

AGREEMENT

This Agreement dated the 16th day of August, 2007, between the COUNTY OF ERIE having its principal office located at 95 Franklin Street in Buffalo, New York, acting by and through the ERIE COUNTY DEPARTMENT OF HEALTH (hereinafter referred to as ECDOH) and the ERIE COUNTY WATER AUTHORITY (hereinafter referred to as ECWA), a public benefit corporation having its principal office located in the Ellicott Square Building at 295 Main Street, Suite 350, Buffalo, New York 14203, is intended to improve the public health, to improve emergency preparedness through certain enhancements to ECWA's Emergency Response Plan and to promote communication between the parties leading up to and in the midst of an emergency.

WHEREAS, ECDOH has jurisdiction to require compliance by ECWA with the New York State Sanitary Code (NYSSC), including the requirement to maintain an Emergency Response Plan and related facilities sufficient to meet the public needs; and

WHEREAS, it is the intention of ECWA and ECDOH to continue their cooperative working commitment to better serve and protect the health and public safety of the residents of Erie County; and

WHEREAS, the October 2006 Surprise Storm caused severe damage and strain to available resources; and

WHEREAS, the Board of Commissioners of ECWA must always act in the best interest of the public in the exercise of its fiduciary duties of loyalty and care to protect the assets of ECWA and the interests of its bondholders; and

WHEREAS, in assessing ECWA preparation and response to the 2006 storm, ECDOH alleges that ECWA was in violation of certain provisions of the NYSSC including provisions relating to State and public notification, Emergency Response Plan requirements and backup power; and

WHEREAS, the ECWA states that it was in full compliance with the NYSSC including provisions relating to State and public notification, Emergency Response Plan requirements and backup power; and

WHEREAS, ECDOH has identified necessary improvements and enhancements to the ECWA's Emergency Response Plan; and

WHEREAS, it is the intention of the ECWA and ECDOH to enter into an Agreement to resolve all issues, allegations, and concerns resulting from the October 2006 Storm;

NOW, in exchange of the mutual consideration as set forth above, it is hereby agreed by and between the parties as follows:

1. ECWA will continue to work with the ECDOH to make enhancements and improvements to its Emergency Response Plan (ERP) pursuant to the NYSSC. Submission to the ECDOH of the revised ERP for approval will be made by November 1, 2007. Any items in the revised ERP which are not approved by ECDOH will be addressed by ECWA within three (3) weeks after receipt of ECDOH comments and will be subject to ECDOH approval. Items to be specifically addressed as part of these enhancements and improvements are as follows:
 - a) The parties will clarify the two-way lines of communication between ECWA and ECDOH personnel, including organizational charts from both organizations. Channels of communication between appropriate staff levels will be defined based on the degree of potential effect on public health during an event. This will include certified ECWA operators' emergency communications, directly conveying to ECDOH/NYSDOH all known conditions, as defined by NYS and Erie County Codes, potentially affecting public health as soon as possible after each condition is known and compliance with all reasonable ECDOH and NYSDOH requests to protect the public health. Revisions to the ERP will include current office phone/fax numbers, cell phone numbers, pager numbers, and e-mail addresses of the appropriate ECWA and ECDOH staff. Advisement by any of the referred methods specific to the type of emergency will be deemed compliance.
 - b) ECWA will clarify the public notification procedures to comply with the United States Environmental Protection Agency public notification guidelines as well as the NYSSC provisions governing notification. In addition a list of the appropriate and current ECWA personnel having authority to issue these notifications will be included. The guidelines will

include ECDOH approval prior to lifting the notification and that ECWA will comply with all situation-specific public notification requirements of ECDOH.

- c. ECWA will revise its current communication plan with its Bulk Sales Customers by 10/1/07. The plan shall include specific protocols for communication of ECWA system status referencing water quality and availability. Revisions to the ERP will include current office phone/fax numbers, cell phone numbers, and e-mail addresses of the appropriate public works staff and elected officials. The plan will also include action levels that will determine when this notification action will be taken. Advisement by any of the referred methods specific to the type of emergency will be deemed compliance.
 - d. The section of the ERP covering Power Failures/Loss of Service will be updated to include a deployment plan for at least six current portable generators that the Authority owns/rents with full operation capabilities by 10/1/07. As backup power generation is added to ECWA's system the ERP will be updated. (Attached herewith as Exhibit "A" is the current plan for action and estimated timetable for completion of the acquisition and installation of additional backup power generation.) In addition, the Authority agrees to lease portable generators capable of operating the four largest facilities during extended power outages beginning 10/1/07 and continuing until permanent fixed generators are operational at those facilities.
 - e. The section of the ERP covering Emergency Water Sources will be improved by Agreement of the parties to include the definition of when the use of interconnections is warranted, what areas can be fed from the interconnection, who the appropriate contacts are at the other utilities for the use of the interconnection, and procedures for prompt emergency opening and closing the interconnects by agreement with the parties.
 - f. The section of the ERP covering Prolonged Water Outages will be enhanced to include specific companies that the Authority has made prearrangements with to haul potable water and supply bottled water by 10/1/07. The plan will also include action levels that will determine when this action will be taken.
 - g. A section will also be added to the ERP to identify personnel that would be assigned to an Incident Command Center, if the Authority is involved in the event and/or requested to be present by ECDOH.
2. ECWA will inspect and investigate the usefulness of the Texas and Lang interconnection and determine if it is cost effective to rehabilitate or replace this interconnection. This analysis will be completed by 12/30/07.
 3. ECWA will work with the City of Buffalo, and Town of Tonawanda to develop a protocol and regular schedule for the testing, activating, and de-activating of the existing interconnections between the respective systems by 10/1/07 for review

