

RULES
OF
RURAL DEVELOPMENT AUTHORITY
CONCERNING COMMUNITY SEWER SYSTEMS

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1. APPLICATION AND PURPOSE

(A) These rules shall apply to Community Sewer Systems as defined in Ordinance No. 2005-39 of the Washington County Quorum Court.

(B) The purpose of these rules is intended to implement and enforce the provision of the above stated ordinance. The rules are intended to insure adequate and reasonable service.

2. DEFINITIONS

(A) Authority-means the Rural Development Authority.

(B) Customer-means any person, firm, corporation, or association, furnished service by a Community Sewer System.

(C) Property-means all assets owned and operated by a Community Sewer System.

(D) System-means a Community Sewer System.

(E) Responsible Management Entity (RME)-means the person, persons corporation, partnership, or other entity that has the managerial, financial and technical oversight over any system including but not limited to operations and

management, permit, compliance, record keeping, reporting, customer service, billing and collection and is fully responsible for the long-term cost effective operations in accordance with all applicable regulations and performance requirements. This entity shall be designated by the owner of the system or the Authority should the owner fail to so designative.

(F) Reserves—means a long-term capital reserves that are needed to make any major repair or replacement to the system no sooner than five (5) years from when the system becomes fully operational.

3. RETENTION OF RECORDS

Unless otherwise specified by the Authority, all records required by these rules shall be preserved indefinitely. All records shall be kept at an office of the RME in State of Arkansas and shall be available during regular business hours for examination by the Authority or its duly authorized representatives. Records of the licensed operator shall also be kept at the same office and subject to examination at anytime.

4. DATA TO BE FILED WITH THE AUTHORITY

The following information shall be filed with the Authority as required:

- A. Before initiation of service or expansion of service to new customers, the RME shall furnish the Authority with the following for their review and approval:
- (1) Statements by the Arkansas Health Department and the Arkansas Department of Environmental Quality that the design has been approved.
 - (2) Certification by a Licensed Professional Engineer that the entire system was installed according to plans and specifications or for systems built in phases, that the components required for initial service and for each subsequent phase have been installed according to plans and specifications and are adequate for the required service.
 - (3) The RME Rules and Regulations Governing Service.
 - (4) System plans and operating manuals.
 - (5) Emergency Operating Procedures.
 - (6) Rate schedule for services.
 - (7) Customer service list including name, address, and phone number of each customer.

- B. The RME shall file with the Authority, any updates or changes to the above documents forthwith and shall file the following annual reports on December 31st of each year.
- (1) Annual audited financial statements (an alternate method of accounting may be allowed if such is shown to be reliable and will give the assurances that the Authority feels it needs; the burden of proof will be on the RME to offer such alternative and to show that such will provide the Authority equivalent reliability and assurances; in any event upon thirty (30) days written notice the Authority may reinstate the requirement of fully audited annual financial statements.)
 - (2) Annual budget reflecting two (2) years past budgetary performance and three (3) years future projections.
 - (3) Performance and monitoring results.
 - (4) An extension to file any of the above may be granted by the Authority.
- C. Each application for new system or for any change in a system service area shall include the financial security information required by these rules.
- D. No owner or RME shall execute or enter into any agreement or contract with any person, firm, partnership, or corporation which would impact, pertain to, or effect any systems without first submitting to and obtaining approval of the Authority.
- E. The Authority may require forms or other uniform methods to be utilized by the RME in preparing all reports and filing required information.
- F. Any other matter requested by the Authority.

5. MAPS AND RECORDS

- A. Each RME shall keep on file in its office suitable maps, plans and records showing the entire layout of its collection lines and wastewater treatment facilities with the location, size and capacity of each unit of plant, size of each collection line, and other facilities used in the furnishing of wastewater service.
- B. Each RME shall keep a record of all interruptions of service upon its entire system or major divisions thereof, including a statement of time, duration, and cause of such interruptions.
- C. A copy of all monitoring data and reports and all correspondence with any regulatory authority.

- D. The Authority shall have the right to inspect all aspects of the system at any time; including taking water samples.

