

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION
CASE NO. 2005-00235

In the Matter of:

APPLICATION OF MALLARD POINT
DISPOSAL SYSTEMS, INC. FOR AN
ADJUSTMENT OF RATES PURSUANT TO THE
ALTERNATIVE RATE FILING PROCEDURE
FOR SMALL UTILITIES

RECEIVED

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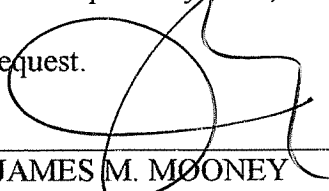
PUBLIC SERVICE
COMMISSION

* * * * *

**ANSWERS BY APPLICANT MALLARD POINT DISPOSAL SYSTEMS,
INC. TO THE ATTORNEY GENERAL'S FIRST INFORMATION
REQUEST**

* * * * *

Comes now the Applicant Mallard Point Disposal Systems, Inc., and submits its Answers
to the Attorney General's First Information Request.



JAMES M. MOONEY
MATTHEW L. MOONEY
MOONEY, MOONEY & MOONEY
208 SOUTH LIMESTONE STREET
LEXINGTON, KENTUCKY 40508-2502
(859) 259-2701

ATTORNEYS FOR MALLARD POINT
DISPOSAL SYSTEMS, INC.

VERIFICATION

I hereby verify that the following Answers by Applicant Mallard Point Disposal Systems,
Inc. to the Attorney General's First Information Request are true and correct to the best of my
knowledge, information, and belief formed after a reasonable inquiry.

MALLARD POINT DISPOSAL SYSTEMS, INC.



Mark S. Smith, President

STATE OF KENTUCKY)
COUNTY OF FAYETTE)

The foregoing was executed before me by Mark S. Smith, President of Mallard Point Disposal Systems, Inc. on this the 12th day of September, 2005.



NOTARY PUBLIC

My commission expires: May 24, 2006.

CERTIFICATE OF SERVICE

I hereby certify that the original and eight (8) copies hereof was mailed, postage prepaid, to the following:

Kentucky Public Service Commission
P.O. Box 615
211 Sower Boulevard
Frankfort, Kentucky 40602-0615

and that a copy of the foregoing was mailed, postage prepaid, to the following:

Honorable David Edward Spenard
Office of the Attorney General
1024 Capital Center Drive, #200
Frankfort, KY 40601-8204

on this the 12th day of September, 2005.



JAMES M. MOONEY

ATTORNEY FOR MALLARD POINT
DISPOSAL SYSTEMS, INC.

AG-1-1) Please provide the Mallard Point Disposal System, Inc. ("Mallard Point" or "MPDS") residential customer count as of each of the following dates: 31 December 2000; 31 December 2001; 31 December 2002; 31 December 2003; 31 December 2004; and 30 June 2005.

ANSWER:

Date	Number of Mallard Point residential customers
December 31, 2000	274
December 31, 2001	300
December 31, 2002	322
December 31, 2003	345
December 31, 2004	377
June 30, 2005	381

AG-1-2) Does Mallard Point's request for a rate increase include any adjustment(s) for expense items associated with customers added following the end of the test year? If yes, please identify the adjustments.

ANSWER: Mallard Point's request for a rate increase does not include any adjustment(s) for expense items associated with customers added following the end of the test year.

AG-1-3) Please confirm that the rehabilitation of the 50,000 GPD wastewater treatment plant has begun. Additionally, provide the following:

- a. The date that work began.
- b. The date of completion or estimated date of completion.
- c. The current status of the rehabilitation effort.

ANSWER: Rehabilitation of Mallard Point's 50,000 GPD wastewater treatment plant began in December 2004, and is approximately 25% - 35% completed. Unfortunately, however, Mallard Point does not have sufficient cash flow to complete this approved rehabilitation, but estimates that rehabilitation will be completed within 120 - 180 days from the date it receives an increase to its rate sufficient to support the repayment of the bank loan used to finance the remainder of the project.

AG-1-4) RE: Labor. Please provide the following:

- a. A list of the employees of Mallard Point.
- b. A job description for each employee.
- c. Indicate whether the employee is full-time or part-time.

ANSWER: Mallard Point has no employees.

AG-1-5) RE: Contract Labor and Contract Service. Please provide the following:

- a. A list showing each contract labor or contract service agreement in force at any time since 1 January 2003.
- b. A photocopy of the contract (or for oral contracts, a written summary of the agreement).

ANSWER: Mallard Point independently contracts with Charlie Hanson to provide maintenance and service to its facilities, Noel Norton to perform as its certified operator, and Christy Combs to perform as its bookkeeper. *See* Case No. 2003-00284, Application of Mallard Point Disposal Systems, Inc. for an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities, for a more full listing of their respective duties, which remain unchanged, with the exception of Ms. Combs, who now also prepares Mallard Point's quarterly filings with the PSC. There have been no written contract labor or contract service agreements in force at any time since January 1, 2003.

Witness: Mark S. Smith

AG-1-6) RE: Outside Services. Please provide the following:

- a. Identify the service provider(s) for Account 923.0.
- b. Indicate whether any Account 923.0 service provider also provides Mr. Mark

S. Smith with service for matters other than MPDS.

ANSWER: a. Service providers included in Account 923.0 are Christy Combs, L. Smith, and Lazorwitz Tax Service.

b. None of the service providers listed in (a) above provide Mark Smith with service for matters other than MPDS.