and approval by ECDOH. Once the protocols have been completed and agreed to by all parties ECWA will update the ERP to reflect the actions to be taken during an emergency.

4. ECWA will continue to work with ECDOH regarding its Emergency Power Generation Study (scheduled for September 1, 2007 completion) and will keep the ECDOH informed as to the progress of the installation of backup emergency power. The current schedule is to have permanent backup power installed and operational at Sturgeon Point by the fall of 2009 and Van De Water, Ball, & Windom by the end of 2010. (Attached herewith as Exhibit "A" is the current plan for action and estimated timetable for completion of the emergency power generation.)
5. ECWA will continue to work with the ECDOH to complete the New York State Sanitary Code required cross-connection control program in accordance with the schedule set forth in the ECDOH letter dated April 20, 2004 (attached as Exhibit "B").
6. ECWA agrees that during normal operations, communications with the ECDOH staff will be prompt, open, and direct. To insure that communications are documented properly, requests for information shall be in writing unless emergency conditions require telephonic or face-to-face discussion, in which event appropriate written documentation will be made when practicable. Written communication shall consist of letters, faxes, and/or e-mails. Advisement by any of these methods will be deemed compliance.
7. It is understood between the parties that, to the extent noncompliance with any deadline, time table or other requirement of this Agreement is brought about by entities other than ECWA, the ECWA will not be held responsible so long as the ECWA has made a good faith effort to elicit cooperation and coordination from such outside entity. If such noncompliance brought about by an outside entity occurs, the ECWA shall notify ECDOH of such occurrence as soon as practical.
8. The parties recognize that the Public Authorities Act of 2005, as well as the Procurement and Lobbying Act, i.e. State Finance Laws 129, subsections j and k, that prescribe the timing for procurements by ECWA, may impede the ECWA from meeting deadlines or time tables. ECWA will not be held responsible for same so long as the ECWA makes a good faith effort to adhere to the deadlines and time tables in this Agreement as closely as allowed by law and the ECWA notifies the ECDOH of any statutory impediment to any terms of this Agreement as soon as practical.
9. This Agreement is subject to and shall comply with all applicable provisions of local and New York State and Federal laws, rules and regulations. This Agreement shall be governed by the laws of the State of New York.
10. ECDOH will be consistent in the treatment of ECWA and other potable water suppliers under its jurisdiction with respect to the issues addressed in this

Agreement.

11. No amendment, modification or waiver of any provision of this Agreement shall be valid unless it is in writing and signed by the parties hereto. If any section or portion of this Agreement shall be determined to be invalid, such determination shall not affect the enforceability or validity of the remainder of this Agreement. Any waiver of a breach of any of the provisions of this Agreement shall not be deemed a waiver of any other provision of this Agreement.
12. The failure of ECWA to reasonably comply with a material provision contained herein may be considered by ECDOH to be a material breach (breach) of this Agreement. Written notice with supporting documentation of the alleged breach shall be provided to the Attorney for the ECWA and it shall have ten (10) days thereafter to cure the alleged breach. Additional time may be granted, if mutually agreed upon in writing. In the event ECWA fails to cure the alleged breach, the ECDOH may pursue all contractual remedies available including, but not limited to, specific performance. In addition, in the event of a determination of an alleged breach of the Agreement by ECWA and failure to cure as described herein, the Erie County Health Commissioner may take immediate action to commence formal legal proceedings relative to all NYSSC violations. Each party shall have the right to pursue any and all additional legal or equitable remedies as provided by law.
13. NOTICES: Any notice required or permitted to be delivered or given pursuant to this Agreement shall be in writing, either hand-delivered or sent by courier service or certified mail, postage prepaid, return receipt requested, or by facsimile transmission, addressed as follows or to such other address and/or person as either party may designate for itself in the manner provided herein:

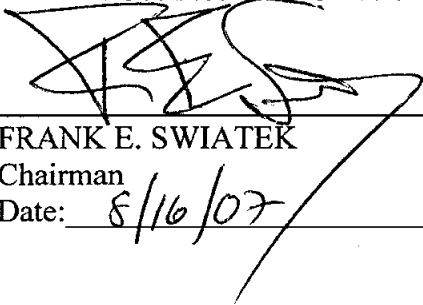
If to ECWA:

Mark J. Fuzak, Esq., Attorney
Erie County Water Authority
350 Ellicott Sq. Bldg., 295 Main Street
Buffalo, NY 14203


If to County:

Anthony J. Billittier IV, M.D., FACEP
Commissioner of Health, Erie County
95 Franklin Street – Rm. 910
Buffalo, New York 14202

ERIE COUNTY
WATER AUTHORITY

By: 
FRANK E. SWIATEK
Chairman
Date: 8/16/07

ERIE COUNTY
DEPARTMENT OF HEALTH


By: 
ANTHONY J. BILLITTIER, IV, MD
Commissioner of Health
Date: 8/18/07

APPROVED AS TO FORM



JOSEPH A. MATTELIANO
Augello & Matteliano LLP
Date: 8/08/07

APPROVED AS TO FORM



GREGORY P. KAMMER
Assistant County Attorney
Date: 8/08/07
Doc.# 07-744-He

EXHIBIT "A"

ECWA Standby Emergency Power Action Plan Timetable

- 11/20/06 - ECWA board of Commissioners approved five year capital budget including the installation of permanent power generators in 2007, 2008, 2009, and 2010.
- 12/01/06 - ECWA rents two additional generators (400kw & 150kw). This brings the Authority's inventory of portable generators to five. (ECWA currently owns 28kw, 150kw, and 500kw) These generators are capable of running all but the four largest facilities the Authority operates.
- 12/29/06 - ECWA issues RFP for engineering services regarding an Emergency Standby Power Study.
- 01/17/07 - ECWA advertised Nussbaumer & Clarke Contract Number NC-26B which includes permanent standby power at Van De Water raw water pump station.
- 02/08/07 - ECWA advertises for the purchase of an additional 100kw generator.
- 03/22/07 - ECWA awards Nussbaumer & Clarke Contract Number NC-26B scheduled installation of standby power estimated to be mid 2008.
- 04/02/07 - ECWA Board of Commissioners approves the award of contract to Nussbaumer & Clarke for the Emergency Standby Power Study.
- 04/19/07 - ECWA Board of Commissioners approves the award of contract for the 100kw generator. Delivery date is estimated to be mid-July 2007. this will bring the total number of generators that the Authority owns/rents to six.
- 05/02/07 - ECWA issues RFP for the rental of portable generators capable of running the Authority's four largest facilities. (Sturgeon Point & Windom, and possibly Van De Water & Ball)
- 05/24/07 - ECWA, Nussbaumer & Clarke, and ECDOH meet to discuss the methodology used in the Emergency Standby Power Study.
- 06/28/07 - Board of Commissioner approval of contract for generator rentals for the Authority's four largest facilities.
- 09/01/07 - Nussbaumer & Clarke to issue final recommendations for the Emergency Standby Power Study.
- Fall 2007 - ECWA will advertise Nussbaumer & Clarke Contract Number NC-30 which includes the electrical switchyard modifications necessary to accommodate permanent standby emergency power at Sturgeon Point.
- Fall 2009 - Installation of permanent standby power generators to be completed at Sturgeon Point.
- 12/31/10 - Installation of permanent standby power generators at Van De Water, Windom, and Ball to be completed.



County of Erie

JOEL A. GIAMBRA
COUNTY EXECUTIVE

DEPARTMENT OF HEALTH
April 20, 2004

ANTHONY J. BILLITTIER IV, M.D., FACEP
COMMISSIONER OF HEALTH

Re: Cross Connection Program
Compliance Schedule
ECWA 12/16/03 Letter

RECEIVED
04 APR 23 AM 10:59
ERIE COUNTY
WATER AUTHORITY

Dear Wes,

We have reviewed ECWA's proposed cross connection control program contained in the 12/16/03 letter. Based on this we request that the Authority resubmit an itemized, prioritized cross connection implementation program that reflects:

- Completing an initial inventory of all suspected industrial and commercial "hazardous facilities" by June 15, 2005
- Installation of acceptable backflow devices at those hazardous facilities deemed by the ECWA to be a moderate to high priority risk in the initial inventory by June 15, 2006
- Completion of the program for all hazardous facilities by June 15, 2008 and;
- Completion of all NYS Health Department Cross-Connection requirements for all users by June of 2010.

This request is based on the need for such actions to protect the public water supply and a review of the status of similar programs for the Monroe County Water Authority, City of Buffalo, Niagara Falls, and the Town of Tonawanda. We noted you expect the need for review and follow-up on over 11,000 customers. While it appears this number may not need backflow devices, this is considerably higher than the number of installed devices in service for the Monroe County Water Authority that completed their program a number of years ago. They have recently changed their guidelines that will result in more installations, however their number of about 2,800 may reflect the hazardous facilities they identified in their initial program. Buffalo, which is nearing completion of their program monitors approximately 2,600 backflow devices.

We would be glad to meet and discuss this at your convenience. Please respond by May 21, 2004 or sooner, if possible.

Sincerely,

Thomas P. Casey, PE
Associate Public Health Engineer

Cc: J. Kociela, Dir. Env. Health, D. Funke, Env. Health