

PUBLIC SERVICE COMMISSION
Statutory Authority: 26 Delaware Code,
Section 209(a) (26 Del.C. §209(a))

In the Matter of the Adoption of Regulations Governing the Minimum Standards for Service Provided by Public Wastewater Utilities Subject to the Jurisdiction of the Delaware Public Service Commission Opened February 22, 2005)	 	PSC Regulation Docket No. 55
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ORDER NO. 6661

PSC Regulation No. 55, Regarding the Minimum Standards for Service Provided by Public Wastewater Utilities Subject to the Jurisdiction of the Delaware Public Service Commission

AND NOW, to-wit, this 21st day of June, 2005, the Commission having received and considered the Findings and Recommendations of the Hearing Examiner, previously designated in the above-captioned matter, which was submitted after a duly publicized evidentiary hearing, and having given all interested persons and companies an opportunity to be heard and to participate, and after due consideration of the testimony of the Commission Staff and there being no exceptions to said Findings and Recommendations;

AND WHEREAS, based upon the recommendations of the Hearing Examiner, the Commission has determined that the evidence of record supports approving the *Regulations Governing the Minimum Standards for Service Provided by Public Wastewater Utilities Subject to the Jurisdiction of the Delaware Public Service Commission*, as proposed by Commission Staff;

Now, therefore, **IT IS ORDERED:**

1. That the Commission hereby adopts and approves in its entirety the Findings and Recommendations of the Hearing Examiner, which is attached hereto as Exhibit "A."
2. That the Commission adopts the proposed *Regulations Governing the Minimum Standards for Service Provided by Public Wastewater Utilities Subject to the Jurisdiction of the Delaware Public Service Commission*, the exact text and citation of which are attached hereto as Exhibit "B."
3. That the Secretary shall transmit this Order, together with the exact text of the *Regulations Concerning the Jurisdiction of the Public Service Commission to Grant and Revoke Certificates of Public Convenience and Necessity to Provide Wastewater Services* to the Registrar of Regulations for publication on July 1, 2005.
4. That the effective date of this Order shall be the later of July 10, 2005, or ten days after the date of publication in the *Register of Regulations* of this Order and the final text of *Regulations Concerning the Jurisdiction of the Public Service Commission to Grant and Revoke Certificates of Public Convenience and Necessity to Provide Wastewater Services*.
5. That the Commission Staff shall closely monitor the companies during their implementation of these Regulations and report to the Commission in 120 days after enactment of the Regulations concerning the companies' compliance with the Regulations.
6. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Chair Arnetta McRae
Commissioner Joann T. Conaway
Commissioner Dallas Winslow
Commissioner Jaymes B. Lester

ATTEST:

Secretary Karen J. Nickerson

EXHIBIT "A"

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

DATED: June 10, 2005

Ruth Ann Price, Hearing Examiner

Ruth Ann Price, duly appointed Hearing Examiner in this docket pursuant to 26 **Del.C.** §502 and 29 **Del.C.** ch. 101, by Commission Order No. 6581, dated February 22, 2005, reports to the Commission as follows:

I. APPEARANCES

On behalf of the Public Service Commission Staff ("Staff"):

MURPHY, SPADARO & LANDON

BY: FRANCIS J. MURPHY, ESQUIRE

PHILIP T. EDWARDS, ESQUIRE.

II. BACKGROUND

1. On July 6, 2004, the Delaware General Assembly, enacted legislation, found at 74 Delaware Laws, Chapter 317, which granted the Delaware Public Service Commission ("the Commission") jurisdiction to regulate nongovernmental Wastewater Utilities having fifty (50) or more customers (hereinafter collectively "Wastewater Utilities"). 26 **Del.C.** §203D(a). The legislation also conferred on the Commission the jurisdiction to grant and revoke Certificates of Public Convenience and Necessity ("CPCNs") and to super rates and terms and conditions of service.

2. In order to implement the new law, the Commission promulgated regulations entitled, *Regulations Governing the Minimum Standards for Service Provided by Public Wastewater Utilities Subject to the Jurisdiction of the Delaware Public Service Commission* ("the Regulations" or "the proposed Regulations"). The proposed Regulations provide minimum standards for service provided by wastewater utilities.