AG-1-7) RE: Application, Exhibit D, Pro Forma Adjustments, (b). Please explain the basis for an annual "owner/manager fee" of \$35,000. Include with the response relevant documentation concerning Mr. Smith's time or services performed.

ANSWER: a. Mark Smith has been required to spend an increasing amount of time operating Mallard Point over the past few years as it has grown in size. Normal, everyday demands on his time over the past few years, including the test year, include but are not limited to the following:

- A minimum of 550 calls from customers covering an array of topics;
- Weekly correspondence with lab and/or other contractors on compliance chemical testing and monitoring;
- Daily discussions with the licensed plant operator regarding plant operations;
- Daily conversations and supervision of the maintenance contractor for the plant;
- Twice daily personal inspections of the plant facilities;
- Contact with and supervision of electricians on multiple occasions for failures to the systems (pumps, pump stations, etc);
- Monthly contact and scheduling of sludge removal;
- Meet sludge removal personnel to allow access to the plants for same;
- Meet with builders and or property owners to assist the finding of the sewer taps for connection to the system;
- Obtaining and supervising personnel and/or contractors for repairs to leaks within the system, on multiple occasions;
- Supervise and provide oversight to the bookkeeper, and assist in her record keeping;
- Obtain and retain receipts for all expenditures of the utility;
- Make no less than 300 calls per year to customers for the purpose of collection of past due accounts;
- Participate and supervise the shut off of any customer for non payment;
- Meet in person and over the telephone with the accountant on multiple occasions to perform such work as required and needed;

Witness: Mark G. Enderle; Mark S. Smith

- Meet in person and over the telephone with the attorney on multiple occasions for clarification of the law with respect to the utility's operation;
- Make contact with and seek direction from the PSC staff for the operation of the utility on multiple occasions;
- Meet with state regulators on multiple occasions for the purposes of inspections and operational conferences;
- Deliver monthly DMRs to the post office for certified mailing to multiple state agencies;
- Meet with plumbers, and electricians on multiple occasions to explain how our system works and how to properly install same, as this is the largest pressure system within the state and many plumbers and or electricians are not familiar with how to complete and perform installation.

Mallard Point would prefer that Mr. Smith continue to perform these ever increasing duties and responsibilities for the fair and reasonable compensation requested, but if not, Mallard Point will have to hire a contractor or management firm to perform them in the future.

It is beyond Mallard Point's ability to identify with any degree of certainty the number of hours spent performing each listed duty.

b. It is beyond the ability of Mallard Point to conduct a comprehensive study of Commission proceedings over the years that have considered the owner/manager fee. However, there are a number of sewer utilities that report to the PSC. A review of their annual reports show a wide range of such fees being charged to customers, including:

- Middletown Waste Disposal with 184 customers reports an owner/manager fee of \$14,400.
- Knott County Water & Sewer District with 116 customers reports an owner/manager fee of \$32,033.
- Shadow Wood Sewer with 265 customers reports an owner/manager fee of \$30,000.
- Delaplain Disposal Company with 212 customers reports an owner/manager fee of \$48,462.

Witness: Mark G. Enderle; Mark S. Smith

- Bullitt Utilities, Inc. with 678 customers reports an owner/manager fee of \$15,000.

Considering the time and effort Mark Smith devotes to participation in the management and operation of Mallard Point, \$35,000 is a minimal amount that one would expect for his services. Please note that Mallard Point has no expenditures for administrative & general salaries (Acct 920), internal supervision and engineering (Acct 710-B), or routine maintenance service fee (Acct 710-A). Mark Smith provides all of these services.

AG-1-8) RE: Application, Exhibit D, Pro Forma Adjustments, (q). Please provide the following:

a. The long-term debt amount for each of the following dates. 31 December 2000; 31 December 2001; 31 December 2002; 31 December 2003; 31 December 2004; and 30 June 2005.

b. A schedule showing the refinancing of long-term debt since 31 December 2000 that shows (i) the date of refinancing; (ii) the amount of refinancing; and (iii) whether Commission approval was sought for the refinancing (include the relevant KY PSC Case Number).

c. A schedule showing each issuance or addition of long-term debt (loan, note, etc.) since 31 December 2000 that shows (i) the date of the loan, note, etc.; (ii) the amount of the loan, note, etc.; (iii) a photocopy of any loan, note, etc., not provided with the Application; and (iv) whether Commission approval was sought for the loan, note, etc. (include the relevant KY PSC Case Number).

d. Notwithstanding the previous questions, did Mallard Point obtain Commission approval for the loan to "repay" Mark Smith \$280,000? If yes, please provide a photocopy of the Commission approval.

e. Notwithstanding the previous questions, why was there a change to the maturity date of Loan #15-202-66405, from 30 July 2007 to 30 July 2005?

ANSWER: a. The loan from Farmers Bank and Trust Co. had ending balances as follows:

12/31/03	\$667,736.24
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Witness: Mark G. Enderle; Mark S. Smith

12/31/04	\$663,182.99
6/30/05	656,869.36

Note that Citizens Bank merged into Farmers Bank and Trust Co. in 2004.

The loan from First National Bank & Trust had ending balances as follows:

12/31/03	\$50,793.81
12/31/04	\$37,659.79
6/30/05	\$31,131.45

Note that First National Bank & Trust has merged into Whitaker Bank.

