

STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE: October 19, 2009
AT (OFFICE): NHPUC

FROM: Amanda O. Noonan *an*

SUBJECT: Request for Hearing – Joel Hutchins v. Eastman Sewer

TO: Commissioners
 Executive Director

CC: Douglas Brogan
 Marcia Thunberg



On March 16, 2009, the Commission received correspondence from Joel and Gina Hutchins requesting a hearing regarding a sewer back-up that occurred at their home located at 3 Robin Lane in Grantham NH. A copy of the Hutchins' request is attached here as Attachment A. The sewer back-up occurred on July 20 through July 22, 2008. Sewer service is provided to the Hutchins' home by Eastman Sewer.

The Hutchinses contacted the Consumer Affairs Division on August 20, 2008 about the July 20 through July 22 sewer back-up. The Hutchinses were requesting reimbursement for their out-of-pocket expenses incurred as a result of the back-up. On August 29, 2008, Eastman Sewer responded to the Consumer Affairs Division regarding the Hutchins' complaint. A discussion between Mr. and Mrs. Hutchins, Eileen Hadley, Doug Brogan and Mark Naylor took place on September 17, 2008. On September 19, 2008, Doug Brogan sent out follow-up questions to the Hutchins and to Eastman Sewer. A copy of that correspondence is attached here as Attachment B.

Eastman Sewer and the Hutchinses provided responses to Staff's questions on October 27, 2008. On December 30, 2008, Mr. Brogan provided a written summary of and recommendations regarding the Hutchins' complaint. Among other things, Mr. Brogan recommended that Eastman Sewer reimburse the Hutchinses for their requested out-of-pocket expenses as verifiable through the invoices the Hutchinses had provided. A copy of Mr. Brogan's letter is attached here as Attachment C.

On January 30, 2009 Mr. Brogan again corresponded with Eastman Sewer in response to a memo received from Joe Damours, the operator for Eastman Sewer. Mr. Brogan reiterated the recommendations contained in his December 30, 2008 correspondence. At its February 17, 2009 board of directors meeting, Eastman Sewer voted to deny the Hutchinses claim noting "going forward, hence forth (sic) no sewer

back-ups will be paid per the tariff effective December 02, 1989, PNPUC (sic) Order No. 19,600, in docket No. DS 88-117, dated November 02, 1989.”

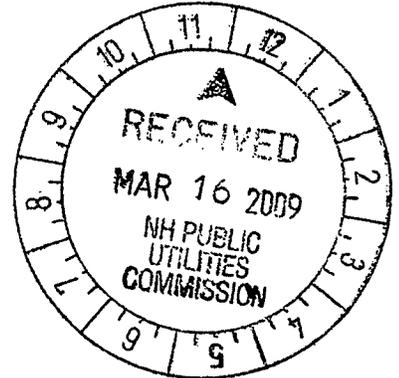
Upon receipt of the Hutchinses request for a hearing, I contacted Mr. Hutchins to review his request. With Mr. Hutchins agreement, I sent a letter to the Hutchinses with a copy to Eastman Sewer on June 4, 2009. A copy of that letter is attached here as Attachment D. In that letter, I advised the Hutchinses that I would be recommending the Commission grant their request for a hearing. At the same time, I notified the Hutchinses that a copy of the letter would be sent to Eastman Sewer with the expectation that Eastman Sewer would revisit the Hutchins’ claim and the recommendations in Mr. Brogan’s December 30, 2008 and January 30, 2009 letters. To allow time for that review to be accomplished, I advised the Hutchinses that I would wait until June 19, 2009 before submitting a recommendation to the Commission on the request for a hearing. On June 18, 2009, Brian Harding of Eastman Sewer notified me that the board of directors maintained its position regarding the Hutchins’ claim.

Prior to the Hutchins’ request for reimbursement for the out-of-pocket costs resulting from the July 2008 sewer back-up, Eastman Sewer had had a practice of paying or settling damage claims from customers resulting from sewer back-ups despite broad language in its tariff purportedly limiting its liability for “damages arising from the furnishing or failure to furnish service or facilities, including but not limited to errors, interruptions, breakdowns, or other defects or the negligence of the Company”. See Original Page 4, section 2.2(c)(1). It is important to note, however, that in its Order No. 19,600, the Commission noted Staff’s objection to this provision in the tariff and stated:

“In regard to the tariff provision excluding liability, the commission finds the exclusion from liability could be misleading to a customer as it is now stated. The company should clearly state that it will be liable for its own negligence. However, the company may exclude consequential damages [see Original Page 4, section 2.2 (c)(2)].”