3. In accordance with PSC Order No. 6581, on March 9, 2005, the Commission solicited comments on the proposed Regulations by publishing notice in *The News Journal* and the *Delaware State News*.¹ Notice requesting public comment was also published in the *Delaware Register* on April 1, 2005. All written public comments on the Regulations were due on or before May 5, 2005.

4. On Thursday, April 28, 2005, the Commission published notice in *The News Journal* and the *Delaware State News* of an evidentiary hearing to be held on May 23, 2005.

5. I have considered all of the record evidence and, based thereon, I submit for the Commission's consideration these findings and recommendations.

III. SUMMARY OF THE EVIDENCE

6. **Commission Staff's Direct Testimony.** On May 13, 2005, with its proposed Regulations, the Commission Staff pre-filed the testimony of one witness, Heidi L. Wagner.² (Ex.3.) Ms. Wagner, a Public Utility Analyst for the Commission, provided the reasons the Commission Staff considered the proposed Regulations to be in the public interest.

7. Ms. Wagner explained that the purpose of the Regulations was to provide a consistent set of minimum rules and regulations for all Wastewater Companies. (Ex.3 at 2.)

1. The affidavits of publication of notice from *The News Journal* and the *Delaware State News* are included in the record as Exhibits 1 and 2, respectively. Exhibits will be cited as "Ex. ___" and references to the hearing transcript will be cited as "Tr. ___."

2. The Commission Staff served its prefiled testimony on ten (10) wastewater utilities who may be subject to the Regulations after enactment. Those companies are: Chapel Green Homeowners Association, Inc., Oak Crest Farms, Excel Property Management, Inland Bays Preservation Company, Moore Grant Sanitation, Inc., Utility Systems, Inc., YMG Corporation, Bass Properties, Inc., Artesian Wastewater Management, Inc., Woods Community Wastewater System.

8. The proposed Regulations are designed to provide a uniform basis under which all regulated wastewater systems must operate and to ensure that the service these companies provide is safe, adequate and efficient. (Ex.3 at.4.)

9. In developing the proposed Regulations, Commission Staff reviewed a broad sample of the rules and regulations currently enacted in other jurisdictions, including West Virginia, New Hampshire, Pennsylvania, New Mexico, Florida, Nevada and Arizona.

10. The Commission Staff also compared the proposed Regulations with the regulations for water utilities to ensure there was consistency where appropriate. (Ex.3 at 3.)

11. Ms. Wagner testified that the proposed Regulations serve a different purpose than the companies' individual tariffs. She explained that a tariff contains terms and conditions that a specific utility offers its customers. (Ex.3 at 4.) In contrast, the proposed Regulations are designed to govern the operations of all wastewater utilities subject to the Commission's jurisdiction. *Id.*

12. **Proposed Regulations.** The proposed Regulations are designed to provide minimum standards for all nongovernmental wastewater utilities serving at least fifty customers. 26 **Del.C.** §203D(a). They are grouped into categories applicable to general conditions and definitions (Ex. 3, Exhibit A., Section I), records and reporting requirements (Ex. 3, Exhibit A., Section II), engineering standards (Ex. 3, Exhibit A., Section III), operations (Ex. 3, Exhibit A., Section IV), customer relations (Ex. 3, Exhibit A., Section V) and front end capital contributions (Ex. 3, Exhibit A., Section VI).

13. The Regulations require that all wastewater companies must keep their books and records in accordance with the Uniform System of Accounts promulgated in 1996 by the National Association of Regulatory Commissions. (Ex.3, Exhibit A, §2.3.1.)

14. The Regulations require all wastewater systems to notify the Commission of serious accidents and service interruptions. (Ex.3, Exhibit A, §2.4.5-§2.4.6.) Wastewater companies are required to file an annual financial statement with the Commission. (Ex.3, Exhibit A, §2.4.7.)

15. The Regulations provide a mechanism for receiving customer complaints and resolving disputes. (Ex.3, Exhibit A, §2.5.)

