

AUSTIN, LEWIS & ROGERS, P.A.

ATTORNEYS AND COUNSELORS AT LAW

WILLIAM F. AUSTIN
E. CROSBY LEWIS
TIMOTHY F. ROGERS
RAYMON E. LARK, JR.
RICHARD L. WHITT
EDWARD L. EUBANKS
SANDRA L. BURR
W. MICHAEL DUNCAN
JOHN T. MOBLEY

CONGAREE BUILDING
508 HAMPTON STREET, SUITE 300
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 256-4000 FACSIMILE: (803) 252-3679

August 14, 2001

DANIEL S. LEWIS
(1940-1981)

RECEIVED

AUG 15 2001

Clerk of DHEC Board

The Department of Health and Environmental
Control
2600 Bull Street
Columbia, SC 29201

RE: Amended Petition For Administrative Review regarding Carolina Water Service, Inc., Lexington, County vs. South Carolina Department of Health and Environmental Control Docket No. 99-ALJ-07-0390-CC; 0450-CC; and 0653-CC

Dear Sir:

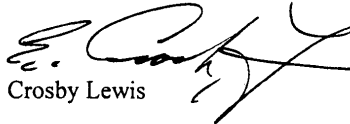
Please accept this amended petition which contains certain typographical corrections to the petition filed earlier today.

If you have any questions regarding same, please advise the undersigned.

Sincerely,

AUSTIN, LEWIS & ROGERS, P.A.

E. Crosby Lewis



ECL/jlr

W:\clients.lit 99\99289\Letter regarding amended Petition Carolina Water Service v. DHEC081401.wpd

RECEIVED

AUG 15 2001

Office of Commissioner
SOUTH CAROLINA

P.O. BOX 11716, COLUMBIA, SOUTH CAROLINA 29211

Return to Saluda Sewer Information: <http://parkinhunter.tripod.com/sewer.html>

BEFORE THE SOUTH CAROLINA
DEPARTMENT OF HEALTH
AND ENVIRONMENTAL CONTROL

RECEIVED

AUG 15 2001

Carolina Water Service, Inc.,

Petitioner,

v.

South Carolina Department
of Health and Environmental
Control,

Respondent.

Clerk of DHEC Board

AMENDED PETITION
FOR
ADMINISTRATIVE REVIEW

NATURE OF PROCEEDING

1. Pursuant to S. C. Code Regs. R.61-72 and § 1-23-310, *et seq.*, S. C. Code Ann. (1976) as amended, Carolina Water Services, Inc. a public wastewater utility operating in and regulated by the State of South Carolina (CWS), contests and appeals the actions of the staff of the South Carolina Department of Health and Environment Control (DHEC) in refusing to certify an amendment to the Areawide 208 Water Quality Management Plan by the Central Midlands Council Of Governments ("COG") dated March 26, 2001, ("208 Plan Amendment"), and requests the Board of Health and Environmental Control to direct that a contested case hearing be held to review the actions of DHEC.

IDENTIFICATION OF PARTIES

2. This petition is made on behalf of:

Carolina Water Service, Inc.
P. O. Box 2509
Cayce, West Columbia, South Carolina 29171-4509

3. CWS as a public utility regulated by the South Carolina Public Service Commission (SCPSC) and is required by state law, including S.C. Code Regulation, PSC-R-103-541 to obtain SCPSC approval of a proposed connection agreement with the Town of Lexington and of the proposed rates and charges therein set forth.

4. CWS operates several wastewater treatment facilities in Lexington County, serving

Return to Saluda Sewer Information: <http://parkinhunter.tripod.com/sewer.html>

a number of customers; Watergate wastewater treatment facilities and I-20 wastewater treatment facilities are two of such sewer treatment facilities included in the COG's 208 Plan.

5. The actions complained of were taken by the Bureau of Water of DHEC.

FACTS

6. The Watergate Sewer System serves approximately 1100 customers and under its NPDES Permit is permitted for .294 MGD; I-20 sewer system serves approximately 2400 customers and under its NPDES Permit is permitted for .800 MGD.

The action of DHEC in non-concurring in the COG's action and in preventing the rightful certification of the COG's 208 Plan Amendment is a violation of CWS's state and federal constitutional rights of substantive and procedural due process.

7. I-20 WWTF discharges into the Saluda River and Watergate WWTF discharges into 14-Mile Creek.

8. Pursuant to the 1993 Amendment to the COG's 208 Plan, CWS was to terminate the discharge of these two facilities and to connect them to the Town of Lexington's regional sewer line when the line was available. The regional line was to be constructed along 14-Mile Creek and then pumped to the Cayce Treatment Facility.

9. Pursuant to the 208 Plan, the Town of Lexington agreed: (a) to provide a bulk sewer rate; (b) to charge capital contribution fees only to new customers; and (c) to charge rates that were fair and equitable.

10. In considering a DHEC certification of compliance request, the COG after numerous presentations by the Town, CWS and other interested parties to the COG and its representatives reflecting various alternatives and various rates, concluded that CWS was in conformance with the 208 Plan until the connection agreement could be submitted to the SCPSC for its approval.