In its analysis of the information collected during its review of the Hutchins’ complaint, Staff concluded that there were too many unknowns “and the possibility of correlating impacts from the two coincident backups is too large, to avoid giving the customer some consideration in this instance.” See January 30, 2009 letter from Doug Brogan to the Hutchinses, Eastman Sewer and Joe Damours included here as Attachment E. Staff believes that the Hutchins’ damages cannot be properly classified as consequential damages and that Eastman may not rely on its tariff to avoid liability for negligence. Accordingly, I recommend the Commission grant Mr. and Mrs. Hutchins’ request for a hearing.

Joel & Gina Hutchins
3 Robin Lane
PO Box 410
Grantham, NH 03753



March 9, 2009

Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301-2429

Attention: Debra Howland

Dear Ms Howland,

I'm writing this letter requesting a hearing in regards to a sewer back up that occurred at our home at 3 Robin Lane Grantham NH (Eastman) on July 20-22 2008. My wife Gina & myself have only requested payment of our out of pocket expenses incurred to date. We have been in contact with Doug Brogan and twice he has recommended payment. Eastman Sewer has denied payment. We feel there is no other recourse other than a hearing. Mr. Brogan has all the paperwork pertaining to this matter. Gina and I look forward to your response regarding this matter.

Respectfully,



Joel Hutchins

THE STATE OF NEW HAMPSHIRE

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PUBLIC UTILITIES COMMISSION

21 S. Fruit Street, Suite 10
Concord, N.H. 03301-2429

September 19, 2008

Joel and Gina Hutchins
3 Robin Lane
Grantham, NH 03753

Brian Harding, General Manager
Eastman Sewer Company
PO Box 470
Grantham, NH 03753

Re: Sewer Backup Complaint

Dear Mr. and Mrs. Hutchins and Mr. Harding:

I am writing in regard to the complaint filed by the Hutchins on August 20, 2008 regarding the sewer backup that occurred on their property in late July 2008. Eastman Sewer Company provided a written response to the complaint on August 29, 2008. In an effort to move the matter forward, we are submitting the questions below for your respective responses in an attempt to clarify some of the physical issues involved. We would ask that the responses be provided by October 24, 2008, if possible.

Questions for the Hutchins

Staff 1-1

Your complaint describes sewage backing up into your crawlspace and downstairs bathroom. Does the house consist of crawlspace, first floor and second floor (with 'downstairs' referring to the first floor)? If other than the above, please describe, including whether any portion of the house has a full basement.

Staff 1-2

Approximately when was your home built?

Staff 1-3

How long have you lived there?

Staff 1-4

Please indicate what openings into the sewer (DWV) piping in your home, such as showers, sinks, laundry drain, etc., exist in each of the following:

- a) First floor;
- b) Crawlspace or basement.

Staff 1-5

What is the diameter of the service line leaving your home, if known?

Staff 1-6

Please provide a time line of events that occurred from July 20 through 22 in relation to the sewer backup.

Staff 1-7

When you snaked the line, where did you insert the snake and what length of snake did you insert?

Staff 1-8

Regarding the contractor who performed the videoing/scoping of your service line:

- a) Was the video recorded? If so, please provide a copy of the recording.
- b) Please provide a copy of the invoice from the contractor.

Staff 1-9

Were any other contractors or third parties involved in the incident? If so, please indicate who, and the nature of their involvement.

Staff 1-10

Regarding each manhole that was opened by you or your contractor, please indicate:

- a) The location of the manhole;
- b) When it was opened;
- c) How long it took to open and whether any difficulties were encountered in so doing;
- d) What was observed in the manhole, including the estimated distance from the top of the manhole to any sewage backup observed; and
- e) Whether the manhole was observed to overflow onto the street at any time.

Staff 1-11

For each sewer backup incident in your home prior to July 2008, please indicate:

- a) The approximate date the backup occurred;
- b) Where in your home the overflow occurred, and for how long;
- c) What efforts were made in response to the backup;
- d) What contractors or other parties were involved, and the extent of their efforts;
- e) What was observed in any manholes that were opened; and
- f) The suspected cause of the problem.

Staff 1-12

Have you had any sewer problems since July 22, 2008? If so, please describe.