The loan from Mark Smith had ending balances as follows:

12/31/03	\$3,113.00
12/31/04	\$44,551.00

Mallard Point is unable to provide long-term debt amounts for 31 December 2000, 31 December 2001, and 31 December 2002. That information was inadvertently destroyed by a third party while in the possession of Louis Lazowitz, prior accountant for Mallard Point. *See* Case No. 2003-00284, Application of Mallard Point Disposal Systems, Inc. for an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities. The involved financial institutions have since merged and are no longer able to provide that historical data. Nevertheless, Mallard Point will continue to search for this requested data and will supplement its answer hereto.

b., c. and d. Mallard Point does not have a schedule showing the refinancing or issuance or addition of long-term debt since 31 December 2000 showing the date or amount of refinancing. A photocopy of Mallard Point's note to Citizens Bank/Farmers Bank and Trust Co. was included with the Application. Mallard Point did not seek Commission approval for the

Witness: Mark G. Enderle; Mark S. Smith

First National Bank/Whitaker Bank and Mark S. Smith loans because those transactions were for terms less than two (2) years and exempt from the requirements of KRS 278.300. During an Informal Conference held August 18, 2003 in Mallard Point Disposal Systems, Inc., Commonwealth of Kentucky, Public Service Commission, Case No. 2003-00284, Mallard became aware that, because a March 31, 2003 refinance and increase by Citizens Bank/Farmers Bank and Trust Co. of its long-term debt was for a term greater than two (2) years, it was first required to obtain Commission approval pursuant to KRS 278.300 before entering into that transaction. Mallard Point was unaware of that requirement or obligation and, consequently, it unintentionally violated that statutory provision, but applied for that authorization ex post facto. See Mallard Point's answer to AG-1-15, *infra*.

e. The maturity date of Loan #15-202-66405 was changed from 30 July 2007 to 30 July 2005 in order to reduce its term to two (2) years.

AG-1-9) RE: Application, Exhibit E. Please confirm that Mallard Point seeks both an "Operating Ratio" revenue adjustment as well as an annual \$35,000 owner/manager expense.

ANSWER: Mallard Point does seek both an "Operating Ratio" revenue adjustment as well as an annual \$35,000 owner/manager expense. An owner/manager fee would be earned and paid by Mallard Point to someone, if not Mr. Smith. Mallard Point seeks fair compensation for the duties Mr. Smith fulfills outside his capacity as owner of the utility.

AG-1-10) RE: Application, Exhibit H, Form 1120S for Year 2004. Please explain the increase in "Loans from shareholders" from \$3,113 to \$44,551. If applicable, include a photocopy of the loan document.

ANSWER: The increase in "Loans from shareholders" from \$3,113 to \$44,551 was a direct result of a lack of utility revenue to cover basic operational expenses, as evidenced by Mallard Point's 2005 quarterly filings. See attached.

1

#1

SUBSTITUTED PROMISSORY NOTE

\$ 16738⁰⁰

Georgetown, Kentucky,

8-30-04 (Date)

For value received, the undersigned agrees to pay to the order of Mark S. Smith the principal sum of ~~SIXTEENTHOUSAND SEVENHUNDREDS~~ ^{THIRTYEIGHT} and ⁰⁰/₁₀₀ Dollars (\$16738⁰⁰), with interest from even date herewith at the rate of ~~SEVEN AND ONE HALF~~ ^{SEVEN AND ONE HALF} percent (7.5%) per annum on the unpaid balance until fully paid. The principal and accrued interest shall be due and payable at 104 Teal Court, Georgetown, KY 40324 or at such other place as the holder hereof may designate in writing, two (2) years from the date hereof. This Substituted Promissory Note is given in substitution of that certain Promissory Note dated 1-2-04 in the principal sum of ~~SIXTEENTHOUSAND SEVENHUNDREDS~~ ^{THIRTYEIGHT} and ⁰⁰/₁₀₀ Dollars (\$16738⁰⁰) between the undersigned, as maker, and Mark S. Smith, as lender.

The undersigned, whether principal, surety, guarantor, endorser, or other party hereto, hereby waives demand, protest, and notice of demand, protest, and nonpayment. If this Substituted Promissory Note is referred to an attorney for collection, the undersigned agrees to pay said attorney's fees and expenses incurred.

The undersigned hereby acknowledges receipt of a true and complete copy of this Substituted Promissory Note.

MALLARD POINT DISPOSAL SYSTEMS, INC.



Mark S. Smith, President

#3

SUBSTITUTED PROMISSORY NOTE

\$ 7000.⁰⁰

Georgetown, Kentucky,

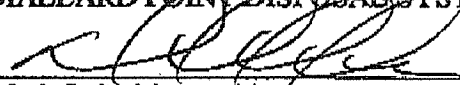
3-31-04 (Date)

For value received, the undersigned agrees to pay to the order of Mark S. Smith the principal sum of SEVENTH THOUSAND and 00/100 Dollars (\$ 7000.⁰⁰), with interest from even date herewith at the rate of SEVEN AND ONE/100 percent (7.1%) per annum on the unpaid balance until fully paid. The principal and accrued interest shall be due and payable at 104 Teal Court, Georgetown, KY 40324 or at such other place as the holder hereof may designate in writing, two (2) years from the date hereof. This Substituted Promissory Note is given in substitution of that certain Promissory Note dated 3-31-04 in the principal sum of SEVENTH THOUSAND and 00/100 Dollars (\$ 7000.⁰⁰) between the undersigned, as maker, and Mark S. Smith, as lender.

The undersigned, whether principal, surety, guarantor, endorser, or other party hereto, hereby waives demand, protest, and notice of demand, protest, and nonpayment. If this Substituted Promissory Note is referred to an attorney for collection, the undersigned agrees to pay said attorney's fees and expenses incurred.

