

SMITH, GREENBERG & LEIGHTTY PLLC

ATTORNEYS

RICHARD A. GREENBERG
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RECEIVED

APR 07 2010

PUBLIC SERVICE
COMMISSION

April 7, 2010

Hand Delivered

Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Post Office Box 615
Frankfort, KY 40602

Re: Middletown Waste Disposal, Inc. Rate Case No. 2009-00227/Request for Informal
Conference/Request for Formal Hearing

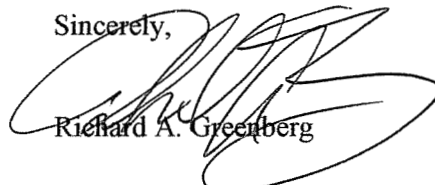
Dear Sir or Madam:

Please be advised that I represent Middletown Waste Disposal, Inc. ("MWD"). MWD is in receipt of the PSC Staff Report issued on April 1, 2010 concerning the rate case referenced above. MWD disagrees and objects to many of the staff's findings and recommendations set forth in the Staff Report. Therefore, MWD requests an informal conference. The informal conference must be held in the near future due to the time limitations for PSC decision making. MWD recommends that an informal conference be held mid to late next week. Hopefully, we can reach a resolution to this matter. In the event that all issues are not agreed upon, MWD also hereby requests a formal hearing in this matter. Enclosed is a request for a formal hearing addressing some of the issues of concern. I am also enclosing ten (10) copies of the request for formal hearing per PSC regulation.

In addition to the information that has been provided to the PSC, MWD has incurred additional attorney fees, and will incur further attorney fees addressing PSC issues before this matter is finalized. Furthermore, MWD has recently received the enclosed PSC Staff Inspection report noting that the plant needs painting and other repairs. MWD needs sufficient cash flow to fund these and other repairs and items addressed throughout the record of this matter.

Please provide me with dates and times that we can schedule the informal conference, and if need be, a formal hearing.

Sincerely,



Richard A. Greenberg

Cc: David Edward Spenard, Esq., Assistant Attorney General, w/encls
J.R. Goff, Esq., Attorney for PSC, w/encls

Enclosures

Report Number: MiddletownWDI-021110
DTR Number: 1

Due Date: 4/15/2010

Deficiency Tracking Report

Deficiency Detail

Utility	Date of Investigation	Investigator
Middletown Waste Disposal, Inc.	2/11/2010	Brian Rice

Regulation

807 KAR 5:071 Sec. 7(1) Sewage treatment facilities of the sewage utility shall be constructed, installed, maintained and operated in accordance with accepted good engineering practice ...

Deficiency:

Finding 1: There are air leaks in the system.
Finding 2: Surge tank was close to overflowing due to an inoperable pump.
Finding 3: The angle iron at one section of the walkway, which holds the grating, has deteriorated and is unsafe to walk on.

If Repeat Deficiency, Date of Last DTR:

Response (attach additional pages as necessary)

1) Explain why the deficiency occurred. Include information about what caused the deficiency and why it was not detected by the utility. (Attach extra pages as necessary)

The deficiency occurred due to normal wear and tear on the air system. The deficiency was not detected by the utility because the air headers are underground. The air headers will be repaired along with the grating.

2) Explain actions taken to correct the deficiency, including utility's responsible person, actions taken, and when it was (or will be) done. (Attach extra pages as necessary)

The pump was inoperable and we are unable to pull the pump due to the wet ground. The pump will be pulled when weather permits so that rock can be put down to allow access.

3) Explain actions taken to prevent the deficiency from occurring again, including utility's responsible person, actions taken, and when it was (or will be) done. (Attach extra pages as necessary)

The angle iron was deteriorated due to normal aging and was detected by the plant operator. A new grating will be painted with a rust prohibitive paint and will be taken care of when the air headers are repaired.

Response Provided By: Donald A. Lorenz

Response Date: March 22, 2010

Signature: _____

administrative regulation, the utility shall make all reasonable efforts to eliminate or prevent the entry of surface or ground water, or any corrosive or toxic industrial liquid waste into its sanitary sewer system. A utility may request assistance from the appropriate state, county, or municipal authorities in its efforts, but such a request does not relieve the utility of its aforementioned responsibilities.

Section 6. Continuity of Service. (1) Emergency interruptions. Each utility shall make all reasonable efforts to prevent interruptions of service and when such interruptions occur shall endeavor to reestablish service with the shortest possible delay consistent with the safety of its customers and the general public.

(2) Scheduled interruptions. Whenever any utility finds it necessary to schedule an interruption of its service, it shall notify all customers to be affected by the interruption stating the time and anticipated duration of the interruption. Whenever possible, scheduled interruptions shall be made at such hours as will provide least inconvenience to the customers.

