

**Draft Minutes of the November 18, 2019 Water Authority Meeting
Southeastern Connecticut Water Authority
1649 Route 12, Gales Ferry, CT**

Present

Authority: Chairman Edward Monahan, Vice-Chairman Harry Watson, Treasurer Paul Eccard, Peter Balestracci, Barbara Lee Franciosi, Nicholas Mullane, Claudia Koerting.

Authority Staff: General Manager Josh Cansler

Call to Order

Chairman Monahan called the meeting to order at 5:15 p.m.

Public Comment on any Item on the Agenda – None

Approval of Prior Minutes

On a motion of Mr. Eccard, seconded by Mr. Mullane, the Authority approved the minutes of the October 3, 2019 Special Authority Meeting, by a vote of 7-0.

On a motion of Mr. Eccard, seconded by Mr. Watson, the Authority approved the minutes of the October 15, 2019 Special Authority Meeting, by a vote of 7-0.

On a motion of Mr. Eccard, seconded by Mr. Balestracci, the Authority approved the minutes of the October 21, 2019 Water Authority Meeting, by a vote of 7-0.

Correspondence

(Attachment #1: Obituary for Douglas Robert Crandall (former SCWA General Manager), from The Day newspaper, dated Nov 17, 2019)

(Attachment #2: Excerpt from the Connecticut Congressional Record - Senate, S6088, dated October 23, 2019; Tribute to Dr. Edward C. Monahan)

General Manager's Report

1. Vandalism and Break-in at Tower Large Pumphouse

(Attachment #3: Request for Hearing; dated October 22, 2019)

(Attachment #4: Request for Stay to Administrative Order DWS 19-072-063, dated October 22, 2019)

(Attachment #5: Ruling on Request for Stay to Administrative Order DWS 19-072-063, dated November 13, 2019)

On the morning of September 23, 2019, SCWA field crews discovered that the Tower Division pump station had been vandalized. In addition to the destruction of spare water main repair parts and the dumping of motor oil into the adjacent retention pond, the vandals broke into the pumphouse.

Although the treatment system and water supply were not tampered with, SCWA was advised to send out a "Do Not Drink Water" advisory by DPH until water samples from the Tower Division water system could be sampled and verified to be clean of any potential contaminants. This was accomplished by the

following afternoon. Two juveniles were later charged in connection to the vandalism at the pumphouse.

On September 27, 2019 DPH forwarded an Administrative Order requiring a series of corrective actions in response to the vandalism at the pump station. The Authority held a Special Meeting on October 15th to discuss the SCWA response to the Administrative Order. At that meeting the Authority approved a motion to hire Attorney Rich Cody, of Suisman Shapiro in New London, to represent SCWA; and to have him prepare a Request for an Appeal, and a Request to Stay the Administrative Order.

At the monthly Authority meeting on October 21st, the Authority approved a Request for a Hearing, and a Request to Stay the Administrative Order, which were both prepared by Attorney Cody. Both requests were sent to the Department of Public Health (DPH) on October 23, 2019. On November 19, 2019 the Request for a Stay the Administrative Order was granted. On November 26th Attorney Cody met with a State Assistant Attorney General, Dan Shapiro, via teleconference, to discuss the Administrative Order.

Although SCWA has requested a Stay to the Administrative Order, pending a Hearing, we have completed several of the required items on the Administrative order to include all required sampling (to include PFAS sampling). We have also installed a video surveillance system, trail cameras, and repaired the door to the pumphouse. We have also reached out to contractors to discuss an upgrade to the door, the fencing, and a new storage shed.

2. CodeRed Implementation Update

At the September meeting the Authority approved a motion to contract with the company CodeRed to establish, maintain, and operate an emergency notification network for all SCWA Divisions, at an annual cost of \$4,000. CodeRed, a division of Onsolve LLC, offers the ability to send voice or text messages based on specific geographical areas, or to all our customers, at one time. This system can also be used to send out notifications for scheduled maintenance, such as flushing water mains. Customers will have to provide phone numbers, or sign themselves up, for this system to work. General Manager Cansler stated that this system has now been tested using numbers in the CodeRed database. Flyers are being sent out to all of the customers with the monthly bills requesting customers to sign-up with their cell phones and/or emails. Messages have also been placed on the SCWA website and Facebook page requesting customers to sign-up. Customers do have the option to not be alerted.

3. Tower Division - Well #3

SCWA is continuing to move forward on the replacement of Tower Division Well #3, which failed last summer. In September SB Church Well & Pump installed a test well and conducted an analysis of the potential capacity of the replacement well. On October 1, 2019 SCWA finally received approval from DPH to install the well. In mid-October SCWA received an estimate from SB Church Well & Pump to install the permanent well. Their estimate of \$122,000 was approximately three times what SCWA and Lenard Engineering estimated for installation of the well. Mr. Cansler stated that SCWA will reach out to other companies capable of installing high capacity wells inviting more estimates.

