

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF MALLARD POINT)
DISPOSAL SYSTEMS, INC. AND THE CITY OF)
GEORGETOWN, KENTUCKY FOR AN ORDER)
APPROVING THE TRANSFER OF OWNERSHIP) CASE NO. 2013-00311
OF THE WASTEWATER COLLECTION SYSTEM)
OF THE MALLARD POINT DISPOSAL SYSTEMS,)
INC. TO THE CITY OF GEORGETOWN,)
KENTUCKY)

ORDER

Mallard Point Disposal Systems, Inc. ("Mallard Point Disposal"), and the city of Georgetown, Kentucky ("Georgetown"), jointly petitioned for approval to transfer ownership and control of Mallard Point Disposal's sewage collection system to Georgetown. Having reviewed the application and being otherwise advised, the Commission finds that:

1. Mallard Point Disposal, a Kentucky corporation, is organized pursuant to KRS Chapter 271B.¹
2. Mallard Point Disposal owns and operates sewage collection and treatment facilities that serve approximately 535 customers in the Mallard Point, Harbor Village, Cedar Hills, and West Woods Subdivisions of Scott County, Kentucky.²

¹ Application ¶ 1. See also <https://app.sos.ky.gov/ftshow/%28S%28fyplq5bu5wikerxt1dngn2qv%29%29/default.aspx?path=ftsearch&id=0207340&ct=09&cs=99999> (last visited Oct. 3, 2013).

² *Annual Report of Mallard Point Disposal Systems, Inc. to the Public Service Commission for the Calendar Year Ended December 31, 2012* ("Annual Report") at 1, 12.

3. As of December 31, 2012, Mallard Point Disposal had total assets of \$31,500 and total liabilities of \$629,720.³

4. As of December 31, 2012, Mallard Point Disposal had net utility plant of \$31,500.⁴

5. For the calendar year ending December 31, 2012, Mallard Point Disposal had operating revenues of \$273,049 and utility operating expenses of \$191,009, which resulted in net utility operating income of \$82,040.⁵

6. For the calendar year ending December 31, 2012, Mallard Point Disposal had net income of \$31,765.⁶

7. Mallard Point Disposal holds a Kentucky Pollutant Discharge Elimination System ("KPDES") Permit, which permits Mallard Point Disposal to discharge effluent into the waters of the Commonwealth.⁷

8. Mallard Point Disposal's KPDES Permit requires Mallard Point Disposal to connect to a regional facility if such facility becomes available.⁸

9. Georgetown is a city of the fourth class.⁹

³ *Id.* at 2 - 3.

⁴ *Id.* at 4.

⁵ *Id.* at 8.

⁶ *Id.*

⁷ Letter from Sandra L. Gruzesky, Director, Kentucky Division of Water, to Mark S. Smith, President, Mallard Point Disposal (Feb. 15, 2012).

⁸ *Id.*; 401 KAR 5:005, Section 4(6)(a).

⁹ KRS 81.010(4).

10. Georgetown owns and operates a water treatment and distribution system that provides water service to 8,832 customers within Georgetown's corporate boundaries and to 3,488 customers outside Georgetown's corporate boundaries.¹⁰

11. Georgetown's water system consists of a water treatment plant with a treatment capacity of 4.0 million gallons per day, five water storage facilities with a total storage capacity of 2.55 million gallons, and 397.65 miles of water transmission and distribution mains.¹¹

12. Georgetown owns and operates three sewage treatment and collection systems that provide sewer service to 10,564 customers within Georgetown's corporate boundaries and to 359 customers outside Georgetown's corporate boundaries.¹²

13. Georgetown has created the Georgetown Municipal Water and Sewer Service ("GMWSS") to manage and control its water and wastewater systems.¹³

14. Georgetown Sewage Treatment Plant 1 consists of sewage treatment plant with a treatment capacity of 4.5 million gallons of wastewater per day, 30 lift stations, 4,610 manholes, 21.52 miles of sewer interceptor mains, and 117.6 miles of collection mains.¹⁴

¹⁰ Kentucky Infrastructure Authority, *Kentucky Water Management Plan* (Feb. 2013) 96, available at http://kia.ky.gov/NR/rdonlyres/92C135FB-6B5D-4744-A074-D29993FCB807/0/DW_ManagementPlan_State_062413.pdf; Joint Applicants' Response to Commission Staff's First Request for Information, Item 8 (filed Sept. 27, 2013).

