission. An authority also can be ordered to take all steps necessary to remove an impediment (if it is removable) in connection with a direction to terminate made by its organizing municipality.

Although the available case law interpreting the Act does not address it, it is assumed that a joint authority may also be ordered to terminate, so long as all of the member municipalities join in the decision to terminate the authority and agree to a plan for the transfer of the authority's assets and the assumption of its liabilities. The termination of a joint authority may also be governed by the terms of any intermunicipal agreement between the participating municipalities.

Section 5619 establishes a procedure to be followed when an authority is to be terminated, and among other things specifies when an authority may convey projects and property to the municipality that created it. Section 5622 establishes that a municipality that created an authority may compel the authority to convey a project to the municipality, if the project is of a type which the municipality has the power to operate.

¹ We note that Act 73 may be unconstitutional as "special legislation," and therefore of no effect. However, we have not conducted any research on this particular argument at this time.

Kenneth R. Schuster, Esq.
May 23, 2017
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The passage of Act 73 has raised the following question: whether the Counties, by virtue of their right to appoint three members each to the board of the Authority, have an interest in the assets of the Authority such that upon a disposition of those assets they would be entitled to a portion of the sale proceeds. To put it another way – did the passage of Act 73 convert the Authority into a joint authority, with the Counties becoming members?

We believe that Act 73 should be narrowly interpreted as granting the Counties only the right to appoint members to the board of the Authority, and not broadly interpreted to transform the Authority into a joint authority, with the Counties as members.²

Accordingly, we believe that the City has the power to terminate the Authority and assume control of its assets consistent with the Authorities Act. Such power gives the City the right to demand a role in the ongoing discussions of the possible sale of the Authority's assets, because in effect, the City could terminate the Authority and proceed with the sale in any event. Accordingly, we recommend that the City take the following steps immediately:

1. Formally put the Authority on notice of the City's intention to play a role in the ongoing evaluation of the potential sale of the Authority's assets.
2. Assemble a team of City representatives to work with the Authority in the process of that evaluation. The Recovery Team should be part of the City's team as well, and Steve Mullin has agreed to be the point person for the Recovery Team.
3. Schedule a meeting with the City's appointed Authority Board members in order to ensure that the City's appointed representatives on the Authority Board and the City are on the same page. We will want to help the Authority Board members understand the City's role in this process.
4. Consider hiring an engineer or other expert to help value the City's portion of the assets of the Authority. In accordance with recently enacted legislation, an expert opinion is now required by statute prior to the disposition of water and sewer assets. The City should consider hiring its own expert, in addition to any expert retained by the Authority, to value the City's portion of the assets.

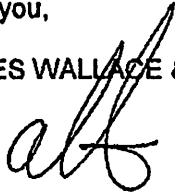
The members of the Recovery Team are available to aid you in this process. We look forward to working with you to protect the City's interests in this important matter. If you have any questions, please let us know.

² Please note that our analysis does not include consideration of any contractual arrangement between the City and the Counties. We are not aware of whether any such agreement exists, but if such an intermunicipal agreement is in existence, it will need to be evaluated to determine what, if any, impact it has on the above analysis.

Kenneth R. Schuster, Esq.
May 23, 2017
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Thank you,

McNEES WALLACE & NURICK LLC

A handwritten signature in black ink, appearing to read 'AS', is written over the company name.

By

Adam L. Santucci

ALS/cem

c: Recovery Team

One page email from Adam L. Santucci, Esq. of McNees, Wallace & Nurick, LLC (Chester Act 47 consultant) to Kenneth Schuster, Esq., Chester City Solicitor, recommending two attorneys that "may be able to help with the proposed acquisition of the Chester Water Authority" ... and stating "we will be happy to participate in the discussion" dated May 25, 2017.

Santucci, Adam

From: Santucci, Adam
Sent: Thursday, May 25, 2017 11:44 AM
To: Kenneth Schuster
Cc: Unkovic, David
Subject: Contact Information RE Authority matter

Ken,

As we discussed, we wanted to provide you with contact information for two attorneys/firms that may be able to help with the proposed acquisition of the Chester Water Authority. Contact information for Marc Feller of Dilworth and Bill Rhodes of Ballard is below. Please let us know if you want to set up a time to try to talk to Marc or Bill, as we discussed, we will be happy to participate in the discussion. Perhaps we can shoot for late next week?

Marc A. Feller
Partner; Chair, Public Finance Group
1500 Market St. 3500E
Philadelphia, PA 19102
Direct (215) 575-7242
Fax (215) 575-7200
mfeller@dilworthlaw.com

William C. (Bill) Rhodes
Ballard Spahr LLP
1735 Market St., 51st Floor
Philadelphia, PA 19103
215-864-8534
Rhodes@ballardsphar.com

If you have any questions, please let us know.

Thank you,
Adam
Adam L. Santucci
asantucci@mcneeslaw.com
717.237.5388

Letter from Econsult Solutions (Chester Act 47 Coordinator) to the Honorable Thaddeus Kirkland (four (4) pages) with the reference "Recovery Plan Implementation" dated July 5, 2017.

July 5, 2017

VIA EMAIL AND CERTIFIED MAIL

The Honorable Thaddeus Kirkland
Mayor of the City of Chester
Chester City Hall
1 East Fourth Street
Chester, PA 19013

RE: Recovery Plan Implementation

Dear Mayor Kirkland:

Thank you for the opportunity for the Act 47 coordinator team and Marita Kelley of the Department of Community and Economic Development ("DCED") to meet with you and your staff on June 19, 2017. We wanted to take the opportunity to summarize our discussion and confirm some of the key points from our productive discussion regarding the City's implementation of the Recovery Plan.

