

**SUMMARY:**

District Staff recently became aware of a practice outside the District whereby a municipality allowed connections to sanitary sewers using extraordinarily long building sewers. This practice hinders the District in keeping track of how much utilization of the District's system is being made by this municipality and others similarly situated.

The proposed rule amendments do the following:

- 1) redefine building sewer with the effect that unusually long builder sewers must comply with existing rules for sewer extensions; and
- 2) establishes capacity utilization reporting requirements for those municipalities outside the District that receive sewerage service on a basis other than by contract.

These rules require a notice and public hearing prior to Commission adoption.

**ATTACHMENTS:** KEY ISSUES  RESOLUTION  FISCAL NOTE  BACKGROUND

10/31/91  
HJM/JF/LS1126  
Atts.

COMMITTEE ACTION

DATE

COMMISSION ACTION

DATE



**MARC  
DUFF**

STATE REPRESENTATIVE

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

July 31, 1995

*file copy*

Mary Claire Cera, Mayor  
City of New Berlin  
3805 S. Casper Drive  
New Berlin, WI 53151

Dear Mayor Cera:

Due to the recent developments with the partial Westridge hook-up and in Madison regarding legislation modifying the procedure MMSD can use for determining sewer connections, I feel it is important to inform you about additional actions the city may want to take in light of the situation.

As you know, Assembly Speaker David Prosser suggested that a vote be delayed on the sewer connection legislation so that he could personally intercede to resolve differences between FLOW and MMSD. He stated that if significant progress was not made, he would put his full support behind the legislation. Therefore, I believe it is vitally important that New Berlin immediately file requests to MMSD for all outstanding connections, including the remaining portion of the Westridge development. It would be more difficult for the Speaker to resolve differences on the connection issue if no requests are pending before MMSD.

You should also know that the lobbyist for MMSD, Bill Broydrick, told me that MMSD would act favorably on a request by New Berlin that the remainder of Westridge be connected. He consistently stated to me that MMSD cannot approve a connection if an application was not before the commission.

I hope this information is helpful. I will continue to work with Speaker Prosser with the goal of resolving the dispute.

Sincerely,

Marc C. Duff  
State Representative  
98th Assembly District



**RUEKERT|MIELKE, INC.**

W239 N1812 Rockwood Drive  
Waukesha, Wisconsin 53188-1113

**FROM: WILLIAM J. MIELKE**  
**PHONE: (414) 542-5733**  
**FAX: (414) 542-5631**

**FAX TO:**

**NAME:** REPRESENTATIVE MARC DUFF

**COMPANY:**

**FAX NUMBER:** 608/266-7038

**DATE:** JUNE 16, 1995

**PROJECT:**

**NUMBER OF PAGES (INCLUDING THIS PAGE) 5**

Attached is the DNR and SEWRPC approval of an interim sewer service plan to resolve the Westridge MMSD problem. We had to propose a holding tank for the development in order to obtain DNR approval to begin construction of the sewer system. This should hopefully take some of the pressure off of New Berlin relative to working with MMSD.

**Bill**



George E. Meyer  
Secretary

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

101 South Webster Street  
PO Box 7821  
Madison, Wisconsin 53707  
TELEPHONE 608-267-7694  
TELEFAX 608-267-7664  
TDD 608-267-6897

June 16, 1995

P&S Number: 95-0945A  
REVISION

William Bowers, Clerk  
City of New Berlin  
3803 S. Casper Dr.  
New Berlin, WI 53151

Dear Mr Bowers:

The Division for Environmental Quality is conditionally approving revised plans for sanitary sewers and a grinder pump system at New Berlin, Wisconsin, submitted under the seal of Ken Ward, Professional Engineer, Ruekert and Mielke, Inc., Waukesha, Wisconsin, and resubmitted for approval on June 16, 1995. The sanitary sewers will be installed on Westridge Drive, West Court and East Court. The grinder pumps will be installed in MH 40. This system will discharge to a temporary holding tank which requires approval by the Department of Industry, Labor and Human Relations. This Department concurs with the installation of the temporary holding tank.

The Milwaukee Metropolitan Sewerage District (MMSD) reviewed the previously submitted plans and found them to be in conformance with MMSD's Rules and Regulations concerning sewer plan content and sewer design. We noted that the MMSD letter of June 7, 1995 transmitting the original plans for the project to the Department contained language different from that normally included in MMSD transmittals. The MMSD letter for this project indicated that MMSD staff were not recommending Commission approval of the plans and would notify WDNRR of subsequent Commission action. The MMSD letter nevertheless requested the Department's cooperation in reviewing the plans and sending the results to MMSD. It was not clear from the MMSD letter when owner approval would be given.

Due to the above confusion and good faith commitments that were made by the city and others, the Department is willing to accept the use of a temporary holding tank (subject to DILHR approval) and grinder pump system to service this development. The Department expects and insists that the City take responsibility for servicing and maintaining the temporary holding tank and grinder pump systems. The Department also expects that the City will abandon this temporary arrangement within seven (7) days of receiving official owner approval notice from MMSD and that the above sanitary sewers may discharge to the existing MMSD approved sewer system on Moorland road.

Post-It™ brand fax transmittal memo 7671 # of pages = 3

To William Mielke	From John Melby
Co.	Co.
Dept.	Phone #
Fax # 414-542-5631	Fax # 608-267-7664



Mr. William Bowers - June 16, 1995

2

The specifications for the project will be Standard Specifications for Sewer and Water Construction in Wisconsin, Fifth Edition, March 1, 1988, as amended by Addendum No. 1, January 2, 1992, a copy of which is on file with this Division.

The plans and other reports on file with the Department were used by the Department as the basis for conditional approval.

The plans are hereby approved in accordance with s. 144.04, Statutes, as attested by affixing on the plans, the stamp of approval Number 95-0945, subject to the following conditions:

1. That a preconstruction conference be held to familiarize the construction contractor(s) and resident inspector(s) with the erosion control and dewatering requirements and all other provisions and conditions of the approved plans and specifications.
2. That a competent resident inspector be provided during the course of construction.
3. That erosion control methods be used to prevent siltation to lands and waterways adjoining the construction area. These methods shall include but not be limited to the following:
  - a. Siltation fences,
  - b. Trench stabilization, and
  - c. Immediate mulching and seeding.
4. That all storm and other clear water including that from sump pumps, roof drains, cistern overflows, and building foundation drains be excluded from these approved sanitary sewers, that street and building sewers be laid in such a manner as to minimize entrance of groundwater (ILHR 82.36(3)(c)1., Wis. Adm. Code), and that the building sewers and drains be installed to conform to the state plumbing regulations (ILHR 82.40(8)(c), Wis. Adm. Code).
5. That no connections be made to the collection system until the temporary holding tank and grinder pump system has been installed and is operational.
6. That the improvements be installed in accordance with the plans, and the above conditions, or subsequent essential and approved modifications.

The Department has the authority under ss. 144.025(2)(c) and (t) and 162.01, Statutes, to adopt rules for the construction, installation, use, and operation of practicable and available systems and for obtaining drinking water for human consumption. Chapters NR 108, 110, and 811, Wis. Adm. Code, have been adopted by the Department pursuant to this statutory authority. The Department has the authority to approve, conditionally approve, or deny plans under s. 144.04, Statutes.

The plans have been reviewed in accordance with s.144.04, Wisconsin Statutes, for compliance with Chapters NR 108, 110 and 811, Wis. Adm. Code (or any other applicable section of the Wisconsin Administrative code or Statutes which may be specifically referenced in the conditions above). This letter should not be construed as an approval for activities requiring approval under other Statutes or by other federal, state or local agencies.

JUN-16-95 FRI 14:42 RUEKERT I MIELKE INC.

JUN-16-1995 11:59

WASTEWATER MANAGEMENT

608 267 7038

P. 04  
F. 03/95

Mr. William Bowers - June 16, 1995

3

The Division reserves the right to order changes or additions should conditions arise making this necessary.

If you believe that you have a right to challenge this decision, you should know that Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions must be filed.

For judicial review of a decision pursuant to s. 227.52 and 227.53, Statutes, you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review shall name the Department of Natural Resources as the respondent.

To request a contested case hearing pursuant to s. 227.42, Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources. The filing of a request for a contested case hearing is not a prerequisite for judicial review and does not extend the 30-day period for filing a petition for judicial review.

This notice is provided pursuant to s. 227.48(2), Stats.

