

**DEPARTMENT OF ADMINISTRATIVE SERVICES
PUBLIC SERVICE COMMISSION**

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

FINAL

**Reg. Docket No. 54, Regarding the the Implementation of 74 Delaware Laws, Chapter 317
(2004) Granting the Delaware Public Service Commission the Jurisdiction to Regulate
Wastewater Utilities Including the Jurisdiction to Grant and Revoke Certificates of Public
Convenience and Necessity for Wastewater Utilities (Opened October 5, 2004)**

ORDER NO. 6573

AND NOW, to-wit, this 22nd day of February, 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 heard from all parties and the Commission Staff that there are 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 Concerning the Jurisdiction of the Public Service Commission to Grant and Revoke Certificates of Public Convenience and Necessity to Provide Wastewater Services*, 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 Concerning the Jurisdiction of the Public Service Commission to Grant and Revoke Certificates of Public Convenience and Necessity to Provide Wastewater Services*, 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 *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 April 1, 2005.
4. That the effective date of this Order shall be the later of April 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. 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:

Arnetta McRae, Chair
Joann T. Conaway, Commissioner
Jaymes B. Lester, Commissioner

ATTEST: Karen J. Nickerson, Secretary

EXHIBIT "A"

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

William F. O'Brien, duly appointed Hearing Examiner in this Docket pursuant to 26 Del.C. §502 and 29 Del.C. ch. 101, by Commission Order No. 6486, dated October 5, 2004, reports to the Commission as follows:

I. APPEARANCES

On behalf of Commission Staff (“Staff”):
MURPHY SPADARO & LONDON
By: Chase T. Brockstedt, Esquire

On behalf of the Division of the Public Advocate (“DPA”):
G. Arthur Padmore, Public Advocate
On behalf of Artesian Wastewater Management, Inc. (“Artesian”):
John J. Schreppler, II, Esquire

II. BACKGROUND

1. On July 6, 2004, new legislation was enacted by the Delaware General Assembly, found at *74 Delaware Laws, Chapter 317*, which granted this Commission jurisdiction to regulate wastewater utilities having more than fifty customers, including the jurisdiction to grant and revoke Certificates of Public Convenience and Necessity (“CPCN”). In preparation for the implementation of this new jurisdiction, Commission Staff drafted a proposed regulation entitled *Regulations Concerning the Jurisdiction of the Public Service Commission to Grant and Revoke Certificates of Public Convenience and Necessity to Provide Wastewater Services*.

2. On October 5, 2004, by PSC Order No. 6486, the Commission opened Regulation Docket No. 54 to consider Staff’s proposed regulation. The Commission directed publication of notice of the proposed regulation, which included, among other things, publication in the *Delaware Register*. The Commission set a deadline of November 30, 2004, for the filing of comments by interested parties, and scheduled a public hearing for December 8, 2004. Written comments were filed by Artesian (Ex. 6),¹ DPA (Ex. 4), the Office of State Planning Coordination (“State Planning”) (Ex. 2), and White Marsh Environmental Systems, Inc. (a subsidiary of Tidewater Utilities, Inc.) (Ex. 3).

3. In accordance with PSC Order No. 6486, a duly noticed² public hearing was conducted at the Commission’s offices in Dover on December 8, 2004. Representatives of Staff, DPA, and Artesian participated in the hearing. Clark Carbaugh, President of Utility Systems, Inc., appeared at the hearing but did not participate. No member of the public appeared at or otherwise participated in the hearing.

4. At the hearing, Staff submitted an amended proposed regulation, which included certain changes Staff had made prior to the hearing based on the written comments received (Ex. 4.) In accordance with the post-hearing schedule, Staff, on December 21, 2004, submitted its final proposed regulation (Ex. 7), which included additional changes Staff made based on the oral comments offered at the hearing. Staff also provided a redlined version of the final proposal (Ex. 8), as well as a six-page, post-hearing memorandum describing each change that it made to its original proposed regulation (Ex. 9). After receiving these documents into evidence, I closed the record, which now consists of nine exhibits and a 39-page *verbatim* transcript of the proceedings. I have considered all of the record evidence of this docket and, based thereon, I submit for the Commission’s consideration these Findings and Recommendations.

II. THE PROPOSED REGULATION

5. Staff’s proposed regulation consists of eleven rules governing the certification process for wastewater utilities. (Ex. 7.) Rule 1 defines certain terms and acronyms. Rule 2 identifies the scope of the regulation and the Commission’s authority for its adoption. Rules 3 and 4 outline the application procedure and filing requirements for wastewater utilities seeking a new CPCN or an extension of an existing CPCN. Rule 5 provides a 21-day deadline for Staff to review the CPCN application and to notify the applicant of any deficiencies, and provides a 30-day deadline (upon notice) for the applicant to correct any deficiencies. Rule 6 requires an applicant to provide copies of its application to the Department of Natural Resources and Control (“DNREC”), State Planning, the county within

1. References to the Exhibits entered into the evidentiary record of this proceeding will be cited as “(Ex. ___)” or “(Ex. ___ at ___).” References to the transcript of the proceedings will be cited as “(Tr. at ___).”

