

**ORIGINAL**

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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE OUCC’S REQUEST )  
FOR COMMISSION INVESTIGATION OF THE )  
UTILITY OPERATIONS OF HARBOR TOWN ) CAUSE NO. 44468  
SANITARY SEWAGE CORP. AND TO TAKE )  
SUCH REMEDIAL ACTION AS IT DEEMS ) APPROVED: SEP 10 2014  
ADVISABLE AND NECESSARY WITH REGARD )  
TO SUCH OPERATIONS )

ORDER OF THE COMMISSION

**Presiding Officers:**  
**Carol A. Stephan, Commission Chair**  
**Jeffery A. Earl, Administrative Law Judge**

On March 24, 2014, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed its petition with the Indiana Utility Regulatory Commission (“Commission”) in this matter. On May 30, 2014, the OUCC prefiled the direct testimony and exhibits of Scott A. Bell, Director of the OUCC’s Water/Wastewater Division.

On June 10, 2014, the Presiding Officers issued a Tender of Communication docket entry that contained communication the Commission received from Regis Palmer, President of Harbor Town Sewage Corp. (“Harbor Town”).

On July 02, 2014, the OUCC prefiled the Rebuttal Testimony of Scott A. Bell.

The Commission held an Evidentiary Hearing in this Cause at 1:00 p.m. on July 29, 2014, in Hearing Room 222, 101 West Washington Street, Indianapolis, Indiana. The OUCC appeared and participated in the hearing. Harbor Town did not appear or participate in the hearing. No members of the general public appeared or sought to participate in the hearing.

Under 170 IAC 1-1.1-18(m), a party who, after being duly notified, fails to be represented at a scheduled hearing is deemed to have waived the opportunity to participate in the hearing and is deemed to have consented to, and may not be permitted thereafter to reopen, any matter resolved or accomplished at such hearing.

Based on the applicable law and evidence presented, the Commission finds:

- 1. Notice and Commission Jurisdiction.** Notices of the hearings in this Cause were given and published as required by law. Harbor Town is an investor-owned utility that holds a Certificate of Territorial Authority (“CTA”) from the Commission to provide sewage disposal service to the Harbor Town subdivision in Posey County, Indiana.

Under Ind. Code § 8-1-30-3, the Commission may, after a request by the OUCC, review a water or sewer utility's operations, including technical, financial, and managerial capacity; physical condition and capacity of the utility company's plant; compliance with Indiana or federal law or the Commission's orders; and provisions of service to customers. Therefore, the Commission has jurisdiction over Harbor Town and the subject matter of this proceeding.

**2. Background.** In the December 21, 1978 Order in Cause No. 35455, the Commission issued a CTA to Harbor Town to provide sewage disposal services to the Harbor Town subdivision in Posey County, IN.

On August 1, 2011, under National Pollutant Discharge Elimination System ("NPDES") Permit No. IN0109924, IDEM authorized Harbor Town to discharge treated wastewater from its outfall to an unnamed tributary of McFadden Creek. On October 8, 2013, IDEM issued a Notice and Order of the Commissioner of the Indiana Department of Environmental Management ("IDEM Order") to cease the violations of the NPDES Permit.

On March 11, 2014, Mr. Palmer was convicted of a Class C Misdemeanor for the Unlawful Discharge of Deleterious Substances under Ind. Code § 13-30-10-1.5(k) and sentenced to 60 days of incarceration in the Posey County Jail. The sentence was suspended with the following conditions: (1) Mr. Palmer was ordered to surrender his wastewater treatment license and not re-apply for a period of 1 year; and (2) Mr. Palmer was ordered to pay a \$25.00 fine and Court Costs totaling \$168.00. On April 8, 2014, the Indiana Attorney General's Office filed a Verified Petition for Civil Enforcement in the Porter County Superior Court to comply with its NPDES Permit and to stop discharging sewage into the water.

**3. Relief Requested.** The OUCC requests that the Commission initiate an investigation for the purpose of assuring compliance with its orders, remediation of any severe deficiencies, provision of reasonable adequate sewage disposal service to its customers, maintenance of the physical condition of the utility's plant, technical, financial, and managerial capacity of the utility, consistent application of the Commission's rules, and such other matters as the Commission deems appropriate.

**4. OUCC's Evidence.** Harbor Town's NPDES Permit describes the facilities as a Class I, 0.0155 MGD extended aeration treatment facility consisting of a flow equalization tank, anoxic tank, sludge tank, aeration tank, final clarifier, post aeration, flow meter, and chlorination/dechlorination equipment. Mr. Bell explained that the collection system is comprised of 100% separate sanitary sewers by design with no overflow or bypass points and that final solids are hauled off site by a licensed contractor.