¹¹ *Kentucky Water Management Plan* at 98.

¹² Kentucky Infrastructure Authority, *Kentucky Wastewater Management Plan* (Apr. 2013) 97, available at http://kia.ky.gov/NR/rdonlyres/9A094655-E931-4A98-8F07-914CE0A50D2E/0/CW_ManagementPlan_State_062513.pdf; Joint Applicants' Response to Commission Staff's First Request for Information, Item 8.

¹³ Georgetown, Ky. Code of Ordinances § 2-206 (2004 & Supp. 2013). For a history of GMWSS's operations, see <http://www.gmwss.com/about.htm> (last visited Oct. 3, 2013).

¹⁴ *Kentucky Wastewater Management Plan* at 101.

15. Georgetown Sewage Treatment Plant 2 consists of sewage treatment plant with a treatment capacity of 2.2 million gallons of wastewater per day, 18 lift stations, 893 manholes, 27.46 miles of sewer interceptor mains, and 31.26 miles of collection mains.¹⁵ A significant portion of Treatment Plant 2's capacity is dedicated to treating industrial waste from the automotive manufacturing plant of Toyota Motor Manufacturing, Kentucky, Inc.¹⁶

16. Georgetown Sewage Treatment Plant 3 consists of sewage treatment plant with a treatment capacity of 140,000 gallons of wastewater per day, 4 lift stations, 55 manholes, 0.09 miles of sewer interceptor mains, and 6.4 miles of collection mains.¹⁷ This plant serves an area that includes the city of Stamping Ground, Kentucky.

17. Figure 1 depicts the areas in Scott County, Kentucky, that Georgetown's three sewage treatment plants serve.

18. For the fiscal year ended June 30, 2013, GMWSS reported total assets of \$91,808,156¹⁸ and total liabilities of \$11,397,920.¹⁹

19. As of June 30, 2013, GMWSS had net capital assets of \$86,461,912.²⁰

¹⁵ *Id.* at 101; Joint Applicants' Response to Commission Staff's First Request for Information, Item 21.

¹⁶ PDR Engineers, Inc., *Georgetown Municipal Water and Sewer Service 201 Facilities Plan Update* (Apr. 1998) at 3-1.

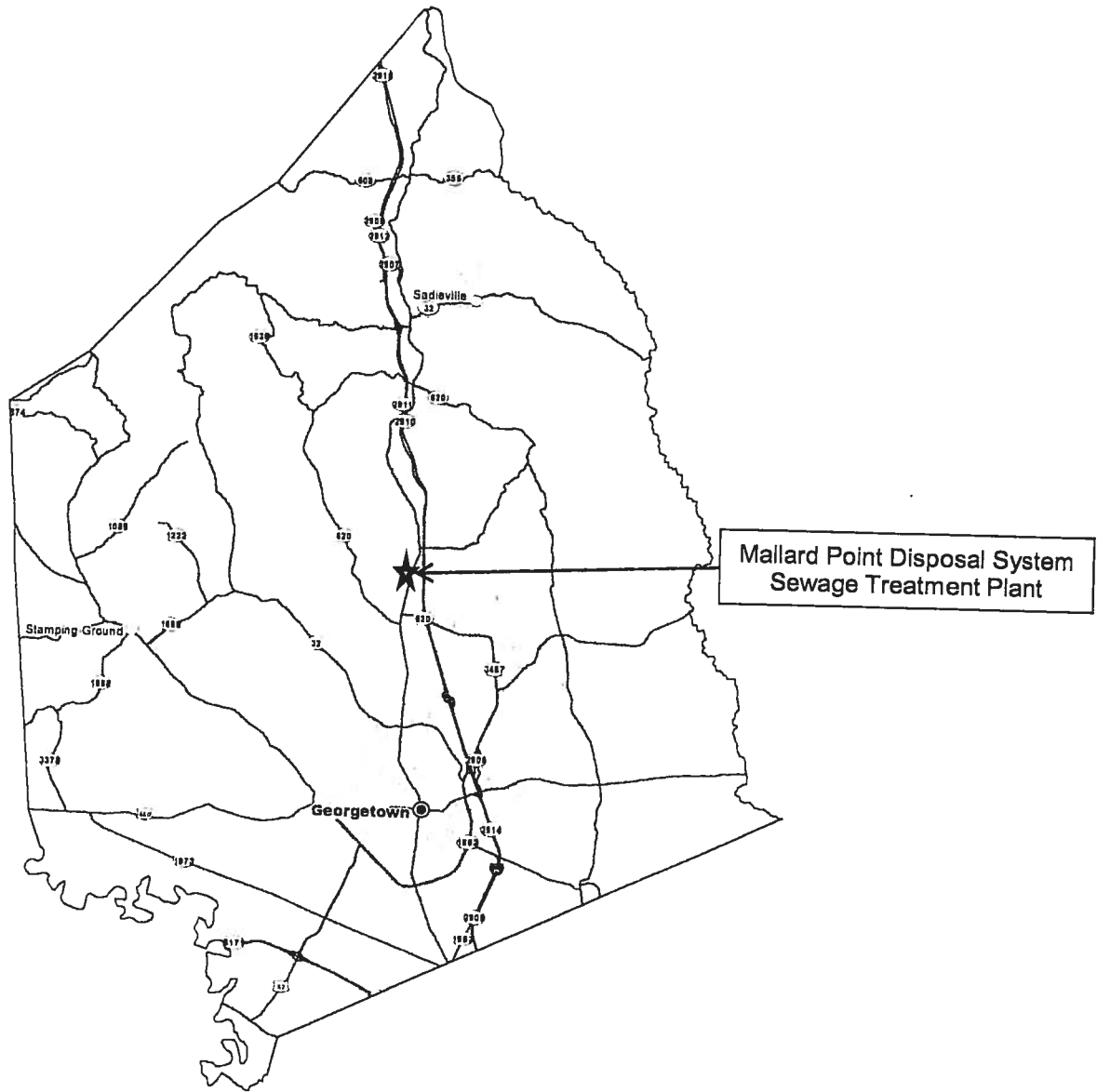
¹⁷ *Kentucky Wastewater Management Plan* at 103.

