



Allingham,
Readyoff &
Henry, LLC

Attorneys at Law

Attorneys at Law

54 Bridge Street

New Milford, CT 06776

www.allinghamlaw.com

Phone: 860-350-5454

Fax: 860-350-5457

July 23, 2020

Mr. Nelson Malwitz, Chairman
Brookfield Water Pollution Control Authority
53A Commerce Road, Unit 1
Brookfield, CT 06804

Re: Adjustment of Sewer Use Bill for Error in Calculation

Dear Nelson,

You have asked whether the Water Pollution Control Authority has the legal authority to reduce a charge for sewer use after the sewer use charge has been levied – in other words, after the bill has been sent.

The sewer use charges imposed by the Authority are based on a “unit” system and the number of units charged in any particular bill is determined under the regulations based on the use being made of the property. The methodology used by the Authority for determining the number of units is typically based on a use survey, but the survey methodology is “informal” and not designed to ascertain use changes for billing purposes on an annual or more frequent basis. Unless the property owner reports a change of use, or unless the Authority investigates a potential change of use on its own initiative, the number of units charged to a customer may be too low or too high during any given billing cycle.

When a property owner presents compelling evidence that his sewer use bill was excessive based on the actual use made of the property, does the Authority have the legal authority to adjust the bill downward to reflect the charges that it would have levied had it had accurate use information at the time of billing?

The General Statutes and Town Ordinance specifying the powers of the Authority are silent on the subject. Section 7-258 of the Connecticut General Statutes, however, contemplates that sewer use charges shall be collected in the same manner as utilized for the collection of municipal taxes. While a municipal tax collector does not have the authority to adjust a tax bill, the tax can be corrected through the assessor or the board of assessment review. Section 12-60 allows any *clerical* omission or mistake in the assessment of taxes to be corrected by the assessor or the board of assessment appeals within three years following the tax due date. In such case, the tax shall be collected according to such corrected assessment. Section 12-60 contemplates both reductions and increases in assessments where the original assessment has been tainted by clerical error.


Section 12-39s of the General Statutes applies to the collection of State taxes. Section 12-39s authorizes the Commissioner of Revenue Services to cancel any tax, penalty or interest that has been wrongfully assessed.

Although not applicable to the Water Pollution Control Authority, Section 12-60 and Section 12-39s suggest that the state's policy is to allow for the correction and abatement of taxes that are improperly assessed within a time frame of three (3) years.

As noted, the General Statutes and Town Ordinance are silent on the subject of whether sewer use charges may be adjusted or corrected after the fact. The Authority, however, has broad power to "operate a sewerage system". This is defined in Section 7-245(8) of the General Statutes to include the power to "supervise, manage, operate and perform any act pertinent to the collection, transportation and disposal of sewage". Given that the Authority is also given the power in Section 7-255(a) of the General Statutes to "establish *and revise* fair and reasonable charges for connection with and use of a sewerage system", I conclude that the Authority has the inherent power to adjust a sewer use bill when it has reason to believe that the sewer use bill is manifestly unfair or improperly calculated. Given the three year limitation for similar adjustment for municipal tax assessments specified in Section 12-60 of the General Statutes, I conclude that after the expiration of three years such adjustments for sewer use bills should also be barred. Three years is more than enough time for a property owner to challenge the calculation of his sewer use bill.

In summary, the Authority has the inherent power to adjust a sewer use bill within three (3) years of its issuance when the Authority is satisfied that the sewer use bill is manifestly unfair or improperly calculated. This should be done by resolution at a duly convened meeting of the Authority and reflected in the minutes of the meeting. *It should be a rare event and only considered when it is extremely clear that an error has been made in the levy of the use charge.* Upon such adjustment, the sewer use charge shall be collected according to such corrected levy.

Sincerely,



Jeffrey B. Sienkiewicz
of Counsel

JBS/jbs

f/clients/jbs/BWPCA/General/Rates & Charges/ Ruling - Bill Adjustment