The undersigned hereby acknowledges receipt of a true and complete copy of this Substituted Promissory Note.

MALLARD POINT DISPOSAL SYSTEMS, INC.


Mark S. Smith, President

#4

SUBSTITUTED PROMISSORY NOTE

\$ 6000⁰⁰
8-30-04 (Date)

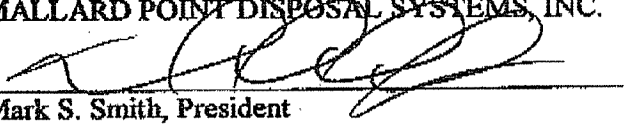
Georgetown, Kentucky,

For value received, the undersigned agrees to pay to the order of Mark S. Smith the principal sum of SIX THOUSAND and 00/100 Dollars (\$ 6000⁰⁰), with interest from even date herewith at the rate of SEVEN AND ONE HALF percent (7.5%) per annum on the unpaid balance until fully paid. The principal and accrued interest shall be due and payable at 104 Teal Court, Georgetown, KY 40324 or at such other place as the holder hereof may designate in writing, two (2) years from the date hereof. This Substituted Promissory Note is given in substitution of that certain Promissory Note dated 5-13-04 in the principal sum of SIX THOUSAND and 00/100 Dollars (\$ 6000⁰⁰) between the undersigned, as maker, and Mark S. Smith, as lender.

The undersigned, whether principal, surety, guarantor, endorser, or other party hereto, hereby waives demand, protest, and notice of demand, protest, and nonpayment. If this Substituted Promissory Note is referred to an attorney for collection, the undersigned agrees to pay said attorney's fees and expenses incurred.

The undersigned hereby acknowledges receipt of a true and complete copy of this Substituted Promissory Note.

MALLARD POINT DISPOSAL SYSTEMS, INC.


Mark S. Smith, President

#5

SUBSTITUTED PROMISSORY NOTE

\$5000⁰⁰
8-30-04 (Date)

Georgetown, Kentucky,

For value received, the undersigned agrees to pay to the order of Mark S. Smith the principal sum of FIVE THOUSAND and 00/100 Dollars (\$ 5000⁰⁰), with interest from even date herewith at the rate of SEVEN AND ONE TENTH percent (7.1%) per annum on the unpaid balance until fully paid. The principal and accrued interest shall be due and payable at 104 Teal Court, Georgetown, KY 40324 or at such other place as the holder hereof may designate in writing, two (2) years from the date hereof. This Substituted Promissory Note is given in substitution of that certain Promissory Note dated 5-27-04 in the principal sum of FIVE THOUSAND and 00/100 Dollars (\$ 5000⁰⁰) between the undersigned, as maker, and Mark S. Smith, as lender.

The undersigned, whether principal, surety, guarantor, endorser, or other party hereto, hereby waives demand, protest, and notice of demand, protest, and nonpayment. If this Substituted Promissory Note is referred to an attorney for collection, the undersigned agrees to pay said attorney's fees and expenses incurred.

The undersigned hereby acknowledges receipt of a true and complete copy of this Substituted Promissory Note.

MALLARD POINT DISPOSAL SYSTEMS, INC.


Mark S. Smith, President

#6

SUBSTITUTED PROMISSORY NOTE

\$ 3000⁰⁰
8-30-04 (Date)

Georgetown, Kentucky,

For value received, the undersigned agrees to pay to the order of Mark S. Smith the principal sum of THREETHOUSAND and 00/100 Dollars (\$ 3000⁰⁰), with interest from even date herewith at the rate of SEVEN AND ONE HALF percent (7 1/2%) per annum on the unpaid balance until fully paid. The principal and accrued interest shall be due and payable at 104 Teal Court, Georgetown, KY 40324 or at such other place as the holder hereof may designate in writing, two (2) years from the date hereof. This Substituted Promissory Note is given in substitution of that certain Promissory Note dated 6-30-04 in the principal sum of THREETHOUSAND and 00/100 Dollars (\$ 3000⁰⁰) between the undersigned, as maker, and Mark S. Smith, as lender.

The undersigned, whether principal, surety, guarantor, endorser, or other party hereto, hereby waives demand, protest, and notice of demand, protest, and nonpayment. If this Substituted Promissory Note is referred to an attorney for collection, the undersigned agrees to pay said attorney's fees and expenses incurred.

The undersigned hereby acknowledges receipt of a true and complete copy of this Substituted Promissory Note.

MALLARD POINT DISPOSAL SYSTEMS, INC.



Mark S. Smith, President

#7

SUBSTITUTED PROMISSORY NOTE

\$ 3500.00

Georgetown, Kentucky,

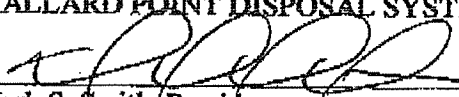
8-30-04 (Date)

For value received, the undersigned agrees to pay to the order of Mark S. Smith the principal sum of THIRTY FIVE HUNDRED and 00/100 Dollars (\$ 3500.00), with interest from even date herewith at the rate of SEVEN AND ONE HALF percent (7 1/2%) per annum on the unpaid balance until fully paid. The principal and accrued interest shall be due and payable at 104 Teal Court, Georgetown, KY 40324 or at such other place as the holder hereof may designate in writing, two (2) years from the date hereof. This Substituted Promissory Note is given in substitution of that certain Promissory Note dated 8-13-04 in the principal sum of THIRTY FIVE HUNDRED and 00/100 Dollars (\$ 3500.00) between the undersigned, as maker, and Mark S. Smith, as lender.

