

refused to pay any part of their 1994 sewer bill which was sent to them earlier this year. Although not acceptable, over the past decade FLOW had been paying less than half of the annual bill we send them. But in 1995, FLOW paid nothing. It would be reasonable for someone to withhold payments if their service had been cut off. But these FLOW communities have been receiving the same full service as everybody else, which makes the decision not to pay anything hard to understand. This is a mean-spirited action which caused the taxpayers in Milwaukee County to subsidize the FLOW communities at an even higher dollar amount. It is interesting that FLOW's leadership says they want to end this dispute. However, it is quite evident that their actions speak louder than their words.

Now to the issue of the District having the highest residential user charge of any sewerage agency serving more than 600,000 customers. This statement by FLOW leaders was based upon information obtained from a 1993 Association of Metropolitan Sewerage Agencies (AMSA) financial survey (see attached surveys). District staff contacted the AMSA office in Washington, D.C. and, after reviewing their data, AMSA determined that MMSD's residential charges had been overstated due to calculation errors. First, City of Milwaukee administrative and local sewer charges were included in our residential charge calculations. It should also be pointed out that residential charges for St. Louis, Chicago and Denver, which have the lowest rates on the chart, do not include local sewer costs for those cities. In addition, the 1993 AMSA report calculated the MMSD capital charges on a home with a value much higher than the

actual average home value in the City of Milwaukee. Without the City of Milwaukee local sewer charges and the calculation error on home values, MMSD's 1993 annual residential sewer charges would be \$254.01, not \$496.86 as previously reported. The corrected information shows that MMSD charges are very competitive when compared to the other cities. Especially when one considers that many of the cities with seemingly low rates did not report or include all of their costs when submitting information to AMSA for the survey. It is also important to note that if the FLOW communities had been paying their fair share of our sewer costs, the \$254.01 annual payment would be even lower. Based upon staff calculations, this could be as low as \$200 annually.

In summary, let me say that the residential rate survey needs to be put into perspective. When reviewing the rates of other cities, you must take into consideration that many other urban areas are just beginning their urban Water Pollution Abatement Programs, while our project is nearly completed. This means that even though our charges are competitive now, after we complete construction on the WPAP at the end of 1996, our sewer charges will steadily go down while other metropolitan areas will begin to see large increases in their fees as they start work on their Water Pollution Abatement Programs. In addition, now that MMSD has a world-class wastewater treatment facility, the Milwaukee metropolitan area can boast of a system which helps to promote economic development and growth. The ability of our infrastructure to meet clean water needs for generations to come gives the metropolitan area a competitive

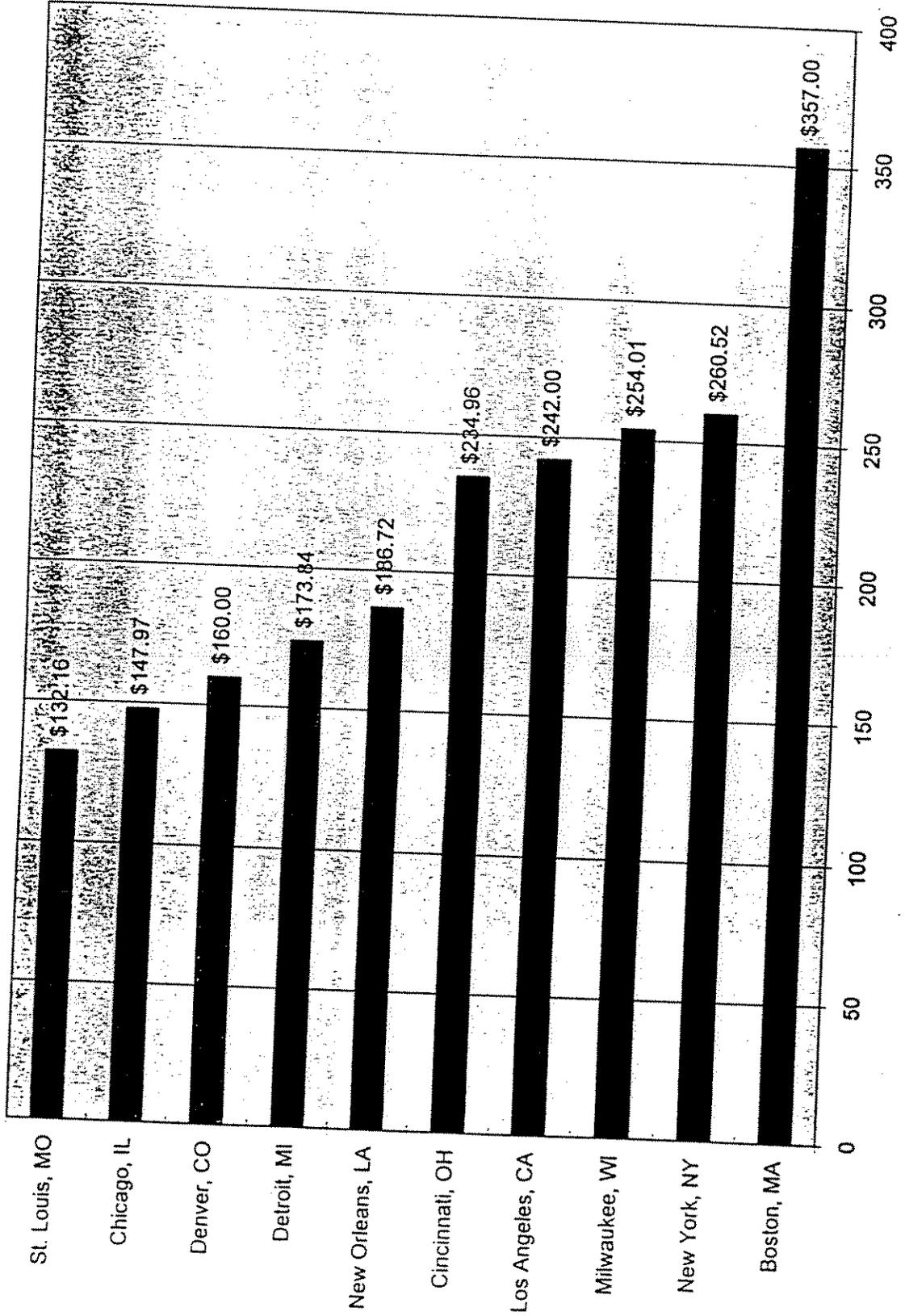
advantage which will be very helpful in our efforts to attract new businesses and retain existing ones as well.