In case construction of this improvement has not commenced or contracts awarded to complete this improvement within four years from this date, this approval shall become void. After four years a new application and plan submittal must be made and approval obtained of this or other plans before any construction work is undertaken.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES  
For the Secretary



John E. Melby, Acting Chief  
Municipal Wastewater Section  
Bureau of Wastewater Management

JEM:wbb

cc: Ken Ward - Ruckert and Mielke, Inc.  
Dan Warren - Ruckert and Mielke, Inc.  
Southeast District (WW Supv.)  
Southeast District (Engineer)  
SEWRPC (SSE-216-94)

## SOUTHEASTERN WISCONSIN REGIONAL PLANNING COMMISSION

916 N. EAST AVENUE

P.O. BOX 1607

WAUKESHA, WISCONSIN 53187-1807

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TELECOPIER (414) 547-1103

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WAUKESHA



June 16, 1995

Mr. William J. Mielke, P.E., President  
Ruekert & Mielke, Inc.  
W239 N1812 Rockwood Drive  
Waukesha, Wisconsin 53188-1113

Dear Mr. Mielke:

This is to acknowledge receipt of your letter of June 15, 1995, requesting, on behalf of the City of New Berlin, that the Commission review and comment on proposed sanitary sewer extensions in Westridge Drive, East Court, and West Court, and on a proposed temporary holding tank connected to the sewer in Westridge Drive, all to serve a 16-lot development located south of IH 43 and west of Moorland Road in the City of New Berlin, Waukesha County.

The area to be served lies within the currently approved New Berlin sewer service area, and the proposed sewers are designed to serve as a component of a permanent public sewer system to be connected ultimately to the Milwaukee metropolitan sewerage system through the City of New Berlin sewerage system. The proposed holding tank is to be used as an interim measure pending the development of needed intermunicipal agreements governing the connection of the sewers concerned through the New Berlin sewer system tributary to the Milwaukee metropolitan sewerage system.

Please be advised that the Commission staff has reviewed the proposed project and has determined that the project—as an interim measure pending the execution of an agreement between the City of New Berlin and the Milwaukee Metropolitan Sewerage District—is in conformance with and will serve to implement the regional plans prepared and adopted by the Commission.

Should you have any questions concerning this matter, please do not hesitate to contact us.

Sincerely,

Kurt W. Bauer  
Executive Director

KWB/RPB/pk  
MIELKE.rpb

Village of **Elm Grove**



13600 Juneau Boulevard  
Elm Grove, Wisconsin 53122-0906  
(414) 782-6700

June 7, 1995


Representative Marc Duff  
State Assembly  
P.O. Box 8952  
Madison, WI 53708

Dear Representative Duff:

I want to thank you again for your effort with the FLOW  
Legislation. This issue is Number #1 with our citizens, even  
more important than the State Budget.

Please keep focused on this issue, you have our 100% support.

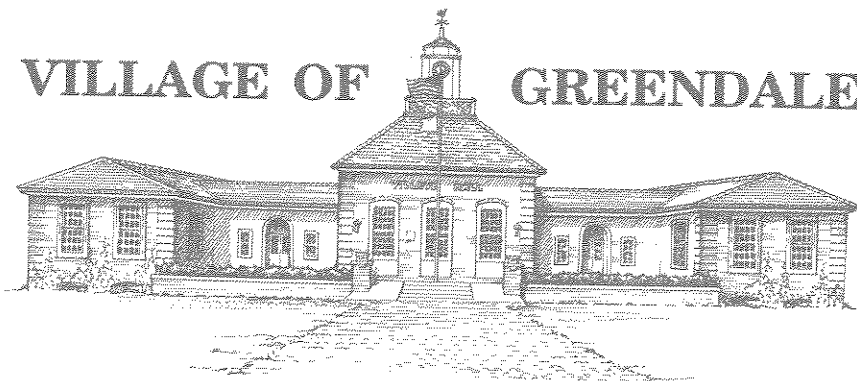
Very truly yours,

  
James W. Nortman <sup>for</sup>  
Village President

JWN:pd



# VILLAGE OF GREENDALE



6500 NORTHWAY  
P.O. BOX 257  
GREENDALE, WI 53129-0257  
414-423-2100  
FAX 414-423-2107

June 1, 1995

The Honorable Marc Duff  
State Capitol-Room 306N  
P. O. Box 8952  
Madison, WI 53708

Dear Representative Duff,

This letter is in response to the May 16th hearing you chaired concerning AB-374. I understand that as the author of the bill and because of the area you are elected to represent, you have significant built in biases toward this matter. One can still oppose or disagree and still remain civil to all participants in a debate. Unfortunately, you seemed more interested in putting on a show for the your constituents rather than holding a legitimate hearing on this matter. Your lack of time management left myself and others unable to provide testimony opposing AB-374. I am sure that as time passes, your tenure and ability as a committee chairman will improve.

I was also perplexed with what I perceived to be an anti-Milwaukee business (particularly, to the brewing, frozen food or any other industry that uses significant amounts of water) philosophy. These companies provide significant employment opportunities to people who live throughout Greater Milwaukee. More than likely, (if approved) your proposed rate formula within AB-374 will either expedite the downsizing and transferring of production to other affiliated plants or require companies to use technology to recirculate and recycle the amount of water they currently use. This could mean a loss or transfer of jobs to another part of the state or country meaning employment transfer or layoffs. Secondly, the use of technology to reduce the industrial water usage will cause MMSD's operational costs to become the responsibility of the residential property owner. This cost to the homeowner will increase as each business moves, reduces production or implements a water recovery system. Once this transpires, will the FLOW communities run to the legislature and again blame MMSD for their self-inflicted economic problems?

The potential for continual and significant residential rate increases, loss of jobs due to corporate transfers, reduction of production at current businesses and reduced residential construction could become a reality if this rate formula is adopted. The new rate formula would do more to reduce development than any suburban impact fee could ever hope to accomplish. This proposed

rate formula would have more negative local and personal (job loss or corporate transfers) economic impacts on communities than any utility reduction costs to the community. If FLOW communities wish to reduce development and growth, that is a local issue but we in Milwaukee wish to continue promoting and maintaining a positive relationship with private industry.

Moving on, I truly believe that communities such as Mequon, Brookfield and New Berlin and other FLOW communities are using this legislation (with your assistance) as a last gasp effort to not pay their fair share of utility costs. At a variety of state and regional meetings I hear the Mayors of New Berlin and Brookfield constantly talk about the positive attributes of their communities' residential and economic growth and development. The primary reason this development takes place is the ability to access and hook up to utilities. It is easy to talk about commercial and industrial development when your community can get by without paying the fair cost of utilities.

The reason they (FLOW communities) would rather pay attorney fees and a \$16,000 a day interest fee rather than settle this matter is quite simple. A settlement would increase taxes to the affected communities. This would create political problems for local elected officials, make locating a business equally attractive to the Milwaukee area and thereby create increased competition.

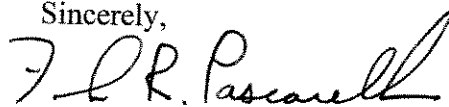
Most importantly, it would mean that after many years of political rhetoric, FLOW communities would have to take a responsible leadership position on this matter. Currently, it is easier to pay attorneys and consultants to argue your point rather than resolve a difficult and costly issue.

It is also my understanding that you authored this legislation in the hopes of placating local elected constituents. Please provide me comment on this matter because your conduct at the May 16, 1995 Hearing was anything but one of ambivalence or facilitating. Your determination to fast track this matter led me to believe that you truly believed (although I disagree with your position) in this legislation.

In closing, AB-374 is proposed legislation that favors FLOW communities, significantly impacts the cost of doing business in the Greater Milwaukee area and can in my opinion be viewed as anti-Milwaukee legislation. This philosophy may play well to the people within your district but does nothing to improve the economic or intergovernmental relationships between communities.

As always, I look forward to your comments and can be contacted at (414-423-2105) if you would personally like to discuss this matter further.

Sincerely,



Frank R. Pascarella  
Village Manager

cc: Ralph E. Hollmon, MMSD



# CITY OF WEST ALLIS

WISCONSIN

**MAYOR'S OFFICE**

VIA FAX

**JOHN TURCK**  
*Mayor*

June 8, 1995

Senator Robert L. Cowles, Chair  
Environment & Energy Committee  
P.O. Box 7882  
Madison WI 53707-7882

**SUBJECT: SB206/AB382 PSC Oversight of MMSD  
SB208/AB381 MMSD Governance Changes**

Dear Senator Cowles:

This letter is in regard to the City's position relative to the above two proposed bills. Unfortunately, neither Paul Ziehler, our City Administrative Officer, nor myself can attend the hearing on these two bills on June 9 at 9:30 a.m. in Madison. Both of us will be out of town attending family functions.