The undersigned, whether principal, surety, guarantor, endorser, or other party hereto, hereby waives demand, protest, and notice of demand, protest, and nonpayment. If this Substituted Promissory Note is referred to an attorney for collection, the undersigned agrees to pay said attorney's fees and expenses incurred.

The undersigned hereby acknowledges receipt of a true and complete copy of this Substituted Promissory Note.

MALLARD POINT DISPOSAL SYSTEMS, INC.



Mark S. Smith, President

#8
#8
SUBSTITUTED PROMISSORY NOTE

\$ 1,000⁰⁰
8-30-04 (Date)


Georgetown, Kentucky,

For value received, the undersigned agrees to pay to the order of Mark S. Smith the principal sum of ~~One Thousand~~ and 00/100 Dollars (\$ 1,000⁰⁰), with interest from even date herewith at the rate of ~~seven and one-half~~ percent (7.5%) per annum on the unpaid balance until fully paid. The principal and accrued interest shall be due and payable at 104 Teal Court, Georgetown, KY 40324 or at such other place as the holder hereof may designate in writing, two (2) years from the date hereof. This Substituted Promissory Note is given in substitution of that certain Promissory Note dated 8-19-04 in the principal sum of ~~One Thousand~~ and 00/100 Dollars (\$ 1,000⁰⁰) between the undersigned, as maker, and Mark S. Smith, as lender.

The undersigned, whether principal, surety, guarantor, endorser, or other party hereto, hereby waives demand, protest, and notice of demand, protest, and nonpayment. If this Substituted Promissory Note is referred to an attorney for collection, the undersigned agrees to pay said attorney's fees and expenses incurred.

The undersigned hereby acknowledges receipt of a true and complete copy of this Substituted Promissory Note.

MALLARD POINT DISPOSAL SYSTEMS, INC.


Mark S. Smith, President

#7
PROMISSORY NOTE

\$ 3,500⁰⁰
8-3-04 (Date)


Georgetown, Kentucky,

For value received, the undersigned agrees to pay to the order of Mark S. Smith the principal sum of ~~Three Thousand Five Hundred~~ and 00/100 Dollars (\$ 3,500⁰⁰), with interest from even date herewith at the rate of ~~seven and one-half~~ percent (7.5%) per annum on the unpaid balance until fully paid. The principal and accrued interest shall be payable at 104 Teal Court, Georgetown, KY 40324 or at such other place as the holder hereof may designate in writing, upon demand.

The undersigned, whether principal, surety, guarantor, endorser, or other party hereto, hereby waives demand, protest, and notice of demand, protest, and nonpayment. If this note is referred to an attorney for collection, the undersigned agrees to pay said attorney's fees and expenses incurred.

The undersigned hereby acknowledges receipt of a true and complete copy of this Note.

MALLARD POINT DISPOSAL SYSTEMS, INC.


Mark S. Smith, President

AG-1-11) RE: Application, Exhibit H, Form 4562 for Year 2004. Please indicate whether the 1986 Sewer Plant Additions (Asset No. 1) will be fully-depreciated on 31 December 2005. If not, provide the date on which Asset No. 1 will be fully-depreciated.

ANSWER: The 1986 Sewer Plant Additions will be fully depreciated on December 31, 2005.

AG-1-12) Please provide the number of customers that MPDS anticipates adding in the following periods. 1 January 2005 through 31 December 2005; 1 January 2006 through 31 December 2006; and 1 January 2007 through 31 December 2007.

ANSWER: Mallard Point estimates that it might add between 20 - 40 customers within each of the referenced time periods. However, outside influences over which Mallard Point has no control, such as interest rates, have a significant impact on any such estimate.

AG-1-13) How many lots remain unsold in (a) Mallard Point; (b) Harbor Village; and (c) Cedar Hills subdivisions?

ANSWER: While neither Mallard Point nor Mark Smith has any developmental interest in the Mallard Point, Harbor Village, or Cedar Hills subdivisions, Mallard Point estimates that the number of yet to be built on lots are as follows: Mallard Point - 100+; Harbor Village - 40+; and Cedar Hills - 20+. The Westwoods development, an extension of Mallard Point subdivision, contains an additional 100+ lots.

AG-1-14) RE: Mallard Point Annual Report to PSC, 1/1/2004, Balance Sheet.

Please answer the following:

- a. Explain the decrease in Notes Payable from \$676,080 to \$44,551.
- b. Identify the source of the funds to reduce this amount.
- c. Explain the decrease in Other Deferred Credits from \$866,000 to zero.
- d. Identify the source of the funds to reduce this amount.

ANSWER: The Mallard Point Annual Report to PSC submitted for the year ended December 31, 2003 prepared by Mallard Point's prior accountant, Louis Lazorwitz, listed incorrect amounts in several categories, including those identified above, making the preparation of the December 31, 2004 report difficult. The matter was discussed by Mallard Point's current accountant, Mark G. Enderle, with personnel in Mr. Bill Feldman's office during the preparation of the December 31, 2004 report. The amount of \$44,551 for December 31, 2004 in Notes Payable is correct; this is the amount owed by Mallard Point to Mr. Smith for loans he was compelled to make to sustain the day-to-day operations of the utility. Likewise, the amount of \$866,000 for December 31, 2004 in Other Deferred Credits was also incorrect, and it was reduced to zero.

Witness: Mark G. Enderle

AG-1-15) RE: Mallard Point Annual Report to PSC, 1/1/2004, Long-Term Debt.

