

**BOROUGH OF ALBURTIS
LEHIGH COUNTY, PENNSYLVANIA**

Ordinance No. 450

(Duly Adopted December 27, 2006)

AN ORDINANCE AUTHORIZING THE BOROUGH OF ALBURTIS TO ENTER INTO AN ADDENDUM NO. 5 TO THE 17 APRIL 1991 AMENDMENT TO THE 1 APRIL 1991 WASTEWATER TREATMENT CAPACITY ALLOCATION AGREEMENT (6.15 MGD) WITH LEHIGH COUNTY AUTHORITY, COUNTY OF LEHIGH, BOROUGH OF MACUNGIE, AND THE TOWNSHIPS OF LOWER MACUNGIE, LOWHILL, UPPER MACUNGIE, UPPER MILFORD, AND WEISENBERG TO EXTEND THE TERMS OF THE 1991 AMENDMENT FOR AN ADDITIONAL THREE YEARS); AND AUTHORIZING THE BOROUGH OF ALBURTIS TO ENTER INTO AN AMENDMENT NO. 4 TO THE 4 AUGUST 1987 WASTEWATER TREATMENT CAPACITY ALLOCATION AGREEMENT (POST-1985 ALLOCATION) WITH LEHIGH COUNTY AUTHORITY, COUNTY OF LEHIGH, BOROUGH OF MACUNGIE, AND THE TOWNSHIPS OF LOWER MACUNGIE, LOWHILL, UPPER MACUNGIE, UPPER MILFORD, AND WEISENBERG TO REVISE THE PROCEDURE AND CRITERIA FOR TRIGGERING A REEXAMINATION OF THE METHOD FOR ALLOCATING TREATMENT CAPACITY WHEN THE AMOUNT OF REMAINING CAPACITY BECOMES SMALL, TO CONTINUE THE CURRENT METHOD OF ALLOCATING CAPACITY UNTIL A NEW ALLOCATION PROCESS IS APPROVED, AND TO REDUCE THE AMOUNT OF TIME WHICH A USER MAY RESERVE AN ALLOCATION OF CAPACITY BEFORE OBTAINING A CERTIFICATE OF OCCUPANCY OR USING THE ALLOCATION, AND IF SUCH TIME REQUIREMENTS ARE NOT SATISFIED, FORFEITING THE UNUSED ALLOCATION WITH NO REIMBURSEMENT OF FEES.

WHEREAS, the Borough of Alburtis has entered into certain Agreements with Lehigh County Authority, the County of Lehigh, the Borough of Macungie, and the Townships of Lower Macungie, Lowhill, Upper Macungie, Upper Milford, and Weisenberg relating to the transportation and treatment of sanitary sewage; and

WHEREAS, the Borough of Alburtis desires to join with the other parties to enter into an Addendum No. 5 to the 17 April 1991 Amendment to the 1 April 1983 Wastewater Treatment Capacity Allocation Agreement (6.15 MGD), in the form attached to this

Ordinance, and an Amendment No. 4 to the 4 August 1987 Wastewater Treatment Capacity Allocation Agreement (Post-1985 Allocation);

NOW, THEREFORE, be it **ORDAINED** and **ENACTED** by the Borough Council of the Borough of Alburtis, Lehigh County, Pennsylvania, as follows:

SECTION 1. Chapter 65, Article XVI of the Alburtis Codified Ordinances (relating to Sanitary Sewer—Authorization of Agreements, Etc.) is amended by adding the following new Sections 65-1605 and 65-1606 after existing Section 65-1604:

§ 65-1605 Addendum No. 5 to 1991 Amendment to 1983 Wastewater Treatment Capacity Allocation Agreement (6.15 MGD).