16. The Regulations require customers to be billed for services in either of two ways: a flat rate per Equivalent Dwelling Unit (EDU) or by volume measured by water meters. (Ex.3, Exhibit A, §2.6.)

17. Wastewater companies are required to obtain a Certificate of Public Convenience and Necessity before beginning construction. Further, the proposed Regulations mandate compliance with the Department of Natural Resources and Environmental Control (DNREC Reg. 4.06) (Ex.3, Exhibit A, §2.6.) for approval of construction projects.

18. The Regulations mandate that companies include in their tariffs the terms under which they collect contributions in-aid-of construction and refundable advances. (Ex.3, Exhibit A, §3.1.)

19. Plant for wastewater companies must comply with and be maintained pursuant to current engineering practices and companies must file a copy of their inspection programs with the Commission. (Ex.3, Exhibit A, §§3.2,3.3.)

20. The Regulations specify procedures for companies to notify customers of rates, changes in rates and the application of customer deposits. (Ex.3, Exhibit A, §§5.1.2-5.1.6).

IV. DISCUSSION

21. The record reveals that there were no intervenors in this case. Further, the Commission did not receive any written comments from members of the public. Tr. 6, 8.

22. Although notice of the proposed Regulations was published in two newspapers of general circulation and the Commission Staff sent copies to several wastewater companies who may be subject to the Regulations, Staff did not receive any comments. *Id.*

23. Staff's witness, Heidi Wagner, testified that there are approximately thirteen developments and eight utilities who will be subject to the Regulations. Tr. 8. These entities will have to conform their operations to meet the requirements of the Regulations because they are not currently operating in the manner envisioned by the Regulations. *Id.* Therefore, these companies will undergo a period of transition which the Commission's Staff should closely monitor.

24. It is clear that the Regulations do not impose an undue burden on wastewater companies in Delaware. Rather, they are designed to impose only the minimum requirements to ensure that customers receive safe, efficient service on a basis that is consistent for all regulated wastewater systems and that the companies' physical plants are maintained in good operating order.

V. LEGAL STANDARD

25. Under 26 **Del.C.** §209 the Commission, after hearing, may order wastewater companies to fix just and reasonable standards, classifications, regulations, practices, measurements or services. 26 **Del.C.** §209(a)(1). The Commission is also empowered to require utilities under its jurisdiction to provide safe, adequate and proper service and to adequately maintain its plant and equipment. *Id.* at §209(a)(2).

26. Further, under the Delaware Administrative Procedures Act, 29 **Del.C.** §§1011 *et seq.*, in the interests of the public welfare, administrative agencies are authorized to promulgate regulations concerning the agency.

VI. RECOMMENDATIONS

27. In summary, and for the reasons stated herein, I recommend that the Commission adopt Staff's proposed Regulations entitled, *Regulations Governing the Minimum Standards for Service Provided by Public Wastewater Utilities Subject to the Jurisdiction of the Delaware Public Service Commission* (Ex.3, Exhibit A) as "just and reasonable." A proposed form of Order implementing the above recommendation is appended, as Attachment "A," for the Commission's convenience.

Respectfully submitted,

Ruth Ann Price, Hearing Examiner

Dated: June 10, 2005

EXHIBIT "B"

PROPOSED REGULATIONS GOVERNING THE MINIMUM STANDARDS FOR SERVICE PROVIDED BY PUBLIC WASTEWATER UTILITIES SUBJECT TO THE JURISDICTION OF THE DELAWARE PUBLIC SERVICE COMMISSION

1.0 General

1.1 Authorization For Regulations. Title 26 of the Delaware Code vests in the Delaware Public Service Commission the authority to formulate standards for such wastewater services and facilities as it deems necessary to carry out the provisions of this law. (26 **Del.C.** § 209)

1.2 Application Of Regulations. These regulations shall apply to any public wastewater utility operating within the State of Delaware, under the jurisdiction of the Delaware Public Service Commission. These regulations shall become effective ninety (90) days after adoption by the Commission.

1.2.1 Purpose. These regulations are intended to insure adequate service to the public, to provide standards for uniform and fair charges and requirements by the utilities and their customers, and to establish the rights and responsibilities of both utilities and customers.

