

Public Service Commission

**6001 Regulations Concerning the Jurisdiction of the Public Service Commission to
Grant and Revoke Certificates of Public Convenience and Necessity to Provide
Wastewater Services**

1.0 Definitions

The following words and terms, when used in these regulations, should have the following meaning unless the context clearly indicates otherwise:

“Commission” means the Delaware Public Service Commission.

“CPCN” means a Certificate of Public Convenience and Necessity.

“DNREC” means the Delaware Department of Natural Resources and Environmental Control.

“DPA” means the Division of the Public Advocate.

“Staff” means the Staff of the Delaware Public Service Commission.

“Secretary” means the Secretary of the Delaware Public Service Commission.

2.0 Scope and Authority

- 2.1 These regulations govern the process by which non-governmental wastewater utilities serving, or planning to serve, fifty or more customers (in the aggregate) apply for and are granted a CPCN to provide wastewater services. These regulations also contain procedures for municipalities, governmental agencies, and wastewater authorities and districts, to notify the Commission of their service territory and planned service extensions.
- 2.2 Authority for these regulations is granted by 26 **Del.C.** §203D.
- 2.3 Proceedings before the Commission for wastewater utilities shall be conducted in accordance with the procedures set forth in 29 **Del.C.** Ch. 101, Subchapter III, including any proceedings where the Commission finds that an applicant is unwilling or unable to provide safe, adequate, and reliable wastewater service to existing customers, or is currently subject to such a Commission finding under 26 **Del.C.** §203D(e).

3.0 Application for a Certificate of Public Convenience and Necessity

- 3.1 An application for a CPCN to begin the business of a wastewater utility, or to extend or expand the business or operations of an existing wastewater utility, shall be made in writing and filed with the Commission. The application shall include all information and supporting documentation required by statute, the Rules of Practice and Procedure of the Commission, and these regulations, and shall not be considered complete until all such information and supporting documentation has been filed with the Commission. At the time of filing, the application shall:
 - 3.1.1 Contain a statement explaining the reason(s) why the Commission should grant the CPCN, and include citations to all statutory and regulatory authority upon which the application is based, or upon which the applicant relies to support the application.
 - 3.1.2 A statement identifying any significant element of the application that, to the applicant's knowledge, represents a departure from prior decisions of the Commission.
 - 3.1.3 State the name, address, telephone number, and e-mail address (if any) of the individual to be notified if Staff determines there are deficiencies in the application.
 - 3.1.4 For applications submitted under 26 **Del.C.** §203D(d)(2), contain the supporting documentation required by 26 **Del.C.** §203D, that all landowners of the proposed territory have been notified of the application by certified mail.
 - 3.1.5 A complete list of county tax map parcel number(s), and the corresponding names and mailing addresses of the property owners, for the area covered by the application.
 - 3.1.6 Copies of the tax map or maps with the proposed service territory clearly marked.

- 3.1.7 A check made out to the Delaware Public Service Commission as specified in Title 26.
- 3.2 If an application for a CPCN involves a wastewater utility project or service that requires the review, approval or authorization of any other state, local or federal regulatory body, including DNREC, the application to the Commission shall so state, and include the following:
 - 3.2.1 A statement of the current status of such application or applications.
 - 3.2.2 If a determination has been made with respect to such application by the other regulatory body or bodies, the applicant shall include a copy of any permit, order, certificate, or other document issued by the regulatory body; and,
 - 3.2.3 If a determination is made by the other regulatory body or bodies with respect to such application after the filing of the CPCN application with the Commission, but prior to its determination, a copy of any permit, order, certificate or other document issued by the regulatory body or bodies shall be filed with the Commission within six business days of receipt by the applicant.
- 3.3 If not presently on file with the Commission, an applicant for a CPCN shall provide the following with the CPCN application:
 - 3.3.1 A legal history of the applicant including information such as the dates of formation or incorporation, subsequent acquisitions and/or mergers, a copy of the applicant's certificate of incorporation or other documentation reflecting the applicant's formation, and business license;
 - 3.3.2 A complete description of all relationships between the applicant and its parent, subsidiaries, and affiliates, and a chart or charts that depict the inter-company relationships;
 - 3.3.3 A map or maps identifying all areas, including towns, cities, counties, or other government subdivisions to which service is currently provided;
 - 3.3.4 Annual reports to stockholders for the applicant, its subsidiaries, and its parent for the last two years;
 - 3.3.5 The applicant's audited financial statements, 10K's, and all proxy material for the last two years;
 - 3.3.6 Any report or document submitted by the applicant within the preceding twelve months to any state or federal authorities in any proceeding where an issue has been raised regarding the applicant's failure to comply with any statute, regulation, rule, or order related to the provision of safe, adequate and reliable wastewater services to its existing customers; and
 - 3.3.7 Evidence of comprehensive general liability insurance.
- 3.4 An applicant for a CPCN that proposes to extend services into the service territory of a municipality, government agency or wastewater authority or district must submit written documentation that such entity has been informed of and has approved such an expansion by the applicant.
- 3.5 During the course of the Staff investigation of an application, the Commission may require an applicant to furnish additional information specifically related to the statutory standards for Commission review and consideration including information pertaining to the financial viability of the applicant. Such documentation shall be made available for inspection and copying upon request by the Staff.
- 3.6 An applicant for a CPCN shall submit one original and 10 copies of the application and shall include three copies of applicable maps.

