

Chapter 7: Ownership Structure and Policy Recommendations

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Table of Contents

1.0 Introduction.....	1
2.0 Wastewater Ownership Options and Considerations	1
2.1 Governmental - Municipal/County.....	3
2.2 Quasi-Governmental – Authority, Special District, Public Nonprofit.....	3
2.3 Private Nonprofit Cooperative or Association	3
2.4 Private For-Profit Utility – Transportation Corporation	4
3.0 Policy Recommendations	5
3.1 Sewer Connection Agreement.....	5
3.2 WWTP Setback Requirements.....	6
3.3 Redundancy.....	8
3.4 Operator Coverage	8
Appendix A.....	10

1.0 Introduction

This chapter of the report discusses ownership of decentralized wastewater systems as well as recommendations for policy change.

2.0 Wastewater Ownership Options and Considerations

Ownership of wastewater systems in Suffolk County, New York can take several forms that offer differing characteristics. The form of ownership of the future wastewater facilities should be considered as soon as possible in the planning process so that the actions taken to control and implement new facilities and upgrade the existing facilities fulfill the operating protocol and financial goals of the future owner. Whereas, these objectives will be similar with regards to the environmental attributes that are driven by established regulations, they could differ with regards to the details of the facility functions and methods of financing. It is important to match the characteristics of the owning and servicing entities with the required skills and operating capabilities of the solutions selected.

Wastewater treatment systems serving the public sector in New York State can be owned by a combination of public, private, for-profit and nonprofit entities as is typically the case in most states. The public ownership options include governmental jurisdictions (city, town, county, etc) as well as quasi-public entities such as authorities which can be created for a singular or multipurpose function such as wastewater, stormwater, solid waste, etc. This section of the report is not intended to be a comprehensive legal analysis of each option, which requires review of local, inter-local and County historical records and agreements, but rather this is intended to serve as an overview of the benefits and drawbacks of different options that are generally available.

There are a number of variables that provide benefits and drawbacks to each ownership model and the best outcome is one that meets everyone's needs for safe, affordable and dependable service in the most efficient and lowest risk manner. In recent times, blending public and private risk sharing models together is becoming more popular as a means of achieving that objective, but there are restrictions and specific requirements for such shared risk models that vary by State. New York State has expanded the opportunity to utilize certain aspects of what is typically referred to as "Public Private Partnerships" or "P3's" but not without limitations. It appears that the "public finance - private execution" models that utilize long term at-risk Design-Build-Operate services would be allowable by State law applicable to Suffolk County and may provide a desired model for wastewater services discussed in this study. Further legal review would be required to fully understand the nuances of this approach as it may be impacted by local or county regulations that are specific to Suffolk County.

The typical wastewater and water ownership options are illustrated in Table 1 below and discussed subsequently as a means of providing a quick comparison between options:

Table 1: Overview of Ownership Options

Entity	Role	Strength	Weakness
Municipality or other governmental entity e.g. County	Public finance, own, operate, contract for services, regulate	Tax free financing, access to federal funding, combine multiple public services for efficiency, backed by taxation security	Political drivers create instability, Municipal/County debt limitations, service area limitations restricted based on political boundaries, labor costs carry governmental requirements
Quasi-Governmental - Special District, Authority, Public Nonprofit	Public finance, own, operate, contract for services, sub-regulate	Tax free revenue based financing, access to federal funding, focused services, guaranteed by taxing authority	Diversion from public objectives possible, inflexibility, labor costs carry governmental requirements
Cooperative – Private Nonprofit (Association)	Public and private finance, own, operate, contract for services, sub-regulate	Revenue based financing separate from public debt structure, access to federal funding, independent of political drivers	Diversion from public objectives possible, financial security is not backed by taxation, higher cost of debt
Private For Profit – Transportation Corp	Private finance, own, operate, contract for services, sub-regulate	Revenue based financing separate from public debt structure, labor and operating cost efficiency gains, risk shedding for governmental entities, services and costs controlled by local governments	Higher risk of financial failure if inadequate securities provided, change of ownership possible
Public Private Partnership (P3)	Combination private public financing, own, operate, sub-regulate	Combines benefits of other forms of ownership, tax free revenue based financing, access to federal funding, labor and operating cost efficiency gains	Success requires secure and carefully crafted contracts, financial security of private entities necessary