In the place of formal testimony at the hearing, we are sending this letter to register our opposition to both bills. Our reasons are stated below.

SB206/AB382 - PSC Oversight of MMSD

The PSC should not be given oversight of MMSD. Currently, City sanitary sewer utility rates are set locally and not approved by the PSC. If the PSC is given authority to control metropolitan sanitary sewer rates, it is only a matter of time until someone extends the PSC's oversight to our municipal sanitary sewer utility. Currently, this is a decision made locally. For such a change to occur would be another state mandate affecting local control. Local elected officials are the closest to the people. The decision-making authority for local sanitary sewer utility rate setting should remain at the municipal level.

SB208/AB381 - MMSD Governance Changes

The five member board as proposed in the legislation should not be passed. The proposal does not maintain the "one man-one vote" concept which is a basic democratic principle affirmed by the U.S. Supreme Court. If some changes need to be made, this principle should continue to apply. Further, all appointments should be done locally, not at the state level. The Governor does not belong involved in the appointment process.

Senator Robert L. Cowles, Chair  
June 8, 1995  
Page 2

Using 1990 census figures for the City of Milwaukee, other Milwaukee County municipalities, and municipalities outside Milwaukee County, the percentages of representation out of a total population of 1,115,888 people is as follows: City of Milwaukee - 628,088 (56.3%), other Milwaukee County municipalities - 331,187 (29.7%), and municipalities outside Milwaukee County - 156,613 (14.0%). Using these percentages and choosing whatever size board you want, the board could be changed to be structured accordingly:


<u>Board Size</u>	<u>Milwaukee</u>	<u>Milw. County Municipalities</u>	<u>Outside Milw. Co. Municipalities</u>
5	3	1	1
7	4	2	1
9	5	3	1
11	6	3	2
13	7	4	2

A board size of 5 or 13 might be too small or too large; however, by choosing the 7, 9, or 11 board size, you would get a manageable and fair/equitable distribution of representation.

In summary, we oppose both bills as presently drafted.

Thank you for your consideration of our position on these two bills. If you have any questions or need further information or clarification, please feel free to contact Mr. Ziehler or me.

Sincerely,

  
John Turck,  
Mayor

JT:PMZ:jfw

cc: Environment & Energy  
Cmte. Members  
Representative Bell  
Representative Duff  
Representative Krusick  
Senator Farrow  
Senator Rosenzweig

Ralph Hollmon  
Ed Huck  
Dan Thompson  
City Legislative Committee

6/8/95

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

Dear Representative Duff,

On May 16, 1995 the Assembly Environment and Utilities Committee held a public hearing on AB 374. At that hearing there was some testimony and many questions from the committee about the status of negotiations to settle the dispute over what the FLOW communities owe MMSD for past service.

You and other members of the committee asked me to prepare an exhibit describing the status of settlement offers. The attached exhibit lists the offers put forward by both sides since March, 1990.

March 1990 is an important benchmark because that is the date of the "almost settlement" mediated by the Governors' office with the direct participation of DOA Secretary James Klauser. That settlement agreement provided for a payment currently present valued at \$257,500,000 to MMSD to pay for all FLOW service through the year 2012. All the parties agreed this was a fair financial settlement.

The attached exhibit shows that since 1990 the FLOW communities have bargained in good faith and have significantly increased the proposed settlement amount. Remember that the 1990 settlement figure was already more than we would have been charged under our contracts with MMSD.

The exhibit also shows that it is MMSD who has shown bad faith in bargaining since 1990.

You and your colleagues have heard that the FLOW communities are not willing to pay our fair share. This is simply not true.

As a matter of fact, the FLOW proposal in the fall of 1993 proposed that the FLOW communities pay 150% of what Milwaukee County communities pay ! This offer is still on the table. One of the areas of great difficulty in negotiations since 1990 has been the MMSDs' insistence that any settlement contract must be for 20 or 25 years and that during

that period FLOW communities must be barred from seeking any legislative solutions to governance problems.

We continue to believe that AB 374 is needed to help create a realistic pricing structure for the future. We know it will not and can not settle the dispute over the amount owed for past service.

Many of those who spoke in opposition to AB 374 called the "Sewer Wars" a local issue and insisted that the legislature stay out of it. I respectfully must disagree.

The MMSD is a special use district created by the legislature. It exists at the pleasure of the legislature and all of its powers are provided by the legislature. Evidence of the legislatures' proper role in these matters is the MMSDs' own attempts to insert explicit taxing authority statutory language in two budget bills and their sponsorship of SB 65 in 1989.

Allow me to use this opportunity to reiterate one other point which received little attention at your hearing except for the testimony of Mr. Mielke. I am speaking of the environmental aspects of the ad valorem billing system. The rate structure in use by MMSD encourages wasteful use of water and wastewater services by sending a price signal to heavy users that reducing water usage and wastewater generation is not something that has value. Frankly, acquiescence to this pricing system by a state legislature, which has a proud progressive tradition of encouraging and demanding fair pricing and environmentally sound conservation practices by providers of electric and gas service, has me confused. Shouldn't we as a state be pushing all wastewater providers to put in place aggressive demand side management programs?

Sincerely,



Neil H. Palmer

cc Members of Assembly Environment and Utilities Committee  
Senator Margaret Farrow

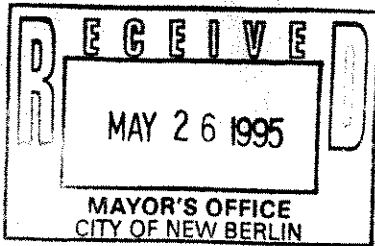
## **NEGOTIATION MOVEMENT**

### **Present Value Comparison of FLOW - MMSD Settlement Offers**

<b><u>FLOW's Settlement Offers</u></b>	<b><u>Amount</u></b>	<b><u>Key Elements of Agreement</u></b>
March 1990	\$257,500,000	(Agreed Upon Offer)
Fall 1993	\$296,200,000	150% of what Milwaukee County pays based on a rate per million gallons
Winter 1994	\$329,300,000	Cash for WPAP and the same as Milwaukee County for non-WPAP
<b><u>MMSD's Settlement Offers</u></b>		
March 1990	\$257,500,000	(Agreed Upon Offer)
November 1992	\$440,100,000	Arrearage payment plus full ad valorem for the future
Fall 1993	\$417,500,000	18% discount on arrearages, ad valorem in future
Winter 1994	\$401,200,000	\$30 million arrearages, \$3.00 tax rate to 2007 then full ad valorem

#### **NOTES:**

1. Offers stated as present worth costs as of January 1995, for FLOW's share of MMSD existing and projected capital costs from 1980 through 2012.
2. In March 1990, a financial settlement was reached between all parties with the assistance from the Governor's office. This settlement broke down because of disputes over the amount of capacity the FLOW Communities were purchasing.
3. Winter 1994 offer by MMSD was presented by independent facilitators as acceptable to MMSD.



LYNN ADELMAN  
STATE SENATOR

SENATE OFFICE: STATE CAPITOL, P.O. BOX 7882, MADISON, WISCONSIN 53707-7882. PHONE: 608/266-5400  
RESIDENCE: 33725 JANESVILLE DRIVE, MUKWONAGO, WI 53149. PHONES - OFFICE: 414/225-2920; HOME: 414/662-3864

May 24, 1995

Ralph Hollmon, Executive Director  
Milwaukee Metropolitan Sewerage District  
260 W. Seeboth St.  
Milwaukee, WI 53201-3049

Dear Executive Director Hollmon,

I am writing to you to demand that the Milwaukee Metropolitan Sewerage District immediately withdraw its threats to cut off service to the Westridge Business Park in New Berlin and proceed as quickly as possible to establish service to this development.

Since 1987 when Westridge was included in the Southeastern Wisconsin Regional Planning Commission's sewer service plans, MMSD has supported the project. There is no reason for MMSD to change its position on this issue now.

MMSD's actions in this matter have certainly left the impression that it is more concerned with New Berlin's association with the Fair Liquidation of Waste coalition than the merits of the Westridge case at hand. Westridge is one of the largest developments in the state, and it is too important to the economic vitality of New Berlin and Southeastern Wisconsin for MMSD to threaten to derail the project at this late date.

I strongly urge you to place the economic interests of the region above politics and continue with plans to provide sewer service to the Westridge development.

