



M E M O R A N D U M

TO: Mr. Kurt Zemba
Chairman, Old Lyme Water Pollution Control Authority

FROM: Andrew W. Lord

DATE: January 30, 2014

RE: Old Lyme Water Pollution Control Authority – Scope of Authority

This memorandum provides a general overview of the authority of the Old Lyme Water Pollution Control Authority (“OLWPCA”) to maintain and operate wastewater collection and treatment systems in the Town of Old Lyme (the “Town”). More specifically, it discusses the authority of the OLWPCA to manage its revenue and expense budgets. Finally, this memorandum addresses several specific questions raised by the OLWPCA.

Statutory Background

Chapter 103 of the Connecticut General Statutes (“C.G.S.”) applies generally to municipal sewerage systems. C.G.S. § 7-246 states that any municipality may, by ordinance, designate its legislative body (unless the legislative body is the town meeting) or any existing board or commission, or create a new board or commission to be designated, as the water pollution control authority for the municipality. In accordance with C.G.S. § 7-246, the Town created the OLWPCA by ordinance on March 28, 1995. That ordinance, as codified in Code § 16-9, expressly gives the OLWPCA the jurisdiction set forth in Section 7-246 of the Connecticut General Statutes (“C.G.S.”) within the territorial limits of the Town of Old Lyme. In addition, Code 16-10 states that the OLWPCA shall establish rules and regulations regarding the operation and maintenance of household and small commercial subsurface wastewater disposal systems and to designate sewer avoidance areas and to implement sewer avoidance plans.

Water Pollution Control Authority (“WPCA”) Powers

In general, duly established WPCA’s are granted the powers and duties described in Chapter 103 and the specific powers set forth in C.G.S. § 246, 247, 249 and 255. Those statutes provide that any municipality, by its water pollution control authority, may, among other things:

- operate, maintain, repair and improve a municipal sewerage system;

- borrow money to finance such activities, and to defray the cost of such activities by levying assessments against the properties served by the system;
- acquire, construct and operate a sewerage system or systems;
- enter upon and take and hold by purchase, condemnation or otherwise the whole or any part of any real property or interest therein which it determines is necessary or desirable for use in connection with any sewerage system;
- establish and revise rules and regulations for the supervision, management, control, operation and use of a sewerage system, including rules and regulations prohibiting or regulating the discharge into a sewerage system of any sewage or any stormwater runoff which in the opinion of the water pollution control authority will adversely affect any part or any process of the sewerage system except that any such rule or regulation regarding decentralized systems shall be approved by the local director of health before such rule or regulation may be effective;
- enter into and fulfill contracts, including contracts for a term of years, with any person or any other municipality or municipalities to provide or obtain sewerage system service for any sewage;
- make arrangements for the provision or exchange of staff services and equipment with any person or any other municipality or municipalities, or for any other lawful services;
- establish rules for the transaction of its business;
- levy benefit assessments; and
- establish and revise reasonable charges for the connection to and use of a sewerage system.

Budgeting and Rate Setting

The OLWPCA is authorized to borrow money to finance its statutorily prescribed activities and to raise funds by levying benefit assessments and establishing sewer use and connection charges. A guidance document prepared by the Connecticut Department of Energy and Environmental Protection ("DEEP") titled "The Cost of Clean Water: A Sewer User Charge Rate Survey and Guidance Material," dated March 1999, states:

Note that setting the annual budget for wastewater facilities and the establishment of user charge rates is the responsibility of the Water Pollution Control Authority (WPCA) (CGS Section 7-255). In most cases, this means that

other municipal boards and commissions do not have any direct input or overview in the water pollution control budget process. In particular, neither the board of selectmen nor the board of finance have rate-setting or review authority in this matter. However, an informational public hearing is required by that same statute to present the WPCA budget to the public and educate them regarding the details of the budget and rate structure for the coming year.