2. Ex. 1 consists of the affidavits of publication of notice from *The News Journal* and *Delaware State News* newspapers. Notice was also sent to all certified wastewater utilities in Delaware.

which the proposed service territory lies, and any affected municipalities, towns or local authorities (collectively, “municipalities”) and directs Staff to coordinate its investigative efforts with these entities.

6. Rule 7 provides the procedure that applicants must follow in order to notify landowners in the proposed service territory of the CPCN application. Rule 8 provides the process by which a landowner may oppose the CPCN application or request a hearing on the application.

7. Rule 9 outlines the procedure that the Commission will undertake before suspending or revoking a CPCN and identifies the factors that constitute “good cause” for such action. Rule 10 requires wastewater utilities to obtain approval from the Commission before they abandon or transfer a CPCN. Rule 11 provides that municipalities and governmental agencies who act as wastewater utilities need not obtain CPCNs but must notify the Commission of their service territories (and of any extensions thereof). In addition, Rule 11 prohibits municipalities and governmental agencies from extending service into an area subject to an existing CPCN without prior Commission approval.

III. SUMMARY OF EVIDENCE

8. By letter dated November 30, 2004, Constance C. Holland, Director of State Planning, recommended that Staff define “existing service territory” as:

The area for which the municipality, governmental agency, or wastewater authority or district is planning to serve with its public wastewater service. This area shall be consistent with service and/or growth areas reflected in the jurisdiction’s most current wastewater and/or comprehensive planning efforts.

(Ex. 2.) Ms. Holland asserted that the definition would provide guidance on what the Commission considers “existing service territory” and would help reduce the potential overlap between public wastewater providers and private utility companies.

9. Kevin Neilson, Regulatory Policy Administrator, testified on behalf of Commission Staff. (Tr. at 16-22.) Mr. Neilson stated that Staff chose not to include the definition proposed by State Planning because it did interpret the statute to include an area not yet served as an “existing” service territory. Mr. Neilson noted that under Staff’s proposed rules, if a private wastewater utility applies for a CPCN for an area that overlaps with a municipality’s planned growth area, the municipality will have an opportunity to object to the CPCN application and to request a hearing.

10. Mr. Neilson testified that Staff had modified slightly its proposed Rule 7.1 based on a recommendation made by White Marsh in its December 7, 2004 comments (Ex. 3). The modification clarified that the Rule 7.1 notice requirements apply only to CPCN applicants that rely on a petition from a majority of landowners to comply with 26 Del.C. 203D(d) rather than to those that rely on a service agreement with the developer of a proposed subdivision. (Tr. at 22, Ex. 3.)

11. G. Arthur Padmore, Public Advocate, moved DPA’s November 23, 2004 comments into the record (Ex. 4) and asserted that Staff had addressed each of DPA’s concerns to his satisfaction. DPA’s comments involved certain clarifications of various rules as well as grammatical and typographical corrections.

12. John Schreppler, counsel for Artesian, moved Artesian’s December 17, 2004 comments into the record (Ex. 6) and stated that Staff had addressed all but one of Artesian’s concerns to his satisfaction. Artesian’s comments primarily related to clarifications, deletions of unnecessary language, and one minor change to a timing deadline. The remaining issue, which involved clarification of the procedure for instituting a proceeding to revoke a CPCN under proposed Rule 9.4, was left for resolution after the hearing. Staff reported in its post-hearing memorandum (Ex. 9) that it made certain minor changes to Rule 9.4, which were acceptable to Artesian.

III. FINDINGS AND RECOMMENDATIONS

14. The Commission has the authority and jurisdiction to promulgate regulations under 26 Del.C. §209(a) and 29 Del.C. §10111 *et seq.* Pursuant to 26 Del.C. §209(a), the Commission may fix “just and reasonable” regulations governing any public utility.

15. The final proposed regulation, which is attached to the proposed Order in this case as Exhibit “B”, outlines the procedure to be followed by the regulated wastewater utilities and by Staff with respect to CPCN applications, transfers, abandonments, and revocations. The proposed regulation follows the recent wastewater utility legislation (codified primarily at 26 Del.C. 203D), which transferred jurisdiction over wastewater CPCNs from DNREC to the Commission. In addition, the proposed regulation parallels the Commission’s existing regulation governing CPCNs

for water utilities, adopted in June 2001 in Regulation Docket No. 51. (PSC Order No. 5730, June 5, 2001.) For the following reasons, I recommend that the Commission adopt the proposed regulation as “just and reasonable.”