Finally, there is an old saying, "If it's not broken, why try to fix it." I firmly believe the facts clearly show that the District is well managed, financially prudent and accountable to its customers. Organizations, both nationally and internationally, recognize what we have been able to accomplish and it's truly unfortunate that, because we have a dispute, communities in our own backyard refuse to recognize the significant things which the District has accomplished. The WPAP is the largest, most complex public works project in the history of the State, and it is being completed on time and within the budget estimates developed 15 years ago.

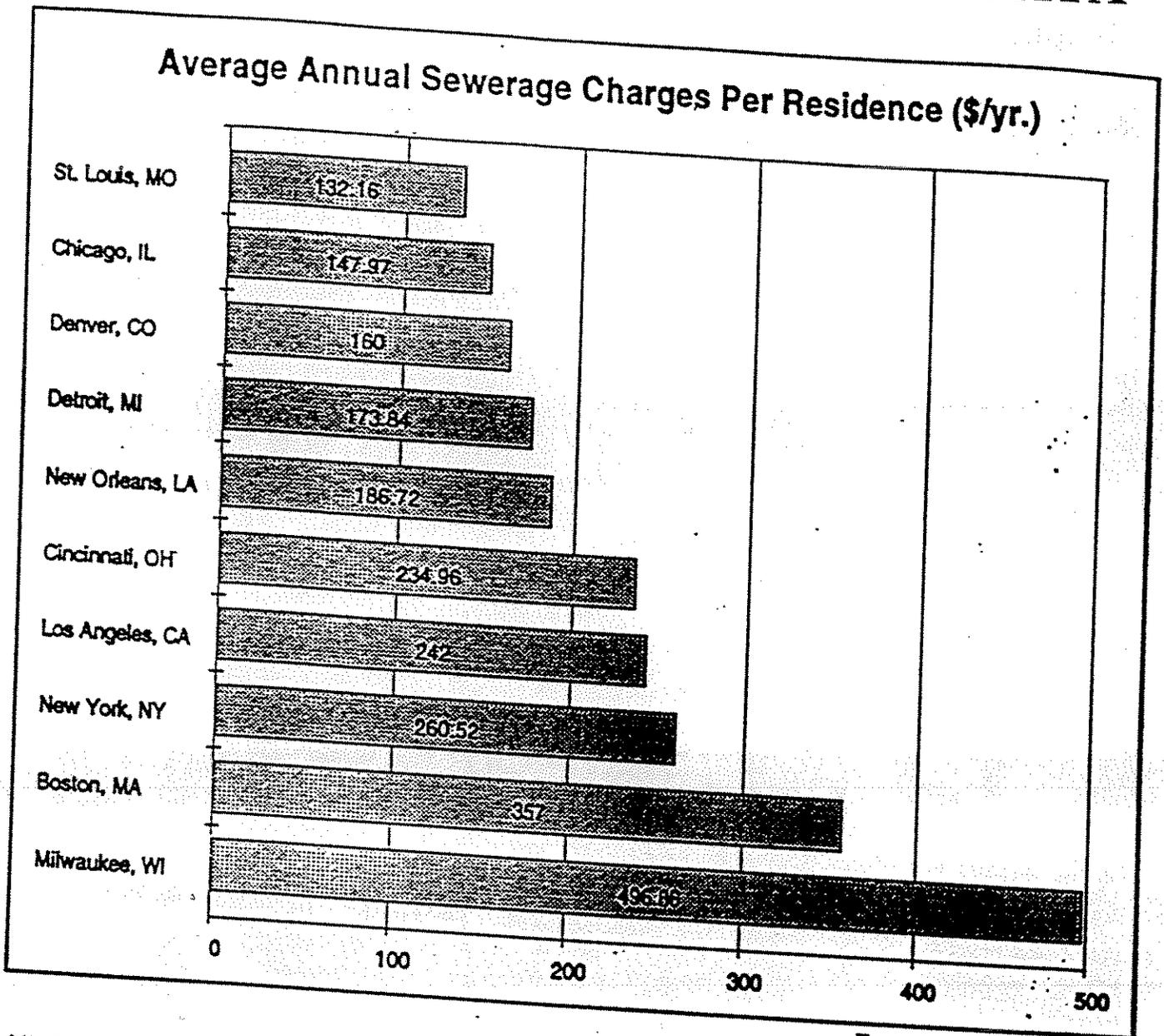
We are now viewed as a world leader as it relates to wastewater treatment technology. We have set the standard which others want to follow. So let's focus on the real issue before us today -- the issue is not about rate setting -- it's not about management or who should review our sewer charges, it's about a dispute between the FLOW communities and Milwaukee County communities over money. Therefore, if money is the issue, let's focus on that and eliminate all of the other issues which are being used to confuse and camouflage the real issue. If we can resolve the money issues, governance, rate setting and all of the other issues can quickly be settled. Legislation is not the way to end this dispute. Therefore, I ask that you not support passage of A.B. 382. Thank you.

CORRECTED 1993 AMSA SURVEY DATA

Average Annual Sewerage Charges Per Residence (\$/yr.)



INCORRECT 1993 AMSA SURVEY DATA



MMSD's annual residential charge is the highest of any sewage district serving more than 600,000 people in the U.S.