¹⁸ Georgetown Municipal Water and Sewer Service, *Financial Statements (June 30, 2013)* at 6. This amount includes assets of GMWSS's water operations.

¹⁹ *Id.* This amount includes the liabilities of GMWSS's water system.

²⁰ *Id.* at 13. This amount includes plant used to provide water services.

FIGURE 1



SEWER SERVICE BY OWNER
CORINTH SEWER DEPARTMENT
GMWSS STP #1
GMWSS STP #2
GMWSS STP #3 - STAMPING GROUND
THREE SPRINGS CAMPGROUND

Source: Kentucky Wastewater Management Plan

20. For the fiscal year ended June 30, 2013, GMWSS reported total operating revenues of \$10,082,030 and total operating expenses of \$10,468,326.²¹

21. GMWSS currently employs 50 employees for its water and sewer operations.²² Twenty-three of these employees are currently certified by the Kentucky Energy and Environment Cabinet as wastewater treatment plant operators or wastewater collection system operators.²³

22. GMWSS presently has no outstanding legal or administrative actions in which it is a party and in which its sewer operations are involved.²⁴

23. Since 2008 the Kentucky Department for Environmental Protection ("KDEP") has issued five notices of violation against GMWSS related to its sewer operations. GMWSS resolved the issues arising out of four of these violations and the KDEP has either rescinded the notice of violation or determined that no formal enforcement action should be taken.²⁵

24. GMWSS has been designated a regional planning facility.²⁶

25. Mallard Point Disposal's facilities are located within the boundary of GMWSS 201 facility planning area.²⁷

²¹ *Id.* at 7.

²² *Kentucky Wastewater Management Plan* at 101; *Kentucky Water Management Plan* at 98.

²³ Joint Application ¶ 26. A sewage system must be operated by a person whom the Kentucky Energy and Environment Cabinet has certified as having the skill and competency to operate a sewage system of that class and who has been issued a certificate to that effect. KRS 224-73.110(2).

²⁴ Joint Applicants' Response to Commission Staff's First Request for Information, Item 1.

²⁵ *Id.* Item 2. KDEP issued a fifth notice of violation on September 17, 2013. GMWSS is currently reviewing this notice.

²⁶ Letter from Sandra L. Gruzesky, Director, Kentucky Division of Water, to Mark S. Smith, President, Mallard Point Disposal (Feb. 15, 2012).

²⁷ *Id.*

26. GMWSS has constructed the North U.S. 25 Sewer Force Main to convey sewage from Georgetown Sewage Treatment Plant No. 3 to Georgetown Sewage Treatment Plant No. 2.