Questions for the Company

Staff 1-13

Please provide a map, sketch or diagram showing the approximate location and profile of the various manholes, mains, service lateral and home (location and sill elevation of the latter, to the extent the Hutchins are amenable to the company obtaining such information). Please include the following:

- a) Relevant elevations, distances, main diameters and manhole depths;
- b) Which manholes were opened, keyed to the description in your written response of what was observed in each; and
- c) The estimated location of the blockage in the company's main, if known.

Staff 1-14

Please provide a copy of all invoices from Water System Operators and Stearns Septic Service relating to the incident.

Staff 1-15

From the videoing or other efforts done to date, is the company aware of any deficiencies in its mains in the vicinity of the Hutchins property (roots, sags, deterioration, bad joints, breaks, etc.)? If so, please describe.

Staff 1-16

The March 2008 CLD engineering study of the Eastman system indicates the need for further videoing in the West Cove area, including in the vicinity of Butternut Drive. In this regard:

- a) Has this work been scheduled?
- b) If not, in what time frame does the company anticipate doing the work?
- c) Would it include the mains in the immediate vicinity of the Hutchins property?

Staff 1-17

What is the approximate elevation difference and distance between the Hutchins' property and the pump station into which their sewage flows?

Staff 1-18

Do manholes in the vicinity of the Hutchins property have locking covers or other features that would make them difficult to open?

Staff 1-19

What amount of head or backpressure would typically be required for sewage to lift one of the covers and overflow onto the street?

Staff 1-20

How far back into the system does the company estimate the July 2008 backup went?

Staff 1-21

Even if not directly responsible, does the company believe the backup in its mains could have been a contributing factor in any way to the blockage in the Hutchins' service line?

Staff 1-22

Please list all sewer backup or overflow incidents in the past three years in the Eastman system and indicate the following for each:

- a) Location;
- b) Date;
- c) Duration;
- d) Suspected cause.

Staff 1-23

Has the company considered ways in which it could further reduce the response time to such emergencies?

I trust the responses both parties provide will enhance both an understanding of the issues affecting the backup and the potential for resolution of the complaint. Please feel free to contact me if you have any questions in these regards.

Sincerely,



Douglas W. Brogan
Utility Engineer

THE STATE OF NEW HAMPSHIRE

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December 30, 2008

Joel and Gina Hutchins
3 Robin Lane
Grantham, NH 03753

Brian Harding, General Manager
Eastman Sewer Company
PO Box 470
Grantham, NH 03753

Re: Sewer Backup Complaint

Dear Mr. and Mrs. Hutchins and Mr. Harding:

I am writing in regard to a complaint initiated by Joel and Gina Hutchins concerning a sewer backup at their home at 3 Robin Lane on July 20-22, 2008. This letter provides a summary of, and recommendations regarding, the complaint. In preparing the letter, Staff has reviewed the following items:

- 1) The log of the initial telephone complaint on August 20, 2008.
- 2) The written response to the complaint provided by Eastman Sewer Company (ESC) on August 29, 2008.
- 3) Discovery responses from the Hutchins that included the following:
 - a. Attachments A-1 through A-3.
 - b. A copy of a March 13, 2008 engineering report on the ESC system by CLD Consulting Engineers.
 - c. Backup material consisting of a September 30, 2008 note from Bob Holton; an August 5, 2008 letter from the West Cove "B" Board of Directors to ESC; and minutes of an August 19, 2008 ESC Board of Directors Meeting.
- 4) Discovery responses from ESC including two attachments (diagrammatic plan and profile of the sewer facilities in the vicinity of the Hutchins' home, and an invoice from Stearns Septic Service, Inc.).
- 5) Logs of two other consumer complaint calls related to ESC sewer backups.

Assumptions

Some of the responses were lacking in detail or contained conflicting information. As a result I am relying on the following assumptions in reaching the conclusions found later in this letter:

- 1) The blockage in ESC's sewer main occurred between the two manholes shown in the diagram provided by ESC in response to Staff 1-13, such that the manhole to the right (at intersection of Robins Lane and Old Spring Road) experienced the backup.
- 2) The house location shown on the diagram is correct, although the house number should be 3, not 7.
- 3) The house service enters the sewer main between the two manholes shown.
- 4) Although ESC's response to Staff 1-13 failed to provide elevations and other information requested, I am assuming the elevations and information provided by Construction Strategies, LLC in Attachment A-3 to the Hutchins' responses are accurate.
- 5) The fact the upper manhole did not overflow is inconclusive as to the extent of the backup, since its cover may have been sufficiently sealed to resist lifting.
- 6) Although various observations were made by different parties at different times regarding the extent of the backup, the backup appears to have at least filled the upper manhole at some point.