Our discussion focused on the short term, mid-term and long term actions items that must be achieved to allow the City to exit distressed status in ten short months. We recognize that the City has worked very hard over the last six to eight months to implement key provisions of the Recovery Plan. As a result, it appears that the City will end the year with a budget surplus. Although the surplus is not as robust as called for in the Recovery Plan, our hope is that the surplus will be significant enough to permit the City to address some of its past due debts. You and your staff should be commended for making some of the difficult decisions necessary to ensure compliance with the Recovery Plan and to set the City on the path to financial stability.

However, the City still has many challenges ahead. There are significant concerns facing the City, both in the short term and in the long term. Further, as you know, pursuant to Act 199 of 2014, the Recovery Team will be required to evaluate and make a recommendation regarding the City's ability to exit financially distressed status in May of 2018. While an extension of distressed status is also an option, a third possible outcome is a recommendation to appoint a receiver. We certainly agree with your strong reaction that a receiver is not desirable at this time.

Below, we outline in more detail some of the short term, mid-term and long term accomplishments that must be achieved in order to avoid that outcome, and to ensure the City

short term and long term financial success. We look forward to continuing to work with the City to achieve these critical goals.

Short Term Challenges and Goals

As we discussed, the City will face a potential cash short fall before the end of the year, and potentially before the end of the summer. Accordingly, the City must take immediate steps to secure its short term cash position. The City has begun the process of securing unfunded debt in the amount of approximately \$11 million (the "Financing") to assist with certain passed due debts, and to provide the City with much needed short term cash relief. Specifically, the short term unfunded borrowing will ensure that the City is able to pay back \$4.1 million to Independence Blue Cross (in order to avoid a legal claim), allow for the repayment of a \$1 million emergency loan provided by the Department of Community and Economic Development, and allow the City to utilize the remaining proceeds to meet its ongoing obligations through the end of 2017.

However, in order to finalize the Financing, several steps must be taken. Critically, the City must complete the 2015 audited financial statements. This must be accomplished **no later than July 31, 2017**. Initially, we anticipated that the audited financial statements were to be completed by June 15, however, the completion date has been extended twice. The City must stress to the auditor that moving the date back any further than July 31, 2017 is simply unacceptable. While the audit is moving toward completion, the City must continue to work with its Financial Advisor and counsel to complete the other necessary steps to complete the Financing as soon as possible.

The number one strategic focus in the short term must be the financing.

Mid-term Challenges and Goals

When the Financing is finalized, the City must immediately turn its attention to two additional critical tasks. First, the City must work to identify an appropriate means to make past due payments to the pension funds. The City has not made the required pension payments since 2014, and the Police Pension Plan is critically underfunded. The City has made \$500,000 in minimum municipal obligation payments in 2017 and must continue to take all appropriate action to identify a means to bring its payment obligations current, and infuse the pension plans with the funds necessary to meet obligations.

In addition, the City must continue to work tirelessly to implement the terms of the Recovery Plan. As noted, the City is on track to end the year with a surplus, but that surplus is less than the amount required under the Recovery Plan. We recognize that the City is also facing several additional challenges that will make compliance difficult. We appreciate your candor regarding the initiatives in the Recovery Plan that you view as the most problematic. However, the City must remain in compliance with the Recovery Plan, in order to afford itself the best opportunity to

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exit distressed status next year. The City's compliance with the Recovery Plan will also make it far less likely that the Recovery Team will recommend a receiver.

Long Term Challenges and Goals

As we discussed, the City's unpaid debts are significant. While we believe that the action items outlined above will allow the City to remain viable and continue to pay its ongoing obligations, the City must explore all available opportunities to address its significant unpaid debts and ongoing budgetary constraints. Accordingly, we discussed the critical importance of exploring the potential sale of the Chester Water Authority assets. We strongly encourage you to work with the City's representatives on the Chester Water Authority, your staff and counsel to determine if a sale of the assets of Chester Water Authority are in the best interest of the City and its residents, and if such a sale will provide for financial relief for the City.

As we discussed, in addition to obtaining special legal counsel, we also recommend that the City obtain its own valuation expert to provide the City an opinion regarding the value of the assets of the Authority. While we believe that a valuation expert will be required for the Authority, we strongly recommend that the City obtain its own expert to value the assets on the City's behalf.

Once again, we appreciate the time and opportunity to speak with you and key members of your staff and we appreciate all the hard work in implementing the Recovery Plan. While much work needs to be done, your efforts have put the City on the pathway towards financial recovery. We believe that by continuing to work together we will be able to achieve the goals set forth in the Recovery Plan.

Sincerely,



Stephen P. Mullin
Recovery Coordinator, President and Principal of Econsult Solutions Inc.

cc: Councilman William Jacobs
Councilman William Morgan
Councilwoman Portia West
Councilwoman Elizabeth Williams
Nafis Nichols, City Chief Financial Officer
Kenneth Schuster, City Solicitor

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Marita Kelley, DCED, Deputy Director, Governor's Center for Local Government Services
Adam Santucci, McNees Wallace & Nurick LLC
David Unkovic, McNees Wallace & Nurick LLC
Daniel Connelly, Fairmount Capital Advisors, Inc.
Brooke Queenan, Econsult Solutions, Inc.