MMSD's average residential charge is 150% over the national average.

Source: American Metropolitan Sewerage Association (AMSA) 1993 Financial Survey

**TESTIMONY OF ENGINEER WILLIAM J. MIELKE, P.E.
BEFORE THE ASSEMBLY ENVIRONMENT AND UTILITIES COMMITTEE
REGARDING 1995 ASSEMBLY BILL 382
SEPTEMBER 14, 1995**

My name is William J. Mielke. I am the President and CEO of Ruckert & Mielke, Inc. I have worked on MMSD related projects for the past 20 years. I was also one of the three members of the legislative study committee which evaluated the MMSD capital cost recovery system. I am here as the technical consultant for the FLOW Communities to testify in support of Assembly Bill 382 for the following reasons:

PUBLIC SERVICE COMMISSION'S RATE SETTING CAPABILITIES

MMSD has the responsibility to construct, operate and maintain a system of interceptor sewers and two wastewater treatment facilities. These facilities are sized according to the amount of infiltration and inflow or I/I contributed by each of the 28 communities served by MMSD and the amount of waste discharged by the individual users in each community. Both of these elements are quantifiable and can be directly attributable to either the community in the case of I/I or the individual user in the case of the actual wastes. This is a utility service just like your water service, electric service, gas service or telephone service where you pay for what you use. Any legislator not located in the MMSD service area can easily relate to this issue because all of the wastewater treatment agencies in Wisconsin charge for capital costs according to use. The reason for charging based on use is to influence the amount of use with what is called a cost price signal. That is, the more you use, the more you will pay.

Given the fact that the MMSD has constructed only a limited amount of very expensive capacity, one would think a consumption based cost price signal would be foremost in MMSD's goals and objectives. Yet MMSD has not only ignored the benefits of cost price signals, they have actively opposed them. You can only imagine what would happen if Wisconsin Electric took this same tack. Without cost price signals, people would overuse the electricity and we would be building new power generating facilities all over the State.

It's not that the MMSD doesn't understand the methodology on how to structure a proper cost price signal. They have a very successful user charge system for the operation and maintenance costs associated with running their wastewater treatment facilities. If someone's discharge of wastes causes operation and maintenance costs for treatment facilities, doesn't it seem rational that that same discharge also caused the construction of these facilities? It's like saying I'll pay for the gas and insurance for the car I drive, but I don't want to pay for the car.

The ad valorem charging method creates a whole host of inequities such as:

- Light users of the system and high value businesses subsidize heavy users, namely wet industry.
- Thirty-five percent of Milwaukee County is tax exempt and, therefore, entities such as hospitals pay nothing toward their share of MMSD's capital costs.

- Wet industries in the MMSD service area enjoy an unfair economic advantage over wet industries anywhere else in Wisconsin.
- Personal property such as computers and high tech equipment are charged, yet they don't even flush.

You will hear today from MMSD that the reason for the entire program is stormwater and rain water caused by Mother Nature. That just simply isn't true as an example, Mother Nature doesn't rain sludge and MMSD just spent approximately \$725,000,000 to handle solids and sludge discharged by various users. At Jones Island where a majority of the solids related construction is taking place, nearly 70% of the sludge is contributed by wet industries, yet under the ad valorem charge system, they are only charged 3% of the costs for the facilities.

The Public Service Commission is well suited to sort out these problems with the MMSD capital cost recovery system. They are capable of providing independent unbiased analyses of the most equitable cost recovery methods. The MMSD has proven that it is incapable of even studying the problems and possible solutions to the capital cost recovery mess. The sewer wars have raged for over 15 years. I know of no rate disputes which the PSC has been involved with that have been litigated and disputed for even a small fraction of this time. The costs associated with the PSC becoming involved with MMSD rates are minuscule in proportion to the legal and engineering costs which are spent each year, not to mention the long-term damage this dispute has caused for the region.

PUBLIC SERVICE COMMISSION REGULATION OF SERVICE

By virtue of the existing statutes establishing MMSD coupled with the DNR's non-proliferation policy for new wastewater treatment facilities, the State has effectively made MMSD a monopoly utility service. At the same time, the legislature did not put in place adequate regulatory protection against MMSD abusing its monopolistic powers. The Public Service Commission is the only agency equipped to deal with service rules and practices of a utility like MMSD. Current MMSD practices of denying service to the Westridge Business Park in New Berlin, St. Mary's Hospital in Mequon, large areas of Brookfield and the new industrial park in Menomonee Falls, would never happen under a PSC regulated system of rules and practices.

PUBLIC SERVICE COMMISSION'S ECONOMIC/ENVIRONMENTAL IMPACT BALANCE

The State and MMSD should be concerned about our environment. The MMSD's treatment systems do a good job, but they are far from being perfect and they will never remove all the wastes from the sewage MMSD receives. Therefore, for every gallon of waste received, approximately 10% of the pollutants are discharged to Lake Michigan. Why would anyone want to promote an increase in this type of activity? You will not hear one shred of testimony today of how MMSD's present ad valorem charges will reduce pollution to Lake Michigan. The Public Service Commission has the expertise to review capital expenditures and evaluate them for cost effectiveness. Just as the Public Service Commission required Wisconsin Electric to institute cost price signals to all its users to prevent them

from constructing additional electrical generating facilities, this same expertise can be utilized in regulating MMSD to get the best use of the \$2.3 billion investment in new treatment facilities.