Mr. Bell said that IDEM performed inspections of the Harbor Town facilities on November 21, 2011, February 4, 2013, April 8, 2013, April 10, 2013, and September 16, 2013. He attached copies of the IDEM inspection reports documenting numerous severe deficiencies and operational failures, which resulted in Harbor Town violating Indiana environmental rules and its NPDES permit. Mr. Bell said that on May 20, 2013, IDEM issued a Notice of Violation

("NOV") to Harbor Town. The NOV indicated that IDEM had reason to believe that Harbor Town has violated environmental rules and/or its NPDES permit and provided Harbor Town an opportunity to enter into an Agreed Order with IDEM. Mr. Bell indicated that Harbor Town did not stop violating environmental rules or its NPDES permit and that it did not enter into an Agreed Order with IDEM. Mr. Bell included a copy of the IDEM Order, which again documented the operational failures and severe deficiencies and ordered to comply with all environmental rules and NPDES permit conditions. The IDEM Order required Harbor Town to comply with specific things, including effectively operate and maintain all aspects of wastewater treatment equipment and infrastructure, install a remote alarm system to prevent prolonged malfunction of aeration system blowers, and operate all lift station system components to fully comply with the NPDES permit. The IDEM Order also assessed a civil penalty of \$2,035. Mr. Bell testified that Harbor Town did not comply with the IDEM Order.

On April 8, 2014, The Office of the Indiana Attorney General filed a Verified Petition for Civil Enforcement in the Posey County Superior Court under Cause No. 65D01-1404-PL-000152. The Civil Enforcement petition states that the "Commissioner of the Indiana Department of Environmental Management ("IDEM") petitions for civil enforcement of the IDEM Order. The Commissioner asks this court to order Harbor Town Sanitary Sewage Corporation to comply with its NPDES Permit and to stop discharging sewage into the waters of the state." The OUCC supplemented the record in this cause on July 22, 2014, by filing the Posey County Superior Court's Order Enforcing the IDEM Order.

On March 11, 2014, the Posey County Superior Court issued a Judgment of Conviction and Sentencing Order in Cause No. 65D01-1401-CM-000018, convicting Mr. Palmer of a Class C Misdemeanor for the Unlawful Discharge of Deleterious Substances under Ind. Code § 13-30-10-1.5(k). The court sentenced Mr. Palmer to 60 days of incarceration in the Posey County jail. However, that sentence was suspended on the following terms and conditions: (1) Mr. Palmer was ordered to pay a \$25.00 fine and Court Costs in the amount of \$168.00, and (2) Mr. Palmer was ordered to surrender his wastewater treatment license and not re-apply for a period of one year.

Mr. Bell testified that he visited Harbor Town's wastewater treatment plant May 23, 2014, but he was not permitted to enter the facility or to go inside of the security fence. He observed IDEM inspector, Keith Condra, perform an inspection of the facilities. Mr. Condra's inspection included a written summary of the inspection, a completed NPDES Wastewater Facility Inspection Report, and Inspection Photographs. Mr. Bell attached these documents to his testimony. The report documents numerous unsatisfactory conditions at the wastewater treatment plant. Mr. Bell described the only operating pump, which pumps raw sewage from a manhole outside of the treatment facility to a non-operating aeration tank via a flexible hose lying on the ground. Mr. Bell explained that this unsatisfactory pumping configuration has existed for over one year. Mr. Bell also provided pictures of unsatisfactory conditions around the wastewater treatment plant.

Mr. Bell testified that the evidence he gathered shows that Harbor Town's severe operational deficiencies have resulted in continued discharges of sewage, which poses an immediate threat to public health, safety, and welfare and constitutes violations of Indiana environmental laws. He stated that Harbor Town is either unwilling or unable to provide reasonable and adequate sewage disposal services and facilities as required by Indiana Code § 8-1-2-89(h) and Indiana Code § 8-1-2-89(k). He concluded that Harbor Town has not shown the technical capacity to properly operate the utility.

Mr. Bell explained that Mr. Palmer and his wife have owned the Harbor Town since 2005 and that the Harbor Town does not have any employees. Until March of this year, Mr. Palmer served as the Certified Operator of the Harbor Town. Mr. Palmer and his wife are ultimately responsible for the managerial decisions of the Utility. Mr. Bell said that the deplorable condition of the wastewater treatment plant and lack of proper investment in the utility plant is indicative of a poorly managed utility. Because severe deficiencies have existed and continue to exist at Harbor Town, Mr. Bell concluded that Harbor Town does not possess the capacity to properly manage the utility and provide proper and adequate sewage disposal service to its customers.