2.1 Governmental - Municipal/County

A governmental entity could own the wastewater assets and operate the systems under a separate utility budget of the governing body, in this case either Suffolk County or a municipality. Public body ownership offers an advantage with regards to access to public financing, but is somewhat more complicated with regards to civil service employment regulations, procurement regulations and the influence of local politics on the system management. Having the backing of the governing body's taxing power is advantageous for financial security and the ability to qualify for low interest subsidized funding. Also, the governing body typically has the authority to impose user fees to support a financially self-sufficient system. The taxing power of the governing body is typically used to provide financial security while the user fees provide the routine costs of operations and management, including repayment of debt. Under the governmental ownership option, services can be provided to multiple municipalities via inter-local service agreements or by the County directly serving as the owner.

2.2 Quasi-Governmental – Authority, Special District, Public Nonprofit

The formation of a wastewater or combined water and wastewater authority provides a quasi-governmental management alternative that generally qualifies for all of the financial benefits offered by municipal ownership and carries many of the same procurement and management characteristics. The governing body of an authority is generally appointed by the participating municipal governments or county government, as appropriate, and secures independent financing by loans and bonds that are backed by the general obligation of the municipality's or county's taxing power. Under this alternative, the assets must be fully financed by the revenue from rate payers and the debt is generally outside of the municipal spending caps. This approach has the advantage of being somewhat independent of the political climate of the municipality but this sometimes presents difficulties if the authority develops ambitions that differ from those of the governing bodies. The operating charter of the authority is defined in the initial formation but then is difficult to change once bonds and loans are secured. It is therefore not a flexible asset management mechanism unless defined as such initially. Quasi-governmental entities generally follow the same civil service labor and operating characteristics of governmental entities and thus bear similar cost characteristics. The ability to create service territories that cross municipal boundaries is an advantage, but requires good cooperation of the participating entities to define and meet all competing goals and objectives.

2.3 Private Nonprofit Cooperative or Association

A private nonprofit entity such as a cooperative or association can be formed by the system users as one alternative. Homeowner's or landowner's associations are one example of such an operating nonprofit entity supported by association fees paid by property owners for operation and maintenance of the facilities. Cooperatives are common and very successful in the area of power supply utilities, but are not commonly used for water and wastewater although the legal provisions generally exist. The Homeowner Association is a more common form of private nonprofit asset management which often encompasses water and wastewater systems in addition to other commonly shared assets such as parks, roads, community centers, etc. The Association

can also be a special purpose entity focused only on the management of the wastewater/water assets. A Cooperative or Association form of ownership separates the municipality for the financial responsibility of the facility's operation and management but this form of ownership is less viable with smaller customer bases which may lack the ability to provide adequate management and financial discipline. Associations often have difficulty managing complex assets effectively and can experience financial problems if funding and maintenance are not adequate. Ultimately, if an association falls into financial difficulty, the municipality is the next logical entity in line to provide assistance, so even though there is no legal liability there is a practical responsibility that can implicate the municipality should problems arise.

One mechanism used to strengthen the small Cooperative or Association options is to implement a long term management contract from a more secure financial entity that has stronger technical and financial capabilities. A long term performance contract can provide guaranteed maintenance and can be backed by appropriate financial guarantees, such as performance bonds. Via this approach, the risk of the facility performance remains with the private sector and the Non-profit Cooperative or Association gains better protection.

Recently, non-profit wastewater entities have become eligible for low cost subsidized financing through the State's revolving fund program which is funded by the federal Clean Water Act and traditionally was reserved strictly for governmental entities. However, this eligibility is sometimes tied to specific system characteristics with special advantage offered to green or sustainable models. In such cases, the Green Infrastructure Grant Program can become a source of low cost funding.

2.4 Private For-Profit Utility – Transportation Corporation

A private utility can own and operate both wastewater and water assets in New York, but the control mechanism differ somewhat. The New York Public Service Commission regulates the financial and service aspects of water utilities but private wastewater entities require local control under the Transportation Corporation rules. A private utility is the most independent form of ownership wherein the municipality does not have any financial or physical obligations for the asset management and thus it is the option with the lowest public risk. Private utilities are financed by private equity and a combination of private and public debt financing.

Private ownership of wastewater facilities by a for-profit utility in New York State requires franchise approval and rate regulation by the "Local Governing Body" (LGB). This is somewhat unique by comparison to most states that regulate both for-profit wastewater utilities and water utilities at a state level. In New York State, water utilities are regulated at the state level, but wastewater utilities are regulated at the local or county level.

