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CLEARWATER RIVER WATERSHED DISTRICT

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Rule Revision: Community Sanitary Sewer Operation & Maintenance Accounts (February 20, 2019)

Invitation to Comment

All property owners served by a Community Sanitary Sewer System owned and operated by the Clearwater River Watershed District, and all other interested parties, are invited to review the District's proposed rule amendments and to comment thereon. All written comments should be submitted by email to: admin@crwd.org or by mail or delivery to the District offices at: PO BOX 481, Annandale, MN 55302. All such comments must be received by April 17, 2019. In addition, on March 20, 2019 at 6:00 PM, at Annandale City Hall, the District Board of Managers will hold a public hearing on the proposed rule amendments. At that time, any interested party is invited to appear and address the Board on the proposed rules. The proposed rule amendments and associated documents can be reviewed on the District's web site at www.crw.org. For any questions regarding the rulemaking, please contact Sonja Moseley, District Administrator at 320-274-3935.

Introduction

The proposed rule would revise selected sections of the District Rules: Sections 2.0, 4.2 and 5.0. The revisions are intended to clarify District rules and procedures for applying quarterly charges to property served by the District's four community sanitary collection and treatment systems. The four systems owned and managed by the District serve the Hidden River, Clearwater Harbor, Wandering Pond and Rest-a-While residential subdivisions. The District constructed the systems to provide cost-effective sanitary service for residential development, and to do so by means that more reliably protect the quality of groundwater and adjacent surface waters than would individual septic systems owned and maintained by individual property owners. The four systems were commissioned in the early to mid 2000s. District Rules concerning the collection of charges for system operation & maintenance (O&M) were first adopted on October 8, 2003, and revised effective October 12, 2005.

This rule revision is prompted in large part by an appeal made by one property owner served by a District system. That property owner challenged the application of quarterly O&M charges to property that, although it has service available by means of a stubbed service line, is not physically connected to the system. The 2005 amendment of the District Rules was for the specific purpose of providing for quarterly O&M charges to be applied to all lots that are buildable and for which a service stub has been provided, whether or not the property owner has physically connected to the system. However, in the appeal, the district court judge decided that the specific wording of the District rules says that O&M charges will not be applied when there is no physical connection to a system. This revision is to ensure that the Rules are consistent with the District's long application of its policy and intent.

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Also, in its management of these sanitary systems over the years, the District has applied a certain set of criteria in deciding when an unimproved lot is “buildable” so as to be subject to charges. This approach, however, was not formally written or adopted. In 2017, the District put its practice onto paper, as District Policy 604, to ensure consistency in its administration and to be more transparent to property owners. The judge observed that since this policy is not a part of the Rules, it does not have the force of law. It also makes sense in this rulemaking to incorporate the content of Policy 604 into the Rules.

Finally, in the course of the property owner’s appeal, it became apparent that the legal basis of the District’s management of its sanitary systems, and its collection of charges to operate and maintain those systems, is not clear to affected parties. Therefore, in this rulemaking, the District also proposes to make these more explicit.

Legal Authority for O&M Charges

The Minnesota legislature has given the District the authority to collect charges to maintain its community sanitary systems. The law is 2004 Laws chapter 228, Article 1, Section 70, which was made retroactive to August 1, 2003. It states as follows:

The Clearwater River Watershed District may collect charges for maintenance, repair, operation, and use of sewer systems, sewage treatment systems, and other facilities, whether created as projects of the district or acquired by the district, for disposing of sewage, industrial waste, or other wastes as prescribed under Minnesota Statutes, section 444.075, subdivision 2a.

Section 444.075, subdivision 2a, as written applies only to “stormwater facilities” constructed and maintained by watershed districts. However, the 2004 legislation specifically directs that the District is to use subdivision 2a to collect charges for community sanitary system O&M charges as well.

Subdivision 2a states that charges “may be billed and collected in a manner the district shall determine.” This broad language allows the Board of Managers to use its judgment to decide how O&M costs should be distributed among property owners served by a system. Subdivision 2a also describes how the county will conduct billing on behalf of the District, will collect delinquent payments, and will apply interest and penalties to delinquencies. Finally, subdivision 2a says that any property owner may appeal the charge by following the procedures at Minnesota Statutes §103D.535. A notice of appeal of the Board of Managers’ order setting the charge must be filed within 30 days of that order, with either the court administrator of the district court, or the secretary of the Minnesota Board of Water and Soil Resources.

Proposed Rule Revisions

Availability Charge

First, the proposed rule would maintain the District’s long-standing approach to applying O&M charges to lots that are buildable but not physically connected to the system.