11. While an application to the PSC for approval of the Towns Connection Agreement was pending, the Town and CWS with the assistance of the COG representatives, entered into an agreement as follows: (a) to request an amendment of the 208 Plan to designate the I-20 WWTF as a permanent WWTF discharging into the Saluda River and to require the

upgrade of the facility to tertiary; (b) to sell the Watergate sewer distribution system to the Town which would connect that distribution system to the regional system; (3) to extend the operation of the Town's Coventry Woods WWTF for five (5) additional years.

12. The Town of Lexington as a designated management agent of the 208 Plan and CWS filed a request that the COG modify its 208 Plan in accordance with the Agreement between the Town and CWS.

13. After compliance with the COG's procedures and policies, and after public notice and public hearing, first the EPAC Committee by a vote of 16 to 9 and then the Board of the COG by a vote of 35 to 5 overwhelmingly approved the amendment.

14. Upon being advised by the COG of its amendment of its 208 Plan, DHEC non-concurred with the amendment and then informed the United States Environmental Protection Agency (EPA) of its action.

TIMELINESS

15. The action taken by DHEC was evidenced in a letter dated July 30, 2001 and received by the CWS on that date. The CWS is filing this Petition for Administrative Review within the fifteen (15) days allowed by the applicable Department regulation, S.C. Code Regs. R61-72. § 201 (A).

REASONS SUPPORTING REVIEW

16. CWS is an interested and related party which is substantially affected and damaged by the actions of DHEC in this matter. CWS seeks review of the action of DHEC in refusing to certify the 208 Plan Amendment. While DHEC's letter of July 30, 2001 alleges that it does not concur in the 208 Plan Amendment, it does not contain any relevant justification for same. Further, DHEC has advised the United States Environmental Protection Agency ("EPA") that the 208 Plan Amendment was not consistent with the State Water Quality Management Plan; however, even that letter (dated August 3, 2001) fails to contain any justification for the DHEC conclusion. CWS would assert that the COG has been designated by the Governor as the areawide management agency for the four-county region consisting of Fairfield, Lexington, Newberry and Richland Counties pursuant to 33 U.S.C. § 1288, and that DHEC lacks the

authority to substitute its judgment for that of the COG. CWS asserts that only the Governor or his designee may determine whether the 208 Plan Amendment is consistent with the State Water Quality Management Plan, if such plan in fact exists, and any other Areawide Water Quality Management Plans as provided in 40 C.F.R. § 130.6(e). CWS is informed and believes that no such statewide Water Quality Plan related to the COG planning area exists and that DHEC has not been authorized to act as the Governor's designee in this matter.

PRIOR PROCEEDINGS

17. There have been no prior proceedings in this matter.

CROSS EXAMINATION

18. As required by S. C. Regs. R.61-72.201(9), the petitioner agrees to be subject to cross examination and to make any employee or consultant of the petitioner or such other person represented by the petitioner available for cross examination at the expense of the petitioner or such other person upon the request of the hearing officer, his own motion or on the motion of any party.

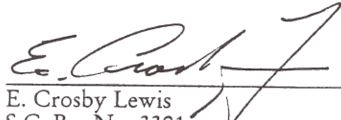
RELIEF

19. CWS respectfully requests that the Board instruct the DHEC staff that it has not been designated by the Governor of South Carolina to act as his designee for certification of Amendments to the 208 Plan. However, should the Board determine that DHEC has been so designated, that it direct its staff to certify the COG's 208 Plan Amendment to EPA; that the Board conclude that CWS's constitutional rights of substantive and procedural due process have been violated by the actions of DHEC in non-concurring in the CCG 208 Plan Amendment and in advising EPA of its non-concurrence and that the Board as a result of the violation of CWS's constitutional rights direct its staff to withdraw its action of non-concurrence.

CONCLUSIONS

20. For the reasons described above, the COG respectfully requests that its Petition for Administrative Review be granted and grant the relief requested herein.

Respectfully submitted,



E. Crosby Lewis
S.C. Bar No. 3301
508 Hampton Street, Suite 300
Post Office Box 11716
Columbia, SC 29211
(803) 256-4000 (phone)
(803) 252-3679 (fax)

August 14, 2001

Columbia, South Carolina.

BEFORE THE SOUTH CAROLINA
DEPARTMENT OF HEALTH
AND ENVIRONMENTAL CONTROL

Carolina Water Service, Inc.

Petitioner,

v.

South Carolina Department
of Health and Environmental
Control,

Respondent.

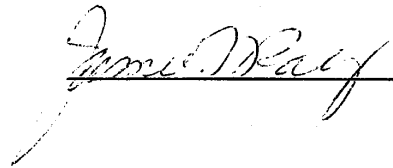
CERTIFICATE OF SERVICE

I hereby certify that the foregoing Amended Petition For Administrative Review was filed with the Board by delivering a copy of same via U. S. Regular Mail to the following:

ATTN: Clerk
South Carolina Board of
Health and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

with a copy delivered to via U.S. Regular Mail/facsimile to:

Office of General Counsel
South Carolina Board of
Health and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201



August 14, 2001
Columbia, South Carolina