In addition, C.G.S. § 7-267 states that all benefit assessments and charges shall be kept separate from other funds of the municipality and shall be used for the sewerage system and *for no other purpose*. The DEEP's January 1997 publication, "Methods of Capital Cost Recovery on Water Pollution Control Projects: A Summary and Analysis of the 1995 Sewer Benefit Assessment Survey," reinforces this principle:

The ability to use funds collected as benefit assessments or connection charges is restricted by CGS § 7-267. This statute requires that funds collected for the sewerage system must be kept separate from all other municipal funds and may not be transferred or used for anything but the costs associated with the sewerage system. This means that, regardless of the other fiscal needs of the community, money that has been collected for the operation, maintenance, or debt retirement of the sewerage system cannot be transferred or reallocated to other municipal accounts.

As referenced above, the OLWPCA has the statutory authority to independently establish charges for connection with and use of the sewerage system. While the OLWPCA must follow the statutory requirements when establishing or revising its sewer use charges, and absent any other municipal requirements or expenditures related to the OLWPCA, there is no requirement that the OLWPCA's expense budget or the user rate be approved through the Town budget process.

The OLWPCA may also routinely revise its charges in accordance with the statutory procedure based on the annual expenses of operating the sewer system to assure sufficient funds cover expenses and build a reserve fund for unanticipated capital and maintenance costs.

Specific Questions

1. Is it the responsibility of the WPCA to manage and oversee the pump-out revenue (in our case it is \$0.08 per gallon), the fines and penalties assessed per our ordinance/by-laws, etc. and the user fees, the user hook-up fees, the fees assessed for homes not hooked-up but where the lines go by (access assessments) as well as revenue that may be gained by the transport or selling of waste by product?

Response: As described above, the OLWPCA has the authority to establish fees and assessments and to use the revenues solely for the operation and maintenance of wastewater treatment facilities.

2. Within our expense should we also be responsible for any charges invoiced back to the town by haulers? Should it be a line item on our expense line?

Response: Yes.

3. Should the revenue not be enough to sustain operating costs of the WPCA, (that is unlikely except where we incur pre-Wastewater Management Project Expenses), and the town allocates dollars to cover that initially, can we set-up accounting to eventually pay the town back those dollars from future revenue?

Response: Yes.

4. Should our budget – once approved by the WPCA, require approval by the Board of Selectmen or the Board of Finance when presented to them?

Response: As described above, absent some municipal requirement, a budget established by a WPCA does not need to be approved by other boards, provided that the budget does not require disbursement from the general fund.

5. Can either of those entities change it? Or is town meeting approval required for the WPCA budget in an unchartered town which Old Lyme is?

Response: Please refer to question No. 4.

6. If the Wastewater Management Project is approved by the town in a town meeting should the bond dollars, the application of which was backed by the rating of the town, be set up in a separate account but under the WPCA Budget and not the town's budget or general fund?

Response: Typically, a municipality would secure the bond funds to finance the project and that debt would be carried on the Town's account. The WPCA would then collect the revenues through benefit assessment to repay the debt. The details of this accounting would be developed through bond counsel and the board of Finance or Finance Director at the time of bonding

7. Should any grant money received also be in a separate account under the WPCA Budget and not the town's budget?

Response: Similar to the answer to question No. 6, the details of the accounting would be established based on the terms and conditions of the grant.

8. Can the WPCA as an expense line pay the town for services - such as financial management services? Can we send the town money to offset a

tax abatement deal for property use for our project? Can we pay back the town for any monies advanced to us to operate before we get the revenue to pay for it?

Response: With regard to the first and third questions, the answer is yes. The second question require further review.

9. Should all revenue not expended be carried over by the WPCA and remain in the WPCA budget instead of sent to the town as it can only be used for wastewater and WPCA management?

Response: Yes.

10. Can we create a by-law indicating that we would have the town finance office manage the accounting for the WPCA and have that set-up alongside the town's budget as an "Enterprise Account" – Separate but subject to the town's auditor's review?

Response: Yes.

Conclusion

In conclusion, the OLWPCA has broad statutory authority and a fair amount of autonomy to operate and maintain wastewater treatment facilities and to manage its revenues and expenses for such purpose. Provided that the OLWPCA generates sufficient revenues to cover its expenses and does not receive money from the general fund, the involvement of other municipal agencies should be minimal.

If you have any questions or require additional information, please do not hesitate to contact me.