

CARROLL TOWNSHIP AUTHORITY

RULES AND REGULATIONS

BILLING

COLLECTIONS OF DELINQUENT ACCOUNTS

WATER SHUT OFF

MUNICIPAL LIENS

Adopted December 20, 1999

PREAMBLE

These Rules, Regulations, and Procedures are the current procedures employed by the Carroll Township Authority in billing and collecting current and delinquent sewage accounts.

Up until now, the different procedures of Carroll Township Authority have not been codified. The authorization procedures are found scattered in the Carroll Township Authority Minutes and Statutes of Pennsylvania.

Here, it is intended to codify the present Rules, Regulations, and Procedures with the sections of the pertinent Statutes of the Commonwealth of Pennsylvania governing the procedures.

CARROLL TOWNSHIP AUTHORITY RULES AND REGULATIONS

ARTICLE I.

BILLINGS

1. The Authority shall set the yearly billing rate of residential and commercial customers for sanitary sewage collection and treatment immediately following the adoption of the Authority's budget for the coming fiscal year. This is usually done at the January monthly meeting.

2. However, the rates may not be established until after the January monthly meeting due to some unusual circumstances; e.g., the Carroll Township Authority does not receive the treatment rates for the year from either or both of the Authorities who treat our sewage.

3. The Authority reserves the right to amend the rate at any time during the fiscal year due to substantial unexpected additional expenses or reduction in income.

4. Monthly Rate. The Authority shall bill its customers monthly at one-twelfth (1/12) of the yearly rate.

- a. Residential establishments will be charged a flat rate for one (1) EDU regardless of the quantities of sewage generated.
- b. Commercial establishments will be charged a rate set for each 1,000 gallons of potable water recorded as delivered by the water company. The minimum rate shall be the residential rate.

5. Overrun Charges. The Carroll Township Authority is subject to overrun/penalty charges imposed by the Municipal Authority of the City of Monongahela for any sewage delivered for treatment that exceeds 700,000 gallons per day. Each Carroll Township

customer will be billed his proportionate share of said charges. These charges will be in addition to the regular monthly bill and stated separately on the customer's bill for the months incurred.

The formula for the calculation of the customer's share is as follows.

- (a) The overrun charge billed by the Municipal Authority of the City of Monongahela to Carroll Township Authority will be divided by the total EDU's in the township times 1.05% to determine the amount of EDU's proportionate share of the overrun.
- (b) The residential customer will be rated as one EDU.
- (c) A commercial establishment will be calculated on its individual EDU rating
- (d) A commercial establishments EDU rating shall be calculated by dividing the total gallons of potable water consumed during the previous year divided by 60,000 gallons, which is the established number of yearly gallons per EDU in Pennsylvania.
- (e) At the beginning of each year, the EDU rating of each commercial establishment will be calculated and submitted to the Authority Board for approval.

6. Billing Date. The billing date shall be the fifteenth (15) day of the month. If the fifteenth day falls on a Saturday, Sunday, or Holiday and there has not been any overrun reported, the bills will be mailed on the 13th. If there are overrun charges, the date may be extended because of a delay of the receipt of charges from the Municipal Authority of the City of Monongahela.

7. Due Date. The bills are due twenty (20) days after the mailing date of the billings. Any payments delivered by the U.S. Mail Service four days later will not be considered

delinquent. Bills not paid on or before the due date, will be deemed delinquent and subject to a delinquent charge of 0.833% per month on unpaid balance.

8. Returned Checks. A charge of \$20.00 will be made to the customer who pays his bill by check and his financial institution fails to honor said check.

9. Notice of Delinquency. Within ten (10) days after a customer becomes delinquent in the payment of his bill, the Authority shall mail a delinquent notice to the one responsible for the payment of the bill. The form of the notice shall be substantially the form set forth in the attached Appendix of Forms No. 1.

- a. This notice will state to the customer that the Authority will institute, one or any of the other legal collection remedies available to the Authority, if the delinquency is not full satisfied within thirty (30) days or if the customer made satisfactory extended payment arrangements in writing agreed to by the Authority.
- b. If the customer defaults on the payment arrangements, proceedings will be filed immediately against him.

10. Waiver of Monthly Bill - The monthly sewage bill for any residential property may be waived:

- a. If the dwelling has been razed, is totally or partially destroyed, is not habitable, and water service has been shutoff;
- b. If the residential property is vacant, habitable and the public water is shut off, one – half of the monthly sewer bill will be waived;
- c. To obtain a waiver, the property owner must complete an Affidavit as to the facts and condition of the premises and submit it to the Authority Board for approval; and;
- d. Waivers are not retroactive but take effect in the month approved.

ARTICLE II.

COLLECTION METHODS AND PROCEDURES FOR DELINQUENT SEWER BILLS

Introduction: The Pennsylvania Statutes provide for four separate and different legal remedies available to municipal authorities and other local government unit for the collection of delinquent sewer billings, which include:

- Require water utility to shut off water service to premises;
- File a claim and lien under the Municipal Claims Act;
- File a *Scire Facias* proceeding with the sheriff's office; and,
- File an Action at Law (regular law suit) against debtor.