MMSD's current system of charging for the wastewater treatment facilities based on a person's property value is just plain wrong. Because a person's property value has no relationship to their use of a sewer system, MMSD is encouraging overuse and abuse of the system. Communities have no incentive to repair their leaking sewer systems since their bill will be the same no matter how good of a job they do. This presents a critical problem to MMSD. In 1980 when the MMSD's plans were finalized, there were several assumptions which were made and are vital to the success of the project. First there was very little excess capacity designed into the new facilities. Second, the MMSD assumed that the entire 420 square miles of sewer systems would not deteriorate any more than they were in 1980. It was also assumed that there would be a 10% reduction in users' flows over the 20 year planning period. Even with all these assumptions, the new system was still designed to overflow raw sewage into Lake Michigan once every 6 months. What has actually happened since 1980 is the individual users' flows have not decreased by 10% and, in fact, have increased nearly 10%. Several major wet industries have been increasing their flows by nearly 16% per year. The net result is we have 16,000,000,000 more gallons per year discharged to Lake Michigan than we did in 1980. Without cost price signals being sent out to communities and users, we are going to end up with a \$2.3 billion system which is too small before the last construction worker leaves the site. This should be of particular interest to the legislature since the last MMSD project has consumed over 50% of all dollars available which amounts to over \$1.1 billion in state and federal grants which Wisconsin spent to reduce pollution, yet the area is only 25% of the Wisconsin pollution problem.

PUBLIC SERVICE COMMISSION'S ROLE OF PROTECTING THE PUBLIC

The largest single investor in the MMSD's new \$2.3 billion project is the State of Wisconsin. Nearly every project the MMSD undertakes involves State GPR dollars. The independence of the PSC is needed to protect State tax dollars from being wasted.

Because of the size and complexity of MMSD, it is impossible for any citizen, business or even an entire community to monitor and audit the MMSD's operation or its rates. Only the PSC has the expertise and manpower necessary to provide an independent analysis of the MMSD's spending and finances. Just imagine any one of us trying to investigate the rate setting and capital financing mechanisms of WEPCO.

The future of public wastewater and water utilities is moving towards privatization. Without PSC regulation of MMSD, any effort to move toward a more cost-effective method of providing wastewater services in the MMSD service area would be severely hampered.

SUMMARY

I will leave you with just one example of the problems with the present non-PSC regulated MMSD. There are two wet industries served by MMSD which discharge the same amount of flow to MMSD as does the entire City of New Berlin with all its users. The two wet industries discharge 5 times the amount of pollutants to MMSD as do all the users in the City of New Berlin. This year the City of

New Berlin was charged \$5,200,000 for their share of MMSD's capital costs and the two wet industries were charged \$3,900. These disparities are just too staggering to go unnoticed, the PSC is capable of finding an equitable methodology to address this disparity.

An unbiased and experienced decision maker like the PSC will be able to set aside all of the rhetoric and entrenched positions which have long kept this battle from ending. We need your support of this bill to untie the hands of the PSC and be able to perform the functions the legislature intended.

Thank you.

William J. Mielke, P.E.-D.E.E.



*City Living
with a Touch of Country*

3805 S. Casper Drive
P.O. Box 921
New Berlin, Wisconsin 53151-0921
414/786-8610

June 14, 1995

Representative Marc Duff
Room 306 North
State Capital
Madison, Wisconsin 53702

Re: SB 248 & AB 434

Dear Representative Duff:

At your request, I am sending this letter in lieu of my testimony due to the adjournment of the Joint Senate and Assembly hearing yesterday.

Some of your colleagues have asked why should the state get involved with this issue with MMSD. The legislature has heard plenty of testimony on the technical merits of the validity of the sewer extension request for the Westridge Business park development in the City of New Berlin. I ask the legislature to look at this issue from the other side, not from the City of New Berlin vs. City of Milwaukee or MMSD vs. DNR. I ask you to look at it from the viewpoint of Wisconsin businesses.

Put yourself in the shoes of the citizens of the State of Wisconsin. How can we solve this problem for the businessmen and women who frankly don't care about some 1962 or 1990 map or 208 study. We have hard working businesses who hire our citizens. Business is good and they need to expand and build a new building. The State wants them to stay and expand in Wisconsin.

With reliance on MMSD sewer approval and the City's installation of those approved sewers (and lift station and force main, and interceptors and freeway crossing tunnels), a business woman notifies her landlord that she will be leaving and building a new expanded building in Westridge. She hires an architect, designs a building, secures financing, makes arrangements to purchase a lot and the City prepares to issue a building permit to start construction.

Then Wham! MMSD sits on the sewer permit for the pipe that would run from the main past her new building. This business owner does not have time to wait for MMSD, the City or DNR to get their act together, she has orders to get out and a business to run and she must be out of her existing building. Because of the Wisconsin winters, we have a narrow building season. A few months delay can kill an entire year of construction.

This business owner is being solicited by Illinois, Tennessee and several others states with all kinds of promises. This business is not looking for any handouts from Wisconsin just a promise that when government approves to install utilities it doesn't change it's mind the day before her building permit is issued.

Multiply the above scenario by 20 -30 businesses, \$50-100 million of investment in Wisconsin, and thousands of lost jobs to the Southeast corner of the State. Hostage or no hostage, the businesses that intended to invest in Wisconsin and buy land in Westridge and hire employees from all over the metropolitan area don't have time to mess around. And what do we say to the hundreds of contractors, lenders, building tradesmen, suppliers, engineers, and architects who now don't have the work; MMSD made a mistake, sorry?

SB 248 and AB 434 are bills intended to provide reasonable assurance from the State of Wisconsin to our hard working corporate and business citizens that they will not be jerked around by agencies of the State. In some ways these bill are similar to current State laws which provide deadlines for government to review subdivision plats or timelines in which we must issue building permits. We must act in a timely fashion or these are deemed approved.

For the sake of the citizens of this State, in the name of fairness, and for the good of economic prosperity, the legislature needs to provide the frame work and guidelines for the timely (and nonpolitical) issuance of sewer extensions.