4.0 Additional Requirements for a CPCN Application Filed by a New Wastewater Utility

- 4.1 Except for municipalities, governmental agencies and wastewater authorities and districts, and wastewater utilities serving or to serve fewer than 50 customers in the aggregate, any new wastewater utility that has not previously been awarded a CPCN in Delaware and that will begin operations or provide service to its 50th customer after June 7, 2004, must submit the following information with its CPCN application:
 - 4.1.1 Evidence that it possesses the financial, operational, and managerial capacity to comply with all federal, state and local wastewater requirements, by maintaining capacity sufficient to meet existing and reasonably anticipated future peak daily and monthly demands. In this regard, the Staff may request that the applicant provide information, such as projected revenues, expenses, capital costs, number of customers, and funding sources for a five-year period.

- 4.1.2 A certified copy of the applicant's certificate of incorporation or other documents reflecting the applicant's formation, and the applicant's business license if not presently on file with the Commission;
- 4.1.3 Details of plant as to type, capacity, cost, status of plant construction, construction schedule, and estimated number of customers to be served; and
- 4.1.4 A map showing the location and size, in acres or square feet, of the proposed territory, and the composition, diameter, length, and location of pipes to be initially installed.
- 4.2 Any existing wastewater utility that did not obtain a CPCN from the Commission by December 3, 2004 as required by 26 **Del.C.** §203D(a)(2), must comply with the requirements set forth in Section 4.1 of these rules.

5.0 Review of Application; Deficiencies in the Application

- 5.1 The Staff shall review all CPCN applications for compliance with applicable statutes and these regulations. The Staff will, within twenty-one days after the date of filing, specifically identify any deficiencies in the application, and promptly notify the applicant of the alleged deficiencies.
- 5.2 The applicant shall have thirty days from the date of the receipt of the notice of the deficiencies in the application to file a corrected or supplemental application. The Commission may, in its discretion, extend the period to cure deficiencies in the application for an additional thirty days.
- 5.3 Only upon the applicant's filing of a corrected or supplemental application correcting the deficiencies shall such application be deemed completed and filed with the Commission for purposes of the time limits for action by the Commission under 26 **Del.C.** §203D(g)(1). In the event the alleged deficiencies are not cured within the time provided hereunder, Staff may move the Commission to reject the utility's application for non-compliance with these regulations.
- 5.4 Nothing in this regulation shall prevent an applicant from filing an application in draft form for Staff's informal review and comment without prejudice. Such informal review and comment shall not be unreasonably withheld by Staff; nor shall this regulation affect or delay the filing date of applications that comply with applicable statutes and these regulations, or whose non-compliance is deemed minor or immaterial by the Commission or its Staff.