Each of the above have advantages for various situations.

ARTICLE III.

WATER SHUT OFF

Introduction: The Commonwealth of Pennsylvania Statutes include provision that a municipal authority and other government entities may require a water utility to shut off the water service to a premise of a delinquent sewer customer, who has not paid his bill after the expiration of thirty (30) days from the due date of the billing, for any rental, rate or charge for sewage collection and treatment. All overdue collection and treatment charges, penalties, interest and fees of Water Company shut off turn on and lost revenue must be paid before water service will be restored.

The procedures set forth in the act **must be followed exactly** or the Authority may be subject to damages for abusive process.

Further the Act provides the customer the right to contest the amount of the claim and must be afforded a "due process proceeding". The customer must file a sworn

statement setting forth a just defense and that the filing of such is not a purpose for delay. This will postpone actual water shut off. A hearing should be held as soon as practicable.

Procedure

1. Shutoff proceedings may be instituted against a delinquent debtor after thirty (30) days of the mailing of the delinquent notice provided in Article I, Page 9 above, and the outstanding bill has no been paid in full or in the case where extended payment arrangements were agreed to, and the debtor defaulted on his promises.

2. At least ten (10) days before the scheduled water service shut off; a "Notice of Intention to Shut off Water Service" must be served on the individual liable for payment of the sewage bill by U.S. Mail. The notice must also be posted on the main entrance of the premises.

- a. An attempt to personally serve the occupant of the premises with a copy of the notice should be made.
- b. The Authority must be certain that the notice reached the occupant and owner, if not the occupant.
- c. The Authority should be sure the occupant is not bedridden, is able to understand the notice or away on vacation.
- d. An "Affidavit of Service" shall be signed by the Authority personnel mailed the notice to customer and by the one who posted the notice.
- e. The Shut off Notice and Affidavit of Service shall be substantially in the form set forth in Appendix of Forms No. 3 and Appendix of Forms No. 4, respectfully.
- f. If the physical water shut off to the delinquent premises does not occur on the scheduled date set forth in the Notice, it may occur at a later date. It is suggested that the delinquent customer be sent a copy of the Authority's letter to the water company instructing the water shut off.

3. The Authority must give the water company an Order to shut off the water in compliance with the contract approved by the PA Public Utility Commission. Use standard Form No. 5.

4. The debtor customer has the right to contest the accuracy of the delinquent amount claimed. The following procedures must be followed:

- a. The customer must serve the Authority with a sworn statement of his objections and state that is not filed to delay the shut off.
- b. The customer's claim must be received by the Authority before the closing of the Authority office on the day before the scheduled shut off.
- c. The Authority MUST provide the debtor customer a "Due Process Administrative Hearing; and render a written decision within ten (10) days of the hearing.
 - (i) Due Process Hearing must be scheduled within forty-five (45) days and customer notified.
- d. Water cannot be shut off until thirty-five (35) days after the rendering of the due process hearing.
- e. The solicitor must be immediately notified of the customer filing an objection.

5. Repayment Agreement in Lieu of Termination. When a customer contacts the Authority regarding a delinquent bill, all attempts should be made to negotiate an extended repayment schedule which is acceptable both to the Authority and to the customer. Rigid standards with respect to such things as initial minimum lump sum payment shall not be required. The factors which shall be considered in any repayment shall include the size of the delinquent billing, ability of customer to make payment, and terms of extended payments. The manager shall discuss the terms of the agreement with the Authority Board Chairman or his designee, before agreeing to the same. The agreement shall be substantially in the form set forth in the attached Appendix of Forms No. 5.

6. The premises, where the delinquency is less than _____, will not be subject to the physical shut off. However, all notices and postings for water shut off may be served as soon as the delinquency exceeds the _____, and notice must be sent to the water company. This does not apply to those who agreed to a payment plan and the defaulted on the agreement.

7. Water service cannot be shut off to rental property because the previous tenant was delinquent.

8. Charges of Authority and Water Company that must be paid to the Authority, by the delinquent customer before water is turned on, are as follows:

- a. Charge for posting Notice of Intent to shut off \$20.00
- b. Turn-Off Charge \$30.00
- c. Turn-On Charge \$30.00
- d. Lost Revenue Charge = the daily amount that the water Company would receive if service was turned off
- e. These rates are subject to change at any time.

9. These shut off procedures do not apply to the situation where the premises are occupied by a tenant and the landlord pays the sewage bills. The Utilities Service Tenant Act, Act 299 of 1978 68 P.S. 399.51, applies here. It is complex, must be strictly followed, and its use is not recommended in Carroll Township. If there is a delinquency by a landlord, contact the Solicitor.

10. The filing of **Bankruptcy** by a delinquent customer removes the jurisdiction to the United States Federal Courts. Immediately contact the Solicitor. **Do not shut off water** until the Solicitor researches and approves the shut off.

ARTICLE IV.