Sincerely,



Steven K. Hoese AICP
Director of Planning & Community Development
City of New Berlin, Wisconsin

SKH:mlf

cc Members of Senate and Assembly Committees
Mayor Cera



WISCONSIN LEGISLATURE

P.O. Box 7882 • Madison, WI 53707-7882

TO: All Legislators

FROM: Sen. Margaret Farrow
Rep. Marc Duff

DATE: May 2, 1995

RE: LRB 0292/2 (Governing board) and LRB 1516^Q (PSC Oversight)

Fifty-three cents of every Wisconsin Clean Water Fund dollar spent to date has been spent by the Milwaukee Metropolitan Sewerage District (MMSD). Many of you have supported the allocation of dollars to the Clean Water Fund.

You probably know that MMSD and the suburban Milwaukee communities required by the DNR to contract with MMSD for sewerage services have fought a decade long-war over how best to govern the sewerage district (and ultimately manage and account for Wisconsin Clean Water Fund resources). Because of the billions of dollars sent through the Clean Water Fund to MMSD, money that could be sharenot available for other projects in the state, we believe that this is legitimately a statewide issue.

We are now introducing two bills to reform the governance and oversight of the MMSD in a manner that promotes cooperation rather than encourage conflict. We are asking for your cosponsorship of these bills. Our legislation would:

- [1] Replace the eleven member MMSD governing board with a five member board that provides a more workable basis for regional representation; and,
- [2] Bring the MMSD under State Public Service Commission oversight.

This legislation does not impact outstanding past charges which are the subject of ongoing negotiation and litigation. Rather, these two bills set in place a balanced and workable foundation to *prevent* future disagreements before they reach the point where armies of expensive lawyers and public relation specialists are needed to resolve them.

Of interest to those concerned with accountability for Clean Water Fund dollars, MMSD will need to adopt basic depreciation schedules and uniform charts of accounts for utilities as prelude to PSC oversight. Currently, MMSD does not use these basic standards and has fought in court efforts to release basic information that provides the DNR and others with the data needed to address questions of capacity and cost effectiveness.

Attached is an analysis of our two proposals, set up as a side-by-side comparison with current law. If you are interested in putting in place a good government solution to this long-festering problem, and holding MMSD more accountable for the use of Wisconsin Clean Water Fund dollars, contact Michelle Brey in Sen. Farrow's office (6-9174) or Marsha Buchholz in Rep. Duff's office at (6-1190) by the close of business Friday, May 5, 1995.

Thank you.

Tuesday,

WAUKESHA

Complete
Milwaukee
news section
is inside

FRIDAY, MAY 5, 1995

METRO EDITION

SECTION B INSIDE

THREAT TO WESTRIDGE BUSINESS PARK DEVELOPMENT

New Berlin mayor cries foul

Cera says sewerage district is blackmailing city to splinter FLOW

By JOHN G. SCHUMACHER
AND LINDA CLAWSON
of the Journal Sentinel staff

New Berlin — Mayor Mary Claire Cera on Thursday accused the Milwaukee Metropol-

itan Sewerage District of political blackmail for threatening not to approve sewer service for the Westridge Business Park under development in the city.

Cera reacted to a letter from the district on Wednesday that said the 700-acre industrial, commercial and retail project at the intersection of Interstate 43 and Moorland Road is outside the sewer service area. Denial of sewer service would threaten of-

the project.

Sewer lines to the site are being installed. Some business have been approved for construction, but nothing has been built yet.

New Berlin is part of an eight-member coalition of suburbs outside Milwaukee County called FLOW, or Fair Liquidation of Waste, that has been fighting with the sewerage district for more than a decade

over how sewer charges are billed.

In other developments Thursday, Sen. Margaret Farrow (R-Elm Grove) and FLOW attorney Peter Peshek announced that separate legislation would be introduced in the state Assembly and Senate to reorganize the sewerage district's board. Farrow and Peshek were among a number of legislators, district members and FLOW of-

officials attending an update meeting at New Berlin City Hall on the dispute.

The proposals are the first attempts to restructure the sewerage commission and its power since Republicans gained control over both chambers of the Legislature last fall.

In the letter to New Berlin, the district says sewer service

Please see SEWERS page 4

SEWERS

New Berlin mayor cries foul

From Waukesha page

could not be approved to the site because it is outside the sewer service area determined in a 1980 district facilities plan. The city has 10 days to submit information demonstrating that sewer service to the area was included in the plan, the district said.

The main issue in the FLOW dispute is the district's method of charging the suburbs for capital costs, including construction of the \$2.1 billion Deep Tunnel project. The district contends that billing for the capital costs should be based on property values; FLOW communities say billing should be based on usage.

District Executive Director Ralph Hollmon said no final decision had been made about whether to offer service to Westridge. Cera said the Westridge site was included in the sewer service plan in a 1987 study done by the Southeastern Wisconsin Regional Planning Commission.

The district has developed rules that all communities have to abide by when new sewers are approved, Hollmon said.

"All we're asking is that New Berlin follow those rules," he said. Hollmon denied that refusing to provide sewer service to Westridge was an attempt to push New Berlin into breaking ranks with the other FLOW communities and striking a separate deal with the district.

The sewerage district has tried unsuccessfully to reach deals with at least two other communities, Menomonee Falls

and Elm Grove, according to state officials. Muskego entered into its own deal with the district several years ago.

New Berlin's share of the debt with the sewerage district stands at just under \$40 million, according to district figures.

Cera Lashes Out

Cera said: "This is the MMSD's modus operandi. They have tried to put a halt to economic development in other FLOW communities as a means of blackmailing us to accept their terms. It won't work here. This project is going ahead, on time and on schedule."

Peshek said a package of bills would be introduced in the Assembly Friday to provide three things: a change in the governance of the district to seek more representation for FLOW communities; expansion of state Public Service Commission powers to regulate district matters; and a bill reversing a Supreme Court decision that allowed the district to charge based on property value.

