

Making History

Egg Harbor City uses WIPA to sell water and sanitary sewer systems

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New plant

Operating a large-scale utility system is not an easy task for any municipality. Statutes, Federal Laws, operating costs, capital expenditures, infrastructure repairs, politics, and various other factors influence cost effectiveness of the service, quality drinking water, and efficient customer service. While many larger municipalities successfully navigate these factors, smaller municipalities like Egg Harbor City have less resources to do so.

Divesting itself from a utility system may be a better option for municipalities. However, the endeavor to divest presents its own challenges. The Water Infrastructure Protection Act (WIPA) was intended to assist municipalities in doing so.

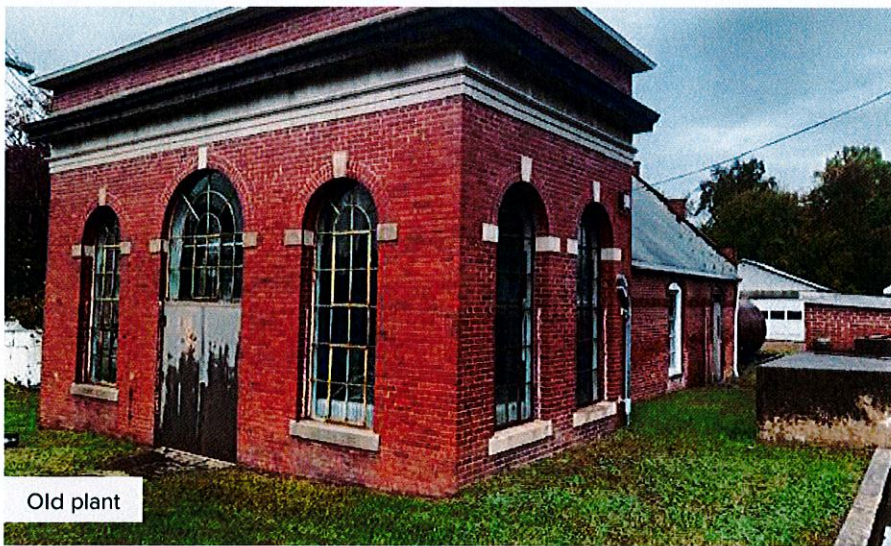
WIPA at work

WIPA was created to protect the integrity of drinking water by allowing certain municipalities to lease or sell their system without going to referendum if they can prove certain Emergent Conditions exist that will hinder them from delivering safe water (N.J.S.A. 58:30-1). Not having to go to a referendum allows elected officials and city professionals to have more input and influence on the decision. Under the Act, citizens retain the option to file a petition to

prevent the sale.

Egg Harbor City was the first municipality in the state of New Jersey to use the WIPA Process to sell its long-held water and sanitary sewer systems. As a small community with limited resources, the process was challenging. My dedicated team of professionals: Ryan McGowan of Remington and Vernik Engineers (R&V), Angela Costigan of Costigan and Costigan Law, the New Jersey American Water (NJAW) team, and City CFO Jodi Kahn did an outstanding job navigating the uncharted waters of WIPA.

Egg Harbor City is a Pinelands Town with around 4,300 residents. For much of the early 2000s, the City Council sought to replace the existing, outdated, 100-year-old water plant and expand water and sewer to the majority of the city's residents. The culmination of that effort came in



Old plant

2013 when the City opened a state-of-the-art water treatment plant to serve ±1,700 users. The new treatment plant was sorely needed, the deteriorating century-plus distribution system was experiencing numerous water main breaks. Mandates in the Water Quality Assurance Act (WQAA) required the city to dedicate around \$400,000 per year to replacing and repairing infrastructure, and significant budget shortfalls were projected. A utility rate increase and/or excessive bonding would be necessary to cover

the projected shortfalls. It was evident that it was beyond the Egg Harbor's capacity to make the needed improvements and repairs.