All approvals for private wastewater utility franchises and pricing are the responsibility of the LGB. New York State law defining the conditions under which private for-profit wastewater utilities are managed is provided in Article 10 of the New York State Transportation Corporation Law. This article defines the incorporation, approval, guaranty and duty requirements incumbent upon both companies seeking incorporation, as a "sewage-works Corporation", and the bodies that hold regulatory authority upon them. In order to provide sewer service, a corporation must ultimately be incorporated as a "Sewage-Works Corporation". Two agencies exercise influence over the incorporation approval: The Local Governing Body and the

Department of Health that holds jurisdiction over the subject municipality. There are considerable powers assigned to the Local Governing Body through Article 10 (copy attached Chapter 7, Section 4).

Article 10 provides special provisions for Suffolk and Saratoga Counties that allow a stronger County role than provided in other political jurisdictions in the state. Whereas, a legal review by the County would be required to assure that no existing municipal agreements interfere with this approach, it would appear that Suffolk County, with approval from the individual municipalities, can assume most of the responsibilities for oversight of all privately held wastewater utilities formed under Article 10. This creates the opportunity to have one county-wide ownership model for all participating municipalities that establishes the criteria and control of private wastewater utilities.

2.5 Public Private Partnerships

The Public-Private Partnership (sometimes referred to as a P3) arrangement is a more recent means of combining the advantages of the public and private ownership models. Under this alternative, the LGB retains legal ownership and transfers operation and financial obligations to a private entity under a long term contract, generally 20 years or longer. In this example the contract which creates the P3 must clearly detail the financial and management obligations and performance requirements. Such contracts are often renewable at the end of the initial term, or transfer responsibility back to the LGB at that point in time. This approach is becoming more common where upgrade and new facility requirements are more efficiently built and operated via a private entity but financing is more efficient with a combination of public and private debt. Underwriting such arrangements with adequate financial performance guarantees is generally accepted as a means of assuring performance. This model is very common in the renewable energy sector where new facilities are required and is now more commonly considered for water and wastewater assets.

Funding opportunities under the P3 model encompass many traditional public asset finance options such as municipal bonds, State Revolving Fund and private sources of funding.

3.0 Policy Recommendations

There are a few recommendations on how Suffolk County can change policies to improve the potential for decentralized systems. Such policy recommendations are described in this section.

3.1 Sewer Connection Agreement

There are few ways Suffolk County can help in addressing regulatory hurdles via new legislation or by modifying their standard Sewer Connection Agreement:

- The SC Sewer Connection Agreement typically requires the County have the right to assume ownership of a privately owned wastewater treatment plant, essentially for free at any time for any reason. If a private entity has made an investment to build and own the plant and not had

an opportunity to recoup their investment and is successfully operating the facility, it would not be appropriate for the County to take ownership at no cost and cause the private entity to lose their investment. Therefore, it is recommended that the Sewer Connection Agreements be modified to only allow the County to assume ownership in the event of unremedied gross negligence. There should also be some price purchase at fair market value.

- The SC Sewer Connection Agreement also only contemplates sewer rates be allowed to cover costs, but does not contemplate fair and reasonable recovery of profit that a private entity would need to cover the risk of their investment. It is suggested that this requirement be clarified for fair and reasonable profits can be made by the private entities to cover the risks of their investment

3.2 WWTP Setback Requirements

One common hurdle that is faced when siting a WWTP in Suffolk County is maintaining setback distance requirements. Setback distance requirements are referenced in Appendix A and Appendix B of the Suffolk County “Standards for Approval of Plans and Construction for Sewage Disposal Systems and for Other than Single-Family Residences”. These Recommended setback distances are provided in the New York State Design Standards for Intermediate Sized Wastewater Treatment Systems, March 5, 2014. The separation distance requirements change depending on the design flow and whether or not the WWTP is enclosed and provided with odor control, ventilation and noise mitigation. A summary of the setback requirements for WWTPs is provided in Table 2 below:

Table 2: Setback Distance Requirements

Flow	Separation Distance to Habitable Building (ft)	Separation Distance to Property Line (ft)
< 15,000 gpd Enclosed	75	75
> 15,000 gpd Enclosed	200	150
Open to Atmosphere	400	350

The setback distances noted above can make it difficult to implement decentralized wastewater systems, particularly in a densely populated areas and locations where available land is limited in size. In cases where setback distances cannot be met, the project would require a variance that is subject to Suffolk County Sewerage Authority approval. Variance approval requires the expense of upfront design and is not a guaranteed process. This creates a degree of risk that can deter the advancement of projects.