(3) Record of interruptions. Each utility shall keep a complete record of all interruptions on its system. This record shall show the cause of interruption, date, time, duration, remedy, and steps taken to prevent recurrence.

Section 7. Design, Construction, and Operation. (1) General. The sewage treatment facilities of the sewage utility shall be constructed, installed, maintained and operated in accordance with accepted good engineering practice to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property.

(2) Design and construction requirements. The design and construction of the sewage utility's collecting sewers, treatment plant and facilities, and all additions thereto and modifications thereof, shall conform to the requirements of the Kentucky Department for Natural Resources and Environmental Protection, Bureau of Environmental Quality, Division of Water Quality.

(3) Adequacy of facilities. The capacity of the sewage utility's sewage treatment facilities for the collection, treatment and disposal of sewage and sewage effluent must be sufficiently sized to meet all normal demands for service and provide a reasonable reserve for emergencies.

(4) Inspection of facilities. Each sewage utility shall adopt procedures for inspection of its sewage treatment facilities to assure safe and adequate operation of its facilities and compliance with commission rules. These procedures shall be filed with the commission. Unless otherwise authorized in writing by the commission, the sewage utility shall make inspections of collecting sewers and manholes on a scheduled basis at intervals not to exceed one (1) year, unless conditions warrant more frequent inspections and shall make inspections of all mechanical equipment on a daily basis. The sewage utility shall maintain a record of findings and corrective actions required, and/or taken, by location and date.

Section 8. Service Pipe Connections. (1) Sewage utility's service pipe. The sewage utility shall install and maintain that portion of the service pipe from the main to the boundary line of the easement, public road, or street, under which such main may be located.

(2) Customer's service pipe.

(a) The customer shall install and maintain that portion of the service pipe from the end of the sewage utility's portion into the premises served.

(b) Requirements for customer's service pipe. That portion of the service pipe installed and maintained by the customer shall conform to all reasonable rules of the utility. It shall be constructed of materials approved by the sewage utility and installed under the inspection of the sewage utility.

(3) Restriction on installation. A sewer service pipe shall not be laid in the same trench with a water pipe.

(4) Inspection. If a governmental agency requires an inspection of the customer's plumbing, the sewage utility shall not connect the customer's service pipe until it has received notice from the inspection agency certifying that the customer's plumbing is satisfactory. (8 Ky.R. 833; eff. 4-7-82.)



Steven L. Beshear
Governor

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David L. Armstrong
Chairman

James W. Gardner
Vice Chairman

Charles R. Borders
Commissioner

March 10, 2010

Middletown Waste Disposal, Inc.
130 Apple Lane
Taylorsville, KY 40071

PERIODIC REGULATORY COMPLIANCE SEWER INSPECTION

On February 11, 2010, Brian Rice conducted a periodic regulatory compliance inspection of Middletown Waste Disposal, Inc. serving 184 customers in Jefferson County, Kentucky. A copy of the report of that inspection is attached for your review. Based on Mr. Rice's findings I have documented one deficiency regarding wastewater treatment plant condition in light of accepted good engineering practice per 807 KAR 5:071, Section 7(1). The previous inspection of this facility was conducted on September 10, 2009. No deficiencies were documented during that inspection.

Following this cover letter I am attaching a deficiency tracking report requiring your review and response by April 15, 2010. Please provide your response by completing the three separate sections under the response heading for each cited deficiency.

I would like to direct your attention to Mr. Rice's recommendations included in this report.

If you have any questions or need additional information, you may contact me at (502) 564-3940. We appreciate your continued interest in the safe operation of your sewer facility.

A handwritten signature in black ink that reads "George W. Wakim".

GEORGE W. WAKIM, P.E., MANAGER, WATER & SEWER BRANCH, ENGINEERING
DIVISION

Attachment: MiddletownWDI-021110 Inspection Report
C: Tom Gabbard, DOW
Shafiq Amawi, DOW

**COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION**

UTILITY INSPECTION REPORT

Report Date: 3/2/2010

Report Number: MiddletownWDI-021110

BRIEF

Inspector: Brian Rice
Inspection Date: 2/11/2010
Type of Inspection: Periodic Regulatory Compliance Inspection

Type of Facility: Wastewater Treatment Plant
Name of Utility: Middletown Waste Disposal, Inc.
Location of Facility: 130 Apple Lane, Taylorsville, KY 40071
Purpose of Inspection: Periodic inspection of utility facilities, operation, and management practices to verify compliance with PSC regulations

Applicable Regulations: KRS 278 and 807 KAR Chapter 5

INSPECTION

Description of Utility: Consists of a wastewater treatment plant and a collection system.
Number of Customers: 184
Area of Operation: Jefferson County
Supply Source: n/a
Distribution Description:
Workforce Summary: 1 owner, 1 contractor
Utility Reps in Insp: Joe and Nick Sanders
Date of Last Inspection: 9/10/2009
DTR from Last Insp: 0
DTRs not Cleared: 0

Summary of items and facilities Inspected:

Inspected the wastewater treatment plant, lagoon, chlorine contact tank and inspection records.