4. Emergency Interconnections with Ledyard/Groton Utilities

In 2017 SCWA signed an agreement with Groton Utilities and Ledyard WPCA to install emergency water main interconnections between all five SCWA Ledyard divisions, and the Ledyard WPCA system. These projects were funded through a funding package Groton Utilities received from the State. Construction of all the emergency interconnections, by Groton Utilities, was completed in October of this year.

At a meeting at the Ledyard Town Hall in September there was discussion of the emergency connection between the Tower/Ferry View Division and Ledyard WPCA. General Manager Cansler stated this interconnection can only serve the Ferry View section of Tower because the interconnection was placed at the bottom of the hill. Senator Osten, who attended the meeting in Ledyard asked what it would take to make the emergency interconnection functional for the entire division. Mr. Cansler stated that an 800 foot section of 2" water main on Christy Hill Road would have to be replaced, and a booster station would have to be installed to pump the water to the top. Senator Osten requested SCWA send her an estimate of the costs. Mr. Cansler sent her estimates for the costs of installing a permanent booster station (\$1.1 million), and for a temporary booster station utilizing SCWA's emergency pump trailer (\$760,000). Both estimates include replacing the 2" line on Christy Hill with an 8" water main.

General Manager Cansler stated that SCWA had received a Notice of Violation following our request to open the emergency interconnection between Ledyard WPCA and the SCWA Chriswood Division. The interconnection was opened in October after a storm damaged one of the electrical panels at the Chriswood pump station, causing the station to operate through a back-up emergency generator. Since the electrical panel could not be repaired the same day, we decided to ask Groton Utilities to turn on the emergency interconnection, rather running the generator all night. We thought this would also be a good opportunity to test the interconnection. DPH assumed that the water supply was interrupted, and followed with a Notice of Violation for not reporting an interruption in water. Mr. Cansler said that the water supply was never interrupted or damaged in any way. After some discussion Mr. Eccard made a motion to seek legal advice regarding how SCWA should respond to this Notice of Violation. This motion, seconded by Mr. Watson, was approved unanimously by all members present.

5. Thames Aquatic Club –Ledyard

The new Thames Aquatic Club in Ledyard, which is in an SCWA Exclusive Service Area, opened for business in July. During the planning process SCWA offered to provide water from our Ledyard Center system. Instead DPH granted approval of a well for the Aquatic Club, with the stipulation that they connect to the water main if it is ever extended to their property as part of a proposed Fairway Drive extension in the future. However after the Aquatic Club opened, SCWA was informed by DPH that due to the Aquatic Club's small full-time staffing requirements they are designated as a Transient Non-Community facility, meaning the Club is not required to have a certified operator.

Because the Aquatic Club is within the SCWA Exclusive Service Area of Ledyard, and DPH originally granted the Club approval based on SCWA being their certified operator, the Authority sent a letter to DPH in September requesting more clarification regarding SCWA's responsibilities related to water purification at the Aquatic Club. Mr. Cansler stated that as of November 21st SCWA still have not received a response to our letter.

6. Replace Montville Manor Distribution System

Over the past year General Manager Cansler and Foreman Brandon Belair have met twice with the Montville Director of Public Works, along with their consulting engineer to discuss paving of several roads in SCWA areas of Montville. The Town is concerned that the frequent water line leaks in Montville Manor will result in numerous patches in their new pavement. Mr. Cansler and Mr. Belair met again with the Montville DPW and their consulting engineer on October 22nd to discuss possible resolutions to this issue. Mr. Cansler said they informed the Montville DPW that it would cost approximately

\$150,000 to replace just the service lines that cross the road, on the roads scheduled for re-paving. The Montville DPW said they would discuss this with the Town at the next meeting.

7. Sanitary Surveys

Sanitary Surveys are conducted at each community public water system (PWS) by the DPH Drinking Water Section every 3 years, and at each non-community PWS every 5 years. A Sanitary Survey is an on-site inspection of the water sources, treatment, distribution system, finished water storage, pumping facilities and controls, monitoring and reporting data, system management and operation, and operator compliance with State requirements.

Mr. Cansler stated that the Sanitary Survey for Tower/Ferry View Division was conducted on September 10th. On November 7th inspections were completed for Hillcrest, Chesterfield, and Seven Oaks Divisions. Sanitary Surveys are scheduled for the Montville and Ledyard Center Divisions on November 14th.

8. Four-log Applications and North Stonington Chlorine Treatment Application

Applications were submitted to DPH on January 17, 2019 requesting 4-log certifications for all SCWA systems which treat water with chlorine, and meet minimum storage requirements. Currently 10 of our 14 systems meet both requirements. If the applications are approved, SCWA will be able to reduce our sampling/testing requirements, and SCWA will not have to conduct a public notification for positive e-coli results, from samples taken before treatment. General Manager Cansler stated that the 4-log applications are still under review at DPH. He said that SCWA have responded to multiple requests for additional information over the past few months.