Starting the process

This situation led us to begin our WIPA journey in 2018. The process began with a Capital Needs Assessment and Rate Study done by R&V. They have been the city's engineers for over 100 years and have prior experience in the sale of utility systems. Their study projected that

the city would need in the neighborhood of \$14 million to make critical repairs and an estimated \$38 million for a fully implemented 10-year capital improvement plan; costs that far exceed the Utility's borrowing capacity.

Upon reviewing these findings, the city certified that there was an Emergent Condition and submitted a request to the NJDEP. The department approved, agreeing to the existence of Emergent Condition No. 5 (financial capacity) stating in their letter of determination, "The city has shown it has significant problems regarding its financial capacity to adequately operate and maintain its drinking water and waste water systems moving forward." After NJDEP's approval of the Emergent Condition, no petitions were filed protesting the process and the city voted to pursue selling the utility systems.

The next step was to circulate a Request for Qualifications. The city received responses from three

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companies: AQUA-NJ, NJAW, and VICO. All three were deemed to be qualified. Then, the city prepared and circulated a Request for Proposals to each of the RFQ respondents. Note: the RFP should be submitted to the Office of the State Comptroller (OSC) prior to issuance if the anticipated transaction value exceeds various thresholds.

Entering negotiations

NJAW's proposal was selected as the most advantageous for the city and we entered negotiations. They agreed to pay \$21.8 million dollars for the systems and committed to \$14 million dollars in system improvements over a 10-year period. Additionally, they offered many customer services that the city could not. NJAW's expertise, highly professional staff, and consultants proved to be invaluable through the WIPA Process.

With NJAW on board, a complete submission was made to OSC, the Office of Administrative Law (OAL), the NJ Board of Public Utilities (BPU), and Rate Council for review. This turned out to be a lengthy review period with much correspondence. Major discrepancies included the BPU's concerns about the sale price and valuation. Additionally, OAL opined that the City Engineer should not have performed the financial analysis and asset valuation, citing that the WIPA Statute required a 3rd party provide the financial analysis and asset valuation. The city was able to produce third-party valuations that backed up the original valuation and ultimately received approval of the transaction.

Grant considerations

Since the city had multiple grants and loans from the United States Department of Agriculture (USDA), some dating back to the 1990s, the next step was to determine how much grant recapture would be required. The USDA's grant recapture calculation is based on Presidential Executive Order (EO) 12803 and sections of the Code of Federal Regulations (CFR). In accordance with a sub-section of those rules, the USDA prepared



New Jersey American Water President Mark McDonough and Mayor Lisa Jampetti.

calculations for grant recapture based on an IRS depreciation schedule for the value of grant funded assets and estimated a grant recapture of approximately \$3.6M.

Remington and Vernick Engineers argued that, in accordance with the language of the EO, specifically, "State and local governments shall first recoup in full the unadjusted dollar amount of their portion of total project costs associated with the infrastructure assets involved," there should be no grant recapture because the city had expended more of its own funds on construction of the system than the system was currently worth. After a logical and convincing refutation written by R&V Engineer, Ryan McGowan, the USDA ultimately agreed that the city was entitled to recoup all system construction costs and that no proceeds would remain for grant recapture. USDA ended up revising its grant recapture rules to reflect the argument advanced by Egg Harbor City.

Disposition of assets plan

Before closing, the last step was to prepare a disposition of assets plan for the NJ Department of Community Affairs (DCA). In accordance with the WIPA statute, the net proceeds of the sale had to be used for "any outstanding fees [debt] or fines owed by the entity to any federal, state, county, or local governmental units, capital improvements, community improvements, and general purposes of the owner." The City Council met in a special public meeting to prioritize and commit to capital and community improvements. The DCA approved the plan.

In conclusion, the WIPA process is a helpful tool for municipalities. Throughout the process, the various government agencies were helpful and supportive. However, their reviews were generally lengthier and more in depth than anticipated. Moreover, having a dedicated team is critical. 📌

Suggestions for Other Municipalities

1. Contact any agency with regulatory authority over the transaction as early as possible.
2. Check with lenders and grant providers before taking any concrete steps.
3. Procure an independent financial advisor with no prior relationship to the municipality.