Timeline

Similarly, given the variety of reports in the various responses and attachments including, for example, a number of conflicting dates, I am assuming the following general timeline:

Sunday night, July 20, 2008

Initial overflow in Hutchins' home through first floor shower drain, resulting in flooding on first floor and in crawlspace below.

Rooter-Man snaked 100 feet of approximately 130 foot service line but failed to clear blockage.

Monday, July 21, 2008

Rooter-Man jetted service line and cleared blockage at some point during the day, as subsequently verified by camera inspection.

The Hutchins notified ESC of problem (about 10 AM).

The Hutchins and/or their contractor opened upstream ESC manhole (3:00 or 4:00 PM) and observed backup at or near top of manhole but dropping.

Water System Operators arrived (about 4:15 PM), subsequently reported upstream manhole about half full (4:30 or 5:00 PM).

Stearns Septic Service pumped upstream manhole and jetted the main between the two manholes until blockage was cleared and flow was observed in downstream manhole. Hutchins' service line appeared to be working normally from inside the home (based on repeated toilet flushings).

Tuesday morning, July 22, 2008

Hutchins had recurrence of problem.

Stearns verified no blockage in ESC system.

Conclusions

This situation is difficult to assess conclusively without additional engineering data, some of which may be impossible to obtain at this point in time. The information currently available to me suggests the Hutchins' problem could have been unrelated to the ESC sewer main backup, such as the occurrence of a problem in the Hutchins' service line in 2006 when no problem was known to exist in the ESC main, the apparent clearing of the Hutchins' line on July 21, 2008 while the ESC main was still blocked, or the recurrence of a problem in the service line on July 22, 2008 when the ESC mains were again running freely. However, other information suggests the ESC backup could have either caused or at least contributed to the Hutchins' backup in this particular instance.

It is impossible at this point to determine the maximum extent of the backup in relation to the lowest opening in the Hutchins' drain-waste-vent piping (first floor shower drain) at various times during the incident. Given only a 2.3 foot differential between the rim of the upper manhole and the shower drain, it seems possible that the ESC backup was a direct contributor to the backup experienced by the Hutchins. Similarly, it is difficult to determine whether, when, how or to what degree the Hutchins' service line may have continued to be obstructed, remained partially obstructed or become re-obstructed - even in spite of, for example, some indication it was again operating normally (flushing of toilet in the home). Did the ESC backup slow flow such that grease or debris lodged in the Hutchins' service line when it would not have otherwise? Could the ESC main have clogged both immediately up and downstream of the service line entrance, resulting in varying consequences and degrees of clogging as the event unfolded? Did clearing of the service line partially unclog the ESC main, resulting in levels in the upstream manhole beginning to drop? Is there a physical problem where the service line enters the main? Clearly there are many unknowns. The fact that the Hutchins' line had problems when the ESC line apparently did not is notable, and may indeed indicate problems in that line itself. However, the occurrence of coincident backups in this case and the unknown interplay between them favor giving the homeowner some benefit of the doubt in this instance. It is also noteworthy that the Hutchins' shower drain is not below, or even less than one foot above, the rim of the upstream manhole - plumbing code related criteria cited in a previous customer backup complaint to suggest homeowner responsibility for the event.

Staff recognizes the potentially significant financial consequences of accepting a degree of responsibility for such events for this small utility. Staff also acknowledges that the company is taking steps to more aggressively address the larger capital improvements needs in its 35 year old system that may contribute to such events. At the same time, we are concerned about the

increasing number of such incidents generally - six in less than two years, at least five of which resulted in backups into customer dwellings. The company has also, for example, indicated it anticipates inspection of mains in the general vicinity of the Hutchins' property "when there is money available to do so ... [w]ithin the next five to ten years" (response to Staff 1-16). In this regard we encourage the company to pursue appropriate operational, maintenance and other activities to prevent additional backups.

