

# Public Service Commission

Richard E. Hitt, General Counsel



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2013 MAY 13 PM 2:01

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May 13, 2013

SECRETARY OF STATE

## Via Hand Delivery

Judy Cooper, Director  
Administrative Law Division  
Secretary of State's Office  
Building 1, Suite 157K  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0771

Re: Public Service Commission of West Virginia Rules for the  
Government of Stormwater Utilities, 150 C.S.R. Series 36.

Dear Ms. Cooper:

On March 15, 2013, the Commission filed with your office a final version of its Rules for the Government of Stormwater Utilities, 150 C.S.R. Series 36 (Stormwater Rules). The rules are scheduled to become effective on May 14, 2013. This letter is to notify you that the Commission is withdrawing the Stormwater Rules effective today. See, Commission Order, May 13, 2013, attached hereto. The Commission anticipates filing a new version of the Stormwater Rules with your office in the near future.

The Commission issued the final rules by Order entered March 15, 2013. Pursuant to the Rules of Practice and Procedure adopted by the Commission, a Petition for Reconsideration of a Commission Order may be filed within ten days of the date of mailing of the Order. Commission Staff filed a timely Petition for Reconsideration of the Stormwater Rulemaking requesting reconsideration of certain rules. Upon receipt of the Petition for Reconsideration, the Commission reexamined the entire Stormwater Rules and anticipates making several modifications to the rules. If the changes are substantial, the Commission anticipates filing the rules for public comment again. If the changes are not substantial, the Commission will file the corrected final rules with your office in the near future.

If you have any questions or if there are any problems, please bring them to my attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard E. Hitt".

Richard E. Hitt  
General Counsel

REH/SMS/slc  
Enclosure

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 13<sup>th</sup> day of May 2013.

**GENERAL ORDER NUMBER 260**

In the Matter of proposed Rules Governing Stormwater Utilities, 150 C.S.R. Series 36.

**COMMISSION ORDER**

The Commission withdraws proposed final rules relating to the provision of stormwater utility services by public service districts and filed with the Secretary of State on March 15, 2013.

**BACKGROUND**

On June 1, 2012, the Commission promulgated proposed rules for public service districts (PSDs) desiring to create stormwater utilities. Commission Order at 3-4 and Attachment B (June 1, 2012). These Rules for the Government of Stormwater Utilities, 150 C.S.R. Series 36 (Stormwater Rules), are necessary because amendments to W.Va. Code §16-13A-9 allow PSDs to create stormwater utilities. In its order, the Commission set a schedule to receive comments on the proposed rules. Id. at 4.

On July 2, 2012, the Jefferson County Public Service District (Jefferson) filed comments requesting that the Commission decline to adopt the proposed rules in their entirety because the rules rely too heavily on the Rules for the Government of Sewer Utilities (Sewer Rules), 150 C.S.R. Series 5. Jefferson commented that the focus of the Sewer Rules is on facilities and building, but the focus of the Stormwater Rules should address how a stormwater utility fulfills its obligation to provide public education and outreach, public involvement and participation, illicit discharge detection and elimination, controlling runoff from construction sites, and pollution prevention and good housekeeping, the six core functions of a stormwater utility. Jefferson also suggested that the Commission should have modeled its rules on communities outside of West Virginia that have more experience in operating Municipal Separate Storm Sewer Systems (MS4s).

On July 2, 2012, the West Virginia Municipal Water Quality Association (WVMWQA) filed comments and noted that several of its members are PSDs that would be subject to the Stormwater Rules.