Sincerely,

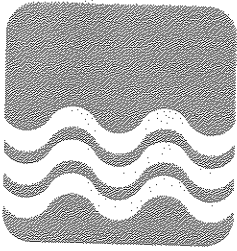
Lynn Adelman  
State Senator  
28th Senate District

LA/jpc

cc: John Norquist, Mayor of Milwaukee  
Mary Claire Cera, Mayor of New Berlin ✓  
New Berlin Common Council

*Please keep for  
Senator Farrow,  
Representative Gajick  
and Jeff  
HASHEMIZEDAH  
Hesse*





**Milwaukee Metropolitan Sewerage District**  
260 West Seeboth Street  
P.O. Box 3049  
Milwaukee, Wisconsin 53201-3049  
(414) 272-5100

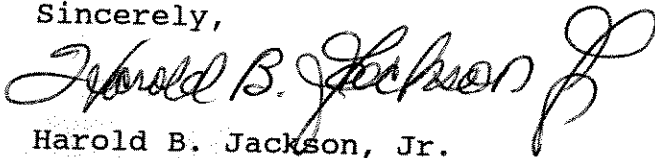
May 24, 1995

Environment and Utilities Committee  
State Capitol  
Madison, Wisconsin 53708

Dear Committee Member:

Enclosed for your information please find the opinion of Michael Best & Friedrich concerning the proposed legislation AB-374.

Sincerely,



Harold B. Jackson, Jr.  
Acting Director of Legal Services

/dlj  
Enclosure

**MICHAEL BEST  
& FRIEDRICH**  
*Attorneys at Law*

Writer's Direct Line:  
608-283-2243

One South Pinckney Street  
P.O. Box 1806  
Madison, Wisconsin 53701-1806  
FAX 608/283-2275  
Telephone 608/257-3501

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Edward D. Heffernan, Esq.  
Washington, D.C.

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Milwaukee, Wisconsin  
Chicago, Illinois

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A Global Association of  
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May 13, 1995

Mr. Ralph Hollmon  
Executive Director  
Milwaukee Metropolitan  
Sewerage District  
260 West Seeboth Street  
Milwaukee, WI 53204

Re: Proposed Legislation; LRB-3721 (MMSD Authority for  
Capital Cost Charges)

Dear Mr. Hollmon:

We have acted as bond counsel to the Milwaukee Metropolitan Sewerage District (the "District") for several years, and have been asked to comment on draft legislation that would affect the District's authority for capital cost charges. Specifically, we have been asked to comment on a part of Section 10 of such draft legislation, which reads as follows:

The commission may not recover capital costs from any user by levying property taxes on the users' [sic] property or by basing charges upon the property value of the users' property unless there is a substantial and unexpected shortfall in revenue such that general obligation bonds would not be paid.

Our comments are directed to (i) the effect of the language on District debt currently outstanding, and (ii) the effect of such language on future debt of the District.

Effect on Debt Currently Outstanding

As of December 31, 1994, the District had outstanding \$705,090,188 of general obligation debt; \$524,500,000 of such debt is held by the investing public, and \$180,590,188 is held by the State of Wisconsin Clean Water Fund.

In Wisconsin, virtually all general obligation debt (other than State of Wisconsin general obligation debt) is issued under

Chapter 67 of the Wisconsin Statutes. Typically, an approving bond counsel opinion for debt issued under Chapter 67 will read as follows:

All taxable property in the territory of the district is subject to ad valorem taxation to pay the bonds without limitation as to rate or amount. The district has levied a direct, irrevocable tax on all such taxable properties to pay the interest on and principal of the bonds.

If the language in Section 10 of the proposed legislation were enacted in its present form, we would be unable to issue an approving opinion required by the bond market of the type set forth above. If bond counsel were unable to give such an opinion, the confidence of current District bondholders in their bonds would be severely shaken, as might be the ratings on such bonds, because of uncertainty whether a direct, irrevocable tax levy would still be in effect for the District's bonds. If this could happen to the District, then the credit of virtually all municipalities in the state would be suspect because, as mentioned above, virtually all local general obligation debt is issued under Chapter 67.

#### Effect on Future Debt

As a practical matter, the District uses income from a variety of sources to pay its bond debt, which may result in an abatement of the taxes levied to support such debt. However, the proposed legislation would limit the property tax levy to a guarantee to be invoked only if other sources of income fail. This would have a significant effect on future District bond issues. In our opinion, the structure contemplated in Section 10 of the proposed legislation would result in all future debt of the District being characterized as revenue debt, rather than general obligation debt. This is because the sole source of payment available for debt service on a current basis would be from revenue sources, rather than from tax sources. Also, the tax levy would not actually be in place, something far short of a direct irrevocable tax.

Revenue debt, no matter how well secured, is virtually always rated below the general obligation bond rating of the issuing municipality. Only in a few circumstances where the collateral offered is extraordinarily strong and there is an implied promise of underlying state support will a revenue debt rating equal the general obligation debt rating. (An example of this is the State of Wisconsin Clean Water Program, which is supported in significant part by general obligation debt of the District. The strength of the District's general obligation bonds was a significant factor in achieving the AA rating on the Clean Water Fund revenue bonds.)

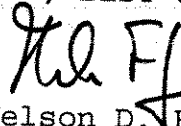
Even where the rating is the same, relying on revenue debt often will require substantially more operating constraints on an issuer than will general obligation debt. Since revenues rather than taxes are the source of repayment, the natural objective of bond underwriters and rating agencies is to curtail the freedom of operation of the issuer so as to assure that the maximum amount of revenues will be available for repayment of the bond issue. These constraints would grow progressively worse as more debt is issued. For example, if several bond issues were required for separate capital projects, which one would initially suffer the shortfall in a "substantial and unexpected shortfall in revenue," as provided in the draft legislation?

The limitations that would be required by revenue bond underwriters and rating agencies would impair the District's ability to manage its operations and capital debt to take maximum advantage of potential savings. For example, if the revenue stream dedicated to Project A bonds were substantially less than anticipated, but the revenue streams from Project B bonds and Project C bonds were greater than anticipated, it would likely be impossible to shift those funds from one project to another because of the limitations one would expect to encounter in the separate revenue bond indentures. This would not be the case in the District's existing general obligation bond structure.

People considering the legislation should understand that it will undermine the District's credit, increase the cost of the District's future financing, and diminish the operating and debt management flexibility of the District.

Very truly yours,

MICHAEL, BEST & FRIEDRICH

  
Nelson D. Flynn



**SCOTT R. JENSEN**  
ASSEMBLY MAJORITY LEADER

DATE: May 23, 1995  
TO: Members, Assembly Environment and Utilities Committee  
FROM: Scott Jensen  
Majority Leader  
RE: MMSD Comments at May 16th Hearing

The representatives of the Milwaukee Metropolitan Sewage District (MMSD) that testified before our committee last week in opposition to Assembly Bill 374 repeatedly made the assertion that it is inappropriate for the legislature to reevaluate the MMSD's current method for charging capital costs. While we may disagree on the proposed change to MMSD's future charging methods, I wanted to briefly respond to their comments because I believe that the statements of the MMSD ignore the recent history of this long-standing dispute between the MMSD and the FLOW communities and reflects the MMSD's fundamental misunderstanding of the Legislature's duty to oversee the MMSD.

The MMSD's contention that the Legislature should not reevaluate its current method for recovering capital costs overlooks that fact that the MMSD has previously sought legislative approval for their charging methods. I have attached a copy of 1989 Senate Bill 65 for your review. Senate Bill 65 was introduced at the request of the MMSD, by several Milwaukee area legislators, including Representative Bock. Senate Bill 65 sought to reaffirm the MMSD's authority to recover capital costs through service charges or charges based on the value of the property in the area subject to the service.

The MMSD's comments at the hearing also suggest there is something unique about the MMSD that precludes the legislature from reviewing the policies and practices of the MMSD. Under MMSD's reasoning, the legislature would apparently be precluded from ever reevaluating the delegation of authority it granted to MMSD over ten years ago.

The MMSD's testimony flies in the face of a well-recognized legal concept that entities created by the legislature have only those powers that are conferred to it by statute. The MMSD is like any other agency or board created by the legislature and may only exercise those powers which the legislature deems appropriate to carry out its duties. The legislature may not only review its delegation of authority to the MMSD, it may withdraw the powers which have previously been granted to the MMSD, modify the procedures through which MMSD currently exercises its powers, or even eliminate the MMSD.

I hope you find this information useful in our deliberations concerning Assembly Bill 374.



**MARC  
DUFF**

STATE REPRESENTATIVE

Chair: Environment & Utilities

Vice Chair: Urban Education

Co-Chair: Joint Legislative Council

Date: May 15, 1995

To: Members, Assembly Committee on Environment & Utilities

From: State Rep. Marc Duff, Chair *MD*

Re: Amended notice for executive action on AB 347.