16. The comments submitted by the parties, and offered at the hearing, primarily involved minor changes to language that either served to clarify certain procedural or administrative requirements in the proposed regulation or to correct grammatical or typographical errors. Based on these comments, Staff made changes to its proposed regulation, which, according to the parties that attended the hearing, satisfied all concerns. (Ex. 9 at 2.) Staff detailed such changes in its post-hearing memorandum (Ex. 9).¹

17. Staff did not, however, incorporate the recommendation made by the State Office of Planning Coordination. As summarized above, State Planning suggested that the regulation define “existing service territory” to include that area where a municipality or governmental agency is *planning* to serve with its public wastewater service, consistent with its comprehensive plan. Staff did not include any definition in its proposed regulation for “existing service territory,” which appears (or closely appears) in proposed Rules 6.3, 11.1 and 11.2.

18. Under Rule 6.3, a CPCN applicant is required to file copies of its application with the county within which the proposed service territory falls, any municipality within which the proposed service territory falls or is adjacent to, and any municipality that has an “existing wastewater service territory” that overlaps the applicant’s proposed service territory. Rules 11.1 and 11.2 provide that municipalities need not obtain CPCNs for new or existing service territories but must file with the Commission descriptions of their service territories and notify the Commission of any extensions thereof.

19. At the hearing, Mr. Schreppler, Artesian’s counsel, and Mr. Padmore, Public Advocate, supported Staff’s decision not to incorporate State Planning’s recommendation. (Tr. at 36-38.) Mr. Schreppler argued that a landowner whose property is located outside of a municipality’s borders and miles from that municipality’s wastewater system, but within its defined “service territory” (under State Planning’s recommendation), could be held “hostage” by that municipality when seeking wastewater service. He noted that, under this scenario, that property owner would not have had the opportunity to challenge that municipality’s identification of its service territory (and cannot vote in the municipal elections).

20. Mr. Padmore expressed concern that allowing a municipality to define its own service territory, beyond where its system is located, could result in an increase in the number of complaints his office receives from customers of a municipal utility who do not reside within the municipality. Because such customers are not residents of the municipality, and because the Public Advocate lacks jurisdiction over municipal utilities, these customers have little recourse regarding their service complaints, according to Mr. Padmore.

21. In its post-hearing memorandum, Staff recommended against including State Planning’s proposed definition of “existing service territory” because:

- a. the definition appears overly broad;
- b. use of the definition is not likely to have any practical effect on planning and development; [and]
- c. under [Staff’s] proposed regulations, counties, municipalities, towns, local governments and the Office of State Planning will receive copies of CPCN applications, and may intervene and challenge the applications.

(Ex. 9 at 2.)²

22. For the reasons outlined above, I agree with Staff, DPA, and Artesian that the Commission should not adopt State Planning’s proposed definition of “existing service territory.” If the Commission were to adopt such definition, the Commission would be, in effect, reserving future service territory for a municipal utility, without first considering the interests of ratepayers or competing wastewater utilities. Under Staff’s proposed regulation, however, the Commission will be able to institute proceedings to resolve disputes whenever an investor-owned wastewater utility seeks to expand into an area located within the growth plans of a county or municipality.

23. For all of the above reasons, I recommend that the Commission adopt, as just and reasonable, Staff’s proposed regulation (Ex. 7). A proposed form of Order implementing the above recommendation is appended, as Attachment “A,” for the Commission’s convenience.

Respectfully submitted,

William F. O’Brien, Hearing Examiner

1. Staff concluded (and I agree) that the changes it made to the published proposed regulation are not material and, therefore, do not warrant republication of the regulation prior to Commission action. See 29 Del.C. §10118(c).
2. Staff also replied directly to State Planning, in a letter dated December 16, 2004.

Dated: January 21, 2005

EXHIBIT "B"

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

1.1 The following words and terms, when used in th[isese] regulation[s], 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.

"DPH" means the Division of Public Health of the Delaware Department of Health and Social Services

"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 Th[isese] regulation[s] governs 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. Th[isese] regulation[s] also contains procedures for municipalities, governmental agencies, and wastewater authorities and districts, to notify the Commission of ~~its~~ **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 ~~working 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 ~~corporate 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.

3.3.8 Supporting documentation not filed with the application shall be made available upon request for Staff review.

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 ~~[and 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 ~~connect 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 ~~and DPH~~]; Coordination and Cooperation; [Filing of Application with Counties, Municipalities and Towns]

6.1 An applicant for a CPCN shall file a ~~an identical~~ copy of the application ~~[and its supporting documentation]~~ with DNREC ~~[and the Office of State Planning and DPH]~~ 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 ~~[and DPH]~~ 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. ~~[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.]~~

6.3 Staff shall coordinate and cooperate with DNREC ~~[and DPH]~~ 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~~[-Governing County and Adjacent Towns and/or Cities of the Proposed Service Territory]~~

7.1 ~~[Pursuant to the provisions of 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 shorthand 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
Suite 100
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 addition to the factors~~ 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 ~~[are alleged to]~~ 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~~[s]~~ 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)