On July 3, 2012, Commission Staff filed comments on behalf of the Stormwater Rules Task Force (Task Force) that initially proposed Stormwater Rules for Commission consideration. See, Staff Petition, Case No. 10-1141-S-PC (July 23, 2010). The Task Force consisted of William Rohrbaugh of the Berkeley County Public Service District, Curtis Keller of the Berkeley County Public Service District, Luke Richmond of the Beckley Sanitary Board, Jim Greene of the Morgantown Utility Board, Scott Copen of the Morgantown Utility Board, Sherry Wilkins of the West Virginia Department of Environmental Protection (WVDEP), William Herald of the West Virginia Bureau of Public Health, Laura Conley-Rinehart of the West Virginia Department of Transportation, James Weimer of the Engineering Division of the Commission, and Amy Swann of the Water and Wastewater Division of the Commission.

On August 31, 2012, Staff filed Reply Comments on behalf of the Task Force. The Task Force considered the comments of WVMWQA and Jefferson, filed responses to those comments, and made editorial suggestions.

On March 15, 2013, the Commission issued final rules. The rules are scheduled to go into effect on May 14, 2013.

On March 25, 2013, Staff filed a Petition for Reconsideration on behalf of the Task Force. Staff requested that the Commission reconsider Stormwater Rules 2.6.a, 2.6.a.1, and 5.3.j.

### **DISCUSSION**

The changes requested by the Task Force in the Petition for Reconsideration have caused the Commission to reconsider the Stormwater Rules in their entirety. The Commission will rescind the March 15, 2013 Order adopting the Stormwater Rules scheduled to go into effect on May 14, 2013. The March 15, 2013 Order caused the Stormwater Rules to be filed with the Secretary of State. By separate correspondence on this date, the Commission has requested that the Secretary of State withdraw the Stormwater Rules filed on March 15, 2013.

Because the Commission is withdrawing the currently proposed rules, the Petition for Reconsideration is moot.

### FINDINGS OF FACT

1. On June 1, 2012, the Commission promulgated proposed rules for PSDs desiring to create stormwater utilities. Commission Order, June 1, 2012, at 3-4 and Attachment B.
2. After considering comments published by interested parties, the Commission issued final rules on March 15, 2013. Commission Order, March 15, 2013, at 9.
3. Staff filed a Petition for Reconsideration. Petition, March 25, 2013.
4. The Stormwater Rules are scheduled to go into effect on May 14, 2013.

### CONCLUSIONS OF LAW

1. Because (i) the Stormwater Rules have not yet gone into effect and (ii) the Commission intends to revise the rules, the Commission withdraws the rules adopted on March 15, 2013, and filed with the Secretary of State on the same day.
2. Because the Commission is withdrawing the Stormwater Rules adopted on March 15, 2013, the Petition for Reconsideration is moot.

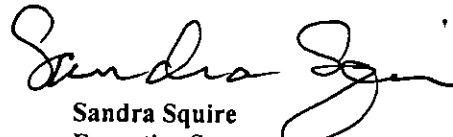
### ORDER

IT IS THEREFORE ORDERED that the Commission reopens this matter and rescinds its March 15, 2013 Order adopting the Rules for the Government of Stormwater Utilities, 150 C.S.R. Series 36, attached to the March 15, 2013 Order.

IT IS FURTHER ORDERED that Petition for Reconsideration is moot and, therefore, the Commission will not rule on the petition.

IT IS FURTHER ORDERED that the Executive Secretary shall serve a copy of this order (i) by electronic service on **all public service districts operating in West Virginia** that have filed an e-service agreement, by United States First Class Mail on all public service districts operating in the state that have not filed an e-service agreement, (ii) on the members of the Task Force: William Rohrbaugh of the Berkeley County Public Service District, Curtis Keller of the Berkeley County Public Service District, Luke Richmond of the Beckley Sanitary Board, Jim Greene of the Morgantown Utility Board, Scott Copen of the Morgantown Utility Board, Sherry Wilkins of the West Virginia Department of Environmental Protection, William Herald of the West Virginia Bureau of Public Health, and Laura Conley-Rinehart of the West Virginia Department of Transportation by electronic service or United States First Class Mail, as applicable, and (iii) on Commission Staff by hand delivery.

A True Copy, Teste:

  
Sandra Squire  
Executive Secretary

SMS/slc  
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