Due to recent developments in the sewer dispute between the Milwaukee Metropolitan Sewerage District and suburban communities, earlier action on AB 347 is being considered. Therefore, I have amended the notice to give the committee maximum flexibility with the bill by allowing an executive session.

Amendments to AB 347 should be drafted and submitted to the chair for consideration prior to convening any executive session.



## Badger Meter, Inc.

4545 W. Brown Deer Road, P.O. Box 23099  
Milwaukee, WI 53223-0099 (414) 355-0400

James L. Forbes  
President and  
Chief Executive Officer



MAY 18 1995

May 15, 1995

State Representative Mark Duff  
State Capitol  
P. O. Box 8952  
Madison, WI 53708-8952

Dear Representative Duff:

The purpose of this letter is to express opposition to LRB-3721. The proposed legislation, which is scheduled for hearing on May 16, 1995, seeks to legislate a resolution to a local issue on the state level in a way that will likely be detrimental to all users of the Milwaukee Metropolitan Sewerage District. The issues are very complex and should be left to the local parties to resolve.

For example, by imposing significantly greater costs on industry and the residents of Milwaukee County, some industry will undoubtedly move processes that are currently being done in Milwaukee to other business locations. Other companies may find that the cost of pretreatment is now cost justified and will implement pretreatment systems. Both eventualities will result in a significantly lower level of quality solids being discharged into the sewerage system. As you may be aware, the Milwaukee Metropolitan Sewerage District reduces its cost to all users by the production and sale of Milorganite. A reduction in the amount of solids discharged into the system will result in a significant decrease in the quality of Milorganite, which will result in a higher cost to all users. In addition, moving of processes or pretreatment will significantly decrease the costs to those specific industries, which will again result in significantly higher costs to the remaining users of the system.

The State Assembly should be conscious of the difficulties in examining the broader effects of this proposed legislation at the state level. The issue should be dealt with on a local level, as it is an entirely local issue. The State Assembly's time is better spent on the many issues of state-wide impact that demand its attention. The time required to become fully informed on these issues in order to make an informed decision is time that can be better spent elsewhere.

Sincerely,

**BADGER METER, INC.**

A handwritten signature in dark ink, appearing to read "James L. Forbes". The signature is written in a cursive, flowing style.

James L. Forbes  
President and  
Chief Executive Officer

JLF:mmh



ATTY. PETER J. DYKMAN  
ACTING CHIEF

# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET  
P. O. BOX 2037  
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561  
LEGAL FAX: (608) 264-8522  
REFERENCE SECTION: (608) 266-0341  
REFERENCE FAX: (608) 266-5648

May 11, 1995

Representative Marc Duff  
306 North  
State Capitol

Dear Representative Duff:

You have asked whether a bill Becky Tradewell and I have drafted for you, 1995 LRB -3721/1 applies retroactively. In particular, you have asked whether s. 66.91 (5) (b) 6., which is repealed and recreated in the bill, may be applied retroactively with respect to the MMSD deep tunnel project.

In my opinion, I do not think that a reasonable argument could be made that s. 66.91 (5) (b) 6. may be applied retroactively with respect to the MMSD deep tunnel project — or any other project — if the project is completed or nearly completed and if bills or assessments for the project are sent out before the effective date of the change to the law. The method of assessing and collecting service charges that may be used by MMSD with respect to a project that is completed or nearly completed and billed for before an otherwise applicable statute takes effect is the method that was allowable when the project was completed or nearly completed and when bills or assessments for the project were issued.

The changes to s. 66.91 (5) (b) that are contained in your bill are substantive, meaning that the statute creates, defines or regulates rights or obligations. See *City of Madison, v. Town of Madison*, 127 Wis. 2d 96, 102 (Ct. Apps. 1985). A substantive statute, like this one, “. . . is presumed to be prospective unless the statutory language clearly reveals by express language or necessary implication an intent that it apply retroactively.” *State v. ILHR Department*, 101 Wis. 2d 396, 403 (1981). See also *Employers Insurance of Wausau v. Smith*, 154 Wis. 2d 199, 220-226 (1990). The Wisconsin supreme court has also stated that “Strong common-law tradition defines the legislature’s primary function as declaring law to regulate future behavior. Thus, as a matter of justice, no law should be enforced before people can learn of its existence and conduct themselves accordingly. In short, retroactivity disturbs the stability of past transactions.” *In Re Marriage of Schultz, v. Ystad*, 155 Wis. 2d 574, 597 (1990).

There is nothing explicit or implicit in this bill, 1995 LRB -3721/1, that indicates that the Legislature wants the bill to operate retroactively. Consequently, there is a strong presumption that the law does not apply retroactively.

To avoid any confusion as to whether the changes contained in this bill apply to an MMSD project that is in its early stages on the effective date of the bill, however, you may wish to have an



amendment prepared which states that the statutory changes in the bill first apply to projects of the District that commence on or after the effective date of the bill.

Sincerely,

*Marc E. Shovers*

Marc E. Shovers  
Legislative Attorney  
266-0129

# **PUBLIC SERVICE COMMISSION OF WISCONSIN**

## **Memorandum**

May 11, 1995

TO: Marc Duff, Chairman  
Assembly Committee on Environment and Utilities

FROM: Steven Levine, Staff Counsel  
Division of Water, Compliance, and Consumer Affairs

RE: LRB-3721\1 (MMSD authority for capital cost charges)

Per your request, listed below is a summary of past Public Service Commission of Wisconsin (PSC) decisions regarding the MMSD and FLOW dispute over charges for capital cost construction.

PSC Docket No. 9308-SR-100 - Order Date of January 24, 1991.

The issue in this docket was **"Whether the MMSD's method for the recovery of capital costs on the basis of taxable property value is an unreasonable or unjustly discriminatory method."**

The PSC in this docket decided that the use by MMSD of a taxable property value basis for the recovery of capital costs is not "unreasonable or unjustly discriminatory" --the standard of review under s. 66.912(5), Stats.

The PSC decision in this docket was appealed to and affirmed by the Waukesha County Circuit Court and then by the Wisconsin Court of Appeals in a decision dated June 22, 1994, City of Brookfield v PSC, 186 Wis. 2d 129, 519 N. W. 2d 718 (Ct. App. 1994). The Wisconsin Supreme Court denied a petition for review of the PSC decision on August 26, 1994.

The PSC decision in this docket dealt with a very narrow issue. The PSC's finding was "that the use by MMSD of a taxable property value basis for the recovery of capital costs is not unreasonable or unjustly discriminatory". The PSC also found that MMSD has the statutory authority to do so. 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).

PSC Docket No. 9308-SR-101 - Order Date of November 30, 1993.

On April 8, 1993, FLOW filed a complaint against MMSD. The complaint requested the PSC to investigate and determine whether the allocation of capital costs by MMSD to the FLOW communities on the basis of property values rather than usage **is authorized by s. 66.076 and whether such basis is unreasonable and/or discriminatory.** FLOW's complaint asserted that under s. 66.076, MMSD's rates must be based on the cost-of-service utility ratemaking principle.

The PSC found in this docket that both the broad language of s. 66.076, Stats., itself, as well as the incorporation of s. 66.91(5) under s. 66.076, grants MMSD the authority to allocate capital costs on the basis of property values. The PSC also concluded that MMSD's method of allocating capital costs on the basis of property values was not unreasonable -- and the reasons for that conclusion -- would be the same under s. 66.076(9) as they were under s. 66.912(5). Therefore, on November 30, 1993, the PSC dismissed FLOW's complaint.

The decision in Docket No. 9308-SR-101 was appealed to the Ozaukee County Circuit Court which dismissed the case because the Court of Appeals had already decided the issue.

PSC Docket No. 9308-SR-102 - Filed with the PSC on October 5, 1994.

On October 5, 1994, the FLOW communities filed a complaint against MMSD for a full investigation and audit of the accounts, records, charges and practices of MMSD. The issues in this complaint are summarized below:

- ISSUE I - Is MMSD estopped from charging the FLOW communities on anything other than a usage basis through 2005?
- ISSUE II - May MMSD charge FLOW interest on any balance allegedly owed it by the FLOW communities?
- ISSUE III - Are the charges, rules and practices of MMSD unreasonably and unjustly discriminatory?
- ISSUE IV - Are MMSD capital service charges proportionate to the costs of the sewerage system that the district may reasonably attribute to the FLOW communities?
- ISSUE V - Is MMSD including inappropriate costs in its capital charges to the FLOW communities?

Marc Duff, Chairman  
Page 3

On April 21, 1995, the PSC held a Prehearing/Technical conference to narrow, define and group the issues in this complaint. The parties in this complaint are in the process of filing briefs and responses to briefs. It is anticipated that a final hearing on this complaint will be held in the fall of 1995.