Setback distances can also prevent or impact or the feasibility of greenfield development which has an negative economic effect in Suffolk County. If designed and operated properly, wastewater treatment plants can be implemented within existing or proposed communities with far lesser setback distances. There are numerous examples of these decentralized systems in the US. Table 3 below provides some examples of wastewater systems, primarily in the Northeast US that routinely achieve proper treatment without negative health impacts to surrounding communities.

Table 3: WWTP Setback Distances

Site	State	Technology	Distance to Nearest Habitable Building (ft)	Setback Requirement (ft)
Crescent Club	NY	EA	170	200
Fairfield Commack	NY	SBR (old) MBR (new)	100/50	200
Hawthorne Court	NY	SBR (old) MBR (new)	100/100	200
Lake Grove	NY	SBR	65	200
Stratford Greens	NY	SBR (old) MBR (new)	100/60	200
Southern Meadows	NY	SBR	75	200
NYIT - Old Westbury	NY	Bardenpho	210	400
Helena	NYC	MBR	0	200
Millennium	NYC	MBR	0	200
River House	NYC	MBR	0	200
Solaire	NYC	MBR	0	200
Tribeca Green	NYC	MBR	0	200
Visionaire	NYC	MBR	0	200
Beacon Hill	NJ	SBR	150	200
Chester Mall	NJ	MBR	0	200
Crossroads at Oldwick	NJ	CMAS	165	200
EDC	NJ	EA	200	400
Fawn Run	NJ	SBR	140	200
Four Seasons at Chester	NJ	MBR	35	200
Homestead	NJ	Lagoon	250	400
Marmora WWTP	NJ	MBR	0	75
Oakwood Village	NJ	MBR	160	200
Trump – Bedminster	NJ	MBR	145	200
Wyndham Pointe	NJ	MBR	195	200
Gillette Stadium	MA	MBR	75	200
Wrentham Outlet Mall	MA	MBR	0	200
Jackson Meadows South	MN	NWTS	150	200
Lutsen Resorts	MN	NWTS	50	200
Meadows Woods Village	MN	NWTS	175	200
The Ponds/Turtle Run	MN	NWTS	125	200
Maplewood	MO	Lagoon	120	400

The reduction or elimination of setback distances will substantially improve the viability of decentralized systems for both brownfield and greenfield projects. This will result in new opportunities that will help improve the economy and reduce the environmental impacts caused by septic system

3.3 Redundancy

Redundancy is an important aspect of wastewater system design. It ensures that the facility will be able to routinely handle flows throughout the lifetime of the facility. There are different degrees of redundancy that can be applied to wastewater system design. “Full redundancy” includes treatment facilities that provide multiple process trains and equipment that have the ability to hydraulically handle flows during periods where an entire process train is down for maintenance.

Full process redundancy is a requirement in Suffolk County, regardless of plant size. For smaller facilities (i.e. < 50,000 gpd) this requirement can raise the cost of the wastewater treatment systems by more than \$20/gal. Mechanical and electrical materials/installations are impacted the most as equipment (i.e. valves, sensors, pumps, membranes, etc) are duplicated. In addition, site work, concrete and building costs are increased as a result of partition wall installations and a larger footprint requirement. For example, a single train 45,000 MBR plant in Northern NJ was recently bid at \$2.2M while a 42,000 gpd dual train MBR in Suffolk County recently cost \$3.1M to construct. For applications where cost is paramount, single train systems must be considered.

In Pennsylvania, Delaware, New Jersey and Massachusetts, single train wastewater plants are accepted for small facilities. There are numerous examples of single train systems that have operated effectively for decades. Dual process trains provide a high degree of reliability, however, single train systems can achieve the same degree of reliability if designed and operated properly. It is recommended that Suffolk County provide a guidance memorandum that allows for single train systems under 50,000 gpd as long as other design requirements are met (i.e. stand-by pumps, etc.) to ensure long term, effective plant performance.