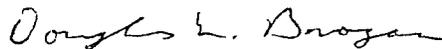
Recommendations

In light of the above, I recommend the following:

- 1) ESC reimburse the Hutchins for their requested out-of-pocket expenses of \$2,958.97, as verifiable through invoices (\$1,182.97 Rooter-Man invoice provided with Attachment A-2 to the Hutchins' responses, with the balance apparently contained in an invoice from West Cove Builders as referenced in Attachment A-1 to the same responses). The Hutchins' indication in Attachment A-1 that they face additional costs in relation to the backup, for which they are not requesting reimbursement, provides further support for this recommendation.
- 2) That the issue of recoverability in rates for ESC's direct costs (\$1,520 Stearns Septic Service invoice) be raised in its current rate case, Docket No. DW 08-086.
- 3) As "heavy grease" was noted as a factor in at least the ESC backup (Stearns invoice), the company should consider adoption of a proactive and continuing customer education program addressing the negative impacts of grease and other foreign matter on the sewer system, if it does not already have such a program in place.

I will send this letter by email followed by hardcopy. If there is significant disagreement with the assumptions, timeline, conclusions or recommendations above, please let me know. I would ask that each party provide comments or indicate that this complaint has been satisfactorily resolved, by January 30, 2009. Please address any comments or other correspondence regarding this matter to my attention.

Sincerely,



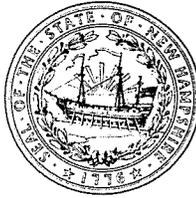
Douglas W. Brogan
Utility Engineer

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June 4, 2009

Joel & Gina Hutchins
3 Robin Lane
PO Box 410
Grantham NH 03753

Re: Request for hearing regarding Eastman Sewer Company

Dear Mr. and Mrs. Hutchins:

Thank you for your letter of March 9, 2009 regarding your dispute with Eastman Sewer Company and a sewer back-up that occurred at your home in July 2008.

In consultation with the Director of the Commission's Legal Division, I have reviewed the information that was provided to the Commission last fall and early last winter by you and by Eastman Sewer Company. In the draft minutes of Eastman Sewer Company's February 17, 2009 meeting of its board of directors provided to the Commission Staff by Eastman Sewer Company, the board voted to deny your claim noting that "going forward, hence forth (sic) no sewer back-ups will be paid per the tariff effective December 02, 1989, PNPUC (sic) Order No. 19,600, in docket No. DS88-117, dated November 02, 1989."

In Order No. 19,600, the Commission noted Staff's objection to the provision in the tariff that provided for an exclusion of liability and stated:

"In regard to the tariff provision excluding liability, the commission finds the exclusion from liability could be misleading to a customer as it is now stated. The company should clearly state that it will be liable for its own negligence.

However the company may exclude consequential damages [see Original Page 4, section 2.2(C)(2)]."

Eastman Sewer Company's position with regard to denying claims and not paying sewer back-ups is not only at variance with its pre-February 17, 2009 practice but also with the terms of Order No. 19,600. Eastman Sewer Company's reliance on its tariff to avoid liability for negligence is incorrect.

As I do not believe that your damages are properly classifiable as "consequential" damages, I will be recommending the Commission grant your request for a hearing. I am sending a copy of this letter to Eastman Sewer Company to make them aware of the above and expect them to revisit your claim and Mr. Brogan's December 30, 2008 letter. To allow time for that to be accomplished, I will wait until June 19, 2009 before notifying the Commission of the above and requesting a hearing be scheduled regarding your complaint.

Sincerely,


Amanda O. Noonan
Director, Consumer Affairs

cc: Brian Harding, Eastman Sewer Company

THE STATE OF NEW HAMPSHIRE

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January 30, 2009

Joe Damours, President
Water System Operators
405 Flanders Road
PO Box 69
Henniker, NH 03242

Brian Harding, General Manager
Eastman Sewer Company
PO Box 470
Grantham, NH 03753

Joel and Gina Hutchins
3 Robin Lane
Grantham, NH 03753

Re: Sewer Backup Complaint

Dear Mr. Damours, Mr. Harding and Mr. and Mrs. Hutchins:

I am writing in response to the January 21, 2009 memo (attached) from Joe Damours of Water System Operators, written in response to my letter dated December 30, 2008. Both documents concern the sewer backup that occurred at the Hutchins property last summer. I appreciate Mr. Damours' raising of potential concerns regarding the backup and conclusions reached in its regard. I will attempt to address the issues raised in his memo point by point.