27. GMWSS's North U.S. Highway 25 Sewer Force Main is adjacent to Mallard Point Disposal's sewer collection system.²⁸

28. GMWSS's North U.S. 25 Sewer Force Main has adequate capacity to carry Mallard Point Disposal's current sewage flows.²⁹

29. Mallard Point Disposal's KPDES permit expired on April 30, 2012.³⁰ Kentucky Division of Water has indicated that it will not renew Mallard Point Disposal's permit.³¹

30. On June 10, 2013, Georgetown's City Council adopted a resolution in which it authorized Georgetown's acquisition of Mallard Point Disposal's sewer collection system.³²

31. On July 23, 2013, Mallard Point and Georgetown executed an agreement for the transfer of ownership and control of certain facilities that Mallard Point owns.³³ This agreement provides:

²⁸ Joint Application ¶ 13.

²⁹ E-mail from Bryan Lovan, Professional Engineer, Kentucky Engineering Group, PLLC, to George Wakim, Manager, Kentucky Public Service Commission (Sept. 26, 2013 15:29 EDT).

³⁰ http://iaspub.epa.gov/enviro/ICIS_DETAIL_REPORTS_NPDESID.icis_tst?npdesid=KY0074829&npvalue=1&npvalue=13&npvalue=14&npvalue=3&npvalue=4&npvalue=5&npvalue=6&rvalue=13&npvalue=2&npvalue=7&npvalue=8&npvalue=11&npvalue=12 (last visited Oct. 4, 2013).

³¹ Letter from Sandra L. Gruzesky, Director, Kentucky Division of Water, to Mark S. Smith, President, Mallard Point Disposal (Feb. 15, 2012).

³² Resolution No. 13-006 (June 10, 2013).

³³ Joint Application Ex.3.

- a. Mallard Point will transfer to Georgetown all of its wastewater collection and conveyance lines, the Mallard Point Subdivision wastewater pump station, the Harbor Village Subdivision wastewater pump station, and all other Mallard Disposal facilities that are necessary to collect and convey wastewater from Mallard Point's customers to Mallard Point's sewage treatment plant.³⁴
- b. Mallard Point will transfer to Georgetown all real estate easements and improvements on those easements, licenses, encroachment permits, rights-of-way and other interests in real property that are used in the operation of Mallard Point's sewage collection and transmission system.³⁵
- c. Mallard Point will convey to Georgetown a real estate tract, located at the intersection of Wright's Lane and U.S. Highway 25 in Scott County, Kentucky.³⁶
- d. The transaction does not include Mallard Point's sewage treatment plant nor the real estate tract upon which the sewage treatment plant is situated.³⁷
- e. Georgetown will pay Mallard Point \$2.9 million for the transfer of the assets.³⁸
- f. Upon Georgetown's acquisition of the assets, GMWSS will assess Mallard Point existing customers the same rates that Mallard Point is currently assessing and will not increase these rates for at least three years from the date of the transfer.³⁹

³⁴ Asset Purchase Agreement ¶¶ 2A – 2E.

³⁵ *Id.* ¶ 2F.

³⁶ *Id.* ¶ 2K.

³⁷ *Id.* ¶ 3.

³⁸ *Id.* ¶ 4.

³⁹ *Id.* ¶ 8.

assessing and will not increase these rates for at least three years from the date of the transfer.³⁹

32. Upon completion of the proposed transaction, GMWSS plans to construct a pump station to pump sewage from Mallard Point Disposal's sewer collection system through GMWSS's North U.S. 25 Sewer Force Main.⁴⁰

33. Georgetown Sewage Treatment Plant 2 has adequate capacity to treat the additional sewage flows from Mallard Point Disposal's sewer collection system.⁴¹

34. Until completion of the proposed pump station, which GMWSS expects to be constructed within eight months, Mallard Point Disposal will treat the sewage from the Mallard Point Disposal sewer collection system under a separate agreement⁴² with GMWSS, but will not treat any other person's sewage.⁴³

35. The proposed transfer will not have an immediate effect upon the rates that Mallard Point Disposal's current customers pay for sewer service.⁴⁴

Based upon the findings set forth above, the Commission makes the following conclusions of law:

1. Mallard Point Disposal is a utility subject to Commission jurisdiction.⁴⁵

³⁹ *Id.* ¶ 8.