3.4 Operator Coverage

Typical SPDES permit conditions for privately owned facilities indicate the following with respect to operator coverage:

“The minimum coverage for this STP is that it must be visited by the certified operator, or someone who is directly supervised by the certified operator, for a minimum of 3 hours every day. The minimum coverage may be modified, upward or downward, in accordance with approved Operation and Maintenance Manual;

Sufficient time shall be spent each day to:

- a) inspect all treatment plant components and equipment for proper operation;*
- b) collect samples/run tests/record data;*
- c) perform maintenance/cleaning;*
- d) make process adjustments.”*

Traditional treatment system performance evaluation and monitoring has historically been accomplished with periodic or full time operator site attendance. The required frequency of site

attendance changes in accordance with many variables including, but not limited to, treatment capacity and treatment process complexity. If attendance is any less than 24 hours a day, 7 days a week, historically, the operator has been unaware of any process and/or performance disruptions while not physically on site. This “operating blind” period can be eliminated through advanced remote monitoring systems.

Leveraging the latest instrumentation technology coupled with secure, off-site live monitoring, the “operating blind” ceases to exist. The coupled instrumentation and monitoring method enables operators to evaluate and monitor the treatment system process full time, in real time, remotely. While live, full time, remote monitoring does not eliminate all operational tasks, it significantly increases the level of treatment system performance evaluation capability of the operator. Sample collection and routine maintenance, of course, require operator attendance. However, daily attendance for routine system performance monitoring, which may only be for a limited number of hours, is being replaced by full-time (24/7) remote system performance monitoring.

In summary, current instrumentation technology and live remote monitoring combined with 24-7 standby coverage, is a more environmentally sound and effective means of ensuring a stable treatment process than periodic operator visits alone. This fulltime/real-time visibility and control of treatment process, not only reduces the need for daily operator visits, but also enhances protection of the environment.

The typical SPDES permit language referenced above allows plant coverage to be reduced, however, the permit language could be modified to provide facility owners with incentive to integrating these systems into the operations. It is recommended that the standard permit language be modified to allow for a minimum 3 day/week coverage upon installation of a County-approved remote monitoring system.

Appendix A

ARTICLE 10

SEWAGE-WORKS CORPORATIONS

Section 115. Definitions.

- 116. Consent to incorporation.
- 117. Approval by department of health.
- 118. Inspection; cost certification.
- 119. Guaranties.
- 120. Option.
- 121. Duty to supply sewage-works facilities.
- 122. Powers.
- 123. Survey and map.
- 124. Condemnation of real property.

S 115. Definitions.

As used in this article, the term:

1. "Sewage-works corporation" means a corporation heretofore or hereafter organized to provide a sewer system as hereinafter defined for the disposal of sewage, through an established system of pipe lines, treatment plants and other means of disposal, and which erects, operates, maintains and performs other necessary acts incidental thereto, disposal systems for sewer areas formed within towns or villages and other municipal areas of the state.
2. "Sewer system" means all sewer pipes and other appurtenances which are used or useful in whole or in part in connection with the collection, treatment or disposal of sewage, and other waste, including sewage pumping stations and sewage treatment and disposal plants and sites.
3. "Local governing body" means the legislative body of a city, town or village authorized by law to establish a sewer district or otherwise to provide sewage-works facilities in such city, town or village wherein is located the area to be served by the sewage-works corporation.
4. "Sewer district" means a county sewer district established pursuant to article five-A of the county law or a town sewer district established pursuant to article twelve or article twelve-A of the town law.

S 116. Consent to incorporation.

1. No certificate of incorporation of a sewage-works corporation shall be filed unless there be annexed thereto a certificate or certificates duly executed in behalf of the local governing bodies of the city, town or village, as the case may be, in which any part of a sewer system provided by such corporation is situate and, in the county of Suffolk, an additional certificate duly executed in behalf of the county sewer agency, consenting to the formation of the corporation for the area described in such certificate.
2. Upon receipt of a request for consent to incorporation, the local governing body shall grant or deny such request within sixty days thereafter or within sixty days after notice to it of the approval of maps and specifications of the proposed system filed with the department of health having jurisdiction pursuant to section one hundred seventeen of this article, whichever is later.

S 117. Approval by department of health.

A local governing body shall not consent to the establishment of a sewage-works corporation in any municipality unless there shall first be filed with the department of health, or city, county, or part-county department of health having jurisdiction, maps and specifications of the proposed system and such department shall have given its approval thereof.

S 118. Inspection; cost certification.

