



Michael D. Klein

Pennsylvania Water Law

By Michael D. Klein, Esq.

Michael D. Klein is a member in the Harrisburg, PA, and Washington D.C. offices of Cozen O'Connor. Michael practices in the areas of utility and environmental law. He can be reached at mklein@cozen.com and 717-703-5903. This column is intended to be a discussion of legal issues in the water industry. It is not intended to be legal advice, or to establish any attorney-client relationships. Before making any legal decisions regarding anything discussed in this column you should always consult with an attorney.

This column will provide overviews of interesting cases and legal issues affecting water suppliers in Pennsylvania.

A thorny aspect of unmetered sewer rates based on metered water rates has its day in court

The Commonwealth Court was recently presented, for the first time, with a case where it had to decide whether unmetered sewer rates based on metered water usage are legal when substantial quantities of metered water does not reach the sewer system due to leaks in the internal water conveyance system. The case is GSP Management Company v. Duncansville Municipal Authority, No. 40 C.D. 2015, decided October 19, 2015.

A brief recitation of the material facts found by the Court are as follows. GSP operates a mobile home park in Allegheny Township, Blair County. The Authority does not provide water and sewer service directly to residents of the mobile home park. Instead, the mobile home park maintains its own internal water distribution and sewage collection and conveyance systems. The Authority meters the water that it provides to the mobile home park, but does not meter the wastewater discharged from the mobile home park into the Authority's sewer system.

The Authority's rate structure provides for the calculation of a sewer bill based on tiered sewer rates, where the rate increases on a sliding scale corresponding to the amount of metered water supplied to the customer. As the customer's metered water increases through particular bands, so too does the assessed sewer rate, and consequently, the customer's sewer bill.

The Authority's rate structure did not expressly provide for an allowance where a customer encounters extreme deviations in the amount of its sewer bills based on water leaks between the point where the water is metered and where water is accessed by the customer. The Court found that there was no dispute that metered water lost by a leak in the internal mobile home park water system is not discharged into the Authority's sewer system.

There was also no dispute that the Authority had historically billed the mobile home park for approximately 40,000 gallons of water a month and, consequently, approximately 40,000 gallons of sewage a month. The mobile home park's highest metered water flow during a month in which it did not experience a leak in its internal water distribution system was approximately 60,000 gallons. However, during several months in 2009 and 2011, because of leaks, monthly metered water flows ranged from 130,000 gallons to a high of 580,000 gallons. When the mobile home park repaired the leaks, metered water flows returned to the historic average of approximately 40,000 gallons per month.

The Authority's policy is that when high water and sewer bills are the result of leaks after the point of the meter and

within the customer's property, it will permit an installment payment plan, but it will not adjust the sewage bill.

For the months when the sewer bills were high due to leaks, the mobile home park disputed the bills and made only partial payments. That was unacceptable to the Authority and both parties filed legal actions regarding the dispute.

The Court recognized that Section 5607(d)(9) of the Municipality Authorities Act provides authorities with the power to fix, alter, change and collect rates for service at "reasonable and uniform rates." The first determination that the Court made in this case is that basing sewer rates upon the amount of metered water flowing into a property is a valid means of establishing rates for sewer system services.

That left the issue of whether, under the facts of this case,

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Longtime water quality icon Paul Zielinski retires from PAW

Paul Zielinski retired on November 1, 2015 after 37½ years with Pennsylvania American Water (PAW).

Prior to retiring, he held the position of Senior Director - Water Quality and Environmental Compliance. He was responsible for Environmental Compliance for 36 surface water treatment plants, 66 public water supplies and 12 wastewater facilities.

Paul began with PAW in 1978 in Pittsburgh, PA where he served as a chemist in the water quality laboratory. In 1981, Paul moved to Butler, PA where he assumed the duty of Water Quality Supervisor for five public water supplies. In 1986 he became the Assistant Director of Water Quality/Water Quality Superintendent for several of PAW's water



Paul Zielinski

operations. He supervised operations for 21 surface water supplies, 10 well supply systems and 2 purchased water systems for compliance with the Safe Drinking Water Act.

Along with his stellar water quality career, Paul served as an appointed member of the PA DEP's Operator Certification Program Advisory Council where he assisted DEP in setting certification regulations from 2002 until his retirement. He served as Chair of the DEP Operator Certification Advisory Council in 2015.

Paul recently signed on as a Representative for the Partnership for Safe Water (PFSW) program that is facilitated in Pennsylvania by PA-AWWA, AWWA (National) and PA DEP. He has been serving as a member of the PFSW's PEAC Committee that reviews Phase III reports for completeness with program initiatives and recommends PFSW Directors Awards based on those reviews

He also served as Chair of

the PA Water Quality Committee from 2001 – 2004 and was a member of the AWWA Residual Waste Committee from 2000 -2001. He served on the PA-AWWA Research Committee from 1997 – 2000.

Paul also shared his expertise with the following published works:

- Co-authored a paper on an innovative aeration method to remove VOCs titled "Turbojett for Aeration of Volatile Organic Chemicals."
- Co-authored a paper – "Applications and Comparison Studies of Particle Counters by WVAWC and the American Water Works System Companies" - Water Quality Tech. Conference, 1997, AWWA.

He is a graduate of the University of Pittsburgh with a Bachelor of Science in Chemistry with a Minor in Math.

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the sewer rates were reasonable during the months when substantial water leaks occurred. On that issue the Court ruled that where a municipal authority adopts a sewer rate structure that is tied to the amount of metered water flowing into a property, a sewer customer may challenge the amount of its sewer bills by establishing that a substantial part of the metered water entering the property did not reach the sewage system. Stated otherwise, where there is an extraordinary water loss between the point of metering and the point of

discharge into the municipal sewer system that is substantial in quantity, and unplanned or unanticipated, relief from the sewer charges during those periods of extraordinary water loss would be warranted. Because the facts in this case met those standards the Court ruled that the mobile home park was entitled to relief. The Court remanded the case to the trial court to determine the amount that the mobile home park should pay to the Authority for those months when substantial water losses occurred due to leaks.

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