The Borough of Alburtis shall enter into an Addendum No. 5 to the 17 April 1991 Amendment to the 1 April 1983 Wastewater Treatment Capacity Allocation Agreement (6.15 MGD) with Lehigh County Authority, County of Lehigh, Borough of Macungie, and the Townships of Lower Macungie, Lowhill, Upper Macungie, Upper Milford, and Weisenberg in the form attached to Ordinance 450 as **Exhibit A**, which is incorporated into this Article by reference, *provided that* the governing bodies of the other parties shall also approve the execution of the Agreement. The President (or Vice President) of Borough Council and the Executive Secretary are hereby authorized and directed to execute and attest the Agreement on behalf on the Borough upon the approval of the Agreement by all of the parties.

§ 65-1606 Amendment No. 4 to 1987 Wastewater Treatment Capacity Allocation Agreement (Post-1985 Allocation).

The Borough of Alburtis shall enter into an Amendment No. 4 to the 4 August 1987 Wastewater Treatment Capacity Allocation Agreement (Post-1985 Allocation) with Lehigh County Authority, Borough of Macungie, and the Townships of Lower Macungie, Lowhill, Upper Macungie, Upper Milford, and Weisenberg in the form attached to Ordinance

nance 450 as **Exhibit B**, which is incorporated into this Article by reference, *provided that* the governing bodies of the other parties shall also approve the execution of the Agreement. The President (or Vice President) of Borough Council and the Executive Secretary are hereby authorized and directed to execute and attest the Agreement on behalf on the Borough upon the approval of the Agreement by all of the parties.

SECTION 2. The attached **Exhibit A** and **Exhibit B** are incorporated into this Ordinance by reference.

DULY ORDAINED and **ENACTED** by the Borough Council of the Borough of Alburtis, this 27th day of December, 2006, in lawful session duly assembled.

BOROUGH COUNCIL
BOROUGH OF ALBURTIS

Steven R. Hill, President

Attest:

Melanie Hansen, Executive Secretary

AND NOW, this 27th day of December, 2006, the above Ordinance is hereby APPROVED.

Russell J. Afflerbach, Mayor

EXHIBIT A

ADDENDUM NO. 5
TO
THE 17 APRIL 1991 AMENDMENT
TO
THE 1 APRIL 1983 WASTEWATER
TREATMENT CAPACITY ALLOCATION AGREEMENT
(6.15 MGD)

This ADDENDUM to the 17 April 1991 Amendment to the 1 April 1983 Wastewater Treatment Capacity Allocation Agreement (6.15 MGD), dated for convenience this ____ day of December 2006, by and among **LEHIGH COUNTY AUTHORITY** ("Authority"), a Pennsylvania municipal authority; **COUNTY OF LEHIGH** ("County"), a Pennsylvania municipal subdivision; and the Boroughs of **ALBURTIS** and **MACUNGIE**, Townships of **LOWER MACUNGIE**, **LOWHILL**, **UPPER MACUNGIE**, **UPPER MILFORD**, and **WEISENBERG**, all Pennsylvania municipal subdivisions located in Lehigh County, Pennsylvania, (referred to collectively as "Municipalities").

WITNESSETH:

WHEREAS, the parties entered into an amendment agreement dated 17 April 1991 ("1991 Amendment") to the 1 April 1983 Wastewater Treatment Capacity Allocation Agreement (6.15 MGD) ("1983 Agreement") to deal with the fact that because of its location within Upper Macungie Township, the then newly-built County Pretreatment Plant ("Plant") would treat wastewater from the then Stroh Brewery, the Kraft facility, Upper Macungie Township and other upstream municipalities; and

WHEREAS, the parties entered into an addendum agreement ("Addendum No. 1") dated 8 November 1994 to the 1991 Amendment for the purpose of extending the terms of the 1991 Amendment; and

WHEREAS, the parties entered into an addendum agreement ("Addendum No. 2") dated 31 December 1997 to the 1991 Amendment for the purpose of further extending the terms of the 1991 Amendment; and

WHEREAS, the parties entered into an addendum agreement ("Addendum No. 3") dated 31 December 2000 to the 1991 Amendment for the purpose of further extending the terms of the 1991 Amendment; and

WHEREAS, the parties entered into an addendum agreement ("Addendum No. 4") dated 31 December 2003 to the 1991 Amendment for the purpose of further extending the terms of the 1991 Amendment; and