Farrow also announced Thursday that she would propose legislation to cut the 11-member district board to 5 members, with just one representative for the City of Milwaukee. The 11-member commission has 7 Milwaukee mayoral appointees and 4 appointees from the Milwaukee County suburbs.

Farrow's board would have two representatives appointed by the governor, one of whom would be from outside the district service area; one by Milwaukee's mayor; one from the

Milwaukee county suburbs; and one from the FLOW communities.

MMSD Lambasted

"They haven't governed as a public health entity," Farrow said of the district. "They have been political and arrogant. For the betterment of the entire 27 communities served by them and more regional cooperation, we have to get this whole thing running from a technical and public health standpoint and get the politics out of it."

"It will bring the blend of interests that aren't represented on this (current) commission. It will have people who are concerned with the whole agenda of the region rather than have it driven with the agenda of the city instead of anything else being served."

Farrow raised concerns that the district's rejection of sewer service to Westridge Business Park could be a ploy aimed at extracting a separate deal between New Berlin and the sewerage district.

"Whether this is leverage or not, I don't know that those words have been said," she said. "A logically thinking person would arrive at that type of conclusion. It would concern me if that's the way this was brought forth."

LEGISLATIVE SUMMARY: LEGISLATION TO PROMOTE CONSENSUS AND ACCOUNTABILITY IN THE GOVERNANCE OF MMSD
STATE SEN. MARGARET FARROW (ELEM GROVE)

PROPOSAL #1: Sen. Farrow's legislation would establish state Public Service Commission (PSC) oversight for ratemaking purposes over the Milwaukee Metropolitan Sewerage District (MMSD).

Current law

MMSD is currently regulated only on the basis of complaint. MMSD does not now maintain the basic continuing property records to develop depreciation records like other regulated entities and it does not follow the uniform system of accounts for utilities. There is no formal review of MMSD rates (which are among the highest of any large municipality in the nation).

Farrow Proposal

The PSC would require MMSD to conform to basic continuing property records to develop depreciation rates like other regulated entities and to adopt a uniform system of accounts. The PSC would have review authority over MMSD rates.

Rationale for PSC review of MMSD rates: If MMSD were a city, it would have the sixth highest expenditures of any municipality in Wisconsin, behind only the cities of Milwaukee, Madison, Green Bay, Racine and Kenosha. MMSD charges some of the highest sewerage rates in the nation when compared to other major metropolitan areas (see attached chart). Yet, MMSD refuses to abide by basic continuing property records (for purposes of developing depreciation records) or to follow a uniform chart of accounts for utilities, and is subject to no formal review of its rates other than review forced by the filing of a complaint.

PROPOSAL #2: Sen. Farrow's legislation would replace the current 11 member MMSD governing board with a new 5 member board.

Current law

There are eleven members of the MMSD commission. Seven of the commissioners are appointed by the mayor of Milwaukee and three of those seven must be elected officials. The other four commissioners are appointed by an executive council composed of the elected executive officers of each city, village and town that is wholly or partly within the boundaries of the district, except for Milwaukee.

Farrow Proposal

There are five members of the MMSD commission. One member is appointed by the mayor of Milwaukee, one is appointed by an executive council that consists of the elected executive officers of each city, village or town that is wholly or partly within Milwaukee County, one is appointed by a similar council of elected executive officers of each city, village or town served by the district and outside Milwaukee County, and two are appointed by the governor. No commissioners may be elected officials.

Rationale for new governance structure: The current governing structure is skewed in a way as to almost ensure dispute, rather than foster consensus, among the communities within the district. This fact has been obvious to anyone familiar with MMSD and the litigation and disagreement that has been driven by a divisive governing structure. The proposed new structure treats all communities equally and seeks to promote more regional rather than narrowly parochial and political interests on the commission.

For more information, please contact Mike Eaton in the office of State Sen. Margaret Farrow, at 800/863-8883. Ranking of MMSD rates and charges relative to other large US metropolitan areas from American Metropolitan Sewerage Association (AMSA) 1993 Financial Survey of its members. Summary of current law and legislative proposals drawn from State of Wisconsin, Legislative Reference Bureau.



IMMEDIATE RESPONSE NEEDED!!!

**MARC
DUFF**

STATE REPRESENTATIVE

Chair: Environment & Utilities
Vice Chair: Urban Education
Co-Chair: Joint Legislative Council

Date: May 4, 1995

To: All Legislators

From: State Rep. Marc Duff 

Re: Cosponsorship of LRB-3721 regarding MMSD
authority for capital cost charges, etc.

This proposal includes several provisions which would affect the communities receiving service from the Milwaukee Metropolitan Sewerage District (MMSD). LRB-3721 includes the following:

- 1) The bill requires MMSD to calculate their charges based on how much a community's sewerage discharges contribute to capital costs. This bill also abolishes MMSD's authority to recover capital costs through a property tax or property value basis.
- 2) The bill allows MMSD to assess each municipality for the costs of storm water management and other projects in that municipality, rather than spreading the cost to all in the district.
- 3) The bill prohibits MMSD from planning, designing and acquiring property for park land, harbor improvements or fire protection service purposes. (MMSD has been the cash cow for several non-sewer related activities, passing the cost to others)
- 4) Current law allows FLOW communities to receive a \$120 million loan from the Clean Water Fund to pay for the capital costs they owe to MMSD, once an agreement is reached. The bill instead allows FLOW communities to receive the loan if MMSD accepts their payment or if a court orders FLOW to pay an amount to MMSD.
- 5) Finally, the bill requires DNR to evaluate whether waste water treatment would be improved by allowing other entities to provide sewer services to the MMSD service area.

It should be noted this does not reverse what FLOW owes from past bills to MMSD. That will continue to be a negotiated settlement. It only makes the changes for future charges.

Please refer to the attached LRB summary and LFB table which shows how charges would be changed for each community. If you would like to cosponsor LRB-3721, please call 6-1190 by Friday, May 5.