9. PFAS (Per- and Polyfluoroalkyl Substances)

Earlier this year DPH required all water systems that prepare water supply plans, which includes SCWA, to conduct an evaluation of potential contamination resulting from possible nearby sources of per- and polyfluoroalkyl substances (PFAS). All utilities were required to complete a vulnerability assessment study for each system. In late March assessments for all 14 SCWA divisions were submitted to DPH. SCWA has not heard anything back from DPH regarding the assessments.

In July 2019 Governor Lamont announced he was convening a working group to examine issues related to the PFAS contamination, and the State's Final PFAS Action Plan was released on November 4, 2019. In addition to requiring testing of public drinking water for select PFAS, the action plan prioritizes testing based on the vulnerability assessments, and proximity of water sources to vulnerable receptors such as schools and daycares. If PFAS are identified through this testing, utilities are expected to mitigate human exposure, and collaborate with local officials on education and outreach programs.

The State's PFAS Action plan also calls for the establishment of a Safe Drinking Water Advisory Council to advise DPH regarding the potential development of Maximum Contaminant Levels (MCLs), and review support measures that provide financial assistance to public water systems for treatment, and/or interconnections to nearby water systems.

10. Updated Asset Management Plan

In February 2019 SCWA submitted an updated application to the Drinking Water State Revolving Fund (DWSRF) program for a project to upgrade the Tower Division pumphouse, and add a water tank. The DWSRF program provides low-interest loans, with the potential for up to 25% subsidization, for eligible projects in the form of principal forgiveness. As part of the program SCWA is required to have an updated Asset Management Plan. DPH has indicated that SCWA's current plan, submitted in 2016,

needs to be updated for SCWA projects to be funded under the DWSRF program. At the May meeting the Authority approved a motion to have Lenard Engineering update the 2016 Asset Management Plan.

11. Claim by Raspberry Junction Holding, LLC vs SCWA

In 2016, Raspberry Junction LLC, owners of the Bellissimo Grande Hotel in North Stonington, filed a legal claim against SCWA for losses incurred during the water outage that resulted from the rupture of a pressure tank in 2015. This claim was forwarded to our insurance company at the time, Gladfelter Insurance. They hired Attorney Stephanie Berry, of the law firm of Tang & Maravelis, in New London, to handle the case. Although Gladfelter, has proposed settlements on two occasions, Raspberry Junction did not agree to either proposal. After a series of hearings at the lower courts, the case was forwarded to the Connecticut Supreme Court in September 2017. The Connecticut Supreme Court heard the case on November 13, 2018, and on April 3, 2019 the State Supreme Court issued a ruling that reversed the trial court's granting of the summary judgment motion. The cases has now been remanded back to the trial court for consideration of the summary judgment argument, based on the alternative grounds of the economic loss doctrine, which the trial judge declined to rule on.

This trial has been scheduled to commence on April 6, 2020 at the New London Superior Court. Several times this past summer Mr. Cansler met with Attorney Berry regarding written interrogatories and requests for documentation submitted by the Attorney representing, Raspberry Junction. On August 28, 2019 Attorney Berry informed Mr. Cansler that the insurance company was making another formal settlement offer to Raspberry Junction. Mr. Cansler said that on November 13th, he received an email from Attorney Berry's office (Tang & Maravelis) stating that a judge had granted their motion for summary judgement which limited the plaintiff's right claim for negligence. Her office anticipates that the Plaintiff's attorney will appeal.

12. Fiscal Year 2019 Annual Audit

General Manager Cansler stated that Sandra Welwood conducted her on-site audit visit on September 19, 2019. She intends to present her audit findings to the Representative Advisory Board (RAB) Finance Committee and the Authority at 6 pm on January 16, 2020, prior to the 7 pm RAB meeting the same evening. Ms. Welwood will be available to answer questions during the Finance Committee's presentation to the rest of the RAB that evening.

13. Regional Considerations

a) State Water Plan: The State Water Plan was approved by the legislature in early June. A State Water Plan Implementation Workgroup has been created by the Water Planning Council (WPC) to monitor adherence to the plan, and provide guidance to the WPC regarding implementation.

b) Water Utility Coordinating Committee (WUCC): Mr. Cansler stated that the next meeting of the Eastern Water Utility Coordinating Committee (WUCC) is scheduled for December 10, 2019, at the Southeastern Connecticut Council of Governments (SCCOG) office. These meetings are open to the public.

c) SCWA Interaction with SCCOG: SCWA and the SCCOG continue to interact cooperatively. To this end, Chairman Monahan attends the monthly SCCOG meetings if there are items relating to water on the agenda. He also attends meetings of the SCCOG Regional Water Committee, which meets only as needed. The General Manager participates on the SCCOG Regional Water Committee's Technical Advisory Subcommittee (TAS).

d) SCWA Interaction with the Water Planning Council (WPC): The General Manager represents SCWA as a member of the Connecticut Water Planning Council Advisory Group (WPCAG), which meets monthly. Starting in 2020, Mr. Cansler will begin a two-year term as Co-Chair of the Advisory Group

e) SCWA Interaction with AWWA and CWWA: General Manager Cansler is also a member of the Connecticut Water Works Association (CWWA) Legislative Affairs Committee, which meets monthly between November and June.