Please indicate whether MPDS sought Commission approval for each of the three items in the debt class. If yes, provide the corresponding KY PSC Case Number.

ANSWER: Mallard Point did not seek Commission approval for two (2) of the three (3) items in the Long Term Debt class of its Annual Report to PSC dated 1/1/2004 – the First National Bank/Whitaker Bank and Mark S. Smith loans – because those transactions were for terms less than two (2) years and exempt from the requirements of KRS 278.300. During an Informal Conference held August 18, 2003 in Mallard Point Disposal Systems, Inc., Commonwealth of Kentucky, Public Service Commission, Case No. 2003-00284, Mallard became aware that, because a March 31, 2003 refinance and increase by Citizens Bank/Farmers Bank and Trust Co. of its long-term debt in the approximate amount of \$680,000.00 was for a term greater than two (2) years, it was first required to obtain Commission approval pursuant to KRS 278.300 before entering into that transaction. Mallard Point was unaware of that requirement or obligation and, consequently, it unintentionally violated that statutory provision, but applied for that authorization ex post facto. See attached.

Witness: Mark S. Smith

LAW OFFICES
MOONEY, MOONEY & MOONEY

EUGENE F. MOONEY
JAMES M. MOONEY
MATTHEW L. MOONEY

208 SOUTH LIMESTONE STREET
LEXINGTON, KENTUCKY 40508-2502
MMMoooney@mooney3.com

TELEPHONE
(859) 259-2701
TELEFAX
(859) 259-2703

August 27, 2004

Kentucky Public Service Commission
P.O. Box 615
211 Sower Boulevard
Frankfort, Kentucky 40602-0615

Dear Sirs:

During a recent Informal Conference held on August 18, 2003 in Mallard Point Disposal Systems, Inc., Commonwealth of Kentucky, Public Service Commission, Case No. 2003-00284, Mallard Point Disposal Systems, Inc. (Mallard Point) became aware that, because a March 31, 2003 refinance and increase of its long-term debt in the approximate amount of \$680,000.00 was for a term greater than two (2) years, it was first required to obtain Commission approval pursuant to KRS 278.300 before entering into that transaction. As set forth in the attached Affidavit of Mark S. Smith, President of Mallard Point, Mallard Point was unaware of that requirement or obligation and, consequently, it unintentionally violated that statutory provision. Nevertheless, Mr. Smith believes the subject transaction meets the standard set forth in KRS 278.300 and now seeks that authorization ex post facto.

Please contact me with any further information you may need or require regarding this matter.

Thank you.

Very truly yours,

James M. Mooney



jmm

Enclosure

cc: Mr. Mark S. Smith (w/enc.)
Mallard Point Disposal Systems, Inc.
104 Teal Court
Georgetown, Kentucky 40324

AFFIDAVIT OF MARK S. SMITH

Comes the affiant, Mark S. Smith, President of Mallard Point Disposal Systems, Inc., and after being duly sworn, states as follows:

1. I am the President and sole owner of Mallard Point Disposal Systems, Inc. ("MPDS"), a Kentucky corporation. MPDS was formed in and around 1984, and formally incorporated in 1985, for the purpose of providing sewage treatment services under the regulatory oversight of the Kentucky Public Service Commission ("PSC").

2. MPDS was authorized by the PSC to receive an initial monthly service rate of \$22.18 per month but, as a benefit to its ratepayers, it did not bill any of its customers for approximately the first five (5) years of its existence. Sometime in 1989, MPDS began charging its customers its initial monthly service rate, and continued to do so for the ensuing five (5) years. In 1994, MPDS sought, and the PSC granted, an increase of its ten (10) year old rate to \$31.10. See Case No. 1994-00266 The Application of the Mallard Point Disposal Systems, Inc. for an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities (February 4, 1995).

3. During these years and thereafter, however, MPDS operated at a loss, which necessitated regular contributions of capital from me in the form of loans. MPDS has and continues to be operated out of my home and truck, with a handful of independent contractors, without an office location, equipment, or support. Until recently, that operating environment impeded orderly businesslike operations and, consequently, evidence of those losses and the need for additional capital was sometimes lacking. Similarly, some of those loans to, and repayments by, MPDS were properly documented and some were not. Most were not. Unfortunately, whatever documentation did exist concerning these matters was inadvertently destroyed by a third party while in the possession of MPDS's accountant. See letter of explanation regarding the inadvertent destruction MPDS's records in the file of PSC staff.

4. On July 7, 2003, because of the increasing age of its facilities and the increasing inability to cover its operating expenses, MPDS sought only its second rate increase in its nearly twenty (20) year existence. During that proceeding, MPDS's poor bookkeeping practices, including the commingling of its funds with my personal accounts, were noted and criticized throughout the proceeding. MPDS acknowledged these errors, and voluntarily agreed to segregate its business from mine, computerize its operations, reconcile its operating accounts, and retain copies of its vendor invoices commencing January 1, 2004. Accordingly, as a part of its Order dated May 27, 2004, the PSC required MPDS to submit quarterly filings containing its monthly bank reconciliations, its receipts and disbursements journal, and copies of vendor, maintenance, and chemical invoices. MPDS was only granted a rate increase to \$35.29. See Consolidated Case Nos. 2003-00283 and 2003-00284 The Application of the Mallard Point Disposal Systems, Inc. for (1) a Certificate of Public Convenience and Necessity to Construct the Proposed Wastewater Improvement Project; (2) the Approval of the Proposed Plan of Financing; and (3) an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities.

