

March 14, 2023

### **NEWWA/AWWA Affiliation Member Q&A**

#### ***What Exactly is NEWWA?***

The New England Water Works Association (NEWWA) is the affiliated organization of the New England Water Works Association, Inc., (NEWWA, Inc.) and the New England Section of AWWA (the Section). NEWWA, Inc., and the New England Section of AWWA are technically two separate organizations. Working together, they are currently known as the New England Water Works Association, a Section of AWWA, or simply "NEWWA."

When you joined AWWA, you were assigned, per your address, to be a part of the New England Water Works Association, a Section of AWWA.

For ease of understanding this document, we will use the term "the Section" when referring to NEWWA's relationship with AWWA.

#### ***What happened?***

On January 12, 2022, AWWA filed a formal complaint against the Section:

*"requesting a full, or otherwise referred to as "major" investigation (within the meaning of "the Rules" adopted for Proceedings by the AWWA Board of Directors in June 2011), to determine if the New England Section has violated the Affiliation Agreement by, among other things, continuing to offer and sell its own separate memberships and retaining the funds from such sales."*

The filing of this complaint launched the Section into a 9-step disciplinary process developed, initiated, and managed by AWWA.

Most recently, on February 16, 2023, NEWWA's leadership attended a formal hearing in Denver, CO, where they presented facts to and answered questions from the AWWA Executive Committee. At the hearing, NEWWA's leadership definitively demonstrated that there was no willful or material breach of the 2010 affiliation agreement as alleged by AWWA. This was based on the facts of our organization's 35-year relationship with AWWA and all AWWA-approved governing documents.

Unfortunately, despite our efforts, AWWA's Board of Directors, on March 13, 2023, voted to approve the Executive Committee's recommendation that the section committed a "material and willful breach" of the 2010 affiliation agreement.



***What now?***

The AWWA board has now dictated that NEWWA act to resolve the conflict, according to one of three “cures.” Two of their choices result in significant organizational changes for NEWWA. One of those is non-negotiable with NEWWA as it would be highly detrimental to the organization. The third option is to disaffiliate from AWWA. In light of this dilemma, we ask for your guidance to determine the best outcome for NEWWA.

On Thursday, April 6, 2023, from 8:30-9:00a.m., in Meeting Room A/B at the DCU Center in Worcester, MA, during NEWWA’s Spring Joint Regional Conference and Exhibition, we ask that all New England Water Works Association, a Section of AWWA members attend an information session and answer a poll question.

YOU DO NOT HAVE TO BE REGISTERED FOR THE CONFERENCE TO ATTEND THIS MEETING. You must attend IN PERSON; there will not be a virtual option. New England Water Works Association, a Section of AWWA membership will be vetted at the door.

**At this meeting you will be asked to answer a poll question about how you feel NEWWA’s leadership should move forward with their decision making. Your choices will be:**

- 1. To accept AWWA’s demands regarding how NEWWA, a Section of AWWA must be restructured and managed (AWWA’s “two entity” cure),**

**OR**

- 2. Disaffiliate with AWWA, and restore NEWWA as a regional water works association (AWWA’s Waiver of Affiliation Agreement Rights” cure).**

The meeting will consist of a 15-minute update by NEWWA’s Ad hoc Affiliation Committee, and then allow 15 minutes for the polling to take place. NOTE THIS IS NOT A FORMAL MEMBERSHIP VOTE.

***What if we choose to accept AWWA’s demands regarding how NEWWA, a Section of AWWA must be restructured and managed? (AWWA’s “two entity” cure)***

If the membership indicates it prefers to accept AWWA’s demands, the Section will have to undergo significant changes as its current, and previously AWWA-approved governing structure is no longer acceptable to AWWA.