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

UTILITY INSPECTION REPORT

Report Date: 3/2/2010

Report Number: MiddletownWDI-021110

FINDINGS

- 1 Finding 1: There are air leaks in the system.
Finding 2: Surge tank was close to overflowing due to an inoperable pump.
Finding 3: The angle iron at one section of the walkway, which holds the grating, has deteriorated and is unsafe to walk on.

RECOMMENDATIONS

ADDITIONAL INSPECTOR COMMENTS

KPDES #KY0086843

The wastewater treatment plant is showing signs of rust and deterioration. This plant should be closely monitored so, if needed, it should be painted.

Submitted by

GW Brian L. Rice

Brian Rice

Utility Regulatory and Safety Investigator II

RECEIVED
APR 07 2010
PUBLIC SERVICE
COMMISSION

BEFORE THE PUBLIC SERVICE COMMISSION

CASE NO. 2009-00227

MIDDLETOWN WASTE DISPOSAL, INC.

PETITIONER

vs.

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

RESPONDENT

REQUEST FOR FORMAL HEARING

Comes the Respondent, Middletown Waste Disposal, Inc., by counsel, for its Request for Formal Hearing states as follows:

1. Middletown Waste Disposal, Inc. (hereinafter "MWD"), is a Commonwealth of Kentucky corporation with its principal office located at 130 Apple Lane, Taylorsville, KY 40071.
2. Commonwealth of Kentucky Public Service Commission (hereinafter "PSC") has its main office at 211 Sower Blvd, Frankfort, KY 40602.
3. MWD applied to the PSC for authority to adjust its sewer rates under the alternative rate filing procedure.
4. PSC did not accept MWD's application until July 2, 2010.
5. PSC staff members prepared and issued an April 1, 2010 a Staff Report approximately nine (9) months after application acceptance.

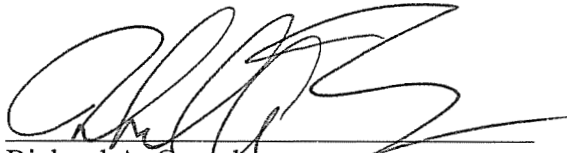
6. Many of PSC Staff's findings and recommendations set forth in the Staff Report are incorrect and/or arbitrary and capricious.
7. PSC has ten months from the date that the application is accepted to issue its rate decision.
8. PSC Staff's delay in issuing its Staff Report at such a late time frame in the decision making process does not afford MWD its right to due process.
9. MWD's objections to the findings in the Staff Report include, without limitation, the following:
 - (a) The rates proposed by MWD will produce annual revenue that is not greater than a reasonable revenue requirement;
 - (b) The Staff's recommendation that MWD's proposed rates be denied is arbitrary and capricious and not based upon the needs of MWD;
 - (c) The rates recommended by PSC Staff are too low to allow MWD to properly operate, and the rate recommendations are arbitrary and capricious; and
 - (d) The PSC Staff recommendation to initiate an investigation into Staff's allegation that MWD violated KRS 278.160 and KRS 278.300, and Staff's recommendation to include MWD's shareholders in the investigation, are arbitrary, capricious, and without merit.
10. MWD further objects to the Staff's findings set forth in Appendix C of the Staff Report which include, without limitation PSC Staff denial of:
 - (a) MWD's requested increase in its owner/manager fee expense;
 - (b) MWD's requested three (3) year amortization period for all items;
 - (c) MWD's requested insurance expense;
 - (d) MWD's requested transportation expense;
 - (e) MWD's requested increase in office rent; and
 - (f) MWD's requested interest expense on loans.
11. The findings and recommendations set forth in the Staff Report do not afford MWD sufficient cash flow to operate.

WHEREFORE, Respondent, Middletown Waste Disposal, Inc., respectfully demands as follows:

1. For a Formal Hearing on all issues, including, without limitation, matters and issues set forth in this Request;
2. For approval of MWD's requested rates and expenses;
3. For MWD's cost expended herein, including reasonable attorney fees;
4. For leave to amend as additional claims or causes of action against PSC that may be revealed in the course of Discovery;
5. For such further relief as this tribunal deems just and proper;

On this 7th day of April, 2010

Respectfully submitted:



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Louisville, KY 40222
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