14. Performance Evaluation of General Manager and Salary Study

At the last Authority meeting Chairman Monahan mentioned that it has been a while since the last formal written evaluation of the General Manager. He asked that Mr. Cansler send him and the other members of the SCWA Human Resources sub-committee a copy of the evaluation form that the Authority had agreed to use, which he did. Mr. Cansler also stated that he had reached out CBIA regarding a salary review of the staff and they said that they did not provide this service anymore.

Mr. Eccard summarized the SCWA Human Resources (HR) sub-committee meeting held prior to the Authority meeting. During their meeting they prepared a performance evaluation for the General Manager. Chairman Monahan said he would discuss Mr. Cansler's performance evaluation with him after the Authority meeting. The HR Sub-committee was also concerned about the SCWA staff structure in comparison with our counterparts in the water utility industry. They recommended that a salary study or comparison of some type be conducted prior to preparation of the next budget, and if warranted the budget be modified accordingly. The HR sub-committee recommended that SCWA reach out to Attorney Dugan at Suisman Shapiro, who has helped the Authority with HR issues in the past.

Other Business

Chairman Monahan discussed the proposed public meeting in Ledyard to discuss the issues at Tower Division. He said we should still move forward with the public meeting, but we should probably wait until we have resolution regarding the Administrative Order.

Chairman Monahan also discussed an upcoming conference at Avery Point about the resiliency of wellfields versus piped water systems.

Report from Chairman - None

Report from Authority Members- None

Public Comment – None

Adjourn

On motion of Mr. Eccard, seconded by Mr. Mullane, the Authority voted to adjourn the meeting at approximately 6:30 p.m.

It was noted the next Authority meeting is scheduled to occur on December 9, 2019, 5:15 pm at 1649 Rt. 12, Gales Ferry, CT.

Josh Cansler
Secretary

ATTACHMENT 1

Douglas Robert Crandall

1929 - 2019

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Groton - Douglas Robert Crandall, 90, of Groton passed away Monday, Nov. 11, 2019, at Yale New Haven Hospital. He was born October 7, 1929, in Port Jervis, N.Y. the son of Kenneth Malcolm and Emma Muller Crandall. He lived his early years in the Ten Mile River Scout Camps, where his father was property superintendent. He was inducted into the Order of the Arrow in 1944.

Upon graduating from Narrowsburg, N.Y. High School in June 1947, he enlisted in the [United States Navy](#), serving on destroyers, submarines and a submarine rescue ship. He was a submarine officer and a helium oxygen deep sea diving officer. He was awarded the Korea Defense Service Medal, China Service Medal, Republic of Korea Presidential Unit Citation and the Navy Occupation Service Medal, Europe. He retired from the US Navy in 1968, and from the Southeastern Connecticut Water Authority in 1994.

He was past president of the Groton [Rotary Club](#), a Paul Harris Fellow for Rotary International, past president of the Nathan Hale Branch of the Connecticut Society of the Sons of the American Revolution, a former officer and director of the Eastern Connecticut Council of the Navy League, a member of the Order of the Founders and Patriots of America, and a member of the Connecticut Society of Mayflower Descendants. He also was a member of the United States Submarine Veterans-Holland Club and a life-member of the Military Officers Association of America.

His interests included genealogy and cycling.

He is survived by his wife, Nancy Chadwick Crandall; two sons, Douglas R. Kent of Indialantic, Fla. and Byron D. Crandall of New London; his brother Richard Crandall of Narrowsburg, N.Y.; and two grandchildren, Amber and Derik Kent. He is also survived by four stepchildren, Sandra L. Adams of Ft. Collins, Colo., Dennis Green of Yakima, Wash., Patsy Covino of Niantic and Joyce Green of Stonington. He was predeceased by his spouse, Floy Nell Crandall; brother Kenneth M. Crandall Jr.; and his son William Scott Crandall.

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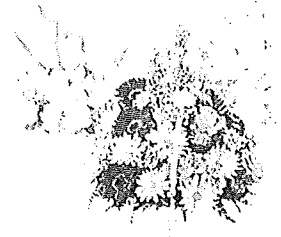
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Funeral service will be private. Interment will be in Glen Cove Cemetery, Narrowsburg, N.Y.

Please visit www.byles.com to share a memory with the family.