WHEREAS, the discharge from the Plant was below assumed strength concentrations and the 1983 Agreement had no mechanism for the Authority to reflect this benefit in wastewater charges to the Plant; and

WHEREAS, the parties agreed to exempt the discharge from the Plant from certain requirements of the 1983 Agreement and establish a system whereby the Plant receives certain credits against its billings from the Authority to reflect the reductions in strength concentrations in its discharges; and

WHEREAS, the County entered into the 23 June 2005 Pretreatment Plant Agreement with the Authority transferring operational responsibilities for the Plant to the Authority with an option for the Authority to also take ownership of the Plant in the future, and

WHEREAS, such transfer of operations responsibilities or ownership to the Authority does not change any of the circumstances supporting the actions of the Addendums; and

WHEREAS, in accordance with §2 of the Addendum No. 4, these benefits are to expire on 31 December 2006 unless the parties agree to a further exemption.

NOW THEREFORE, the parties hereto intending to be legally bound hereby represent, covenant and agree as follows:

1. Nothing in this Addendum is intended, and nothing in this Addendum shall be construed to in any way amend, modify, or supersede existing agreements between and among the parties to this Addendum, nor shall this Addendum waive, release, surrender or bar any rights, any issues, transactions or controversies among any of the parties, or to in any other way affect any rights, privileges or obligations of any of the parties, directly or by implication, except to the extent specifically set forth in this Addendum. All provisions of the 1983 Agreement and 1991 Amendment, other than the term of the Amendment, shall remain in full force and effect.

2. The parties extend the term of the 1991 Amendment for three (3) additional years beyond 31 December 2006, precluding the reinstatement of §3.02 of the 1983 Agreement on 1 January 2007 as provided in §2 of the Addendum No. 4. The reinstatement of §3.02 of the 1983 Agreement shall now occur on 1 January 2010 unless all of the parties agree to a further exemption for the discharge from the Plant prior to that date.

3. If any provision hereof shall be held to be invalid, such invalidity shall not affect any other provision hereof, and the remaining provisions hereof shall be construed and enforced as if such provision had not been contained herein. The Laws of the Commonwealth of Pennsylvania shall govern interpretation hereof.

4. This Addendum may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original, and such counterparts shall constitute but one and the same instrument.

5. This Addendum shall be binding upon the parties and their respective successors and assigns.

IN WITNESS THEREOF, the parties each have caused this Agreement to be duly executed and attested by its proper officers, pursuant to proper action of its governing body, all as of the day and year first above written.

ATTEST:

Bradford E. Landon
Solicitor

LEHIGH COUNTY AUTHORITY

By:_____
Aurel M. Arndt
General Manager

ATTEST:

Name:
Position:

COUNTY OF LEHIGH

By:_____
Name:
Position:

ATTEST:

Name:
Position:

BOROUGH OF ALBURTIS

By:_____
Name:
Position:

ATTEST:

Name:
Position:

BOROUGH OF MACUNGIE

By:_____
Name:
Position:

ATTEST:

Name:
Position:

TOWNSHIP OF LOWER MACUNGIE

By:_____
Name:
Position:

ATTEST:

Name:
Position:

TOWNSHIP OF LOWHILL

By:_____
Name:
Position:

ATTEST:

TOWNSHIP OF UPPER MACUNGIE

Name:
Position:

By:_____
Name:
Position:

ATTEST:

TOWNSHIP OF UPPER MILFORD

Name:
Position:

By:_____
Name:
Position:

ATTEST:

TOWNSHIP OF WEISENBERG

Name:
Position:

By:_____
Name:
Position:

CONSENT AND JOINDER

Upper Macungie Township Authority, an authority located in Lehigh County, Pennsylvania, for value received, and intending to be legally bound hereby, does join in and consent to the foregoing Agreement, dated for convenience as of _____ December 2006, by and among Lehigh County Authority, County of Lehigh, Boroughs of Alburdis and Macungie, and the Townships of Lower Macungie, Lowhill, Upper Macungie, Upper Milford and Weisenberg, and to the extent applicable to it, agrees to abide by the terms of and be duly bound by the terms of said Agreement.

