

**GOVERNMENT OF THE VIRGIN ISLANDS
OF THE
UNITED STATES**

PUBLIC SERVICES COMMISSION

IN RE APPLICATION OF VIRGIN ISLANDS
ISLANDS WASTE MANAGEMENT AUTHORITY
FOR APPROVAL OF ENVIRONMENTAL USER
FEE AND WASTEWATER USER FEE

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Docket No. 554

Order No. 20/2008

ORDER

WHEREAS, this Docket was commenced in 2004, following the passage of Act No. 6638 and the creation of the Virgin Islands Waste Management Authority; and

WHEREAS, the Legislature assigned the Public Services Commission responsibility for regulating the rates of the Waste Management Authority as the Environmental User Fee (“EUF”) and the Wastewater User Fee (“WUF”); and

WHEREAS, on March 30, 2007, the Waste Management Authority filed its application for approval of proposed Environmental User Fees and Wastewater User Fees, and supporting information, including:

- An Environmental User Fee Study, attached as Exhibit A to the Application;
- A List of Additional Fees, attached as Exhibit B to the Application; and
- Proposed Tariffs for each fee, attached as Exhibit C to the Application; and

WHEREAS, the Commission retained Malcolm Pirnie to provide consulting expertise and advise the Commission on this new area; and

WHEREAS, the Commission appointed Lorin Kleegeer to act as the Hearing Examiner in this matter and prepare and submit a report and recommendations on the EUF and WUF; and

WHEREAS, the Hearing Examiner set for a schedule for discovery, briefings, and hearings at the outset of the proceeding, and that schedule was maintained with hearings held on October 30th and 31st on St. Thomas and November 2nd on St. Croix; and

WHEREAS, each of the hearing in this matter was publicly noticed and members of the public were invited to and did both attend and submit comments; and

WHEREAS, as a result of the publicity and public reaction to the proposed WUF and EUF the Authority determined to and did hold public town hall meetings on each of the three major Virgin Islands in November 2007; and

WHEREAS, the Hearing Examiner submitted his report to the Commission on November 26th, 2007; and

WHEREAS, the Commission held a public hearing on November 28th, 2007, in which it heard from the Hearing Examiner, the Authority, the Commission's advisors and members of the public; and

WHEREAS, after a review of the record as a whole and consideration of the arguments raised regarding the Authority's Application to implement the WUF and the EUF, the evidence and testimony before the Commission identified substantial concerns with the implementation of an EUF;

NOW THEREFORE, the Commission hereby finds and orders:

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- 1) The Commission accepts the Hearing Examiner's Report and Recommendations, except as specifically stated below.
- 2) The Authority's application for the WUF is granted, on a temporary basis, for period of eighteen (18) months commencing January 1, 2008. As a condition for renewal of the WUF beyond June 30, 2009, WMA is required to submit the PSC the following by January 1, 2009:
 - a) The design of an industrial pre-treatment program, including a listing of the customers to which the program will apply, and a timetable for implementation;
 - b) A report of the steps taken by WMA to validate the Equivalent Residential Units ("ERUs") utilized for non-residential customers, including an evaluation of the flow and strength of wastewater discharged from non-residential property types, as well as an assessment of the unit cost of conveying and treating wastewater with various strength characteristics so that the ERUs utilized for non-residential customers can be cost justified, as well as an explanation of the steps taken to refine the basis for the equivalent units;
 - c) An application for "miscellaneous service" fees (impact fees, industrial pre-treatment program fees, high strength surcharge fees, septic fees, etc.) with a justification for the cost, and reflecting an off-set of the WUF revenue requirements or the General Fund appropriation;

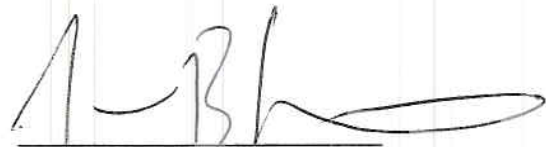
- d) An audit of the WMA with respect to the WUF which includes the amount of WUF collected and the cost of operation of the wastewater system, prepared by an independent certified public accountant;
 - e) A report of the steps taken to improve accountability and transparency of wastewater utility costs, which includes budget information on a program by program basis;
 - f) A report on the effectiveness and efficiency of wastewater systems operation, including an assessment of the cost effectiveness and efficiency of wastewater operations, identification of processes and programs to reduce the cost of wastewater operations with established targets and benchmarks to assess performance;
 - g) A report on the amount of customer-related costs as well as costs that do not vary with the quantity and quality of wastewater discharged, a method for determining and tracking these amounts, and an application for a two-part wastewater fee;
 - h) An application which contains a plan to address the hardship on low income customers, including bill assistance, fixed dollar or percentage discounts for qualifying low income customers, bill forgiveness, crisis vouchers, and financial counseling; and
 - i) A report which contains a plan to address aging infrastructure, including a prioritization of needed capital improvements demonstrating that funds are being allocated to the most critical issues of regulatory compliance and public health.
- 3) The Authority's application to implement the EUF is denied.

- a) Prior to filing any subsequent petition seeking to implement an EUF, the Authority shall prepare and submit with any such application the following information (to the extent that such information remains relevant, and if not, an explanation as to the lack of necessity) with such application:
- i) A detailed plan that identifies the specific steps, milestones and target dates associated with system improvements and programs to be implemented to satisfy regulatory compliance and outstanding court and administrative orders;
 - ii) A detailed short term and long term plan for managing the remaining landfill capacity and for managing solid waste once all existing landfill capacity has been utilized, including an integrated solid waste plan outlining current and future waste diversion and reduction activities, a cost-benefit analysis of the value of the landfill space versus other disposal alternatives, a closure plan for each landfill with a schedule for each facility, and the alternative waste handling required to address the inability to continue to use the landfills;
 - iii) An audited financial statement, prepared by an independent certified public accountant, of all funds received and expended by WMA from its inception in 2004 through September 30, 2007;
 - iv) A budget categorized on a program basis, including capital projects;
 - v) A report comparing the cost of implementing and administering the proposed EUF by WMA personnel with the cost of other approaches, such as by contracting with

agencies such as BIR or U.S. Customs which may already have offices, staffing and procedures in place at ports of entry;

- vi) A report on the effectiveness and cost efficiency of its operations, including identification of processes and programs which can reduce the cost of solid waste system operations, along with targets and benchmarks for tracking cost performance;
- vii) A fee structure which addresses the effect on low income residents, including an exemption for essential items such as food and medicine;
- viii) A fee structure which addresses implementation of a recycling program and a rebate fund designed to encourage waste volume reduction, waste stream diversion and recycling;
- ix) A report on the cost of collection and disposal of hazardous and toxic waste materials and a revised fee schedule which reflects adjustments for such items;
- x) A report detailing mechanisms for implementing the EUF without delaying clearance of shipments into the Territory, including a detailed plan for implementing collection of the EUF or providing an exemption for items arriving through the United States Postal System.

Dated: January 30, 2008



JOSEPH B. BOSCHULTE
Chair