NEWWA, Inc. and the Section would have to become two distinct, completely independent organizations. This would happen through the New England Section reorganizing as a new, separate, IRS 501c3 legal entity, now known as the “new section.” The new section would sign a new affiliation

agreement with AWWA. From there, NEWWA, Inc. could choose to be the sole source management firm of the new section per a 3-year management contract. This would involve NEWWA, Inc. managing two completely independent organizations that would have different Boards of Directors, committees, etc. Note that under this scenario there is no guarantee that after the initial 3 years the Section would continue to contract administrative services with the Holliston, MA-based NEWWA, Inc. staff.

Please see Appendix A at the end of this document if you wish to review all of the stipulations in this "two-entity" cure.

***What would happen to the New England Section of AWWA if there was a disaffiliation (AWWA's "The Waiver of Affiliation Agreement Rights" cure)?***

In the event of a disaffiliation the New England Section of AWWA's management would, on an interim basis, be turned over to AWWA. From there AWWA would organize a new New England Section comprised of AWWA members who live and/or work in the region, and appoint a new, independent Board of Directors with new officers. After a transition period, AWWA would require the board of the new section to incorporate and have the new section, as a legal entity, execute a new, legally binding, Affiliation Agreement with AWWA.

Please see Appendix B at the end of this document if you wish to review all of the stipulations in: "The Waiver of Affiliation Agreement Rights" cure per AWWA (i.e., a disaffiliation).

***How would a disaffiliation affect my membership and benefits?***

Per NEWWA, Inc.'s current Constitution and Bylaws, ALL Section members are members of NEWWA, Inc.

Existing NEWWA, Inc.-only members would not be affected by a disaffiliation as member dues and benefits would remain the same.

Section members, when your membership is up for renewal, you would then have the option to:

1. Renew with just AWWA and be assigned to the New England (or other local) Section,
2. Renew with just NEWWA, Inc., OR
3. Join both AWWA and NEWWA, Inc. to retain membership in both organizations.

By renewing with NEWWA, Inc., all members would continue to receive regional benefits as they always have. These include but are not limited to:

- Member rate for NEWWA, Inc. trainings and events (i.e., membership meetings, symposia, social events, etc.).
- Member rate for NEWWA, Inc.'s Spring Conference in Worcester and Annual Conference in September.

- Access to *The Journal of the New England Water Works Association, Inc.*
- NEWWA, Inc. emails and member communications, including the E-Source, *Currents*, *Source* member newsletter, and training-specific emails.
- Access to member-only information at [newwa.org](http://newwa.org).
- The ability to sit on NEWWA, Inc. committees and its board of directors.
- Eligibility for NEWWA, Inc. awards and scholarships.

By renewing with AWWA, you will receive only AWWA benefits, including, but not limited to:

- The *AWWA Journal*, *Opflow*, and other publications.
- AWWA emails.
- Discounts on AWWA publications and events (like ACE).
- The ability to sit on AWWA committees, local section committees, and councils.
- Eligibility to receive AWWA awards and scholarships.

Members who renew with *just* AWWA will no longer receive any of the regional NEWWA, Inc. benefits listed above. For example, if you remain a member of AWWA and not a member of NEWWA, Inc., you would be charged the non-member rate to attend NEWWA training programs, conferences, and meetings.

***In the event of a disaffiliation, would NEWWA, Inc. no longer have any relationship with AWWA?***

We would hope that in the event of a disaffiliation NEWWA, Inc. and AWWA would continue to work together, through memorandum of understandings versus formal contracts, on pertinent issues to help benefit the overall water works community. These efforts could be compared to NEWWA's current partnerships with the local state associations across the region where NEWWA works collaboratively to benefit water works professionals region wide.