IN WITNESS WHEREOF, Upper Macungie Township Authority has caused this Consent and Joinder to be executed and attested by its proper officers, pursuant to proper action taken this _____ day of December 2006.

ATTEST:

UPPER MACUNGIE TOWNSHIP AUTHORITY

Name:
Position:

By:_____
Name:
Position:

EXHIBIT B

**AMENDMENT NO. 4
to the
4 AUGUST 1987
WASTEWATER TREATMENT CAPACITY ALLOCATION AGREEMENT
(Post-1985 Allocation)**

This Amendment No. 4 (the "Amendment"), dated the _____ day of _____
_____ 2006, among:

LEHIGH COUNTY AUTHORITY, (the "Authority"), a municipal authority located in Lehigh, County, Pennsylvania;

and

BOROUGHS of **ALBURTIS** and **MACUNGIE** as well as the **TOWNSHIP**S of **LOWER MACUNGIE**, **LOWHILL**, **UPPER MACUNGIE**, **UPPER MILFORD** and **WEISENBERG**, all municipal subdivisions located in Lehigh County, Pennsylvania (referred to collectively as the "Municipalities").

WITNESSETH

WHEREAS, the parties entered into the Wastewater Treatment Allocation Capacity Agreement (Post-1985 Allocation) dated 4 August 1987 (the "Agreement") to provide a procedure for allocating the additional wastewater treatment capacity acquired by the Authority in the City of Allentown (the "City") wastewater treatment facility (the "Treatment Plant") per the 1 August 1986 Agreement with the City (the "1986 City Agreement"); and

WHEREAS, the City has decided to release a portion of the 1 mgd of buffer capacity it retained in §5 of the 1986 City Agreement (the "Buffer Capacity Release"), which Buffer Capacity was not included within the Post-1985 Allocation as that term is defined in the Agreement; and

WHEREAS, the Agreement has been revised by amendments dated 1 February 1988 17 April 1991 and 2 August 2000; and

WHEREAS, Article 2 of the Agreement includes provisions on the process for new users to obtain wastewater allocation; and

WHEREAS, the parties wish to change some of the process set forth in Article 2;

NOW THEREFORE, the parties, intending to be legally bound, hereby represent, covenant and agree as follows:

1. The language of §2.01 shall be amended to read (*deleted language is indicated as crossed out language and added new language is underlined*):

Section 2.01. Hydraulic Flow. The purpose of this section is to provide the basis for allocation of the treatment capacity available to the Authority as a result of the 1986 Agreement including the Buffer Capacity Release.

~~An allocation of 300,000 gpd of treatment capacity shall be available to Upper Macungie Township for the proposed Bell Telephone Laboratories, Inc. ("BTL") project, to be located in Upper Macungie Township. The initial 150,000 gpd of said allocation ("BTL Commitment") shall be released upon receipt of payment from Upper Macungie Township for the allocation, provided that such payment shall not be made until such times as Upper Macungie Township receives a corresponding payment from BTL and executes a binding sewer service agreement with BTL. The remaining 150,000 gpd shall be held in reserve ("BTL Reserve") through 1 August 1996. BTL shall purchase all of its capacity in accordance with the terms of §2.05.~~

~~An allocation of 500,000 gpd of treatment capacity ("Stroh Reserve") shall be available to Upper Macungie Township for the Stroh Brewery ("Stroh"), provided that the Stroh Reserve shall not be available until the Successful Start Up of the Lehigh County Pretreatment Plant, as specified in paragraph 4 of the 1986 Agreement ("Successful Start Up"), has been attained. The Stroh Reserve shall be available through 1 August 1996. The purchase of the Stroh Reserve or any portion thereof shall be in accordance with the terms of §2.06.~~

The remaining treatment capacity, including the Buffer Capacity Release, shall be placed in a single pool ("General Pool") available to all residential and nonresidential users in the Municipalities, except as provided below. Treatment capacity in the General Pool shall be allocated in accordance with the procedures described in §2.04.