The memo indicates that it was in fact the manhole below the Hutchins' property that backed up, not the manhole upstream of their home, with the blockage occurring downstream of that lower manhole. I apologize for misinterpreting which manholes were referenced. The company's initial August 29, 2008 response referred to only two manholes, the "nearest manhole" to the Hutchins and the "downstream manhole". Data request Staff 1-13 asked for elevations, distances and other detailed information about the manholes and associated facilities, including an indication of "[w]hich manholes were opened, keyed to the description in your written response of what was observed in each". The company provided a sketch that showed only two manholes,

unfortunately neglecting to provide most of the other information requested in that particular data request. I assumed that the two manholes shown were the same two referenced in the August 29, 2008 response, and appreciate being corrected on that point. As my letter indicated, the lack of clarity in certain aspects of the correspondence is in part why I stated my assumptions up front. I have since also visited the site and observed the layout and relative elevations involved, but at the time was relying solely on the information provided by the parties.

The January 21, 2009 memo indicates that not everyone received a copy of an October 21, 2008 letter from Construction Strategies, LLC containing elevations relevant to the complaint. It had been my understanding that parties had received copies of one another's material. The October 21st letter was itself addressed to both the Hutchins and Brian Harding of ESC, so I assumed it had been distributed to all. To be certain all parties have all of the material pertaining to the complaint, I am attaching copies of all previous correspondence received. As an aside, it is now apparent the elevations in the Construction Strategies letter refer to the lower manhole, not the upper.

The January 21st memo next questions how the company could be considered liable when openings in the customer home meet or exceed plumbing code elevation criteria, given the code's assumption that sewage would escape from an upstream manhole before it would be able to reach the elevation of an even higher first opening inside the home. Actually, based on Mr. Damours' memo and my site visit, it is now apparent the rim of the upstream manhole is well above the sill elevation of the Hutchins' home, not below it. However, I assume the failure to meet current code requirements has existed since the home was built (around 1989/1990), and further understand the Eastman organization to have been involved in construction of both the homes and sewer facilities in the development. In regard to the physics involved, I am relying on representations by the Hutchins and by Construction Strategies that the lower manhole cover was sufficiently sealed that any backup may have been unable to lift the cover, thereby allowing the backup to reach the Hutchins' home.

The memo also raises the issue of language contained in the company's tariff appearing to limit company liability for such occurrences (see sections 2.2 C and 2.3 of tariff pages attached to the memo). While these clauses are certainly relevant, my comments were written with the company's history of reimbursing customers for past backup-related costs in mind.

Finally, in forwarding the January 21st memo, Mr. Damours wondered whether the concerns it raised would change any of my recommendations regarding the Hutchins' backup event. While some of the details in my December 30th may have changed slightly, I believe most of its comments are still applicable. In short, I am still not convinced the two backups are unrelated. At this point no one knows for certain whether there may be a problem in the Hutchins' service line. Similarly, no one knows whether there may be a problem in ESC's main (see, for example, Construction Strategies' comment about a brick and other material having dropped into the main). In fact, one cannot know for certain there was no (unobserved) backup or other problem with ESC's main in connection with the Hutchins' first backup in 2006. I do not mean to be overly hypothetical here but, as indicated in my December letter, I believe there are too many unknowns, and the possibility of correlating impacts from the two coincident backups is too

Eastman Sewer Company - Hutchins Complaint
January 30, 2009
Page 3 of 3

large, to avoid giving the customer some consideration in this instance. My recommendations had been offered in the spirit of compromise, as they would avoid the company having to reimburse the Hutchins for all of their costs (the additional expenses for which they had not sought reimbursement), while at the same time would likely allow the company recovery of some of its own costs from the event in its current rate case. I would also reiterate these recommendations.

As these backup occurrences are difficult for all involved, perhaps it is also time to attempt to reach some kind of consensus on how to handle such complaints when they arise in the future. This is especially important in terms of the tariff language in Section 2.2. If the company is demonstrating an interpretation of this section, such as through past reimbursements, then the wording of that section must be made consistent with that course of dealing.

I appreciate the efforts and patience of all in dealing with these issues.

Sincerely,

A handwritten signature in cursive script, appearing to read "Douglas W. Brogan".

Douglas W. Brogan
Utility Engineer

w/ attachments

Eastman Sewer
Clarifications to December 30, 2008 PUC letter from Doug Brogen
January 21, 2009

Assumptions

- 1.) The blockage was beyond the lower manhole, (the one to the left of the house) in the provided diagram.
- 4.) We have not seen the elevations provided by Construction Strategies, LLC in attachment A-3 and therefore cannot confirm they are correct.
- 5.) It is a fact that the upper manhole and also the lower manhole, (to the left of the house), did not overflow.
- 6.) The lower manhole was pumped out by Stearns Septic and did not overflow at any time.