Published in The Day on Nov. 17, 2019

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REMEMBER

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-Ray Foss

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ATTACHMENT 2

clouding their broker's judgment. Unfortunately, that access to quality, unbiased advice was ultimately overturned, in part thanks to the efforts of Eugene Scalia.

More Federal oversight and stricter safeguards are necessary to prevent the exploitation and discrimination of working people; yet Eugene Scalia has dedicated his career to fighting against the existing safeguards. He argued that more than 30 women alleging sexual harassment and retaliation should have their claims thrown out, defended a company that refused to hire a woman because she had dreadlocks, and fought against corporate whistleblowers. He has also worked to undermine the rights and protections provided by the Americans with Disabilities Act, stating that workers with disabilities should not be provided workplace accommodations.

When I go back to my home in Newark, I see many working families struggling to make ends meet, sometimes while working two to three jobs. They often face underemployment, wage stagnation, wage theft, and a variety of other tactics meant to keep wages down and suppress worker rights. They deserve a Secretary of Labor that will fight for them. The Trump administration and the previous Secretary of Labor have been relentless in their efforts to roll back workers' rights, attack unions, and undermine civil liberties. Unfortunately, I do not have any reason to believe that Secretary Scalia will be any different. This is why I must express my deep concern and opposition to his nomination and confirmation as Secretary of Labor.

ADDITIONAL STATEMENTS

TRIBUTE TO DR. EDWARD C. MONAHAN

• Mr. BLUMENTHAL. Mr. President, today I wish to recognize Dr. Edward C. Monahan, a professor at the University of Connecticut and longtime director of Connecticut Sea Grant.

Throughout his two decade tenure as director, Dr. Monahan positively transformed Connecticut Sea Grant, which is an integral part of a national network of programs that strive to protect and enhance our coastal and marine ecosystems through outreach, education, research, and technology. His remarkable work and visionary leadership secured vital funding for initiatives that improved the water quality in the Long Island Sound and helped establish a full-fledged Sea Grant College Program in our State.

Dr. Monahan demonstrated his excellent qualities as a leader through his decisive problem solving and readiness to find and implement solutions to critically important issues. A notable example came in 1999, when the Long Island Sound faced lobster die-off, an unprecedented disaster for the sound's resources. He responded immediately

by awarding development funds for pathobiologists to investigate the cause. The issue turned out far more complicated than initially expected, but Dr. Monahan smartly worked to allocate \$3 million in Federal disaster relief funds to investigate the source. Over 3 years, 65 researchers at 30 institutions too part in 21 lobster research projects. This research helped uncover essential information for lobster biologists and led to changes in State and local pesticide usage for mosquito control.

One of the other landmarks of Dr. Monahan's directorship was his expansion of Sea Grant's international collaboration. Recognizing the advantages of overseas partnerships, Dr. Monahan worked with universities and government agencies to forge new connections that would support the exchange of innovative marine education, research, and technology. Impressively, he launched the Irish-American Aquaculture Initiative. This initiative launched a formal collaboration between Northeast United States Sea Grant programs and universities in the Republic of Ireland and Northern Ireland. Dr. Monahan also helped to establish relationships with Sea Grant activities in Mexico, Chile, China, and Germany, which set a new standard for international cooperation.

Among his many accomplishments as director of Connecticut Sea Grant, Dr. Monahan also served on the Sea Grant Association, a nonprofit that organizes events at the national level and advocates for better understanding, use, and conservation of natural resources. Thanks to his outstanding efforts, Sea Grant has developed into an even more successful program. In recognition of his immense and ongoing contributions, the Sea Grant Association awarded Dr. Monahan its prestigious President's Award in 2000 and 2001, along with its Distinguished Service Award in 2005.

I applaud his lifetime of dogged commitment to Connecticut's coastal and marine health and hope my colleagues will join me in thanking Dr. Monahan for his extraordinary contributions to the marine sciences. •

100TH ANNIVERSARY OF KETTERING UNIVERSITY

• Mr. PETERS. Mr. President, I rise today to recognize the 100th anniversary of Kettering University. Located in the heart of Flint, MI, Kettering University provides world-class education and has helped propel students into careers that sit on the forefront of innovation.

In 1919, in the infancy of what would become the automotive stronghold within Southeast Michigan, Kettering University began as the School of Automobile Trades, eventually renamed the Flint Institute of Technology, under the direction of Mr. Albert Sobey, who trained mechanics and engineers for Buick.

The General Motors Corporation would then take over administering the institute, establishing the General Motors Institute, GMI. The institute continued to train not only engineers and mechanics but also managers and administrative staff. This training was highly successful, and in 1945, GMI added a fifth-year thesis requirement and became a degree-granting college.

Due to innovation through the 1950s and 1960s, GMI continued to evolve with the inclusion of majors such as electrical engineering and added over 70 new courses. Presidents Guy R. Cowing and Harold P. Rodes—who updated labs, equipment, and began building the campus as we know it today—added buildings such as the Campus Center and Thompson Residence Hall.