6.0 Filing of Application with DNREC and the Office of State Planning; Coordination and Cooperation; Filing of Application with Counties, Municipalities and Towns

- 6.1 An applicant for a CPCN shall file a copy of the application with DNREC and the Office of State Planning within three days of filing the same with the Commission. The applicant need not provide DNREC or the Office of State Planning with the supporting documentation for the application unless DNREC or the Office of State Planning request the supporting documentation.
- 6.2 Staff shall send a written request to DNREC soliciting written comment as to whether it is aware of any matters indicating that the applicant has been unwilling or unable to provide safe, adequate and reliable wastewater services to existing customers.
- 6.3 Within three days of filing an application with the Commission, an applicant for a CPCN shall also file a copy of the application with a) any county within whose boundaries the proposed service territory would be located, and b) any municipality, town or local authority i) whose boundaries are adjacent to the proposed service territory, or ii) within whose boundaries or existing wastewater service territory the proposed service territory would be located. The applicant need not provide the county, municipality, town or local authority with the supporting documentation for the application unless they request it.
- 6.4 Staff shall coordinate and cooperate with DNREC during the process of reviewing an application for a CPCN. Staff shall also coordinate and cooperate with the DPA and other interested state, local, and federal authorities.

7.0 Provision of Notice to all Landowners of the Proposed Service Territory

7.1 In proceedings involving an application under 26 Del.C. §203D(d)(2), prior to filing the application with the Commission, the applicant shall provide written notice of the anticipated filing of the application to all landowners of the proposed territory.

7.2 Such written notice shall be sent to all landowners of the proposed territory not more than sixty days and not less than thirty days prior to the filing of the application, and must include, at a minimum, the following statement:

“Pursuant to 26 **Delaware Code**, Section 203D(d)(2), an application for a Certificate of Public Convenience and Necessity (CPCN) will be submitted to the Delaware Public Service Commission on or about {enter date of intended submission}. Your property has been included within an area {enter name of your organization} intends to serve with public wastewater and we are required to inform you of certain information. The area to be served is {provide a short hand description of the service area}. If you agree to the inclusion of your property in the proposed service area, no action on your part is required. Inclusion of your property in a CPCN area does not obligate you to connect immediately to our system; however, should your existing system fail and public wastewater services are deemed to be legally and publicly available, you may then be required to connect.

Under Delaware law, the Public Service Commission cannot grant a CPCN to {enter name of your organization} if a majority of the landowners in the proposed wastewater service area object to the issuance of the CPCN. If you object to the issuance of a CPCN for the proposed area that includes your property, you must notify the Commission, in writing, within sixty days of your receipt of this notice or within thirty days of the filing of the completed application for a CPCN, whichever is greater.

You may also request a public hearing on this matter. The purpose of the public hearing will be to demonstrate why it would not be in the public interest for the Commission to grant {enter name of your organization} a CPCN to provide wastewater services to the proposed area. A request for a public hearing must be made in writing to the Commission within sixty days of your receipt of this notice or within thirty days of the filing of the completed application for a CPCN, whichever is greater.

Written notice of your decision to object to the issuance of the CPCN or your written request for a public hearing, should be sent to the Secretary of the Delaware Public Service Commission at the address shown below. Any written notice sent to the Commission must include the description of the service area referred to above, your tax parcel identification number, and the name of the applicant for the CPCN so the Commission will be able to identify the CPCN application to which your notice is related.

Secretary

Delaware Public Service Commission

861 Silver Lake Boulevard

Cannon Building

Suite100

Dover, Delaware 19904

Questions regarding objections or public hearings may be directed to: {enter the name or title, and the address and telephone number of the Commission's contact person(s)}.”

8.0 Landowners Who Object or Request a Public Hearing; Time Limits; Extension of Time

8.1 In proceedings involving an application submitted under 26 Del.C. §203D(d)(2), any landowner whose property, or any part thereof, is located within the proposed territory to be served may object to the issuance of the CPCN or request a public hearing. The applicant shall inform the Commission of the name and address of any landowner who notifies the applicant of their objection to the issuance of the CPCN or who requests a public hearing. Any written notice received by the applicant from a landowner shall be filed with the Commission.