1. The local governing body, except in the county of Suffolk, the county sewer agency shall utilize any licensed professional engineer in its own personnel staff, or retain a licensed professional engineer or engineering firm to cause the following to be undertaken and completed:

- (a) Initial examinations of the plans and specifications and a report to the local governing body and in Suffolk county also to the county sewer agency on the feasibility and adequacy thereof including recommended modification and changes, if any;
- (b) Inspections at reasonable intervals during and after the construction of the sewage-works systems and a report to the local governing body and in Suffolk county also to the county sewer agency on the progress thereof;
- (c) A report to the local governing body and in Suffolk county also to the county sewer agency on the cost of construction of the sewage-works system and appurtenances thereto and acquisition of all lands and rights in land therefor, which, in turn, shall apprise the corporation of such cost report. As a part of his report, the licensed engineer or engineering firm shall have the right and duty to examine or have examined the books and records, including all underlying documentation, of the corporation as well as all reports submitted by the corporation to governmental agencies or authorities to ascertain and verify the costs of construction and acquisition. The services of a licensed certified public accountant or licensed public accountant may be utilized, where in the judgment of the engineer, they may be required to properly ascertain and verify the fiscal information to be included in the engineer's report.
- (d) A report to the local governing body and in Suffolk County also to the county sewer agency that construction has been completed in accordance with the plans and specifications filed with and approved by the department of health having jurisdiction.

2. The cost of any such retained licensed professional engineering services shall be reimbursed to the local governing body or sewer agency by the corporation, in accordance with an agreement which shall be entered into between such local governing body or sewer agency and such corporation stating the cost of such services and the terms for payment thereof.

S 119. Guaranties.

1. The local governing body shall require the posting of a performance bond for the completion of the construction of the sewage-works system, and may require the posting of an additional bond or other guaranty for the payment of labor and material furnished in the course of such construction, and for the cost of retained engineering services to the local governing body or sewer agency.

2. The local governing body shall require a reasonable guaranty from the corporation that said corporation will continue to maintain and operate the system for a period of at least five years, in the

form of a bond or other security acceptable to the local governing body in the amount of the estimated cost of the operation and maintenance of the sewage-works project, less the estimated revenues which are received from properties served, and to be utilized to defray such operation and maintenance costs, as reported by the licensed professional engineer or consulting engineering firm to the local governing body. The local governing body may, and on petition of the corporation shall, at any time review the adequacy of such bond or other security, to ascertain whether it should be modified on the basis of fiscal performance or other conditions.

3. (a) In addition to the guaranty, the stock of the corporation shall be placed in escrow and title thereto shall pass to the local governing body in the event of failure to complete the construction thereof, or in the event of abandonment or discontinuance of the maintenance and operation of the system by the corporation.(b) In the county of Suffolk said stock placed in escrow may pass, with the consent of the local governing body and the board of supervisors to a county sewer agency in the event of failure to complete the construction of said sewer system, or in the event of abandonment or discontinuance of the maintenance and operation of said system by the corporation.

4. In the event of such abandonment or discontinuance of the maintenance and operation of the system, the local governing body shall have the right to continue the maintenance and operation of the system at the established rates, with the costs assessed against the users, and it may levy taxes, or sewer rents for such purposes in the same manner as if such facilities were owned by a city, town or village, as the case may be. The local governing body shall have such powers until such time as another corporation or agency may undertake to maintain and operate the sewer system, or until such time as it becomes a part of a municipal or sewer district system.

5. In Suffolk county in the event of an abandonment or discontinuance of the maintenance and operation of the sewer system, the county agency shall have the right to undertake to maintain and operate such sewer system, and it shall do so at the established rates, or such other rates as it may deem necessary, with the costs, including delinquent accounts, assessed against all of the users until such time as the sewer system is included in a sewer district which shall maintain and operate the sewer system.

S 120. Option.

(a) The local governing body may, at the time of granting the consent to incorporation, require an option to purchase the system from the corporation or at any time shall have the right to purchase or acquire it by condemnation. The local governing body may exercise this option by serving written notice on the corporation, not less than ninety nor more than one hundred eighty days before the date of the taking.