In the early 1980s, GM divested itself, which led to GMI becoming a private, nonprofit university, but it was not until 1998 that the institution changed its name a final time to honor one of the founders of the institution, Charles Kettering, who was an early and strong proponent of professional cooperative education. Kettering University continued to grow and develop as technologies and advancements changed throughout the late 1980s and 1990s.

Today, Kettering University offers a variety of programs in addition to engineering related programs which include pre-med, bioinformatics, engineering, physics, and the expansion of their business program, including a master of business administration degree. Kettering University continues to evolve to meet the needs of a technology-infused and rapidly changing society, whether in the automotive industry or in science and business. This includes new projects such as the GM Mobility Research Center and ventures into autonomous vehicles as well as artificial intelligence.

In addition to their academic initiatives, Kettering University has consistently given back to the Flint community through service and community engagement. Kettering helped establish the University Avenue Corridor Coalition to beautify and draw investment to the area. Students continue to give back through community service, whether it is helping to clean up a yard or engineering a solution to aid the greater community. During the height of the Flint water crisis, when the community was in dire need of assistance, a group of Kettering's engineering students took action and developed an adapter to allow water filters to be accommodated to all types of faucets.

Kettering University has become a hub of modernization and inventiveness, proven by their ranking as fourth in the country in producing alumni who hold patents. Kettering's alumni have become leaders in a variety of fields and lead notable organizations such as Henry Juskiewicz, who is the former chairman and CEO of Gibson Guitar, James McCaslin, former President and COO of Harley-Davidson

ATTACHMENT 3



Attorneys-At-Law

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October 22, 2019

Raymond L. Baribeault, Jr.

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Theodore W. Heiser

Jeffrey W. Hill

Carolyn P. Kelly

Kristi D. Kelly

Robert B. Keville

Roger T. Scully

Robert G. Tukey

Kyle J. Zrenda

In Memoriam

Andrew J. Brand

James F. Brennan

James J. Courtney

L. Patrick Gray, III

Michael V. Sage

Matthew Shafner

Max M. Shapiro

Charles J. Suisman

Thomas B. Willson

Louis C. Wool

Of Counsel

Hinda K. Kimmel

Jay B. Levin

Richard A. Schatz

BY OVERNIGHT MAIL

Commissioner, Department of Public Health
410 Capitol Avenue
MS #13COM
P.O. Box 340308
Hartford, CT 06134-0308

Re: *Southeastern Connecticut Water Authority / Order DWS 19-072-063*

Dear Commissioner:

Please be advised that this office represents the Southeastern Connecticut Water Authority (the "Authority") in connection with Order DWS 19-072-063 dated on or about September 27, 2019 (the "Order") issued by State of Connecticut Department of Public Health ("DPH"). On behalf of the Authority, we write to request a hearing pursuant to Connecticut General Statutes Section 25-34(b), Sections 19a-9-1, *et seq.*, of the Regulations of Connecticut State Agencies ("RCSA"), and the notice on page 5 of the Order. The date stamp indicates that the Order was mailed by DPH to the Authority on September 30, 2019.

The Authority contests the findings, terms and conditions of the Order, and challenges the legal authority upon which the Order was issued by DPH. In general, the grounds for the Authority's appeal are that the administrative findings, inferences, conclusions and decisions supporting the Order are:

- (i) in violation of constitutional or statutory provisions;
- (ii) in excess of the statutory authority of the agency;
- (iii) made upon unlawful procedure;
- (iv) affected by other errors of law;
- (v) clearly erroneous in view of the reliable, probative and substantial evidence of the whole record;

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(vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; and

(vii) issued in the absence of regulatory provision and on unauthorized regulatory purpose, that being an effort by DPH administratively to eradicate small water authorities duly established by the legislature.

Without limiting the foregoing, the Authority observes the following:

The relevant factual background to this Order is that prior to September 23, 2019, the Authority reported two minor vandalism events in the area of the pump house for Tower-Ferry Hills Division to the local police department. These involved minor spray painting the outside of the shed and pump house. The police investigated the first report but not the second; in neither circumstance was there any evidence of tampering with the well, the water supply or the water supply system. The well head and treatment system is armed with alarms, none of which was triggered. After the second incident, the Authority ordered a video surveillance system in order to assist it and the police department in identifying the perpetrator(s). A third act of vandalism subsequently occurred, and was discovered on September 23. In this third instance, the shed was broken into also and three or four quarts of oil stored therein and used for the lawn mower were removed and thrown in the small retention pond adjacent to the wellhead. Again, there was no evidence of tampering with the well system or the wellhead, and certainly no introduction of chemicals into the well. This is demonstrated by the fact that the alarms did not trigger, though they were working perfectly. The oil that leaked from the quart vessels was cleaned up from the retention pond.