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The standard that charges may be billed and collected “in a manner the district shall determine” leaves the decision as to how to recover O&M costs through charges to the sound judgment of the Board of Managers. Fundamentally, any distribution of charges should be reasonable and equitable, and should not be administratively complicated.

Section 444.075 of the statutes is the legal framework by which cities and towns collect charges for waterworks, storm sewer systems and sanitary sewer. In deciding on the “manner” by which to collect O&M charges, the Board of Managers looked for guidance beyond subdivision 2a, to the broader statute. Specifically for sanitary sewer, the statute allows cities and towns to charge:

- (a) on the basis of water consumed;
- (b) by reference to a reasonable classification of the types of premises to which service is furnished;
- (c) by reference to the quantity, pollution qualities and difficulty of disposal of sewage produced; or
- (d) on any other equitable basis, other than property square footage.

The statute also explicitly allows for imposition of a connection charge or an availability charge. (See §444.075, subdivisions 3a, 3c and 3d.)

In its deliberations that led to the 2005 amendment of the Rules, the Board of Managers determined that the O&M cost should be divided equally among all improved or legally buildable residential lots for which service is available by a unique connection stub, whether or not the owner discharges to the system, and whether or not the parcel is improved with a primary structure. In other words, the charge is in the nature of an availability charge, imposed equally on all buildable lots, improved or unimproved, based on the availability of service.

The Board considered a property to use and benefit from sewer services by having a connection that is available and that supports the value of the property for its allowable use. Further, in the initial decision to proceed to build and operate each of its community sanitary systems for the benefit of property owners, the Board considered the number of properties that would be served in concluding that the system would make sense economically. Exempting unimproved lots from charges would require owners of improved lots to bear substantial unexpected cost until such time as owners of unimproved lots should chose to build on their lots. During that time, though, the costs borne by residential homeowners would be maintaining the availability of the sanitary system essential to support the market value of the unimproved lots.

The Board of Managers might have taken an approach in which owners without physical connection would pay an availability charge, but less than owners actually connected to the system. The Board might have distinguished between an O&M component supporting the long-term integrity of the system and a component for ordinary management of wastes generated by use. However, in addition to requiring that this line be determined, this approach would generate a different argument from those who may be physically connected but not occupying the residence or by those claiming lower levels of use. It should be noted that the systems are not equipped to measure flows or base the charge on a quantity of flow.

In addition to administrative simplicity, the selected approach is equitable because, among other reasons, it provides predictability for all owners sharing system costs, and requires each

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property owner to contribute to the maintenance of a system that supports property value, whether the property is improved or not. In a small way, it also encourages residential building where utilities well-designed to protect water quality have been constructed.

The Board of Managers proposes to maintain this approach to distributing O&M costs, but to clarify it in the Rules. This rulemaking process, though, does afford the Board the opportunity to consider that approach, and so interested parties are invited to submit comments about this approach and any alternative to it.

Exemptions from Charge

As noted above, in the course of administering O&M charges, the District has on occasion needed to determine whether a parcel is “buildable,” or not, for the purpose of whether it is subject to O&M charges. Principally, this has arisen in a limited number of cases of formal or informal lot combinations or splits. The District has applied certain criteria consistently over time, but these were only reduced to writing in 2017 by adoption of District Policy 604, and never have been incorporated into the Rules.

The proposed rule would incorporate the criteria of Policy 604 into the Rules, as subsection 4.2(d). Because the question of legal “buildability” rests on judgments of land use authorities and because a lot that is not physically or legally “buildable” at one moment may become buildable at a later time, room for judgment will always remain. However, the adopted criteria will guide that judgment. The District’s determination will remain focused, principally, on whether the market value of the lot is being supported by the availability of sanitary sewer service.

Again, the Board of Managers invites public comment on the criteria proposed to be incorporated.

Procedures

The remaining proposed changes would modify and clarify the procedures for administering O&M charges under the Rules. The proposed rule seeks to describe more clearly:

- The (typically) annual process by which the Board of Managers, by order, sets the O&M budget and the charges to fund it.
- The procedure to appeal that order.
- How the District will administer quarterly billing.
- The District’s process to certify delinquent charges to the county for collection.
- The right to be heard by the Board of Managers before charges are certified.
- Interest and penalties on delinquent payments.

All of these procedures are subject to, and follow, Minnesota Statutes §§103D.535 and 444.075, subdivision 2a. The existing rule language regarding interest and potential penalties on delinquent charges, first adopted in 2003, would be revised to more precisely fit what these statutes provide. In addition, explicit reference is made to these two statutes where appropriate, so that property owners can clearly understand the legal framework under which O&M charges for the District’s community sanitary systems are administered.