



## **PRIVATIZATION OF A PUBLICLY OWNED WASTE WATER TREATMENT PLANT**

By Ted Volskay

### **BACKGROUND**

Since 1972, the U.S. Environmental Protection Agency (EPA) Construction Grants Program has invested more than \$67 billion in federal funds into publicly owned (wastewater) treatment works (POTW) throughout the country. Congress initiated the phase out of the Construction Grants Program in 1987 and replaced it with the Clean Water State Revolving Fund (SRF) program which provides low-interest loans to communities for the construction of infrastructure projects involving water pollution control. On April 30, 1992, President George H.W. Bush signed Executive Order 12803, directing federal agencies to remove regulatory or procedural barriers to privatizing wastewater POTWs under their control. In addition, Executive Order 12803 required that privatized federally funded POTWs continue to serve their original purposes.<sup>1</sup>

The first privatization agreement of a POTW under Executive Order 12803 was approved on July 21, 1995, when a private contractor purchased the Franklin, Ohio, POTW for \$6.85 million. The Miami Conservancy District owned and operated the wastewater treatment plant that served the residents of the cities of Franklin (Warren Co.), Germantown and Carlisle (Montgomery Co.), Ohio. The combined population of the three cities was approximately 22,000.<sup>2</sup> The contractor that had operated the Franklin Plant under contract since 1987 offered to purchase the POTW in 1992. The transaction took two years of negotiation between the Miami Conservancy District, which owned the POTW, and the private contractor. Subsequent to the negotiations was an eight-month state approval process, followed by a four-month federal (EPA and Office of Management and Budget) approval process. The Office of Management and Budget had to agree to the negotiated transfer price since the sale of assets was not competitively bid.<sup>3</sup> When agreement was reached on the terms, the City of Franklin, Ohio, became the first municipality in the nation to sell the public asset of a POTW that had been constructed with federal grant funds and enter into a public/private partnership agreement with the new owner.

#### **Privatization Case Study: Franklin, Ohio, Wastewater Treatment Plant**

**Governmental Level: City (Franklin, Ohio) and County (Warren and Montgomery Counties)**

**Primary Privatization Mechanism: Asset Purchase and Operation**

The Franklin POTW was accepted by the EPA as a privatization pilot project. Planning and negotiations between Franklin officials and the prospective buyer began in the summer of 1994. On July 14, 1995, the City of Franklin received word that the EPA had completed its final review and authorized sale of the POTW. The transaction was completed within two weeks and the contractor that operated the plant since 1987 purchased the POTW in July 1995 for \$6.8 million.<sup>4</sup>

## Privatization of a Publicly Owned Waste Water Treatment Plant

Key to the success of this privatization initiative was 16 months of extensive planning and negotiations. A 20-year service agreement was signed that addresses the following key provisions:<sup>5</sup>

- Unit rates the city will pay for sewage treatment;
- Acceptable conditions for rate increases;
- Operation and maintenance standards;
- Allocation of environmental liability;
- Protocol for prompt conflict resolution; and
- Renewal of the 20-year contract.

The three most pertinent fiscal considerations were the:<sup>6</sup>

- Initial sale price of the plant;
- Annual rate and the amount and timing of any increases to the rate; and
- Repurchase price of the plant at the end of the 20-year contract or, as a contingency, repurchase of the plant prior to that date.

A consultant with privatization experience was hired to advise and work with the three city managers during the evaluation and negotiation phase. An advisory board was established to represent the interest of the three cities and two counties, and to provide one voice for the buyer to negotiate with.<sup>7</sup>

A matrix was devised that compared economic and noneconomic impacts of three alternatives:<sup>8</sup>

- Alternative 1 - maintaining public ownership of the plant;
- Alternative 2 - creating a regional sewer district; and
- Alternative 3 – privatization.

The Miami Conservancy District retained ownership of the wastewater collection system that directs sewage to the POTW and a small part of the treatment process so that the treatment system could maintain the *publicly owned treatment works* classification and avoid the more stringent and costly requirements that would otherwise be invoked under the *Resource Conservation and Recovery Act* (RCRA). Similarly, the Ohio Environmental Protection Agency listed both the contractor and the Miami Conservancy District as being responsible for meeting POTW discharge requirements.<sup>9</sup>

A 20-year agreement was signed that made the private contractor responsible for:<sup>10</sup>

- Financing all plant upgrades and expansions;
- Operation and maintenance of the Wastewater Treatment Plant (WWTP);
- Administration of the municipal industrial pretreatment program.