The police investigated and, upon information and belief, identified two children (neither of which is a teenager) as potential perpetrators. Because they are minors, further information concerning them is unavailable.

The Authority has longstanding hydrologic studies demonstrating that the water in the retention pond is not a source for the Tower-Ferry Hills public supply well, meaning that there is no hydrologic connection between the well water and the water in the retention pond. Thus, the hydrocarbons and/or other contaminants released to the retention pond during the recent event are not an actual or a threatened source of pollution to the public well water. Thus, there is no evidence to support an administrative finding that the safety of the water supply was, or is, at risk from this event.

Because the first two incidents resulted in spray painting on the outside of the shed and pump house there was no regulatory reason to notify the department. Further, the RCSA contain no standards for notification in such events.

Without limitation, the Authority will point out several further legal and evidentiary infirmities with the Order.

1. Section 25-34(a) authorizes the DPH to “make such orders as it deems necessary to protect such water or ice supply and render such water or ice safe for domestic use.” This is an illegal delegation of unbridled discretion to DPH.

2. The language of 25-34(a) quoted above authorizes “such orders” to the extent that they shall “render such water or ice safe for domestic use.” Based upon the facts here, the safety of the water and the customers was never imperiled. The actions required under the Order therefore will not advance any regulatory purpose, and the Order is illegally punitive.

3. We note that the RCSAs do not establish any standards by which the requirements of the Order may be measured against the facts or against the legal requirements. This leads to the conclusion that the Order is legally infirm.

4. Several of the stated findings stated in the prefatory language, are inaccurate. For example, the Authority has equipment that continually conducts “testing”.

5. As to Order Item Number 1, the testing required is unlimited and therefore unreasonable and arbitrary.

7. As to Order Item Number 3, there is no reason for the shed to be included.

8. While there is no factual basis to test for hydrocarbons for the reasons set forth above, there also is no reason whatsoever to test for PFAS as related to this incident. The Authority is aware that the DPH is considering requiring testing for this constituent, but not monthly. It is an expensive and unnecessary requirement.

9. As to Order Number 7, the Authority completed this last year.

10. As to Order Numbers 8 and 14, which are related, these items illegally delegate unlimited discretion to a third party contractor who will have commercial, non-governmental interests, and it further illegally requires the Authority blindly comply with such contractor’s decisions. There is no statute or regulation that circumscribes the arbitrary discretion involved in these portions of the Order. In addition, the Authority already has a surveillance system, which it purchased as referenced above, which together with the existing alarm system is sufficient.

11. The timelines are, in general, overly aggressive, create undue difficulty, and are unsupported by the evidence. Notwithstanding, Order Numbers 1 and 3 are completed. The Authority is filing, of even date herewith, a request for a stay of the Order’s requirements.

The Authority therefore requests a hearing within the meaning of law.

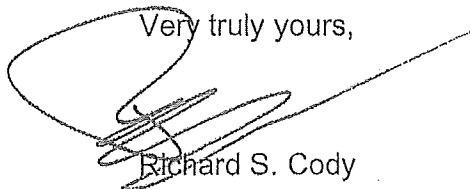
We notice that the RCSA require documents to be filed no later than 14 days prior to the date of the hearing. This requirement is irreconcilable with Section 25-34(b) which requires that the hearing on this Order be held within 10 business days. The Authority requests a reasonable hearing date that will permit it to file documents in an effective and fair manner.

We enclose the original and two copies of this letter.

Kindly enter the appearance of Suisman, Shapiro and address correspondence to this office.

Please let us know if you have any questions or comments.

Very truly yours,

A handwritten signature in black ink, appearing to be 'Richard S. Cody', written over a horizontal line. The signature is stylized and somewhat cursive.

Richard S. Cody

Enclosures

Cc: Southeastern Connecticut Water Authority
Lori Mathieu,
Public Health Section Chief
Drinking Water Section

ATTACHMENT 4

October 22, 2019

Raymond L. Baribeault, Jr.

James P. Berryman

Michael A. Blanchard

Eric W. Callahan

Michael P. Carey

Richard S. Cody

John A. Collins, III

Jeanette M. Dostie

Eileen C. Duggan

Bryan P. Flengo

Theodore W. Heiser

Jeffrey W. Hill

Carolyn P. Kelly

Kristi D. Kelly

Robert B. Keville

Roger T. Scully

Robert G. Tukey

Kyle J. Zrenda

In Memoriam

Andrew J. Brand

James F. Brennan

James J. Courtney

L. Patrick Gray, III

Michael V. Sage

Matthew Shafner

Max M. Shapiro

Charles J. Suisman

Thomas B. Wilson

Louls C. Wool

Of Counsel

Hinda K. Kimmel

Jay B. Levin

Richard A. Schatz

BY OVERNIGHT MAIL

Commissioner, Department of Public Health
410 Capitol Avenue
MS #13COM
P.O. Box 340308
Hartford, CT 06134-0308

Re: *Southeastern Connecticut Water Authority / Order DWS 19-072-063*

Dear Commissioner:

Please be advised that this office represents the Southeastern Connecticut Water Authority (the "Authority") in connection with Order DWS 19-072-063 dated on or about September 27, 2019 (the "Order") issued by State of Connecticut Department of Public Health ("DPH"). On behalf of the Authority, we write to request a stay of the Order. We have this day also filed a request for a hearing pursuant to Connecticut General Statutes Section 25-34(b), Sections 19a-9-1, *et seq.*, of the Regulations of Connecticut State Agencies ("RCSA"), and the notice on page 5 of the Order.