In summary, as noted above, in both of the prior complaints, Dockets 9308-SR-100 and 9308-SR-101, the PSC decided that the taxable property value basis for recovery of capital costs was not "unreasonable or unjustly discriminatory". Copies of these two decisions are attached.

Attachments (2)

G:\NGD\LEGIS\05119501.JRB

MMSD COST SHIFTING TO SUBURBS

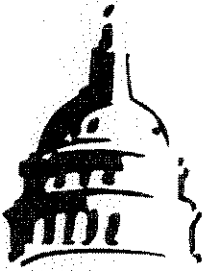
The Milwaukee Metropolitan Sewerage District (MMSD) is required by law to charge all users for their proportionate share of the operation, maintenance and replacement costs of the District. The MMSD user charge system takes into account a community's users discharge of wastes and the strength of those wastes. The community then receives a bill in proportion to its use of MMSD's facilities. This system of charging has been in place since 1979 and has been accepted by all communities as being fair. The Sewer Wars dispute arises over how the MMSD charges communities for their share of the construction costs to build the wastewater collection and treatment facilities. MMSD uses property taxes to distribute the capital costs to individual communities. Because of the wide variation of property values in the area, the extreme amount of property which is tax exempt and the amount of very large users connected to the system, many communities end up paying a disproportionate share of MMSD's capital costs.

A comparison of a community's 1993 share of the operation and maintenance costs as compared to the 1993 property value charge for capital costs is as follows:

<u>Community</u>	<u>% Of User Charges</u>	<u>% Of Property Value</u>	<u>\$ Overcharged (2) For Capital Costs In 1994</u>
Bayside	0.32	1.00	\$ 713,000
Brookfield	1.22	3.28	2,161,000
Brown Deer	1.06	1.86	839,000
Butler	0.28	0.36	84,000
Caddy Vista	0.05	0.04	(10,000)
Cudahy	1.93	1.53	(420,000)
Elm Grove	0.41	1.46	1,101,000
Fox Point	0.50	1.56	1,112,000
Franklin	1.52	2.66	1,196,000
Germantown	1.01	1.43	441,000
Glendale	1.32	2.68	1,426,000
Greendale	1.00	2.22	1,280,000
Greenfield	2.23	3.94	1,794,000
Hales Corners	0.55	0.86	325,000
Menomonee Falls	1.92	4.09	2,276,000
Mequon	1.21	4.77	3,734,000
Milwaukee	64.09	39.32	(25,981,000)
Muskego	1.08	(1)	
New Berlin	2.13	4.96	2,968,000
Oak Creek	1.82	2.18	378,000
River Hills	0.11	0.82	745,000
Shorewood	0.92	1.86	986,000
St. Francis	0.61	0.70	94,000
Thiensville	0.21	0.43	231,000
Wauwatosa	4.46	7.13	2,801,000
West Allis	5.17	6.04	913,000
West Milwaukee	1.85	0.45	(1,468,000)
Whitefish Bay	0.97	2.37	1,468,000

(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.



**MARC  
DUFF**

STATE REPRESENTATIVE

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

May 8, 1995

NEWS RELEASE

For Immediate Release

PUBLIC HEARING SCHEDULED ON CHANGES TO MMSD SEWER ASSESSMENTS

MADISON....A public hearing on a bill that changes the method by which the Milwaukee Metropolitan Sewerage District (MMSD) can charge for sewer construction costs was announced today by State Representative Marc Duff (R-New Berlin), chairman of the Assembly Environment and Utilities Committee.

The hearing on the proposal, which is being introduced by Duff and State Representative Mary Lazich (R-New Berlin), will be held in Madison on Tuesday, May 16 at 1:00pm in room 321 Northeast of the State Capitol.

The key component of the bill would change MMSD's system of charging for sewer construction costs from the current property tax basis to a usage basis. This issue has been a major dispute between Milwaukee and area suburbs.

The public is invited to attend the hearing. Duff noted that a second public hearing will be held in this area in the future.

###

OFFICE: State Capitol  
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**DEWITT  
ROSS & STEVENS**  
LAW FIRM

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Tel 608-631-2100

### FAX TRANSMITTAL SHEET

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**To:** Bill Mielke 414/542-5631

**From:** Peter A. Peshek

May 15, 1995

**Number of Pages**  
**Including This One: ( 8 )**

**Time Sent:** 8:39

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**NOTE:** The information contained in this facsimile message is privileged and confidential and is intended only for the use of the individual or entity named above and others who have been specifically authorized to receive it. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you received this communication in error, or if you encountered any problems with transmission, please telephone us at 608/255-8891. Our fax number is 608/252-9243.

DRAFT

TESTIMONY OF ATTORNEY PETER A. PESHEK BEFORE  
THE ASSEMBLY ~~NATURAL RESOURCES COMMITTEE~~  
REGARDING 1995 ASSEMBLY BILL 374  
MAY 16, 1995

↑ ENVIRONMENT  
& UTILITIES

**Introduction.**

My name is Peter A. Peshek. I am an attorney with the DeWitt Ross & Stevens law firm, and I am here this afternoon on behalf of the FLOW communities. I will focus my testimony on the constitutional, regulatory and administrative theories behind 1995 Assembly Bill 374. These three principals are:

- (1) It would be impermissible for the Legislature to dictate the terms of a resolution over money allegedly owed for past invoices sent by the MMSD to the FLOW communities. Any battle over "arrearages" must be settled either by the Public Service Commission or the civil courts of Wisconsin;
- (2) The Wisconsin Legislature can and should reevaluate the ground rules under which the MMSD will operate in the future since this special use district is a creature of the Legislature and has only those powers granted to it by the Legislature; and
- (3) A PSC finding of "reasonableness" for the use of an *ad valorem* property tax basis collecting taxes does not provide sufficient public policy basis for the Legislature to allow



the District to continue to undertake the massive property tax cost-shifting that has occurred during the last 10 years and will only be exacerbated the next 15 years.

**I. Who Decides The Arrearages Issue?**

The MMSD has argued that the FLOW communities owe the District in excess of \$140 million for past invoices which have not been paid. The FLOW communities dispute the allegation.

The MMSD has sued the eight communities for the alleged arrearages in the Circuit Court of Waukesha County. The Circuit Court has stayed these proceedings while the Public Service Commission seeks to resolve of the specific issues with reference to this alleged \$140 million issue.

The MMSD would argue that since these two proceedings are pending, it is inappropriate for the Legislature to consider AB 374. The argument has no legal merit and is politically and philosophically flawed.

The FLOW communities cannot and are not asking the Legislature to resolve the dispute regarding over what may or may not be owed by FLOW for past invoices sent to it by the MMSD. This is exactly why we have executive and judicial branches of

government. They are the two branches delegated responsibility to sort out such financial claims.

It is the legislative branch which decides future ground rules for the operation of the executive branch of government. It is precisely that role which is being invoked in AB 374. Other witnesses have and will describe many reasons for the Legislature to rewrite the ground rules by which the MMSD taxes its customers in the future. Note the emphasis on the future.

It is reasonable and correct for citizens to petition the legislative branch of government with reference to such things as property tax reform. The agricultural community is doing it this session with reference to property taxes in rural Wisconsin. The executive budget is reviewing this issue with reference to school taxes. The FLOW communities are doing exactly the same thing but in this case, with reference to property taxes that will be assessed in the future by the special use district called the MMSD. It is appropriate for the Legislature to listen to these petitions and to pass corrective legislation if the case is made for property tax reform. This is precisely the core of the issue for AB 374.

The fact that there is a lawsuit and a PSC proceeding pending as to past charges does not invalidate the underlying purpose for AB

374. Like farm property taxes and school property taxes, the MMSD property tax is a legitimate target of legislative review.

## II. MMSD As A Creature Of The Legislature.

The MMSD has been operating as a special use district with its current powers since the early 1980s. As other witnesses will testify, MMSD has not been able to bring either regional cooperation nor perceived economic efficiency to its operations as a special use district. The deliberate and insidious cost-shifting scheme developed by the MMSD has shifted taxes onto the back of residential property owners both within the City of Milwaukee and the 20 plus other communities served by the District.

I have become convinced that the potential for this type of cost shifting to continue in any one of a number of forms is extremely high. In fact, the structure of MMSD and the pressures that all communities face with respect to property tax is such that there are incentives for this type of cost shifting to continue. As these problems continue so does the potential for future intractable disputes which ultimately are no one's interest.