***Why not just become one organization (AWWA's "One entity" cure)?***

If NEWWA were to remain affiliated with AWWA as one organization, NEWWA, Inc. would be required to transfer all its assets – including its building, investments, property, equipment, intellectual property, and employees to the NEW New England Section of AWWA, and dissolve the 140-year-old NEWWA, Inc. organization. In addition, local, NEWWA, Inc.-only memberships would have to be permanently terminated. Finally, under AWWA's Affiliation Agreement, Paragraph 3 "Fidelity to Mission," it states: *"Each of the parties will conduct its business in a manner that is consistent with the Mission and with AWWA's Bylaws, Governing Documents, and Statements of Policy (collectively, "Documents"), as currently in effect and as they may be amended from time to time."* In addition, in Paragraph 9 "Miscellaneous," it goes on to read: *"this agreement does not give the Section any right to veto or block amendments to the "Documents," which may continue to be amended in accordance with their terms."*

If NEWWA, Inc. were to dissolve and turn over all of its assets, property, investments, equipment, intellectual property, and employees to what would be the NEW New England Section, it would also then be bound to adhere to ANY changes AWWA decides to make to its board policy manual or governing documents, without the right to veto or block any amendments that could be detrimental to the ownership or management of the Section. Turning over a 140-year-old, locally focused organization, including all of its assets, intellectual property, and staff, to be controlled by a nationally based entity it has been affiliated with for just 35 years and that provides only 7 percent of annual revenue is too high of a risk, and NEWWA's legal counsel has strongly advised against signing an agreement with such provisions in place.

AWWA refuses to offer a specialized Affiliation Agreement option to sections as it requires all sections to sign the same document. This was one of NEWWA's requests early in the disciplinary process.

Also, the option to dissolve NEWWA, Inc. and become one organization (as an AWWA Section) was strongly rejected by NEWWA, Inc. members in 1987 when the initial affiliation was considered. The arguments against doing so now are even more valid than they were in 1987.

***What if I have an AWWA Life Membership? Would that still be honored with NEWWA, Inc.?***

If you join NEWWA, Inc., yes we would still honor a Life Membership. And NEWWA, Inc. Life Membership is free!

***If I wanted to join NEWWA, Inc. before my membership with AWWA lapses, could I?***

Yes, anyone can obtain a NEWWA, Inc.-only membership at any time.

***Can you explain the history of all the organizations?***

- The American Water Works Association (AWWA) was founded in 1881.
- The New England Water Works Association was founded in 1882.
- The New England Section of AWWA was formed in the 1930s.
- The New England Water Works Association incorporated as the New England Water Works Association, Inc. (NEWWA, Inc.) in February of 1981 in the Commonwealth of Massachusetts.
- NEWWA, Inc. and the New England Section of AWWA initially affiliated in 1987, forming what we all know today as the New England Water Works Association, or NEWWA. However, these two entities never legally merged.
- A written, formal affiliation agreement between the New England Section of AWWA and AWWA was signed in 2010.
- AWWA approached NEWWA in 2016 stating it believed the New England Section of AWWA was out of compliance with the affiliation agreement because, "among other things," it was selling local, NEWWA Inc.-only memberships.
- AWWA leadership filed a formal, "major" complaint against the Section in January of 2022 alleging it was not in compliance with the 2010 affiliation agreement.



# New England

## Water Works Association

a Section of the American Water Works Association

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- Although NEWWA has offered several concessions, negotiations between the two organizations have yielded no agreement. All of AWWA's options for resolution to date require an eventual termination of the regional, NEWWA, Inc.-only, memberships, which have been in place for more than 140 years.

### ***What next?***

NEWWA's leadership is requesting input and feedback from all Section members via the membership information and polling session, scheduled to take place on Thursday, April 6, 2023, from 8:30-9:00a.m. in Meeting Room A/B at the DCU Center in Worcester, MA, during NEWWA's Spring Joint Regional Conference and Exhibition. YOU DO NOT NEED TO BE REGISTERED FOR THE CONFERENCE TO ATTEND THIS MEETING.

Unfortunately, a virtual option will not be available. An informal, anonymous poll will take place. Note that 10 virtual information sessions for Section members are scheduled for the week immediately preceding the conference. We strongly encourage all members to attend at least one of the sessions to have their questions answered. Registration can be found at [newwa.org](http://newwa.org) or via the email sent to members on March 14, 2023.

