**To:** **New Jersey Law Revision Commission**
**From:** **Mark J. Leszczyszak**
**Re:** **Sewerage Authorities Law (NJ ST 40:14A-8) and Municipal Utility Authorities Law (NJ ST 40:14B-22)**
**Date:** **September 8, 2014**

**M E M O R A N D U M**

## I. INTRODUCTION

This potential project arises out of Staff's review of the Supreme Court of New Jersey's decision in *612 Associates, LLC v. North Bergen Municipal Utilities Authority*,[1] and aims to "[c]larify confusing [] provisions found in"[2] the Sewerage Authorities Law[3] and Municipal and County Utilities Authorities Law[4] if there are any.

612 Associates, LLC, a condominium developer, ("612 Associates") filed a complaint in interpleader to determine whether the North Hudson Sewerage Authority ("NHSA") or the North Bergen Municipal Utilities Authority ("NBMUA") "is entitled to collect the connection fee when one of them provides the initial physical connection to a condominium development and transports the waste for a short distance, but when the other actually treats the sewage at its nearby treatment facility" respectively.[5] 612 Associates owned a large piece of land in Union City near the border of North Bergen Township and "needed to connect with a sewerage system … to dispose of its anticipated sewer flows."[6] According to 612 Associates, "its property [was] located at the 'high point of the area;'" this allowed the sewage to flow westward into the North Bergen Treatment Plant operated by NBMUA or southwestward into the North Hudson Regional Sewage Plant operated by NHSA.[7] The westward flow was naturally caused by gravity, therefore 612 Associates "completed a treatment work application with [NB]MUA for treatment of the project's sewage."[8] Although the sewage was to be treated in North Bergen, 612 Associates' property was located in Union City and thus required connection to the sewer lines there, which were owned by NHSA.[9] Since the sewage was to be treated in the neighboring municipality but had to travel through the sewage lines of Union City, the issue of which entity is entitled to the connection fee arose.

## II. APPLICABLE PROVISIONS

In the absence of any provision governing such a split (use of one entity's sewer lines but treatment of sewage in another's plant), the Supreme Court of New Jersey turned to "the provisions governing connection fees that are found in the Sewerage Authorities Law, *N.J.S.A.* 40:14A–8, and the

[1] 215 N.J. 3 (2013).
[2] Powers and duties, N.J.S. 1:12A-8.
[3] Sewerage Authorities Law, N.J.S. 40:14A-1 to -45.
[4] Municipal and County Utilities Authorities Law, N.J.S. 40:14B-1 to -78.
[5] *612 Associates, LLC*, 215 N.J. at 6.
[6] *Id*. at 7.
[7] *Id*.
[8] *Id*.
[9] *Id*.

Municipal and County Utilities Authorities Law, *N.J.S.A.* 40:14B–22."[10] These provisions are strikingly similar. The Sewerage Authorities Law provides in pertinent part:

> (a) Every sewerage authority is hereby authorized to charge and collect rents, rates, fees or other charges (in this act sometimes referred to as "service charges") [] for direct or indirect connection with, or the use or services of, the sewerage system …
>
> (b) ... In addition to any such periodic service charges, a separate charge in the nature of a connection fee or tapping fee, in respect of each connection of any property with the sewerage system, may be imposed upon the owner or occupant of the property so connected …[11]

Similarly the Municipal Utility Authorities Law provides:

> Every municipal authority is hereby authorized to charge and collect rents, rates, fees or other charges (in this act sometimes referred to as "sewerage service charges") for direct or indirect connection with, or the use or services of, the sewerage system …
>
> In addition to any such sewerage service charges, a separate charge in the nature of a connection fee or tapping fee, in respect of each connection of any property with the sewerage system, may be imposed upon the owner or occupant of the property so connected …[12]

In its analysis of these provisions, the Supreme Court looked to Legislative intent and statutory language. The Supreme Court ultimately concluded that it was "persuaded that the Legislature did not [] intend that the connection fee could only be imposed by the entity which owned or operated the particular lines to which any user was directly connected. We reach this conclusion for three reasons."[13]

## III. JUDICIAL ANALYSIS

The first reason was rejecting NHSA's reliance "on the maxim of *expressio unius est exclusio alterius* … [b]ecause our analysis of the statute makes the Legislature's meaning and intent clear, we need not resort to this interpretive aid."[14] The second reason pertained to the provisional language which the court reasoned that "the reference to the basis on which the connection fee may be imposed, although not specifying that it applies to both direct and indirect connections, uses other descriptive words that imply inclusivity … [i]n our view, read in context, the words do not suggest that only a direct connection can support imposition of the charge."[15] The Supreme Court's third reason was that "our analysis of the overall legislative intent demands that we read the statutes to permit imposition of a connection fee by

---

[10] *Id*.
[11] Rates and service charges; connection or tapping fee, N.J.S. 40:14A-8.
[12] Rents, rates, fees or other charges; sewerage; connection or tapping fee, N.J.S. 40:14B-22.
[13] *612 Associates, LLC*, 215 N.J. at 18.
[14] *Id*.
[15] *Id*.

*authorities* that have only an indirect connection with any particular property that generates sewage."[16] This dealt with the purpose of calculating the connection charges which was "to permit an authority that has developed the sewage collection and treatment system to recover capital costs and related debt service associated with developing that system. It is designed to create a mechanism to permit those costs to be fairly spread across those properties that connect with and use the system."[17]

Thus, the Supreme Court ultimately concluded that "each authority that serves a property, whether through a direct or an indirect connection, is permitted to charge a connection fee. Notwithstanding that interpretation, the imposition of any such fee must still be bound by the statutory command that the fee 'represent a fair payment toward the cost of the system.'"[18] In addition, the Supreme Court stated "a fair [] payment must be one that reflects the use of each system and is not duplicative."[19] The Supreme Court later identified what the authorities can and cannot charge for.[20]

## IV. CONCLUSION

It is unclear whether any action should be taken regarding the aforementioned statutory provisions because *612 Associates, LLC* involved a dispute primarily between two authorities but did not involve ambiguous, confusing, or conflicting statutory language.[21] The statutes analyzed by the Supreme Court did not contain a provision that governs a situation in which sewage travels via one authority's sewage lines but is treated at another authority's treatment plant. Staff requests guidance from the Commission regarding whether revision of the statutes or an addition to the statutes is appropriate, or if the case law on this issue offers suitable clarification since the issue essentially pertains to institutional entities rather than the public, and the impact is not one that is anticipated to be felt by the general public.

[16] *Id*. at 19 (emphasis added).
[17] *Id*. at 20.
[18] *Id*. at 22.
[19] *Id*. at 22-23.
[20] *Id*. at 23.
[21] *See*, *612 Associates, LLC,* 215 N.J. at 20-21 (Stating the legislative intent is plain and clear.).