There are a variety of ways in which accountability and fairness can be returned to this process. Clearly, the most direct means for doing so is for this legislature to provide additional guidance

and supervision over the policy and practices of the District. The District, is a special use district which was created by this legislative body. As a creature of the legislature, it only has those powers and duties which this legislature determines are appropriate for it to exercise.

The creation of such bodies and the delegation of legislative authority to such bodies is really no different than when the legislature delegates authority to other state agencies. By delegating authority to specialized agencies many administrative and technical tasks can be performed to carry out critical public services and functions.

But just as it is appropriate to periodically reevaluate the legislature's delegation of authority to state agencies, so too it is appropriate to review the legislature's delegation of authority to special districts such as MMSD. The legislature not only has the power but the duty to determine whether the agencies and districts which it has created to carry out specific public policy goals are continuing to carry them out in a manner consistent with the public interest. We believe that it is time for the legislature to make those kinds of evaluations with respect to MMSD just as it is doing now with respect to many other state agencies.

The fact that change may be threatening to such agencies and is resisted by them is understandable. MMSD is no different than other agencies in this regard. Thus, you have heard and will continue to hear from the District that the legislature has no business changing the method by which the District charges for capital cost because that issue has already been resolved in the courts. The Wisconsin Supreme Court in *City of Brookfield v. MMSD* [add cite], did in fact, hold that the statutes as presently written allow MMSD to use an *ad valorem* or property tax base method for charging for capital costs.

We do not believe that is what the legislature intended when it created the District in 19\_\_\_. But now that we have a determination from the highest court in the state, this legislature, as part of its ongoing supervisory authority over all delegated agencies has the right and, indeed, the duty to ask the question of whether that was the legislative intent when MMSD was created. If not, the statutes should be redrawn to more clearly express the legislative intent.

The Supreme Court expects the legislature to act if it believes the Court's statutory interpretation is not correct or should be

changed. As the Wisconsin Supreme Court noted in *Zimmerman v. Wisconsin Electric Power Co.*, 38 Wis. 2d 626, 633 (1968),

It has often been said that once a construction has been given to a statute [by the courts], the construction becomes a part of the statute; and it is within the province of the legislature alone to change the law.

Even if it was the legislative intent to give the District property tax authority when it was created, we now have the experience of 10 plus years. Those years have demonstrated that such a charging method is ill-conceived and unwarranted. Whether it was intended or not, this legislature not only has the authority but the duty to change a system that is no longer serving the public interest.

In adopting these additional legislative controls on the District, we believe that the ground work will be set so that the potential for future disputes and acrimony arising out of cost shifting will be removed. By removing these sources of conflict for this critical region of our state, we may be able to set it on the course for a longer term regional cooperation which is so desperately needed.



---

## TELEFAX TRANSMISSION

To: Ms. Marsha Buchholz

From: Victor Nohl

Subject: "JOBS" letter

Here is the letter we discussed in our phone conversation this afternoon. Keep up the good work!

Sincerely,

A handwritten signature in cursive script that reads "Victor Nohl".



**JOINT  
ORGANIZATION FOR  
BETTER  
SEWERS**

777 East Wisconsin Avenue, Suite 2000  
Milwaukee, WI 53202  
414/271-7441

2714590

## A Legislative Alert

### From the JOBS Coalition of Businesses

Legislation that would shift the burden of paying for sewer improvements onto industrial users and force Milwaukee County businesses and residents to pay over \$300 million in additional taxes was introduced just last week into the State Legislature.

Already, the Assembly Environment and Utilities Committee has scheduled a public hearing on the bill for May 16 in Madison. Quick action is needed to derail this legislation from the fast track.

LRB-3721, authored by the committee chair, State Rep. Mark Duff (R-New Berlin), seeks to eliminate the ability of the Milwaukee Metropolitan Sewerage District to levy property taxes to pay for sewer improvements and would shift the burden for paying these costs directly onto high volume water and sewer users, and Milwaukee County homeowners.

782-0763

LOB 266 1190

As a result, businesses located throughout Milwaukee County will see their sewer user fees skyrocket astronomically. The majority of businesses within the county would see their costs increase, with major water using industries bearing the brunt of the increased costs.

These industries already pay all of the costs for their use of the sewer system through high user charges. This legislation shifts the capital costs of the system to user charges, even though the Public Service Commission and the highest courts in the state have ruled that the cost of sewer improvements is not related to the system's use by industry.

Passage of this legislation would severely impact economic development in the Milwaukee Metropolitan area and could cause businesses to move or close, and jobs to be lost.

This bill is very bad public policy. The main beneficiaries of the bill would be some of the residents of eight communities who have so far refused to pay their fair share of the cost of sewer improvements.

Time is of the essence. The committee plans to meet on Tuesday, May 16, at 1:00 in Room 321NE of the State Capitol.

Please join in the efforts to protect Milwaukee County's business climate by calling or writing the members of the Environment and Utilities Committee and registering your strong opposition to LRB-3721. Even more importantly, please send a representative from your company to testify against the bill at the committee hearing.

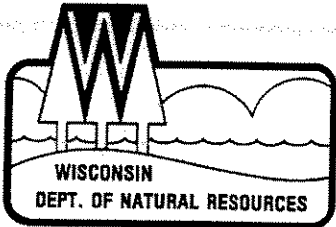
A listing of Committee members is included on the back of this letter.

Only your personal intervention will stop this legislation from becoming law. Our metropolitan business climate depends on your involvement.

MARSHA - BUCHHOLZ

608-266-7038





George E. Meyer  
Secretary

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

101 South Webster Street  
PO Box 7921  
Madison, Wisconsin 53707  
TELEPHONE 608-267-7694  
TELEFAX 608-267-7664  
TDD 608-267-6897

May 30, 1995

Mr. Daniel E. Warren, P.E.  
Ruekert & Mielke, Inc.  
W239 N1812 Rockwood Drive  
Waukesha, WI 53188-1113

SUBJECT: City of New Berlin Sewer Plans  
Westridge Development

Dear Mr. Warren:

I am writing in response to your letter of May 19, 1995 concerning sewer plans for the Westridge development in New Berlin. You requested that the Department provide technical review comments on the project.

Staff in the Municipal Wastewater Section have reviewed the plans and related materials for the project. The project is designed in conformance with NR 110, and, except for the owner approval letter from Milwaukee Metropolitan Sewerage District (MMSD), the forms normally required for sewer submittals were included and correctly completed. We have no technical comments to pass along.

The Department cannot, or course, formally accept this project without the owner approval letter from MMSD. Consequently, we are returning the plans and related materials to you with this letter. The project would meet the criteria to be submitted under the fast-track approval process once MMSD owner approval is obtained, so Department approval should only take a matter of a few days once we receive the complete submittal for the project.

If you have questions or would like to discuss this matter further, feel free to contact me at (608)267-7666.

Sincerely,

*Bill Baumann*

Bill Baumann, Unit Leader  
Municipal Wastewater Section  
Bureau of Wastewater Management

cc: Bill Mielke - Ruekert & Mielke  
Ken Ward - Ruekert & Mielke  
Joe Nowak - City of New Berlin  
Hamid Hashemizadeh - City of New Berlin



**MARC  
DUFF**

STATE REPRESENTATIVE

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

May 10, 1995

Scott Neitzel, Commissioner  
Wisconsin Public Service Commission  
610 North, Whitney Way 3rd Floor  
Madison, WI FAXED

Dear Scott:

As per our discussion, I believe it is important for the members of the Assembly Committee on Environment and Utilities to be properly informed about the past and possible decisions by the PSC regarding the MMSD and FLOW dispute over charges for capital cost construction. Any summary would be welcome.

I have also included two letters from Broydrick & Associates and Jim Tenuta which interpret a past PSC decision. I'm not sure the way they interpret the decision is accurate. Perhaps they are distorting the PSC decision to accommodate their own twisted political motives as high paid lobbyists for MMSD. If you could provide a more impartial interpretation of the PSC decision, it would be appreciated.

Thank you for your attention to this important matter.

Sincerely,

Marc C. Duff  
State Representative  
98th Assembly District

mcd



Assembly Committee on Environment & Utilities  
Public Hearing Assembly Bill 382  
September 14, 1995  
10:30 AM, Room 321 NE

Good morning. My name is Joe Greco and I am Village President of Menomonee Falls, a community of about 27,000 people in the northeast corner of Waukesha county. I appreciate having this opportunity to appear on this important issue.

I am a part time Village President and a full time salesman of corrugated paper products. The Village Board and I work very hard to create and maintain a growing community with a good quality of life. In most cases we have all the decision making tools we need to face our issues and we are not in the habit of asking the legislature for more laws.

However, today I am here to ask for your help.