Mr. Bell stated that Harbor Town has failed to file an annual report with the Commission for the years 2010, 2011, 2012, and 2013. He explained that with the lack of available financial information, the OUCC was unable to determine the amount of revenue and expenses associated with operating the Harbor Town. Mr. Bell said that from a financial perspective, Harbor Town appears to be either unwilling or unable to fund the necessary repairs and improvements to stop violating its NPDES Permit. Therefore, Mr. Bell believes that Harbor Town does not have the financial capacity to provide proper and adequate sewage disposal service to its customers.

Mr. Bell concluded by recommending that the Commission find that Harbor Town has severe deficiencies that it has failed to remedy; Harbor Town does not have the managerial, technical and financial capability to adequately operate the Harbor Town; and Harbor Town failed to furnish reasonable adequate sewage disposal services and facilities as required by Indiana Code § 8-1-2-89(h). Mr. Bell also recommended that the Commission issue orders under Ind. Code § 8-1-30-5 and provide for the appointment of a receiver or the acquisition of the Harbor Town and order the Harbor Town to file its 2013 IURC Annual Report.

Mr. Bell filed rebuttal testimony indicating that Harbor Town had not filed any documents constituting a case-in-chief. However, Mr. Bell pointed out that Mr. Palmer sent a letter to the Commission. Mr. Bell explained that in the letter, Mr. Palmer indicated that he could not afford an attorney to represent the Harbor Town in this matter. He also indicated that he was in failing health and was "no longer able to or willing to continue to shell out money I don't have for something I don't want." Mr. Bell also quoted Mr. Palmer as stating "I am willing and have been for some time to give the ownership to the Harbortown Homeowners Association with certain considerations."

**5. Commission Discussion and Findings.** Under Ind. Code § 8-1-30-3, the Commission may conduct a review of a utility's operations when requested by the OUCC. Our

review may include the following: the utility's technical, financial, and managerial capacity; the physical condition and capacity of the system; compliance with Indiana or federal law or the commission's orders; and provision of service to customers. Ind. Code § 8-1-30-3(a). If the Commission finds the utility has severe deficiencies that the utility has failed to remedy, the Commission may move to proceedings under Ind. Code § 8-1-30-5 to provide for the acquisition of the utility or for the appointment of a receiver.

**A. Technical, Financial, and Managerial Capacity.** Based on the evidence presented, we find that Harbor Town has severe deficiencies with respect to the technical, financial, and managerial capacity to operate the utility. Mr. Palmer's IDEM issued wastewater treatment operator license was revoked in March 2014 due to his poor operation of the utility, which resulted in him being convicted of the Class C Misdemeanor. He admitted that he was in failing health and no longer was able or willing to spend money for something he did not want. He has completely abdicated his managerial responsibility by offering ownership of the utility to the Harbor Town Homeowners Association. In addition, he was unwilling to fund the necessary repairs and improvements to stop violating its NPDES Permit and does not possess the necessary financial capacity.

**B. Physical Condition and Capacity of the Plant.** Based on the evidence presented, we find that Harbor Town has severe deficiencies with respect to the physical condition and capacity of the utility plant. The OUCC presented evidence documenting the fact that the utility system is in a complete state of failure. Sewage is backing up to the surface and ponding in numerous areas throughout the neighborhood. The continued discharge of sewage poses an immediate threat to public health, safety, and welfare and violates Indiana environmental laws.

**C. Compliance with Indiana or Federal Law or the Commission's Orders.** Based on the evidence presented, we find that Harbor Town is not compliant with Indiana Law, the orders of the county court, or the Commission's statutes and rules. In addition, the evidence shows numerous public health violations and non-compliance with orders to abate from Intervenors and the county court.

**6. Hearing on Acquisition or Receivership.** An evidentiary hearing on the issue of the acquisition of the utility or the appointment of a receiver in this Cause shall be held at 1:30 p.m. on September 16, 2014, in Hearing Room 222, 101 West Washington Street, Indianapolis, Indiana. In accordance with Ind. Code § 8-1-30-5(c), the Commission shall provide notice of the hearing to the following: Respondents; other utility companies in Indiana; and appropriate public agencies and political subdivisions, including all municipalities, located in utility's service territory.

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1. An evidentiary hearing on the issue of the appointment of a receiver in this Cause shall be held on September 16, 2014 at 1:30 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana.

2. This Order shall be effective on and after the date of its approval.

**STEPHAN, MAYS-MEDLEY, WEBER, AND ZIEGNER CONCUR:**

**APPROVED:**      **SEP 10 2014**

**I hereby certify that the above is a true  
and correct copy of the Order as approved.**



**Brenda A. Howe**

**Secretary to the Commission**