Time line

Monday, July 21, 2008

We believe the Hutchins and/or their contractor opened the downstream ESC manhole (3:00 or 4:00 PM).

WSO arrived and it was the downstream manhole that was about half full (4:30 or 5:00 PM).

Stearns Septic pumped the downstream manhole and jetted the line below the down stream manhole.

Conclusions

I am confused by your statement that “It is noteworthy that the Hutchins' shower drain is not below , or even less then one foot above , the rim of the upstream manhole – plumbing code related criteria cited in a previous customer backup complaint to suggest homeowner responsibility for the event.”. Does that mean because the plumbing meets code then the sewer company is liable for any and all backups. It would seem to me that this information would suggest that physics make it impossible for sewage to back up from the ESC system through the plumbing fixtures. Could you please clarify this.

Additional Information

Your recommendations seem to be against the ESC Tariff approved by the PUC. Page 4 of the NHPUC No. 1-Sewer Tariff addresses liability of the sewer company to their customers. I have attached a copy of this section. This information was not requested and the ESC Board probably should have referenced this in their response to all of the backups. They will be certain to do so in the future.

NHPUC No. 1-Sewer

Original Page 4

Eastman Sewer Company, Inc.

2.2 Undertaking of Eastman Sewer Company, Inc.**(A) Scope**

The Company undertakes to provide Sewer Service to Customers in the Service Area on the terms and conditions specified herein in accordance with the requirements of New Hampshire Public Utilities Commission (PUC).

(B) Availability

Subject to the terms and conditions of this Tariff, the Company will provide Sewer Service to those persons who are hooked up to the sewer system on the original effective date of this Tariff and to those persons who are paying an availability charge (as set forth in Section 3.2 of this Tariff) as of said date.

(C) Liability

- (1) The Company's liability, if any, to a Customer or to others for damages arising from the furnishing of or the failure to furnish service or facilities, including but not limited to errors, interruptions, breakdowns, or other defects or the negligence of the Company, whether caused by act or omission, shall be limited to the allocable charges for the service or facilities for the period affected and shall be further limited by this Section 2.2(C).
- (2) The Company shall not be liable under any circumstances for any special, incidental or consequential damages, or for commercial loss of any kind, whether or not it has been informed of the possibility of such damages.
- (3) The Company shall be indemnified, defended and held harmless by the Customer against any claim, loss or damage arising from the Customer's use of services offered under this Tariff involving claims arising out of any act or omission of the Customer in the course of using services provided pursuant to this Tariff, including but not limited

Issued: November 2, 1989

Issued by: Tony Hanslin
Tony Hanslin

Effective: December 2, 1989 Title: President
(Authorized by NHPUC Order No. 19,600 in Docket NO. DS88-117,
dated November 2, 1989)

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to the introduction of any wastes or other materials or substances into the Company's sewer system for the Customer's service pipes in contravention of Section 2.5 of this Tariff.

- (4) The Company's failure to provide or maintain services under this Tariff shall be excused by labor difficulties, governmental orders, civil commotions, acts of God and other circumstances beyond the Company's reasonable control.

2.3 Customer Service Pipe

From the point of initial discharge of effluent within the customer's premises served to the junction of the Company's sewer main, the service pipe (referred to in this Tariff as "building sewer") shall be installed, owned and maintained by the Customer, or the Customer's representative, in accordance with Company specifications, but shall not be the property, liability or responsibility of the Company in any respect. No building sewer shall be covered until it has been inspected and approved by the Company. Every building sewer shall be maintained in a sanitary and safe operating condition by the owner of the premises served. Where preliminary treatment or flow equalizing facilities are provided as a part of a building sewer, such facility shall be maintained continuously in satisfactory and effective operation by the Customer.

2.4 Application for Service; Fee

An Availability Customer seeking to receive Sewer Service must make written application for such Service to the Company, accompanied by payment of an initial hookup fee of \$125. The Customer is responsible for installation at his own expense of the building sewer to the point of interconnection with the Company's Sewer System as set forth in Section 2.3 of this Tariff, all subject to the review, inspection and approval of the Company.

2.5 Limits of Discharge

The following described substances, materials, waters or wastes shall not be introduced into the Customers' service pipes or into the Company's sewer mains or system:

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