NOTE YOU MUST BE AN AWWA SECTION MEMBER TO ATTEND.

### ***Who can I contact with questions?***

Kirsten King, NEWWA Executive Director, is always available to answer any questions. She can be reached at [kking@newwa.org](mailto:kking@newwa.org) or 508-893-7979 ext. 243.



## **APPENDIX A: AWWA's "Two-entity" Cure**

- 1) The New England Section is reorganized as a new, separate, IRC 501(c)(3) legal entity (corp. or LLC)—the "New Section."
- 2) The New Section signs a new Affiliation Agreement and the old Affiliation Agreement with NEWWA is cancelled.
- 3) The New Section will have a separate, distinct Board from NEWWA Inc.
  - i. A majority of the New Section's Board members must be independent directors (i.e., cannot concurrently serve as a NEWWA Inc. Board member).
  - ii. The New Section may not have joint officers with NEWWA Inc. (i.e., no current NEWWA Inc. officer can also be a current officer of the New Section).
- 4) NEWWA Inc. may choose to be the sole source management firm of the New Section per a three-year management contract providing as follows:
  - i. The New Section will compensate NEWWA Inc. for all management services (including rent, office expense, conferences, training, etc.), for the first three years, by payment of 50% of the amounts received by the New Section from AWWA as its annual allotment and assessment.
  - ii. Retention of 100% of conference & training revenue by NEWWA Inc. will continue for the initial three-year term of management contract.
  - iii. So long as NEWWA Inc. provides management services to the New Section, members of the New Section must get the same discounts on training, conferences, etc. that are offered by NEWWA Inc. to anyone else, including NEWWA Inc. members.
  - iv. After three years, NEWWA Inc. and the New Section may renew the management contract on the basis of arm's length negotiations.
  - v. Any renewed contract must begin the process of equitably allocating conference & training revenue, as it may be offset by management fees.
- 5) The New Section will have separate finances, books, budgets, ledger, bank accounts, etc.
- 6) The New Section will have a separate financial audit at least every three years.
- 7) Only the New Section has the rights provided in the Affiliation Agreement for the Section, including the rights to use AWWA IP & branding.
  - i. NEWWA Inc. will have no such rights.
- 8) AWWA would not interfere with or object to the sale of separate NEWWA Inc. memberships.

**APPENDIX B: “The Waiver of Affiliation Agreement Rights” cure per AWWA (i.e., a disaffiliation)**

- 1) At the hearing, the Section’s representatives asserted that NEWWA Inc. was not a party to the 2010 Affiliation Agreement and was therefore not bound by it.
- 2) NEWWA Inc. may elect to confirm that assertion by formally disclaiming any rights or obligations under the 2010 Affiliation Agreement. AWWA will then accept the surrender of all of NEWWA Inc.’s rights to be the New England Section of AWWA.
- 3) In that case, the 2010 Affiliation Agreement would be immediately cancelled by AWWA because, as an agreement between AWWA, a corporation, and the Section, which is just another part of AWWA that is not a legal entity, AWWA would be on both sides of the transaction.
- 4) AWWA would then organize a new New England Section comprised of AWWA members who live and/or work in the region, appoint a new, independent Board of Directors with new officers and provide management services to the New Section on an interim basis.
- 5) After a transition period, AWWA would require the Board of the New Section to incorporate and have the New Section, as a legal entity, execute a new, legally binding, Affiliation Agreement.
- 6) The New Section and NEWWA Inc. would be free to establish a new, arm’s length, contractual relationship, which could include joint conferences, training sessions and other cooperative actions, subject to the New Section’s continuing compliance with the Affiliation Agreement.
  - i. AWWA would not interfere with or object to the sale of separate NEWWA Inc. memberships.