The parties to this Agreement recognize that a planning period of 5 years is required to analyze, select and implement any one of the several alternative methods of providing future sewage treatment capacity. In anticipation of this planning period and to provide orderly development of the service area, the parties agree that the allocation of treatment capacity from the General Pool shall be conditioned as provided below.

At such time as treatment capacity available to the Authority under the 1986 Agreement plus the Buffer Capacity Release equals 105% of the total allocation made by the Authority during the immediately preceding 5 years, the Authority and the Municipalities shall review alternative methods of allocating treatment capacity to users. If a project upgrading, re-rating or expanding the treatment capacity of the Treatment Plant has

~~been instituted with a fixed schedule such that treatment capacity available to the Authority will not fall below 100% of the total allocation made by the Authority during the immediately preceding five years prior to completion of this project, no such review is required. In the event that If this provision is triggered and the parties cannot reach an agreement on the method of allocating treatment capacity within 90 days, the allocation method under this Agreement shall lapse and a method selected by a vote of 80% of the Municipalities shall be implemented. Such method shall be selected at a special meeting of the Municipalities called by the Authority after at least 15 days prior notice to each Municipality after the end of the 90-day period, with each Municipality having one vote. Until such time as If an alternative method of allocating treatment capacity is not approved, the allocation method under this Agreement shall continue until the Municipalities take action to create a new allocation process. Any allocation request which would reduce the treatment capacity available to the Authority under the 1986 Agreement to an amount less than 100% of the total allocation made by the Authority during the immediately preceding 5 years, shall not be granted.~~

At such time as treatment capacity available to the Authority under the 1986 Agreement plus the Buffer Capacity Release equals 110%~~100%~~ of the total allocation made by the Authority during the immediately preceding 5 years, the Authority and the Municipalities shall begin reviewing alternative methods of obtaining and/or providing additional treatment capacity over and above the treatment capacity available to the Authority under the 1986 Agreement.

2. The language of §2.04 shall be amended to read (*deleted language is indicated as crossed out language and added new language is underlined*):

Section 2.04. Allocation from General Pool. Treatment capacity in the General Pool will be available to each Municipality on a first come, first served basis. As a condition of allowing any user to connect to a wastewater collection system discharging to the Western Lehigh Interceptor, the Municipalities agree to require such user to first obtain an allocation from the Authority. An application shall be submitted to the Authority through a Municipality, which application shall include a request for a specific treatment capacity requirement determined by the applicant and approved by the Municipality. The Authority shall approve such applications except that applications for 50,000 gpd or more of allocation shall be reviewed with the Municipalities prior to approval of the application.

A user shall file an allocation application following final plan approval in accordance with the Municipality's process~~subdivision approval~~. ~~Except as noted below, if substantial effort is not achieved~~ The entire allocation shall be lost if a certificate of occupancy is not issued for the building for which the allocation was received within two (2) years or if any allocation or portion thereof is not used by the applicant at the end

of a ~~three (3)~~ five- year period commencing upon receipt of such allocation, the, that portion of the unused allocation shall be lost, with no reimbursement of fees, and the treatment capacity will be returned to the General Pool.

~~For purposes of new development and construction, substantial effort shall have two deadlines:~~

- ~~a) Within eighteen (18) months from the date allocation was received, infrastructure improvements, including without limitation, roads, utilities and storm sewers, must be completed within the property for which the allocation has been obtained; and~~
- ~~b) Within five (5) years from the date allocation was received, the unit(s) on the property for which the allocation was purchased shall be under roof.~~

For purposes of municipal construction of sanitary sewer facilities to serve existing development, awarding construction contracts within eighteen (18) months and completion of the project within five (5) years from the date allocation was received, shall preclude loss of allocation constitute substantial effort.