6. ADEQUACY OF FACILITIES

- A. All systems shall be designed, constructed, maintained, and operated to comply with the rules of the Arkansas Health Department and the Department of Environmental Quality and the construction codes, industry standards, and rules of other state and local governmental agencies and shall be in accordance with accepted engineering practice to assure, as far as reasonably possible, continuity of service, and uniformity in the quality of service furnished so as not to create a public health hazard, cause water pollution, wastewater spills, wastewater backup, or other unhealthy conditions.
- B. Each RME shall adopt operating and maintenance procedures of its system's facilities to assure safe, adequate and continuous service at all times by appropriate qualified staff and shall make inspections on a regular basis. These inspection records shall be maintained by the RME for a minimum of five (5) years.

7. FINANCIAL SECURITY.

- (1) The RME must furnish the Authority with a Fidelity Bond covering any person or entity that handles money be it cash or in other form; immediately upon construction and occupation of the 1st home in the development.
- (2) The RME must furnish to the Authority financial security in the amount of nine (9) months worth of operation expenses. If the RME elects to create or build up the cash equivalent of such; to be held in a special escrow account; then once said amount is reached the financial security may be dispensed with. Said security or cash equivalent shall be reviewed annually to determine its adequacy.

- (a) If, for any reason, an instrument of financial security is not to be renewed upon its expiration, the financial institution shall, at least sixty (60) days prior to the expiration date of the instrument of financial security, provide written notification by means of certified mail, return receipt requested, to the Authority, that the instrument of financial security will not be renewed beyond the current maturity date for an additional period; and,

Failure to renew the instrument of financial security shall, without the necessity of the Authority being required to hold a hearing or appoint a receiver, allow the Authority to convert the financial security to cash and deposit said cash proceeds to be used as a cash bond.

- (3) Said financial security must be furnished upon the completion and occupation of twenty-five percent (25%) of the proposed homes in the development. If a warranty exists on said system then the Authority shall be furnished with a copy of such and the Authority may delay the furnishing of the financial security until said warranty expires. In any event, upon thirty (30) days written notice to the RME Authority may increase the amount of financial security set forth herein and change the time it must be posted.
 - (a) The RME shall file bank statements and a report that details the expenses on all disbursements from any bank account annually to the Authority or as the Authority may direct.
- (4) Disbursements from any bank account that are found by the Authority to have been made improperly, or in violation of any statute, regulation or order of the Authority are to be refunded to customers as the Authority may direct. A person, who makes, authorizes or directs a disbursement from a bank account without authorization of the Authority in accordance with these rules shall be subject to fines and penalties.

Any bank account described above shall be subject to forfeiture in the event that the RME goes into receivership or there is a transfer to another owner RME for any reason without the approval of the Authority in accordance with these regulations.

- (5) Reserves may be funded by cash, letter of credit, bond or other similar financial instrument.
 - (a) No expenditure may be made from these funds without the permission of the Authority; in the event of an emergency the Chairman or the Administrator may authorize an expenditure from said funds.
 - (b) Any time an expenditure is made from these funds, the RME shall submit a plan for approval by the Authority to replenish said fund in a reasonable amount of time.
- (6) Systems that were in operation prior to the passage of ordinance number 2005-39 may upon approval of the Chairman or Administrator expend reserve funds; but, must also submit a plan for approval to replenish said funds in a reasonable amount of time. This provision is applicable only to the portion of any such system that was in operation prior to ordinance number 2005-39.

8. SALE, TRANSFER, MERGER, TERMINATION, OR ABANDONMENT.

- (A) Any person, lessee, trustee, or receiver owning, operating, managing, or controlling a system that intends to sell, transfer, merge, terminate, or abandon the system must file ninety (90) days prior to the closing date of such transaction both a Petition with the Authority to obtain Authority approval of the transaction and a proposed written notice to the customers. This procedure should also be followed to enact any valid third-party beneficiary agreement guaranteeing the continued operation of the

system by a personal representative, surviving partner, receiver, trustee or other fiduciary. The provisions of this rule are intended to prevent service interruptions to the system customers.