We are not asking you to settle the dispute of the past charges. We have said from the beginning that the arrearages are a local issue and we will negotiate that settlement. AB 382 will provide a new system to deal with future complaints.

Menomonee Falls receives sewer services from three separate sewage systems. One of them is the Milwaukee Metropolitan Sewage District, which the legislature created in 1982. Ever since the creation we have experienced problems.

The MMSD is a monopoly in every sense of the word. A monopoly, as it pertains to a utility is not a dirty word, however without a system of checks and balances, can be very detrimental to any community or region. But unlike the electric, gas or telephone utility monopolies, the MMSD can hold their customers hostage as was experienced by New Berlin in the Westridge project.

Assembly Bill 382 is necessary to put in place some protection for customer communities in order to create a more fair relationship.

At present, unlike the other monopolistic utilities, the Public Service commission has very limited authority over the MMSD. They can review MMSD rates only after a complaint is filed and the complainant has the burden to proof that sewer charges are unreasonable. The PSC is prohibited from independently determining the most equitable rate treatment.

AB 382 will allow the PSC to treat the MMSD more like they treat other utilities. It will give customers an independent, third party to turn to for help.

The Public Service Commission exists to protect consumers. They have the expertise. No customer or community can be expected to be able to sort out the capital cost issues or service and rule problems presented by the MMSD. The PSC is well suited for the job.

Recently, I testified about the plan to finance a new stadium for the Milwaukee Brewers. I want the Brewers to stay in Milwaukee and testified to that fact. As you know there is great deal of controversy over how to make that happen.

It is interesting that the stadium issue has attracted such attention, obtained top priority by state and local governments to find a solution, when we in the metropolitan Milwaukee area have been struggling with the "Sewer Wars" for more than ten years.

Similarly, my testimony addressed a concern that a governing authority would be created over whatever counties the legislature decides upon and would have limited oversight. Similar to our situation with the MMSD. Speaker Prosser and Representative Lolita Schneiders have assured me that that issue will be addressed.

With the stadium we are all struggling to design a plan that provides fair representation. The existing MMSD on the other hand, is a special unit of government where the Mayor of Milwaukee, through his appointments to the MMSD Commission, controls the ability to tax Milwaukee county, Waukesha county, Ozaukee county and Washington county \$110 million every year with no oversight or control. Every one needs oversight when we are dealing with issues affecting the people in our communities. That is what America is all about and that is why we are asking for the PSC oversight.

Please, we are asking you to help us. Let us be fair and I urge you to vote "YES" on AB382.

Thank you.

**TESTIMONY OF PAUL G. KENT  
BEFORE THE ASSEMBLY  
ENVIRONMENT & UTILITIES COMMITTEE  
REGARDING 1995 ASSEMBLY BILL 382  
SEPTEMBER 14, 1995**

My name is Paul G. Kent. I am an attorney with the DeWitt Ross & Stevens firm and here today on behalf of the FLOW Communities. I will focus my testimony on the key legal reasons why we believe AB 382 is necessary.

Before I do so, however, I would like to highlight three principles embodied in AB 382:

1. First, it would be impermissible for the Legislature to dictate the terms of a resolution over money allegedly owed for past invoices sent by the MMSD to the FLOW Communities. This bill does not do so. It establishes a new system of PSC review for future complaints.
  
2. Second, the Wisconsin Legislature can and should reevaluate the ground rules under which the MMSD will operate in the future since this special use district is a creature of the Legislature and has only those powers granted to it by the Legislature; and

3. Third, there is a need for additional oversight of MMSD to ensure that future rates are fair and reasonable.

Under Wisconsin law, public utilities are subject to rate review by the Public Service Commission under Wis. Stat. ch. 196. For public utilities, the statutes require the utility to propose rates and charges to the PSC. The utility has the burden of proof in establishing the need for and reasonableness of the rates and rate structure. *See*, Wis. Stat. § 196.20. Upon review by the Commission and after public hearing, the Commission sets the rates for the utility.

The current definition of a public utility, however, does not include entities which provide sewerage service. *See*, Wis. Stat. § 196.01(5). For sewer charges, the PSC jurisdiction is substantially more limited. Under both Wis. Stat. § 66.076(9), which applies to any municipal sewerage system, and Wis. Stat. § 66.912(5), which applies to MMSD, a user can petition the PSC to hear its complaint.

The PSC has the discretion to hear the complaint and the burden is on the complainant to establish that the sewer charges are unjust or unreasonable. This is a very limited scope of review. Instead of inquiring as to what is the best or the fairest method for charging, the PSC only reviews the

method to ensure that it is not unreasonable.

In *Brookfield v. Milwaukee Sewerage Dist.*, 141 Wis. 2d 10, 15, 18, 414 N.W.2d 308 (Ct. App. 1987), a case evaluating the reasonableness of "construction work in progress" (CWIP) accounting practices, the Court of Appeals set forth this standard as follows:

**The primary issue in this case is not which of the methods is the best or the fairest, nor is it which method the commission would have adopted for a utility directly under its regulatory jurisdiction. The issue before the commission and now before this court is whether the CWIP method used by the district was unreasonable or unjustly discriminatory within the meaning of sec. 66.912(5), Stats.**

The limited scope of PSC jurisdiction has been repeatedly acknowledged by the PSC and the Courts in the "sewer wars" litigation. The PSC has recognized this limited standard from the outset. In the proceeding commenced by Miller and Universal Foods, PSC Docket No. 9308-SR-100, the PSC stated:

**Thus, the standard to be used upon a complaint under s. 66.912(5), Stats., requires that in order for the commission to change a rate or practice under complaint, the commission must find that the rate or practice is unreasonable or unjustly discriminatory. Otherwise, the rate or practice that is in effect must remain, even though the rate or practice is not one that the commission agrees with or would itself prescribe. (emphasis added).**

PSC Decision at 8-9.

Under the proposed legislation, the PSC would have additional jurisdiction to subject MMSD to rate review similar to that of a public utility. However, such jurisdiction would be limited to rate increases involving cost

allocation issues. All other issues would be raised through the existing complaint procedures. This limited additional jurisdiction will provide the PSC with meaningful oversight for future rates. By providing an empowered neutral reviewing agency we are hopeful that future disputes can be promptly and finally resolved.



**ASSEMBLY BILL 382**  
**ASSEMBLY COMMITTEE ON ENVIRONMENT & UTILITIES**  
**SEPTEMBER 14, 1995**

Mr. Chairman, Members of the Committee, my name is Ralph Hollmon and I am Executive Director of the Milwaukee Metropolitan Sewerage District. I am here today to speak in opposition to A.B. 382.

The FLOW leadership has been saying that the District is not being managed effectively, we are not controlling our costs, we have the highest residential user charge of any sewerage district serving more than 600,000, and there is no accountability at the District. According to FLOW, these issues are a major part of their rationale for wanting to take the responsibility for setting sewer rates away from local officials and put it in the hands of the Public Service Commission in Madison.

First, let me discuss the issue of Effective Management and Cost Containment. Since 1991, the District has eliminated over 78 positions and has made over \$15 million in cuts to its Operations and Maintenance Budget. By the end of 1995, we will have the lowest staffing level since 1978, which was just prior to the beginning of the \$2 billion Water Pollution Abatement Project (WPAP). As a result of these cost containment efforts, total user charge billings -- across all classes of customers -- increased on average by only 3 percent in 1995. It's important to note that the typical

residential user received less than a 3 percent increase in their user charge while heavy wasteload contributors to our system, primarily industry, received more than a 3 percent increase in their user charges.

We are currently in the process of developing our 1996 Operations and Maintenance Budget, but early information indicates that for the third consecutive year, the overall average user charge increase will be less than the rate of inflation and in fact, the user rate may actually decrease in 1996.

The 1995 and 1996 Capital Budgets also reflect prudent financial planning and management.

The proposed 1996 budget would also reduce the tax levy from \$87 million in 1995 to \$80.6 million in 1996 -- a seven percent decrease. Proposed capital spending for 1996 of \$131 million is four percent less than the 1995 budget.

Since 1987, the District has maintained a steady tax rate of \$3.00 per each \$1,000 of equalized property valuation to support its Capital Budget. In 1996, our tax rate will drop to \$2.65 -- a twelve percent decrease over 1995. This tax rate reduction is a year earlier and 15 cents more than our long range budget plan anticipated.

I also want to take this opportunity to reiterate for the committee what the District tax rate could have been in 1996. We could have lowered our 1996 tax levy rate from \$3.00 to \$2.05, except for one major development: the FLOW communities, Brookfield, Butler, Elm Grove, Menomonee Falls, Mequon, and New Berlin, have