1.2.2 Duties Under Other Statutes. These regulations shall in no way relieve any utility from any of its duties under the laws of this State or regulations promulgated by other State or Federal agencies or authorities.

1.2.3 Exemption. If the application of these regulations will cause a utility unreasonable hardship, or if unreasonable difficulty is involved in compliance, the utility may apply to the Commission for a temporary or permanent exemption, provided that the utility shall submit with such application a full and complete statement of the reasons for the application. Applications for exemptions will be determined by the Commission upon due notice to the affected customers and after a hearing.

1.2.4 Modification. The adoption of these regulations shall in no way preclude the Commission, upon complaint, upon its own motion, or upon the application of any utility, from altering or amending them, in whole or in part, or from requiring any other or additional equipment, facility, or standard, or from making such modifications with respect to the utility's application as may be necessary to meet exceptional conditions. Any modification of these regulations shall be subject to the provisions of 29 **Del.C.** Ch. 64.

1.3 Definitions. The following words or terms, when used in these regulations, shall have the meaning indicated, unless the context otherwise requires:

"Collection System". Consists of service lines, mains, manholes, customer facilities such as service lines, pump stations, lift stations, and appurtenances, owned and operated by the utility that conveys wastewater from customers to the treatment facilities.

“Commission”. The Public Service Commission of Delaware.

“Complaint”. A complaint shall mean any specific objection to charges on the utility billing statement, facilities, practices, or services of a utility.

“Customer”. Any person, including any individual, corporation, partnership, firm, association, company, proprietorship, cooperative, joint stock company, or other form of business enterprise or legal entity of any kind, or any government agency or entity served by a wastewater utility.

“Dwelling Unit”. One or more rooms arranged for the use of one or more individuals as a single housekeeping unit, with cooking, living, sanitary, and sleeping facilities.

“Equivalent Dwelling Unit EDU”. Is a measurement of the volume of wastewater for a single dwelling unit and is used as a means to compare wastewater flows from customers for other classes of wastewater service.

“Main”. Any wastewater pipe, owned, operated, or maintained by a wastewater utility, which is used for the collection or conveyance of wastewater, excluding service lines.

“Meter”. Without other qualifications, any device or instrument which is used by the utility in measuring the quantity of wastewater discharged from a customer or service area for recording or billing purposes.

“Premises”. A tract of land or real estate, including buildings and other appurtenances thereon.

“Service Line”. The pipe that runs from the main to the customer's premises.

“Shall”. The use of the word "shall" in these regulations expresses a mandatory requirement.

“Should”. The use of the word "should" in these regulations expresses suggestion or guidance and is not mandatory.

“Utility”. Any person, including any individual, corporation, firm, partnership, association, company, proprietorship, cooperative, joint stock company, or other form of business enterprise or legal entity of any kind, that provides wastewater services, including collection, transport, or treatment of wastewater, and is subject to regulation by the Commission.

“Wastewater Plant”. Equipment, stations, and property owned or operated by a utility, used in its business operations to render wastewater service to its customers.

2.0 Records And Reports

2.1 Availability Of Records. All documents, including books, accounts, papers, records, computer files, electronic data, maps of service area indicating location of mains, pumping stations, and treatment facilities, and memoranda required by these regulations or necessary for the administration thereof, shall be open and available for examination by the Commission or its authorized representatives at all times.

2.2 Retention Of Records. All documents, including books, accounts, papers, records, computer files, electronic data, and memoranda required by these regulations shall be preserved for a minimum period of five (5) years.

2.3 Location. All documents, including books, accounts, papers, records, computer files, electronic data, and memoranda required by these regulations shall be kept in an office within this State, and shall not be removed from this State, except upon such terms and conditions as may be prescribed by the Commission. This provision shall not apply if the utility is engaged in interstate commerce, and its accounts are kept at its principal office outside this State. However, such utility, when requested by the Commission, shall furnish to the Commission, certified copies of all documents, including its books, accounts, papers, records, computer files, electronic data, and memoranda relating to the business done by such public utility.