- (B) The Petition filed with the Authority shall include the following:
- (1) Name, address, and telephone number of the Petitioner.
 - (2) The identity of the person(s) to contact regarding the Petition with their address and telephone number.
 - (3) The location of the books and records of the Petitioner the operator and the RME.
 - (4) The purpose and filing date of the Petition.
 - (5) Proposed effective date of the transaction.
 - (6) Name, address, and telephone number of any potential buyer.
 - (7) Whether the proposed action impacts a water system.
 - (8) Reason(s) for sale, transfer, merger, termination, or abandonment.
 - (9) A statement of the status of the system, the operator, the owner, and the RME from regulating state agencies regarding outstanding citations or violations.
 - (10) Effect of the transaction upon customers.
 - (11) Copy of contract of sale, agreement of merger or transfer as applicable.
- (C) A draft copy of the customer notice must contain the Authority's telephone number or mailing and street address.

9. RECEIVERSHIPS.

- (A) Where the RME demonstrates an unwillingness or incapacity, or refuses to effectively operate and manage the system to provide safe and adequate service to its customers in compliance with these rules and State statutes and regulations, or the system has been actually or effectively abandoned the Authority, may take appropriate action that may require forfeiture of all or part of any bond posted herein or other financial security. In addition, after notice and hearing, the Authority may seek the following remedies:
- (1) The acquisition of the system by another system, a local government, or by another entity that has demonstrated the ability to:

- (a) Operate the system in compliance with State and Federal law and the Authority's rules and orders; and,
 - (b) Remedy any deficiencies in the operation and management of the system.
 - (2) The appointment of a receiver that has demonstrated the ability to:
 - (a) Operate the system in compliance with State and Federal law and the Authority's rules and orders until a new RME is approved by the Court; and,
 - (b) Remedy any deficiencies in the operation and management of the system; and,
 - (c) Seek and find one or more qualified candidates to acquire the system and secure the most favorable terms possible, balancing the interest of the current RME and the system customers.
- (B) Before taking such action as provided in subsections (1)(a) and (b), the Authority shall give thirty (30) day notice to the following:
 - (1) The owner, operator and RME;
 - (2) Owners, operators and RME's of other systems in the County; and,
 - (3) All agencies and political subdivisions, including all local governments, as determined by the Authority.
- (C) An order under subsection (1) may provide cost recovery mechanisms for costs associated with improvements to the acquired system that are immediate and necessary to remedy deficiencies.
- (D) If the Authority takes action as provided in subsection (1) for the appointment of a receiver, the receiver:
 - (1) Has the same rights and duties as the RME under State and Federal law and regulations.
 - (2) Shall continue to operate the subject system until the court finds that the RME:
 - (a) Has the ability to comply and will comply with State and Federal law and the Authority's rules and orders relating to the operation and management of the subject system.
 - (b) Has the ability to operate and manage the subject system without any deficiencies.

- (3) Shall be entitled to just compensation for the services rendered as defined by an interim operating agreement approved by the Authority.
- (4) The appointment shall be accomplished under an Interim Operating Agreement until a long-term option for the provision of service is available to the customers.
- (5) Within ninety (90) days of the appointment of a receiver by the court, the receiver shall request from the Authority a copy of all relevant documentation in it's possession and the possession of the operator and RME.
- (6) Within thirty (30) days of the appointment of the receiver, the receiver shall file any proposed revisions.
- (7) The receiver appointed to operate, maintain, and repair the system must be or employ a qualified wastewater operator.
- (8) The duties of the receiver may also include responsibility for billing and collection, customer service, and administration of the system.
- (9) The receiver shall record all transactions in a general ledger and supply a copy of the ledger and bank statements to the Authority and the Court.
- (10) At the conclusion of services rendered under the Interim Operating Agreement, the Authority and the Court shall approve a final accounting of all monies and disbursement of surplus funds.
- (11) If the appointed receiver is a governmental entity, it shall be exempt from all regulations promulgated herein.

10. SAFETY PROGRAM.

- (A) Each RME shall adopt and execute a safety program, fitted to the size and type of its operations that is in compliance with all Federal and State laws and regulations.
- (A) Each RME shall make and keep a record of each accident happening in connection with the operation of its plant, station, property, and equipment, resulting in death or serious injury to any person or any substantial amount of property damaged or destroyed.

11. CUSTOMER RELATIONS.

Each RME shall comply with the following:

- (A) Each RME shall maintain a business location and a customer service telephone number at which it may be contacted directly by customers, applicants, or the Authority during its regular business hours.