The agreement gave the Miami Conservancy District the option to repurchase the POTW at the end of the 20-year term.<sup>11</sup> In addition, all plant personnel were retained under the contract.<sup>12</sup>

The city of Franklin's rates for wastewater disposal were reduced by 23 percent during the first year of the contract and, with the exception of energy and chemical costs, future rate increases were limited to increases in the rate of inflation.<sup>13</sup>

The pace of economic development in the area increased after sale of the treatment plant. Stabilized wastewater treatment fees were reportedly a primary incentive for expanding operations of three area paper industries and a subsequent increase in jobs. Increased economic development was closely followed by an expansion of the water distribution system from approximately 4 million gallons per day (gpd) to 10 million gpd.<sup>14</sup>

The City of Franklin, Ohio, entered into its second public/private partnership on November 1, 1997, when it opened a new 5-million-gallon-per-day water supply treatment plant that was designed, built and financed, and is now operated by a private contractor.<sup>15</sup>

### **THINGS TO CONSIDER**

- The EPA must review and approve all proposals to sell POTW assets when Federal grants have been used to construct the treatment works.<sup>16</sup>
- In addition to the EPA, the Office of Management and Budget (OMB) must also review and approve the sale of POTW assets constructed using Federal grants if the transaction price is not established using a full and open competitive bidding process.<sup>17</sup>
- POTWs constructed solely using state revolving loans or local funding may be sold without EPA review or approval.<sup>18</sup>
- EPA review and approval is not required when POTW operations are privatized (subcontracted to a private entity), even if the POTW was constructed using Federal construction grants.<sup>19</sup>

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### **ENDNOTES**

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<sup>1</sup> EPA-832-B-00-002. Guidance on the Privatization of Federally Funded Wastewater Treatment Works; August 2000.

<sup>2</sup> Samuel L. Coxson, "Privatizing wastewater treatment in Franklin, Ohio," *Government Finance Review* accessed May 2011, <http://www.allbusiness.com/finance-insurance/543487-1.html>.

<sup>3</sup> EPA 832-R-97-001a. *Response to Congress on Privatization of Wastewater Facilities*, U.S. Environmental Protection Agency Office of Water, July 1997. <http://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=20002990.txt>

<sup>4</sup> See endnote 2 here and for following endnotes (5-8).

<sup>5</sup>

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<sup>9</sup> Roger F. Wakeman, P.E., "Municipal Wastewater Privatization: An Alternative with Solutions for Infrastructure Development, Environmental Compliance, and Improved Efficiency," Masters Project, Old Dominion University Department of Civil and Environmental Engineering, June 15, 1998. [Municipal Wastewater Privatization: An Alternative with Solutions for Infrastructure Development, Environmental Compliance, and Improved Efficiency](#)

<sup>10</sup> See endnote 4 here and below (endnote 11)

<sup>11</sup>

<sup>12</sup> See endnote 3.

<sup>13</sup> Dana Evans Voight, P.E., *Engineering Considerations for Privatizing Water and Wastewater Utility Systems*. Master of Science Thesis, Department of Civil and Environmental Engineering, The Florida State University FAMU-FSU College of Engineering, 2009. [Title page for ETD etd-11042009-182807](#)

<sup>14</sup> Arndt, Randy, "Wastewater deal yields profit and innovation for Franklin, Ohio," *The Free Library*, 22 January 1996. 14 May 2011. [http://www.thefreelibrary.com/Wastewater deal yields profit and innovation for Franklin, Ohio.-a017903809](http://www.thefreelibrary.com/Wastewater+deal+yields+profit+and+innovation+for+Franklin,+Ohio.-a017903809).

<sup>15</sup> <http://www.franklinohio.org/community/privatization.asp>

<sup>16</sup> See endnote 1 here and for following endnotes (17-19).

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<sup>19</sup>