5. On July 12, 2004, MPDS submitted its first such filing covering the first two (2) quarters of 2004. That filing demonstrates that MPDS has now ceased commingling its money with mine. It also reveals that MPDS's current rate is insufficient to generate the income necessary to cover its day-to-day operating expenses, let alone service the debt on the proposed

loan to rehabilitate is facilities, which loan transaction MPDS is now unable to close. Indeed, from the beginning of the year to date, MPDS has encountered losses in excess of \$47,000.00, monies I have loaned to MPDS to keep it operable. When approved depreciation is added, that total loss is in excess of \$74,000.00 to date. MPDS intends to seek another adjustment of its rate pursuant to the alternative rate filing procedure for small utilities in the near future in order to address these problems.

6. Prior to 2004, I commingled MPDS receipts with my personal funds, which obscured the true operational cost for MPDS. Only now, since those funds have been segregated, has the magnitude of MPDS's operating deficit been realized. Unfortunately, what records would have helped reconstruct that deficit were inadvertently destroyed. What does exist though, is a detailed operational picture and profile of MPDS as set forth in its filing covering the first two (2) quarters of 2004. All expenses contained therein are recurring, operational, and absent any type of capital expenditure. Consequently, those current expenses provide support for my past loans, which I project to be in excess of a half a million dollars over the past ten (10) years alone.

7. It has recently come to MPDS's attention that it was required to obtain prior PSC approval of a March 31, 2003 refinance and increase of its long-term debt in the approximate amount of \$680,000.00 over the course of a twenty (20) year term. A portion of that total in the approximate sum of \$400,000.00 represents long-term debt dating back the initial construction, and the additional borrowings in the approximate amount of \$280,000.00 were used to repay indebtedness owed to me for loans used to cover the continuing annual operating deficits incurred by MPDS in previous years mentioned above. The purpose of that refinancing was to serve a lawful object within the corporate purposes of MPDS. It was necessary and appropriate for and consistent with the proper performance by MPDS of its service to the public. It has not impaired MPDS's ability to perform that service. Finally, it was reasonably necessary and appropriate for such purpose.

8. MPDS was unaware of its obligation to seek prior approval from the PSC for its March 31, 2003 refinance and increase of its long-term debt in the amount of \$680,000.00. Its failure to do so was not intentional, and MPDS now seeks that authorization ex post facto.

9. Further the affiant sayeth naught.

MALLARD POINT DISPOSAL SYSTEMS, INC.

Mark S. Smith, President

STATE OF KENTUCKY)
COUNTY OF FAYETTE)

The foregoing was executed before me by Mark S. Smith, President of Mallard Point Disposal Systems, Inc. on this the ____ day of August, 2004.

NOTARY PUBLIC

My commission expires: _____.

AG-1-16) RE: Mallard Point Annual Report to PSC, 1/1/2003, Balance Sheet, Notes Payable. Please explain the increase in Notes Payable from \$488,322 to \$676,080 and provide the following:

- a. Provide a photocopy of any note(s) entered into during Year 2003.
- b. Indicate whether MPDS sought Commission approval for the note(s) (include the relevant KY PSC Case Number).

ANSWER: Mallard Point's Annual Report to PSC dated January 1, 2003 was prepared by Louis Lazorwitz, Mallard Point's prior accountant. The documentation upon which the increase in Notes Payable from \$488,322 to \$676,080 was based was inadvertently destroyed by a third party while in the possession of Mr. Lazorwitz. Consequently, Mallard Point is unable to explain that increase. *See* Case No. 2003-00284, Application of Mallard Point Disposal Systems, Inc. for an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities. Photocopies of Mallard Point's notes to Citizens Bank/Farmers Bank and Trust Co. and First National Bank & Trust/Whitaker Bank were attached to Mallard Point's Application. Copies of Mallard Point's notes to Mark S. Smith are attached in response to AG-1-10. Mallard Point did not seek Commission approval for the First National Bank/Whitaker Bank and Mark S. Smith loans because those transactions were for terms less than two (2) years. Mallard Point applied for ex post facto authorization for the Citizens Bank/Farmers Bank and Trust Co. loan. *See* Mallard Point's answer to AG-1-8 and AG-1-15, *supra*.

Witness: Mark S. Smith

AG-1-17) RE: Mallard Point Annual Report to PSC, 1/1/2004, Notes Payable.

Please answer the following:

a. Indicate whether Mallard Point has used revenues from its rates to pay either principal or interest associated with the loan to Mark S. Smith.

b. Indicate whether Mallard Point will use revenues from its rates to pay either principal or interest associated with the loan to Mark S. Smith.

ANSWER: Mallard Point has, on at least one (1) occasion used revenues from its rates to pay principal associated with a loan from Mark S. Smith. On that single occasion, the funds were then re-loaned by Mr. Smith to Mallard Point. Mallard Point has not requested that principal or interest be repaid on loans from Mark S. Smith from future revenues to be generated as a result of Mallard Point's Application. Consequently, under the proforma rate determination submitted, there is insufficient revenue to make loan payments and pay interest on the loans in the future.

Witness: Mark G. Enderle; Mark S. Smith

AG-1-18) RE: Mallard Point Annual Report to PSC, 1/1/2004, Sewer Plant Statistics – Physical Data of Sewer Plant. Please answer the following:

- a. Explain the basis for the assertion that the plant is designed for a population of approximately 3,500. Include the gallons per day estimate of usage for a residential household in arriving at the 3,500 amount. (For a single residential family, is the current design load 300 GPD?)
- b. When the rehabilitation of the 50,000 GPD plant is complete will MPDS have a total of 150,000 GPD of capacity? If not, explain why not.
- c. Once the rehabilitation of the 50,000 GPD plant is complete, what will the population design amount be for MPDS?

