

Approved by the SRIC in plenary session -- May 21, 2014

Sewer Regionalization Implementation Committee
Legal Subcommittee

Proposed Principles for Intermunicipal Trunk Sewer Line
and Wet Weather Facility Transfer Agreement

Introduction

In the fall of 2011, ALCOSAN commissioned the Allegheny Conference on Community Development to facilitate the proceedings of a stakeholder review panel to evaluate regionalization options for the ALCOSAN service area. The Sewer Regionalization Review Panel was chaired by Dr. Jared Cohon, then President and now President Emeritus of Carnegie Mellon University. This process was initiated in recognition of the challenge confronting ALCOSAN and its 83 municipal customers to formulate an effective wet weather plan for the ALCOSAN service area. The Sewer Regionalization Review Panel issued its report on March 15, 2013. Among other things, the Review Panel recommended that multi-municipal trunk sewer lines and existing wet weather control facilities, to be identified through further analysis, should be transferred by the current municipal owners to ALCOSAN.

In January 2013, ALCOSAN submitted a draft Wet Weather Plan to the United States Environmental Protection Agency (“EPA”), the Pennsylvania Department of Environmental Protection (“DEP”), and the Allegheny County Health Department (“ACHD”) in accordance with a federal court Consent Decree entered in 2008. In July 2013, the ALCOSAN municipal customers submitted their respective wet weather feasibility studies to DEP and ACHD for review in conjunction with the ALCOSAN draft wet weather plan.

The municipal wet weather feasibility studies are still under review by DEP and ACHD; however, EPA has completed its review of the ALCOSAN draft Wet Weather Plan. EPA has advised ALCOSAN that, although the Plan does not demonstrate full implementation of all of the compliance requirements by the Consent Decree deadline due to affordability concerns, it is willing to consider a modification of the Consent Decree compliance program under certain conditions. According to a press release issued by ALCOSAN on February 7, 2014:

“[EPA is willing] ...to consider a phased approach to allow for green infrastructure and other flow reduction elements to be incorporated into the Wet Weather Plan. It also contemplates a high level of regional cooperation and coordination in implementing flow reduction/management programs and furthering substantive regionalization efforts.”

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Implementation of the Sewer Regionalization Review Panel's recommendation to transfer ownership and control of multi-municipal trunk sewer lines and existing wet weather control facilities to ALCOSAN is a critical step toward persuading EPA to modify the current requirements of the federal Consent Decree. Moreover, if responsibility for implementing work specified in the municipal feasibility studies relating to the transferred facilities, as well as the construction of new wet weather control facilities, is transferred to ALCOSAN, significant economies of scale, unavailable to individual municipalities or authorities, may be realized.

3 Rivers Wet Weather ("3RWW") and the Congress of Neighboring Communities ("CONNECT") are collaborating to provide staff and other resources to establish and support the activities of a stakeholder group known as the Sewer Regionalization Implementation Committee ("SRIC"). One of the principal goals of the SRIC is to "develop the legal framework needed for an expeditious transfer of all intermunicipal conveyance lines, trunk sewers and upstream wet weather facilities to ALCOSAN, including any proposed wet weather infrastructure included in the municipal feasibility studies."

The scope of the recommended transfer relates only to multi-municipal trunk sewer lines, existing upstream wet weather control facilities and, possibly, new wet weather control facilities reasonably required by the municipal feasibility studies. The specific facilities to be transferred will be identified through the completion of a process that is already underway. The recommended transfer does not include municipal collection systems which will continue to be operated and maintained by the respective municipalities or authorities in the ALCOSAN service area.

The recommended transfer will not be imposed upon municipalities or authorities through any legal process. Rather the objective of the SRIC is to work with stakeholders to: (1) identify the multi-municipal trunk sewer lines and wet weather control facilities to be transferred to ALCOSAN; (2) develop proposed principles for the legal framework of the transfer transactions; (3) develop a proposed checklist of due diligence tasks to be completed by the municipalities, authorities and ALCOSAN in preparation for the execution of their respective transfer transactions; and (4) develop generally applicable core transaction documents which address the matters required to express the agreement of the parties to the respective transfer transactions.

Over the course of the next six to eight months, the SRIC will be soliciting input concerning the various elements of the transaction framework from the parties who will be involved in the recommended transfer transactions.

As an initial step in this process the SRIC presents for your review and consideration the following proposed principles for the transfer of the specified intermunicipal trunk sewers and existing wet weather control facilities.

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Proposed Principles

1. The intermunicipal trunk sewer lines and existing wet weather facilities to be transferred to ALCOSAN will be depicted on a map which is agreed upon by the respective parties to the transfer transactions. The identification of the specific segments of trunk sewers and wet weather facilities to be transferred in the party-specific transactions will be based upon the map subject to exceptions, if any, identified through due diligence in preparation for specific transactions.
2. ALCOSAN will accept transfer of the specified trunk sewer lines and existing wet weather facilities in “as is” condition if the transferring municipality or municipal authority:
 - has completed the initial inspection and maintenance/repair program required by the existing municipal consent orders issued by the Department of Environmental Protection (“DEP”) or the Allegheny County Health Department (“ACHD”) and
 - is implementing an inspection and maintenance plan approved and audited by DEP or ACHD or, in the case of combined sewer communities, is complying with EPA’s “Nine Minimum Controls” included in its CSO NPDES Permit up to the closing date of the transfer transaction.
3. ALCOSAN will assume responsibility for: (1) all work relating to the future operation, inspection and maintenance/repair of the transferred trunk sewer lines and wet weather facilities, including measures relating to the transferred trunk sewer lines and wet weather facilities specified in the municipal feasibility studies, as approved by DEP or ACHD, and (2) requirements for any new or upgraded facilities included in the approved feasibility studies. Upon transfer, ALCOSAN may negotiate with the regulatory agencies concerning modifications to the projects to be implemented under applicable municipal feasibility studies.
4. In exchange for the assumption of future responsibility by ALCOSAN:
 - the municipalities and municipal authorities will transfer the facilities without monetary consideration from ALCOSAN
 - the cost of performing the responsibilities assumed by ALCOSAN pursuant to the transfer agreements will be covered by ALCOSAN’s system-wide rates
 - the transferring municipality or municipal authority will retain its sewage system revenue source(s)
 - existing municipal or municipal authority debt will not be transferred to ALCOSAN

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- the SRIC, through its Finance Subcommittee, will endeavor to foster a debt resolution process by recruiting an existing, qualified independent entity to explore a means for resolving municipal and municipal authority debt related specifically to the transferred trunk sewer lines and wet weather facilities.
5. The transfer agreement between ALCOSAN and the transferring municipality or municipal authority will include provisions relating to considerations such as:
- cooperation in the completion of pre-closing due diligence activities
 - satisfaction or termination of obligations of the transferring municipality or municipal authority pursuant to pre-existing intermunicipal agreements, if any, relating to the transferred trunk sewer lines or wet weather facilities
 - responsibility of the transferring party to implement source reduction measures
 - protocols for communication and coordination between ALCOSAN and the municipality or municipal authority for future projects to be performed by ALCOSAN relating to transferred sewer trunk lines and wet weather facilities
 - coordination of the respective actions of the transferring municipality or municipal authority and ALCOSAN relating to the transfer of permits and other authorizations, if any
 - resolution of issues unique to specific transfer transactions, if any.