2.3.1 All wastewater utilities shall maintain their accounts and records in compliance with the Uniform System of Accounts as promulgated in 1996 by the National Association of Regulatory Commissions.

2.3.2 Observance of the system of accounts applicable to the utility by appropriate class is obligatory upon all persons having direct charge of the books and accounts of the utility. For the purpose of securing uniformity in the applications of this system, all questions of doubtful interpretation of accounting rules are to be submitted to the Commission for consideration and decision.

2.4 Information To Be Filed With The Commission. Each utility shall file with the Commission, and keep current, a copy of its approved tariff.

2.4.1 Rates. The tariff shall include each schedule of rates for service.

2.4.2 Rules. The tariff shall include the utility's rules and regulations, or terms and conditions describing the utility's policies and practices in rendering service, and in its relations with customers or prospective customers.

2.4.3 Bill Forms. Each utility shall file with the Commission a sample of each type of customer billing statement, which shall include the information normally shown on a customer's bill for service.

2.4.4 Persons to Contact. Each utility shall file with the Commission and shall notify its customers, upon request, of the name, title, business address, and telephone number of the person(s) who should be contacted in connection with the following areas of operation:

2.4.4.1 management;

2.4.4.2 customer relations (complaints and billing inquiries);

2.4.4.3 engineering; and

2.4.4.4 emergencies during non-office hours and regular hours; and shall notify the Commission promptly of any changes.

2.4.5 Accident Notification. In the event of a fatal or serious accident, prompt notice shall be given to the Commission by telephone or such other means of communication designed to assure prompt notice to the Commission, followed by a full written report of such accident. A full written report is also required when the utility suffers any serious property damage. These reports shall be treated confidentially pursuant to 26 Del.C. §213(b).

2.4.6 Reports of Service Interruption. Each utility shall file with the Commission a report of any system failures or service interruption within ten (10) days after such an event has occurred. Reports shall include:

2.4.6.1 location and time of failure or interruption;

2.4.6.2 time that failure or interruption was remedied;

2.4.6.3 estimated number of customers affected; and

2.4.6.4 cause of the failure or interruption. Utilities shall make all possible efforts to re-establish service in the shortest time practicable with due regard to safety.

When service is interrupted for scheduled repairs or maintenance, such work should be done at a time that will cause the least inconvenience to customers. The customers who would be affected shall be notified prior to the scheduled interruption.

2.4.7 Annual Reports. Each utility shall file an annual financial statement based upon the accounts set out in the Uniform System of Accounts, or such other requirement as prescribed by the Commission. This annual report shall be filed with the Commission on or before April 30th of the following year.

2.5 Complaints.

2.5.1 Each utility shall keep a record of each complaint received. The complaint record shall contain:

2.5.1.1 complainant's name, address, and telephone number;

2.5.1.2 nature of the complaint;

2.5.1.3 date complaint was received;

2.5.1.4 when, how, and by whom the complaint was handled; and

2.5.1.5 disposition and findings of the complaint.

2.5.2 Resolution. All complaints should be handled promptly, courteously, and include a full investigation prior to any conclusion.

2.5.3 Disputes. After the Commission or the Company have completed an investigation of a customer's complaint concerning a bill, and when the issue is resolved in favor of the utility, the customer shall be afforded a reasonable time, not less than twenty (20) days, to pay the bill as finally determined.

2.6 Customer Billing. Billing for wastewater service may be based on the following:

2.6.1 Flat rate per EDU; and

2.6.2 Volume measured by water meters serving customer premises. In cases where a significant volume of water does not enter the sanitary sewer, or where water from another source enters the sanitary sewer, the measured water meter volume may be adjusted to more accurately reflect the volume of wastewater discharged. Any such adjustment is to be based on meter readings associated with increased or decreased billable volume. Any supplemental meters are to be provided at the expense of the customers and to be maintained in good operating condition subject to testing by the utility.

Wastewater flow measuring devices shall be maintained in good working order.

In cases where water meters are used as a basis for billing wastewater service, the terms and conditions for testing meters and billing adjustments shall be as provided in PSC Order No. 2076, relating to service governing water utilities.