MUNICIPAL CLAIMS

Introduction: The Authority qualifies as a local government entity, under Municipal Claims Act 53 P.S. §7191 et seq., which is eligible to file a municipal claim against properties, where the sewage collection and treatments bills are delinquent. The charge is automatically a lien against the property. The municipality must perfect the lien by filing a municipal claim in the local county Prothonotary's office. Under that statutes priority of payment, the Authority obtains first lien ahead of all previously filed liens, except state taxes.

Municipal Claims Procedure

1. To perfect a claim for unpaid sewage charges against a customer, a Municipal Claim must be filed in the Prothonotary's Office of the Court of Common Pleas of Washington County, Pennsylvania, located in the Washington County Courthouse, Washington, Pennsylvania.
2. The Municipal Claim must be filed within three (3) years after the charges first became payable to qualify for Priority Status over other liens and judgments filed ahead of this claim.
3. The form of the Municipal Claim shall be substantially the form set forth in the Appendix of Forms No. 6 and shall include the following:
 - a. The name and address of the Carroll Township Authority
 - b. The names and addresses of all the property owners.
 - (i) Be sure to include both husband and wife's name
 - (ii) Names of heirs when property is owned by a deceased person. It cannot be the Estate of John Doe

- c. Description of the property must be clear and sufficient so that it can be located.
- d. The amount due of unpaid services claimed for the period of the beginning date and the ending date
- e. The amount of any other charges for fees and attorney fees.
- f. The Claim must be signed by chief executive officer or solicitor.

4. The term of the municipal lien is for twenty (20) years for the date of filing the claim. The term can be further extended for another twenty (20) years by the filing of a document as "Suggestion of Non Payment" before the expiration of the first twenty (20) year term.

5. Those claims not filed within the initial three (3) year period, referred to as Lost Liens, may be filed any time thereafter. The claim will not obtain Line Priority Status against the property. It will have priority status over judgments and liens subsequently filed.

6. A Municipal Claim will be paid to the Authority out of the proceeds of any Judicial Sale where there are insufficient monies. It is not divested by a Judicial Sale, where the proceeds are insufficient to pay the Claim. When property is being transferred the Buyer will/should insist the claim is satisfied.

7. The Authority cannot initiate a Judicial Sale (Sheriff's Sale) with just a filed claim. It must obtain a Writ of *Scire Facias*, which instruct the sheriff to have a Judicial Sale.

8. Any debtor may file a Petition with the Court stating his defense and request the Court to issue a Rule on Plaintiff to present his claim. The Court will determine the amount of money the debtor must pay into Court as security to release the lien against the property.

9. An interest charge, in the amount of ten percent (10%) per annum from the date of filing, is added to your lien as authorized by Pa. Statute and Resolution of the Board of Carroll Township Authority.

10. Court filing fees and collection expenses will be imposed against the debtor.

11. The Authority is entitled to collect its **Attorney's Fees** incurred in the collection of this claim as provided by Act 1 of 1996; 53 P.S. §7106 providing a Resolution has been passed by the board.

- a. At least thirty (30) days prior to the imposition of attorney's fees, the Authority must notify owner at last known address by U.S. Certified Mail, which shall be substantially in the form as set forth in the Appendix of Forms No. 8.
 - (i) A statement of intent to impose attorney's fees
 - (ii) Manner in which delinquent account may be brought current.
 - (iii) If certified mail is unclaimed or refused, then Authority must give notice by regular mail ten (10) days before imposition of attorney's fees.
 - (iv) Property owner may challenge fees by Petition to Court, but the Authority is no responsible for unreasonable fees.

WRIT OF SCIRE FACIAS

Introduction: The Municipal Claims Act also provides that an Authority can obtain a Judgment against the customer's property by a Writ of *Scire Facias*. This is a prerequisite for the filing of Writ of Execution, which orders the Sheriff to sell the property at Public Sale. This is the next step after filing the Municipal Claim.

1. The form of the claim shall be in substantially the form set forth in the Appendix of Forms No. 9.
2. The claim must be served by the Sheriff upon the owner and occupants of the premises.
3. The delinquent customer must file an Answer within fifteen (15) days. If he fails to file an Answer, a default Judgment may be entered.
4. A Jury Trial is held. The delinquent customer has the burden of proof of overcoming the Authority's prima facia case.
5. After Judgment is obtained, the Authority must proceed in Wirt of Execution for Sheriff's Sale.
6. This is not a Judgment lien against other property of delinquent customer.

COLLECTION BY ACTION OF LAW

Introduction: This method is authorized by 53 P.S. §7251 and is the filing of a regular lawsuit. It is governed by the Pennsylvania Rule of Civil Procedure.

1. Only the property owner can be sued for claims that arise in his period of ownership.
2. The burden of proof is on the Authority.
3. The claim must be for delinquent sewage charges for a period of no more than six (6) years from the date they first became payable.

4. A Judgment under here is a lien against all property of delinquent customer, including bank accounts, automobiles, stock, etc.
5. No attorney fees of the Authority are recoverable in this type of suit.
6. If the delinquent customer is dead, a claim may be file with his estate in the Orphans Court.