The reasons supporting a stay of the Order may be summarized as follows.

The Authority has already completed the immediate items in the Order required to be done on or before the date hereof. Thus, the Authority seeks a stay of only the remaining items which are due to commence on October 24, 2019. The action items due October 24, 2019 are Order Numbers 4-6.

While the Authority believes, for reasons set out in the Authority's request for a hearing, that the requirements of the Order are legally unsupported by evidence and that the Order is excessive under the facts, important to the stay request is that the fundamental issue raised by the Order, security of the pump house, has been achieved. The Authority ordered a surveillance system on its own before the Order even was issued and before the event occurred which is the subject of the Order. Our understanding is that the

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locks required for the pump house, and which have been installed, have been reviewed and accepted by the DPH. The Authority's operators have and maintain all relevant certifications.

Further, hydrologic studies the Authority has prove there is no connection between the small retention pond and the well supply, meaning that there is no way in which the well supply could have been adversely affected by the event. As well, the vandalism was conducted by children, and the system was not compromised – the alarms on the system were working perfectly and did not trigger. Testing has already confirmed that the water supply is safe for public consumption, the brief no-drinking alert has been lifted, and the system is functioning properly.

Thus, there is no harm to the granting of a stay of the Order.

The Authority is more than willing to meet with you and/or your representatives to discuss this and the terms of the Order.

We enclose the original and two copies of this letter pursuant to the RCSA.

Please let us know if you have any questions or comments.

Very truly yours,



Richard S. Cody

Enclosures

Cc: Southeastern Connecticut Water Authority
Lori Mathieu,
Public Health Section Chief
Drinking Water Section

ATTACHMENT 5

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

Renée D. Coleman-Mitchell, MPH
Commissioner



Ned Lamont
Governor
Susan Bysiewicz
Lt. Governor

LEGAL OFFICE

November 13, 2019

VIA CERTIFIED MAIL

Richard S. Cody, Esq.
Suisman, Shapiro, Wool, Brennan, Gray & Greenberg, PC
2 Union Plaza, Suite 200
PO Box 1591
New London, CT 06320

RE: Appeal of Departmental Order No. DWS 19-072-063
Southeastern Connecticut Water Authority--Tower-Ferry Hills Division, Ledyard, Connecticut
CT0720041

RULING ON REQUEST FOR STAY

On September 27, 2019, the Department of Public Health (hereinafter "DPH") issued an Order, Order Number DWS 19-072-063, to Southeastern Connecticut Water Authority (hereinafter "SCWA"). In the Order, DPH requires SCWA to comply with a number of items to achieve and maintain compliance with § 19-13-B102 of the Regulations of Connecticut State Agencies and §§ 25-32, 25-34 and 25-36 of the Connecticut General Statutes (hereinafter "*Conn. Gen. Stat.*").

In a letter dated October 22, 2019 (hereinafter "the Request"), SCWA requested a stay of the Order. In support of the Request, SCWA stated that it has already completed the items in the Order required to be done on or before October 22, 2019, and therefore SCWA seeks a stay of only the remaining items which were due to commence on October 24, 2019. In addition, SCWA stated that the fundamental issue raised by the Order, the security of the pump house, has been achieved as SCWA ordered a surveillance system on its own before the Order was even issued and before the event occurred which is the subject of the Order. Finally, SCWA stated that there is no harm in granting a stay of the Order because SCWA's hydrologic studies prove there is no connection between the small retention pond and SCWA's well, the system was not compromised by the vandalism as the alarms on the system were working perfectly, and testing has confirmed that the water supply is safe for drinking, the no-drink alert has been lifted, and the system is functioning properly.




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On November 1, 2019, Renée D. Coleman-Mitchell, Commissioner of Public Health, designated the undersigned to sit as hearing officer in the above-captioned matter to rule on all motions, and to determine findings of fact and conclusions of law and to issue an order upon completion.

Pursuant to *Conn. Gen Stat.* § 25-34, the Request is hereby **GRANTED** pending the decision in in the above-captioned matter.



Kathryn K. Keenan, Esq.
Hearing Officer

c: Lori J. Mathieu, Public Health Section Chief, Drinking Water Section, DPH