For purposes of additional use by an existing user, ~~substantial effort shall be defined as having utilized~~ at least 80% of the additional allocation and all allocation previously held by the user must be utilized within three (3) within five years from the date the additional allocation was received to preclude loss of that portion of the unused allocation.

If the user can show that noncompliance with the deadlines was the result of force majeure, the fees, excluding any interest that may be earned thereon, shall be returned to the user in the amounts originally paid for the allocation, upon return of the allocation to the pool. For purposes of this section, *force majeure* shall be defined as any act of God, war, civil unrest, natural disaster, natural physical defect, governmental regulation or condemnation by a governmental entity or public utility which precludes development of the tract substantially as approved in the final subdivision plans, or a sewer moratorium which precludes use of the allocation.

The Municipalities, in accordance with the provisions of §2.09 herein, may waive a deadline if just cause is shown. For processing the waiver, there shall be a fee of \$100 per thousand gallons of treatment allocation, with a minimum fee of \$100.

Any treatment allocation purchased pursuant to this Agreement shall attach to the land or unit for which the application was filed and cannot be transferred to any other parcel of land or unit.

No applicant shall receive any additional allocation from the pool until the applicant has committed all allocations under the 1983 Agreements and amendments thereto.

Capacity for Weisenberg and Lowhill Townships shall be subject to prior allocation limits, specifically 160,000 gpd and 100,000 gpd, respectively.

Upper Milford Township shall be subject to an allocation limit of 225,000 gpd which limit will continue to 1 August 2010. Allocations necessary for municipal projects providing service to development which existed as of 5 August 1987, shall not be counted against the Upper Milford allocation limit. At the option of Upper Milford, discussions shall be initiated regarding revising the allocation limit at any time prior to 1 August 2010. It is acknowledged that after 1 August 2010, the limit of discharge does not become unlimited but must be renegotiated between the parties to the Post-1985 Allocation Agreement.

In the event that there shall be insufficient capacity to meet all allocation requests, those requests for capacity that will provide service to existing developed areas will be given priority over requests that will provide service to new development. There shall be a penalty of \$10 per EDU of improper connection per day assessed against any Municipality which allows a connection to a wastewater collection system discharging to the Western Lehigh Interceptor without obtaining an allocation from the Authority. This penalty shall continue from the date a permit is improperly issued by a Municipality until allocation is granted to the Municipality for the connection, which allocation must be approved by the Municipalities in accordance with §2.09.

3. Unless changed by the terms of this Amendment and/or previous amendments, all other provisions of the Agreement shall remain in full force and effect as though stated herein.

4. This Amendment shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

5. The recital clauses set out in the beginning of this Amendment are hereby incorporated in and made a part of this Amendment.

6. This Amendment sets forth in full the terms of our understanding, and such Amendment, previous amendments and the Agreement shall not in any way be modified, amended or amplified other than by mutual agreement in writing, executed by both parties hereto.

7. If any provisions of this Amendment, previous amendments and/or the Agreement are held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect.

IN WITNESS WHEREOF, the parties, which shall include approval and execution by the Authority and the Municipalities, have caused this Amendment to be duly executed and attested by its proper officers, pursuant to proper action of its governing body, all as of the day and year first above written.

ATTEST:

Bradford E. Landon, Solicitor

LEHIGH COUNTY AUTHORITY

By: _____
Aurel M. Arndt, General Manager

ATTEST:

Name:
Position:

BOROUGH OF ALBURTIS

By: _____
Name:
Position

ATTEST:

Name:
Position:

BOROUGH OF MACUNGIE

By: _____
Name:
Position

ATTEST:

Name:
Position:

TOWNSHIP OF LOWER MACUNGIE

By: _____
Name:
Position

ATTEST:

Name:
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TOWNSHIP OF LOWHILL

By: _____
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TOWNSHIP OF UPPER MACUNGIE

By: _____
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TOWNSHIP OF UPPER MILFORD

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Name:
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ATTEST:

TOWNSHIP OF WEISENBERG

Name:
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By: _____
Name:
Position