3.0 Engineering

3.1 Authorization For Operation Or Construction. No person, including any individual, corporation, firm, partnership, association, company, proprietorship, cooperative, joint stock company or association, or other form of business enterprise or legal entity of any kind shall commence any construction of a wastewater system for public use without having been granted a Certificate of Public Convenience and Necessity, and such other permits as may be required by law. System expansion, even within the certificated area, shall not commence without approval of the plans by the Department of Natural Resources and Environmental Control (DNREC Reg. 4.06).

If the construction of an extension involves the acquisition of a private right-of-way, then the prospective customer or developer shall attempt to secure the right-of-way and deliver it to the utility free of cost before construction of the extension is started. If, however, it is not reasonably possible for the prospective customer or developer to secure the right-of-way, and the construction of the extension involves the utility's incurring expenses for right-of-way easements, such costs shall be added to the total cost of the extension.

Utilities are required to incorporate the terms and conditions applicable to contributions in-aid-of construction and refundable advances in their tariff rules and regulations.

3.2 Wastewater Plant Operation. The utility's wastewater plant shall be constructed, installed, maintained, and operated in accordance with current engineering practices in the wastewater industry, to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property, in compliance with relevant DNREC and Health Department regulations and policies.

3.3 Wastewater Plant Inspection. Each utility must adopt and file with the Commission a program of inspection of its wastewater plant in order to develop a capital improvement plan. The frequency of the various inspections shall be based on the utility's experience and accepted good practice. Each utility shall keep sufficient records to give evidence of compliance with its inspection program.

4.0 Operation

4.1 System Safety Program. Each utility shall exercise reasonable care to reduce the hazards to which its employees, customers, and the general public may be subjected. A safety program should be adopted by each utility, fitted to the size and type of its operations.

4.1.1 "Miss Utility". All wastewater utilities are required to belong to and participate in the "Miss Utility" program to minimize third-party damage to other utilities as well as their own.

4.1.2 Promote Safe Work Methods. Each utility shall require its employees to use suitable tools and equipment in order that they may perform their work in a safe manner. The utility's employees who are subject to the hazards of asphyxiation, chemical handling, electrical shock, or drowning in the course of performing their work shall be properly instructed in the accepted methods of artificial respiration, including CPR (cardio-pulmonary resuscitation).

5.0 Customer Relations

5.1 Application For Service.

5.1.1 Rate Schedules. If applicable, each utility shall assist the customer or applicant in selecting the most economical rate schedule. If, after the selection of a service line diameter, the customer determines that a different size service is needed, the full cost of the new service or other facilities requested by the customer will be the responsibility of the customer.

5.1.2 Customer Notification. Customers affected by a change in rates or service schedule classification shall be notified by the utility.

5.1.3 Tariff Notice. Each utility shall keep in each office of the utility where applications are received, a copy of its currently approved tariff available for public inspection at any reasonable time.

5.1.4 Meter Reading. Every customer served by a wastewater utility shall be informed of the method of meter reading if meters are in place for billing purposes.

5.1.5 Interest on Deposits. When a utility's tariff requires or permits the collection of a deposit from customers, the utility shall pay interest on all such deposits at the rate of six percent (6%) annual simple interest. Interest shall be computed from the date of receipt of the deposit by the utility.

5.1.5.1 Interest on deposits shall be credited to the account of the depositor annually, at the time the deposit is returned, or when service is terminated, whichever is sooner; and

5.1.5.2 Deposits shall cease to draw interest on the date service is terminated, on the date the deposit is returned, or on the date that notice is sent to the depositor's last known address that the deposit is no longer required.

5.2 Billing Statement Adjustment. If wastewater service is billed on the basis of metered water usage, billing adjustments shall be calculated on the premise that the meter should be 100% accurate. For the purpose of a billing adjustment, the error in registration of the meter shall be calculated and applied as specified in the meter test rules of the wastewater utility tariff or PSC Order No. 2076 governing minimum service standards provided by public water companies.

6.0 Front-end Capital Contributions

Front-end capital contributions shall be required from all new connections to recover, at least in part, the cost of constructing conveyance, treatment, and disposal facilities incurred by the utility where applicable.