- (B) The RME shall make a full and prompt investigation and maintain an accurate record of all customer complaints and service problems. This record shall include appropriate identification of the customer or service issue; the time, date, and nature of the report; the action taken to alleviate the trouble or satisfy the complaint; and the date and time of trouble clearance or other disposition of the complaint. This record shall be available to the Authority upon request at any time within the period prescribed for retention of such records.
- (C) Each RME shall, within ten (10) working days after receipt of a complaint forwarded by the Authority, file a written reply with the Authority.
- (D) Each RME must provide a means by which it may be contacted at any hour in the event of a service failure or emergency or at which a customer or applicant may leave a message reporting such failure or emergency.
- (E) Insofar as practicable, every customer affected shall be notified in advance of any contemplated work which will result in interruption of service for more than twenty-four (24) hours, but such notice shall not be required in case of interruption due to situations beyond the control of or not reasonably foreseeable by the RME.

12. CUSTOMER BILLING.

- (A) Before customers are charged for services, the Authority must approve the rates and any future increases. All bills for service shall state how the rates are calculated and applied to operating and escrow funds. The bill form used shall contain the name, address, and telephone number of the RME's main office.
- (B) Bills will be rendered at regular intervals and in accordance with the approved rate schedule. This interval may be monthly, or quarterly, however no change shall be made in the billing interval except on approval of the Authority. RME's shall avoid sending a customer two successive estimated bills.
- (C) No RME shall charge, demand, collect or receive any greater, less, or different compensation for provision of service or for any service connected therewith, than those rates and charges approved by the Authority and in effect at that time. Each customer within a given classification (i.e., residential, commercial, or industrial) shall be charged the same approved rate, including tap fees, as every other customer within that classification, unless reasonable justification is shown for the use of a different rate (e.g. high strength effluent), and approved by the Authority.
- (D) Where the RME finds that through no fault of the customer that the customer's service is interrupted and remains out of service in excess of twenty four (24) hours after the customer has notified the system of the interruption, the RME shall refund to that customer the pro-rata portion of the month's charges for the period of days during which service was not provided. The RME may refund the amount owed as credit toward the customer's subsequent bill for service.

- (E) Bills, which are incorrect due to meter, or billing errors are to be adjusted as soon as practical and possible. The system shall retain customer-billing records for not less than three years.

13. DENYING OR DISCONTINUING SERVICE.

- (A) No RME shall deny or discontinue service to any customer without first having diligently tried to induce the customer to comply with its rules and regulations provided, however, where an emergency exists or where fraudulent use is detected, or where a dangerous condition is found to exist on the customer's premises, the service may be cut off without such notice. When a prospective customer is refused service, or an existing customer has service discontinued under the provisions of this section, the RME shall notify the customer promptly of the reason. The customer notification should include an explanation that the customer may appeal to the Authority for an informal resolution of any dispute. A copy of such notification or other documentation should be sent within five business days to the local county health department and the Authority.
- (B) The following shall not constitute sufficient cause for refusal of service to a present or prospective customer:
 - (1) Non-payment for service by a previous occupant of the premises to be served.
 - (2) Failure to pay for merchandise or special services purchased from the RME.
 - (3) Failure to pay the bill of another customer as guarantor thereof.
 - (4) Failure to pay for a different type or class of service.
- (C) No RME may refuse service unless a customer agrees in writing in a "Subscription Service Contract" that would for the various reasons listed in this part allow either:
 - (1) The RME to install and have exclusive right to use a cutoff valve in accordance with both the rules and regulations of the RME and this rule; or,
 - (2) The RME to execute an agreement with a water provider to terminate water services.
- (D) If the water service will be discontinued based on a contract between a water service provider and the RME, this contract shall be submitted to and approved by the Authority prior to any termination of water service in accordance with its provisions so that each company is treated in a just and reasonable manner.
- (E) Connection to and/or service from the system may be refused by the RME. A water provider may discontinue water service to a system customer if the customer has agreed to such in writing in a "Subscription Service Contract" for the reasons listed below:

- (1) Until adequate facilities can be provided, the RME may decline to serve an applicant if, in the best judgment of the RME, it does not have adequate facilities to render service applied for or if the intended use is of a character that is likely to cause unfavorable service to other customers. If a RME refuses service on the grounds of inadequate facilities or resources, the RME shall inform the customer or applicant of the right to request a detailed statement of the basis for the RME's decision, including but not limited to current capacity and demand and the estimated costs to provide capacity for the customer or applicant.
- (2) When the system piping is regarded as unsafe or of such character that satisfactory service cannot be given because the piping does not comply with federal, state, and municipal codes governing service or the RME's rules and regulations.
- (3) In the event of customer use of equipment in such a manner as to adversely affect the system's equipment or the system's service to others.
- (4) When the RME has discovered clear and convincing evidence that by fraudulent means a customer has obtained unauthorized service, such as tampering by the customer with the equipment furnished and owned or operated by the RME or providing false identification or verification of identity.
- (5) For failure of the customer to fulfill contractual obligations for service or to comply with the RME's rules, such as failing to file an application, pay a deposit, or make payments in accordance with the terms of a deposit payment arrangement.
- (6) When the customer does not cooperate in providing reasonable access to the system for necessary inspections, operations, or maintenance. Necessary in this context means required by law or to determine if a health or safety hazard exists.
- (7) For non-payment of a bill provided that the RME has made a reasonable attempt to cause collection and has given written notice to the customer to settle the account or have service denied. In the event of a dispute between the customer and the RME respecting any bill, the RME shall forthwith make such investigation as shall be required by the situation. In the event that the matter in dispute cannot be compromised or settled by the parties, either party may submit the facts to the Authority for its decision, and pending such decision, service shall not be discontinued.
- (8) When a customer provides the RME with a five-business-day notice in writing requesting that the RME disconnect service or closes an account. Until the RME shall have such notice, the customer may be held responsible for all service rendered.

- (9) When the Authority approves the disconnection of service.

14. RECONNECTION.

- (A) In all cases of discontinuance of service as herein defined, where the cause for discontinuance has been corrected, and all rules of the RME on file with the Authority have been complied with the RME shall promptly restore service to the customer.
- (B) Whenever the water service is cut off for the violation of RME's service rules and regulations, or nonpayment of bills, the RME, may make a reconnection charge, payable in advance, for restoring the service. This charge, however, shall be applied uniformly and shall be incorporated in the rules of the RME. When the necessity for emergency termination of service was through no fault of the customer, the RME will not make a charge to restore service.

15. NOTICE TO BUYER

- (A) The RME shall provide notice and information to any buyer of property served or to be served by the system, prior to closing which shall consist of the following:
- (1) That there is a property served by a Community Sewer System.
 - (2) That there is a property owners association, improvement district, or other entity that serves as the Responsible Management Entity is responsible for assuring said system is operated and maintained in accordance with the law.
 - (3) That there will be a fee charged to the buyer for usage of the system.
 - (4) That there exist common area consisting of the drip field that must be maintained by the RME and the buyer will be charged for such.
 - (5) Any easements that exist on the buyer's property so that the RME may have access to the system.
 - (6) That failure to pay any rate or fee can result in a loss of service and a lien may be filed against the buyer's property.

(B) That the following notice shall be filed of record:
(RE: LEGAL DESCRIPTION OF SUBDIVISION)

- (1) Property in this subdivision is served by Community Sewer Systems.
- (2) There exist a property owners association, improvement district, or other entity that serves as the Responsible Management Entity which must assure that said system is operated and maintained in accordance with the law.
- (3) Any purchaser of property in this subdivision will be charged a fee for the usage of the system.
- (4) There exist a common area, consisting of drip field, that must be maintained by the property owners and a fee may be charged for such.
- (5) Easements may exist on each lot enable access to the system.
- (6) Failure to pay any fee or rates herein can result in a lien against the lot of the RME and a loss of wastewater service.
- (7) It is the responsibility of the responsible management entity of said system to give written notice of the items set forth herein, prior to the closing of any purchase.

16. FEES.

There is hereby assessed a fee to be based on \$2 per month per dwelling to be collected by the RME and remitted to the RDA. This fee shall be remitted to the RDA monthly and is for the purpose of hiring staff to assist the RDA in administration of the regulations herein. The RME may build this fee into the rate that it charges customers of the system. This fee shall be effective once a dwelling is built and occupied in any development served by community sewer systems.

17. PUBLIC ENTITY DEFINED.

A public entity is hereby defined as follows:

- (A) A city or agency, thereof
- (B) A county or agency, thereof
- (C) A school district or
- (D) The state or an agency, thereof