- 8.2 The Commission shall maintain records identifying any landowner who has provided written notice of their objection to the issuance of the CPCN or who has requested a public hearing. Such records shall be made available to the applicant.
- 8.3 Written notice from a landowner either objecting to the issuance of the CPCN or requesting a public hearing must be filed with the Commission within sixty days from the date of the landowner's receipt of a written notice from the wastewater utility that complies with Section 7.0 of these rules, or within thirty days of the filing of the completed application, whichever period is greater.
- 8.4 The Commission may, in the exercise of its discretion, extend the time to object or to request a public hearing even though the period in which to do so has expired.

9.0 Suspension or Revocation of CPCN for Good Cause

- 9.1 Pursuant to the provisions of 26 **Del.C.** §203D(j), the Commission may suspend or revoke a CPCN, or a portion thereof, for good cause. Good cause shall consist of:
 - 9.1.1 A finding made by the Commission of material noncompliance by the holder of the certificate with any provisions of Titles 7, 16 or 26 dealing with the provision of wastewater services to customers, or any order or rule of the Commission relating to the same; or,
 - 9.1.2 A finding by the Commission that the wastewater utility has failed in a material manner to provide adequate or safe wastewater service to customers as evidenced by inadequate customer service, insufficient investment in, or inadequate operation of, the system or otherwise; and,
 - 9.1.3 A finding by the Commission that, to the extent practicable, service to customers will remain uninterrupted under an alternative wastewater utility or a designated third party capable of providing adequate wastewater service; and,
 - 9.1.4. A finding by the Commission that to the extent practicable, any financial consequences to customers served by the utility subject to a revocation are appropriately mitigated. (74 Del. Laws, Ch. 317, §6.)
- 9.2 In conjunction with the findings described in Section 9.1 above, the Commission may consider one or more of the following factors in determining whether to suspend or revoke a CPCN:
 - 9.2.1 Fraud, dishonesty, misrepresentation, self-dealing, managerial dereliction, or gross mismanagement on the part of the wastewater utility; or
 - 9.2.2 Criminal conduct on the part of the wastewater utility; or
 - 9.2.3 Actual, threatened or impending insolvency of the wastewater utility; or
 - 9.2.4 Persistent, serious, substantial violations of statutes or regulations governing the wastewater utility in addition to any finding of non-compliance required by Section 9.1.1 above; or
 - 9.2.5 Failure or inability on the part of the wastewater utility to comply with an order of any other federal, state or local regulatory body after the wastewater utility has been notified of its non-compliance and given an opportunity to achieve compliance; or
 - 9.2.6 Such other factors as the Commission deems relevant to the determination to suspend or revoke a CPCN.
- 9.3 Proceedings before the Commission to suspend or revoke a CPCN for good cause shall be conducted in accordance with the procedures set forth in 29 **Del.C.** Ch. 101, Subchapter III.
- 9.4 The Commission will not suspend or revoke a CPCN for good cause without first affording the wastewater utility a reasonable opportunity to correct the conditions that constitute the grounds for the suspension or revocation of the CPCN, unless the Commission finds that the conduct of a wastewater utility poses an imminent threat to the health and safety of its customers, to the general public or to the environment.

10.0 Abandonment, Sale of Utility, and Transfer of CPCN

- 10.1 A utility seeking to abandon service, sell, or transfer a CPCN shall file an application with the Commission and must receive Commission approval prior to such abandonment, sale, or transfer.

- 10.2 Any entity acquiring a CPCN from the divesting utility must submit a CPCN application and receive Commission approval as specified in these regulations.

11.0 Municipalities, Governmental Agencies, and Wastewater Authorities and Districts

- 11.1 As provided for in 26 **Del.C.** §203D(b), municipalities, governmental agencies, and wastewater authorities and districts engaging in or desiring to engage in the business of a wastewater utility are not required to obtain a CPCN from the Commission for any existing or new service territory, or expansion of an existing territory.
- 11.2 These entities shall provide to the Commission a description of any existing service territory for wastewater service no later than October 4, 2004, and shall promptly give notice and a description of any extension of wastewater service territory or new wastewater service territory to the Commission.
- 11.3 A municipality, governmental agency or wastewater authority or district shall not extend service in areas where the Commission has granted a CPCN to another wastewater utility without receiving the approval of the Commission.

8 DE Reg. 1464 (4/1/05)