⁴⁰ Joint Application ¶ 15; Joint Applicants' Response to Commission Staff's First Request for Information, Item 5.

⁴¹ E-mail from Bryan Lovan, Professional Engineer, Kentucky Engineering Group, PLLC, to George Wakim, Manager, Kentucky Public Service Commission (Sept. 26, 2013 15:29 EDT).

⁴² Joint Application Ex. 5.

⁴³ Wastewater Treatment Agreement ¶ 5.

⁴⁴ Joint Applicants' Response to Commission Staff's First Request for Information, Item 12.

⁴⁵ KRS 278.010(3)(f).

2. As a city, Georgetown is not a utility and is not subject to Commission jurisdiction.⁴⁶

3. Georgetown is a "corporation"⁴⁷ and a "person"⁴⁸ for purposes of KRS Chapter 278.

4. KRS 278.020(5) provides that "[n]o person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission . . . without prior approval by the commission." As Georgetown is a person and is acquiring ownership of Mallard Point Disposal's sewage collection facilities, this statute is applicable to and requires Commission approval of the proposed transfer.

5. KRS 278.020(6) provides that "[n]o individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an 'acquirer'), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission." As Georgetown is a corporation and is acquiring control of Mallard Point Disposal's utility operations through the acquisition of its sewer collection facilities, this statute is applicable to and requires prior Commission approval of the transfer of those facilities.

6. In view of its financial assets and its status as a municipal corporation, Georgetown has sufficient financial integrity to ensure the continuity of utility service.

⁴⁶ *Simpson County Water District v. City of Franklin*, 872 S.W.2d 460 (Ky.1994); *McClellan v. Louisville Water Co.*, 351 S.W.2d 197 (Ky.1961).

⁴⁷ See KRS 278.010(1) (providing that a corporation "includes private, quasipublic, and public corporations, and all boards, agencies, and instrumentalities thereof, associations, joint-stock companies, and business trusts"). Cities are municipal corporations. See, e.g., *Wilson v. Central City*, 2012 WL1450136 at *2 (Ky. Apr. 26, 2012) ("a city is both a 'municipality' and a 'municipal corporation'").

⁴⁸ See KRS 278.010(2) (providing that a person includes "natural persons, partnerships, corporations, and two (2) or more persons having a joint or common interest").

7. The consolidation of Mallard Point Disposal's collection facilities into Georgetown's sewage collection and treatment facilities is consistent with the Commonwealth's policy of promoting the consolidation of wastewater systems and the creation of regionalized wastewater treatment facilities.⁴⁹

8. The proposed transfer is in accordance with law and for a proper purpose.

9. Georgetown has the financial, technical, and managerial abilities to provide reasonable service to those persons that Mallard Point currently serves.

10. Provided that the transfer is conditioned upon the conditions set forth in ordering paragraphs 2 through 3 of this Order, the proposed transfer is consistent with the public interest.

11. Upon completion of the proposed transfer, Mallard Point Disposal's sewer collection facilities will no longer be subject to Commission jurisdiction.

12. Upon completion of the proposed transfer, Mallard Point Disposal will be providing sewage treatment service only to GMWSS and, therefore, will not be providing sewage treatment service to the "public."⁵⁰

IT IS THEREFORE ORDERED that:

1. Subject to the conditions set forth in ordering paragraphs 2 and 3 of this Order, the proposed transfer of ownership and control of Mallard Point's facilities to Georgetown is approved.

2. Mallard Point and Georgetown shall notify the Commission in writing of the transfer of assets within ten days of the transfer's occurrence.

⁴⁹ KRS 224A.300(1).

⁵⁰ See, e.g., Case No. 2000-206, *An Investigation of Boone County Water District's Decision to Change Water Suppliers and of the Amendment of Water Supply Agreements Between Northern Kentucky Water Service District and Boone County Water District and the City of Florence, Kentucky* (Ky. PSC Nov. 9, 2000) at 11-12.

3. Mallard Point shall submit to the Commission using the Commission's electronic filing system a financial and statistical report as required by 807 KAR 5:006, Section 4, for its operations for the period from January 1, 2013, until the date of transfer of ownership.

4. Any documents filed pursuant to ordering paragraph 2 shall reference this case number and shall be retained in the utility's general correspondence file.

5. The Executive Director is delegated authority to grant reasonable extensions of time for the filing of any documents required by this Order upon a showing of good cause for such extension.

By the Commission



ATTEST:



Executive Director

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