ATTACHMENT I

Milwaukee Metropolitan Sewerage District Capital Cost and User Charges Billed 1993, Paid 1994

Community	1993 Equalized Value	Calculated by MMSD ⁽¹⁾	1993 MMSD Capital Charges	% to Total	1993 MMSD User Charges	% to Total	Capital Charge if Calculated at % of User Charges	Difference Between Actual Capital Charges & Capital Charges at User Percentage
Bayside	\$351,292,300	\$1,054,082	1.01%	\$177,551	0.33%	\$348,124	\$705,958	
Brookfield	1,145,883,400	3,437,650	3.29	683,251	1.28	1,339,648	2,098,002	
Brown Deer	651,039,200	1,953,498	1.87	559,332	1.05	1,096,681	856,817	
Butler	125,492,400	376,477	0.36	141,518	0.27	277,474	99,003	
Caddy Vista S.D.	14,109,100	42,327	0.04	28,524	0.05	55,927	- 13,600	
Cudahy	535,711,100	1,607,446	1.54	1,011,911	1.90	1,984,051	- 376,605	
Elm Grove	510,163,600	1,330,491	1.46	225,531	0.42	442,198	1,088,293	
Fox Point	545,808,800	1,637,745	1.57	277,580	0.52	544,250	1,093,495	
Franklin	929,131,810	2,787,938	2.67	786,045	1.47	1,541,196	1,246,742	
Germentown	499,920,000	1,499,760	1.44	505,431	0.95	990,997	508,763	
Glendale	938,209,500	2,815,177	2.69	714,479	1.34	1,400,877	1,414,300	
Greendale	777,069,600	2,331,663	2.23	545,126	1.02	1,068,827	1,262,836	
Greenfield	1,377,848,100	4,134,349	3.96	1,228,286	2.30	2,408,297	1,726,052	
Hales Corners	300,508,250	901,700	0.86	304,920	0.57	597,856	303,844	
Menomonee Falls	1,430,125,500	4,290,377	4.11	985,649	1.85	1,932,559	2,357,817	
Mequon	1,668,907,800	5,006,723	4.79	651,944	1.22	1,278,265	3,728,459	
Milwaukee ⁽²⁾	13,742,057,551	41,234,198	39.46	34,189,768	64.15	67,035,787	- 25,801,589	
Muskego				585,558	1.10			
New Berlin	1,605,188,600	4,815,566	4.61	1,105,230	2.07	2,167,022	2,648,544	
Oak Creek	761,269,998	2,284,254	2.19	938,997	1.76	1,841,089	443,165	
River Hills	286,085,900	858,425	0.82	62,179	0.12	121,914	736,511	
Saint Francis	243,640,200	731,063	0.70	327,326	0.61	641,787	89,276	
Shorewood	651,593,000	1,955,160	1.87	508,337	0.95	996,695	958,465	
Thiensville	150,386,500	451,160	0.43	115,767	0.22	226,984	224,175	
Wauwatosa	2,492,368,100	7,478,559	7.16	2,378,861	4.46	4,664,226	2,814,333	
West Allis	2,108,525,400	6,326,808	6.05	2,773,218	5.20	5,437,441	889,367	
West Milwaukee	156,215,900	468,739	0.45	950,414	1.78	1,863,474	- 1,394,735	
Whitefish Bay	829,570,600	2,489,196	2.38	534,902	1.00	1,048,781	1,440,415	
TOTAL	\$34,828,122,209	\$104,500,531	100.00%	\$53,324,162⁽⁴⁾	100.00%	\$104,500,531	\$0	

Notes:

- (1) Equalized value includes the portion of the municipality that is in the MMSD service area. The following municipalities are partially in the service area: Brookfield, Franklin, Germantown, Menomonee Falls, Mequon, New Berlin and Oak Creek.
- (2) Milwaukee user charges include \$397,483 billed separately for Milwaukee water plants.
- (3) Muskego signed a separate contract with MMSD in December, 1990, for capital cost recovery. It is not based on equalized value, but rather on a type of use-based calculation. Muskego made back payments in December 1990 of \$6,933,099, and payments since then totalling \$472,208, including \$190,147 in 1994, billed in 1993. Muskego's 1993 equalized value was \$723,641,000, which would have equalled a capital cost charge of \$2,170,923 if billed at \$3 per \$1,000 of value.
- (4) Total user charges do not include \$26,527 billed to specific users, including \$23,675 for the Milwaukee County landfill, \$1,764 for future parkland in Milwaukee County and \$1,088 for a Waste Management, Inc. site in Muskego.

CAPITAL COST RECOVERY ISSUE
USER FEE VERSUS AD VALOREM CHARGING

1. Nearly one half of the grant funds given to communities is used to build facilities to convey and treat clear water leakage into the sewer systems.
2. Since regional wastewater treatment agencies do not own, operate, or maintain the local collector sewers in the municipalities they serve, they need to send a cost price signal to those municipalities in order to create the incentive to repair the sewers and to remove the clear water flows.
3. An ad valorem charging system lacks built-in incentives for conserving water or reducing the amount of pollutants users discharge.
4. As a result of not offering communities and users incentives for conservation, pollution reduction, or proper maintenance, a regional agency employing an ad valorem charging system is subject to misuse and overuse which in turn is likely to cause that agency to seek additional State assistance to construct additional facilities.
5. An ad valorem charging system is an inequitable method for recovering the local share of capital costs:
 - a) Light users and high value businesses under an ad valorem system subsidize heavy users--namely wet industry; and
 - b) Non-profit organizations are tax exempt and, therefore, pay nothing toward their share of the capital costs; and
 - c) Wet industries in a district employing an ad valorem charging system enjoy an unfair economic advantage over wet industries in user-fee districts.
6. By providing grants to user-fee and ad valorem districts alike, the State supports the inequities inherent in an ad valorem charging system and the competition it creates among Wisconsin Communities in regard to attracting and retaining wet industries.
7. An ad valorem charging system discourages integration of wet and service industries and promotes wet industry "islands". Light users are unfairly penalized for locating in a district which uses ad-valorem charges.
8. A capital cost recovery system based on property value discourages capital improvements to property and business additions of personal property. This conflicts with the laudable and fundamental public policy that all property should be put to its best use. Why should adding a computer to your business or putting aluminum siding on your house increase your sewer charges?
9. Any reduction in a communities sewer leakage or a users discharge of pollutants will result in less pollution to Wisconsin's streams and lakes.
10. All other utilities providing a measurable service charge for their capital costs based on use.