ANSWER: When the rehabilitation of the 50,000 GPD plant is complete Mallard Point will have a total of 150,000 GPD of capacity. It will have a population design of approximately 1,760, which is calculated by dividing 150,000 GPD of capacity by 300 GPD per household, at an average household formation of 3.52 persons per household. Mallard Point was unaware that any assertion had been made to the contrary.

AG-1-19) Identify the point in the system at which MPDS' responsibility for maintaining the service line ends and the individual customer's responsibility for the service line begins.

ANSWER: Mallard Point is responsible for maintaining the service line from the point where the line leaves the customers' tap (valve) connecting them with Mallard Point's system.

AG-1-20) Identify the requirements that a customer must meet in order to hook onto the MPDS system. Include in the response whether it is necessary for a customer to secure a grinder pump and if so the technical requirements for such a pump.

ANSWER: All customers must secure a pump station, consisting of a Meyers WGL20 and 6 foot basin and electronic control panel (known as a "Mallard Point Station") in order to hook onto the Mallard Point system. The Mallard Point Station was designed, engineered, and specified by Meyers Corp. approximately 25 years ago, and their "warranty" of the Mallard Point Station to the utility is contingent on the same. As each pump station moves the line, all must be uniform so that one of higher pressure would not restrict one of lower pumping pressure to function when each would be running simultaneously.

AG-1-21) Indicate whether Mark S. Smith (either individually or through another corporation) provides services or products to the customer-owned portions of sewer services.

ANSWER: Mark S. Smith has provided most of the Mallard Point Stations to Mallard Point customers for use with the customer-owned portions of the Mallard Point sewer system. Mallard Point Stations may also be secured through any other provider.

AG-1-22) Please provide a photocopy of the current KPDES permit for Mallard Point.

ANSWER: See attached.

KPDES



KENTUCKY POLLUTANT
DISCHARGE ELIMINATION
SYSTEM

PERMIT

PERMIT NO.: KY0074829

AUTHORIZATION TO DISCHARGE UNDER THE
KENTUCKY POLLUTANT DISCHARGE ELIMINATION SYSTEM

Pursuant to Authority in KRS 224,

Mallard Point Disposal Systems, Incorporated
104 Teal Court
Georgetown, Kentucky 40324

is authorized to discharge from a facility located at

Mallard Point Wastewater Treatment Plant
Wright Lane (off of Highway 25)
Georgetown, Scott County, Kentucky

to receiving waters named

Unnamed tributary at mile point 0.25 to Little Eagle Creek at mile point 11.05
in accordance with effluent limitations, monitoring requirements and other conditions
set forth in Parts I, II, and III hereof. The permit consists of this cover sheet,
and Part I 2 pages, Part II 1 page, and Part III 1 page.

This permit shall become effective on AUG 1 2003

This permit and the authorization to discharge shall expire at midnight,
April 30, 2007.

JUN 17 2003

Date Signed

A handwritten signature in black ink, appearing to read "Jeffrey W. Pratt", written over a horizontal line.

Jeffrey W. Pratt, Director
Division of Water

Robert W. Logan
Commissioner

AG-1-23) Please indicate whether Mallard Point has, within the last 24 months, engaged in discussions with any other utility provider regarding the transfer of ownership. If yes, please provide a summary of the discussions.

ANSWER: Mallard Point has not, within the last 24 months, engaged in discussions with any other utility provider regarding the transfer of ownership.

AG-1-24) Please indicate whether Mallard Point has, within the last 24 months, engaged in discussions regarding scenarios in which Mallard Point would accept sewerage from customers from areas other than Mallard Point, Harbor Village, or Cedar Hills. If yes, please provide a summary of the discussions.

ANSWER: Mallard Point has not, within the last 24 months, engaged in discussions regarding scenarios in which Mallard Point would accept sewerage from customers from areas other than Mallard Point, Harbor Village, or Cedar Hills. However, Mallard Point has been approved to treat sewerage from the Westwoods development, an extension of the Mallard Point subdivision.

AG-1-25) Please indicate whether Mallard Point has, within the last 24 months, engaged in discussion regarding scenarios in which Mallard Point would transmit any or all of its sewerage to another utility or governmental entity for treatment. If yes, please provide a summary of the discussions.

ANSWER: Mallard Point has, within the last 24 months, been asked by Georgetown Municipal Water and Sewer whether Mallard Point would discuss the transmission of any or all of its sewerage for treatment in the event a transmission line were to ever be built between the two. In response, Mallard Point stated that, if and when such a transmission line was ever built, it would then discuss the arrangement.

AG-1-26) Please provide a step-by-step narrative of how Mallard Point's discontinues service for non-payment. The narrative should include a discussion as to whether the utility has the ability, for any of its customers, to use a valve to shut off sewer service.

ANSWER: When a Mallard Point customer account becomes very delinquent and the customer is unresponsive to phone inquiries and/or personal visits by Mallard Point, Mallard Point may shut off service to that customer by turning an in-ground valve and the placement of a "sewer dummy" over the top of the valve to prevent unauthorized reconnection. A "sewer dummy" is one-half of a 55 gallon barrel filled with concrete and weighing approximately 900 lbs. It is secured to a tree, adjacent utility pole, or some other permanent landmark. Upon payment of the delinquent account, Mallard Point promptly removes the "sewer dummy" and reconnects service.