(b) In Suffolk county and Saratoga county, the county sewer agency having the prior consent of the local governing body and the county legislature or a county district shall have an option to purchase the sewer system from the corporation by paying the cost thereof and for all additions and improvements as certified by the engineer as of the date of completion thereof pursuant to section one hundred eighteen, less depreciation on a schedule initially agreed upon but not to exceed thirty years, together with the cost of the land and other costs thereof as of the date of completion. The said county agency or county district may exercise its option by serving written notice on the corporation not less than ninety nor more than one hundred eighty days before the date of taking. The county agency or county district may, instead of making any cash payment agreed or required to be made to the corporation as compensation for such sewer system and land, elect to agree to pay the principal of and interest on

outstanding bonds and mortgages issued by or on behalf of such corporation, having a principal amount not exceeding the amount of such cash payment, as such principal and interest shall become due and payable. In the event the county agency does undertake to purchase, maintain and operate such sewer system, it shall do so at the rates established from time to time and agreed to between the county agency and the local governing body, with the costs, including delinquent accounts, assessed against the users until such time as the sewer system is included in a sewer district which shall maintain and operate the sewer system. Notwithstanding the foregoing provisions, in Suffolk county and Saratoga County a county district may elect to acquire the sewer system, including any and all plant sites another real property pursuant to the provisions of the eminent domain procedure law and in such event the provisions of such law shall apply.

S 121. Duty to supply sewage-works facilities

A sewage-works corporation shall supply each city, town, village or other municipal area or district wherein such corporation operates, and the inhabitants therein, with facilities or make provision for the collection, treatment and disposal of sewage at fair, reasonable and adequate rates agreed to between the corporation and the local governing body or bodies, and, in addition, in the county of Suffolk, the county sewer agency, notwithstanding the provisions of any general, special or local law. Rates shall be reviewable at intervals of not more than five years or at any time by petition of the corporation or motion by the local governing body on written notice after a period of ninety days. The petition of corporation shall be determined within ninety days of its filing, and in the event a determination is not rendered within such period of time, the petition shall be deemed approved. The local governing body of acuity or village, or of a county or town on behalf of a sewer district or for a special sewer improvement shall have the power to contract with a sewage-works corporation for collection, treatment or disposal of sewage. No contract for such services shall be executed for a period greater than ten years.

S 122. Powers.

Every sewage-works corporation shall have the power:

1. To lay, maintain, repair and operate its pipes, conduits and sewers in any street, highway or public place of any city, town, village or other municipal area, in which it has obtained the consent required by Section one hundred sixteen for the disposal, treatment and removal of sewage, and to operate and maintain and keep in repair its sewage disposal plants, and prescribe the manner in which sewer connections shall be made. No pipes, sewers or conduits shall be laid or repaired under any highway, road, street or avenue by such corporation, without the consent of the local governing body or its official in charge of highways or streets or if such highway be a state highway, or a highway constructed pursuant to section one hundred ninety-four or one hundred ninety-five or article six of the highway law, the consent of the state commissioner of transportation nor in any street, highway, road, avenue or public place in Suffolk county without the prior written consent of the county sewer agency or the county department of environmental control.

2. To cause examinations and surveys to be made for the purpose of determining the proper location of its disposal system, and, for such purpose by its officers, agents or servants, to enter upon any lands or waters, subject to liability for all damages done.

3. To enter into appropriate agreements with the secretary of agriculture of the United States department of agriculture to operate without profit for the term specified therein for the purpose of qualifying to receive federal assistance pursuant to the consolidated farmers home administration act of nineteen hundred sixty-one and any federal laws amendatory and supplementary thereto. Any such agreement to operate without profit shall be subject to the approval of a majority of the stockholders entitled to vote thereat at any regular or special stockholders` meeting. Any stockholder so entitled to vote who does not vote for or consent in writing to the taking of this action, shall, subject to and by complying with the provisions of section six hundred twenty-three of the business corporation law, have the right to receive payment of the fair value of his stock and the other rights and benefits provided by such section.

S 123. Survey and map.

Before taking or using any land, for its corporate purposes such corporation shall cause a survey and map to be made of the lands intended to be taken designating the land of the several owners or occupants thereof, which map shall be signed by the president and the secretary, and filed in the office of the clerk of the county in which such lands are situated.

S 124. Condemnation of real property.

Any such corporation shall have the right to acquire real estate, or any interest therein, necessary for the purposes of its incorporation, and the right to lay, repair and maintain conduits and sewer pipes with connections and fixtures, another necessary portions of the system, in, through or over the lands of others. If any such corporation, authorized by this article shall be unable to agree upon the terms of purchase of any such property or rights, it may acquire the same by condemnation. Notwithstanding the foregoing, in Suffolk county such corporation shall not have the right to condemn or use the land of others without first obtaining the prior written consent of the county sewer agency and the department of environmental control.