MARC DUFF

STATE REPRESENTATIVE

Chair: Environment & Utilities
Vice Chair: Urban Education
Co-Chair: Joint Legislative Council

DATE: May 11, 1995

TO: All Legislators and Staff

FROM: State Rep. Marc Duff

RE: Misleading Information Included in Broydrick & Associates and Jim Tenuta Memorandums on MMSD.

Broydrick & Associates and Jim Tenuta issued memorandums regarding LRB-3721 (MMSD authority for capital cost changes) which I believe contains false and misleading information. Because this appears to be typical of the tactics of MMSD, I would encourage all members to question any information provided to them by them or their lobbyists.

I would like to correct the following misleading assertions:

- 1) The memo falsely asserts the bill would reverse past bills owed by FLOW to MMSD. The Legislature cannot address this issue and I have no intention of making past costs a part of this bill. I have a legal opinion from the LRB drafting attorneys which confirm that the bill is not retroactive. It may be interesting to note that MMSD attempted to retroactively affect past bills owed by FLOW in 1989 Senate Bill 65. We won't resort to such tactics.
- 2) The memo is misleading by saying FLOW insists on paying half of what Milwaukee County taxpayers pay for service. In fact, FLOW has offered to pay 150% more than Milwaukee County taxpayers based on usage. The real tax shifting is because of the way MMSD levies property taxes for sewer construction costs. Attached is a chart which shows the tax shifting that occurred in 1994. In addition to the FLOW communities, the taxpayers of Wauwatosa, West Allis, Whitefish Bay, Bayside, Brown Deer, Greendale, Hales Corners, Shorewood, Franklin, Glendale, Fox Point, Greenfield, River Hills and Oak Creek all pay more than they would under the generally accepted use based method of charging for sewerage system capital costs!
- 3) The memo is misleading about the decision of the PSC as to the reasonableness of their charges. A memorandum addressed to me from the PSC states "PSC staff would not necessarily agree with the broader interpretations of Broydrick & Associates set forth in their memorandum of May 8, 1995, nor their characterizations of PSC decisions in their memorandum of May 9, 1995, items (4) and (5)."

OFFICE: State Capitol
PO. Box 8952
Madison, WI 53708-8952
608-266-1190

HOME: 1811 South Elm Grove Road
New Berlin, WI 53151
414-782-0763

TOLL-FREE HOTLINE: 1-800-362-9472
E-MAIL: USWLSA98@IBMMAIL.COM



4) The memo improperly asserts the bill would adversely affect their bond costs. Staff from the Legislative Council question this assertion and indicate the bill "has nothing to do" with the bond rating of MMSD because the full faith and credit behind the bonds are unchanged. In fact, the bill includes language that in the event of an unexpected revenue shortfall, MMSD could levy property taxes to pay their general obligation bonds. Also, PSC staff explained to me that the bond cost benefit to MMSD from using a property value basis for assessing capital costs was a one time benefit at the time of creation of MMSD. Therefore, the PSC staff questions assertions that this bill will affect MMSD's bond costs.

5) The memo also is very misleading on stormwater management by MMSD. According to the DNR, stormwater management is a municipal function. MMSD's attempt to be permitted by the DNR for stormwater management was recently denied. Therefore, MMSD should not even be spending anything on stormwater management!

We hope you will see through the MMSD and Broydrick & Associates misleading information. I hope you find this helpful and will contact me with any other questions.

**TABLE
BREAKDOWN BY INDIVIDUAL COMMUNITY**

Community	% of Use Charge	% of Property Value Levy	\$ Overcharged ⁽²⁾ for Capital Costs in 1994
Bayside	0.32	1.00	\$ 711,966
Brookfield	1.25	3.28	2,114,846
Brown Deer	1.06	1.86	829,790
Butler	0.28	0.36	80,465
Caddy Vista	0.05	0.04	-12,626
Cudahy	1.93	1.53	-434,229
Elm Grove	0.41	1.46	1,096,222
Fox Point	0.50	1.56	1,102,887
Franklin	1.52	2.66	1,181,220
Germantown	1.01	1.43	427,416
Glendale	1.32	2.68	1,416,461
Greendale	1.00	2.22	1,273,461
Greenfield	2.23	3.94	1,766,219
Hales Corners	0.55	0.86	314,162
Menomonee Falls	1.92	4.09	2,253,807
Mequon	1.21	4.77	3,724,184
Milwaukee	64.09	39.31	-26,716,825
Muskego	1.08	⁽¹⁾ 0.00	0.00
New Berlin	2.13	4.96	2,938,011
Oak Creek	1.82	2.18	352,386
River Hills	0.11	0.82	738,615
Shorewood	0.92	1.86	975,666
St. Francis	0.61	0.70	84,842
Thiensville	0.21	0.43	228,180
Wauwatosa	4.46	7.13	2,746,168
West Allis	5.17	6.03	844,095
West Milwaukee	1.85	0.45	-1,495,904
Whitefish Bay	0.97	2.37	1,458,515

- (1) Muskego is not charged based on property value
- (2) The amount a community would have been overcharged in 1994 if the capital charges were based on user charge data from 1993.