BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARINE VIEW HEIGHTS HOMEOWNERS ASSOCIATION, Complainants, vs. MARINE VIEW HEIGHTS INCORPORATION, Respondent,	DOCKET NO. UW-940325 COMPLAINANTS' BRIEF

I.

ISSUES

A. Does ownership of Marine View Heights Inc. meet the proper transfers of property and continuity of service under RCW 80.12.020, RCW 80.12.030, RCW 80.12.040 and WAC 246-290-430?

B. Did Marine View Heights Inc. provide substandard water quality under RCW 43.20.050(2) and WAC 246-290?

C. Did Marine View Heights Inc. provide unjust, unreasonable and improper service under RCW 80.28.080, RCW 80.28.090, RCW 80.28.100, WAC 480-110 and WAC 246-290?

II

STATEMENT OF FACTS

Marine View Heights Inc. is a Corporation doing business in the State of Washington. On June 15, 1994, Mr. Barker agreed to send to the Washington Utilities and Transportation Commission, to the Department of Health and to each of the homeowners, a letter stating the ownership, the shareholders and percentage of the shares and the Board

members of Marine View Heights Inc. (Ex. 14 pg. 11, L. 25 - pg.12, L. 8) This was not done. (Tr. 317, L. 13 - 19 - Tr. 372, L. 17 - 24) The Department of Health recognizes "Marine View Heights Inc." as the owner of the water system and Mr. James Sahli as the sole stockholder of the corporation. (Tr. 44, L. 18 - 23). There is confusion between the Washington Utilities and Transportation Commission and the Department of Health in as to ownership. (Tr. 172, L. 14 - 20) The Washington Utilities and Transportation Commission regulates "Marine View Heights Water System", owner James Sahli as the responsible individual for the system. James Sahli did not appear at the hearings. (Tr. 173, L. 3 - 11) Fredrick Ray Barker, Junior stated he was owner of the water company (Tr. 313, L. 20 - Tr. 312, L. 17) and 100 percent stockholder. (Tr. 318, L. 1 - 16) Formation of the corporation is confusing. (Tr. 173, L. 15 - 18) James Sahli denied ownership when talking to customers. (Tr. 190, L. 5 - 10; Ex. 15) Ownership of the water system needs to be clarified. (Tr. 373, L. 23 - Tr. 374, L. 4)

Department Order, Docket 93-013, dated April 28, 1993, ordered the system to make sufficient improvements in monitoring and water quality management to alleviate non-acute coliform contaminate level situations. (Tr. 12, L. 23; Ex. 1) The water system was designated as a significant non complier. (Tr. 27, L. 23 - Tr. 28, L. 2) The water system delivered substandard water. (Tr. 34, L. 3 - 14) To date this Order has not been complied with. (Tr. 51, L. 2 5) A notice of imposition of penalties was issued November 10, 1993 in response to noncompliance with several items in the order. (Tr. 14, L. 20 & 21; Ex. 2) December 23, 1993, a Modified Order was issued for continued noncompliance with water quality issues, water quality standards of the Department of Health. (Tr. 15, L. 16 - 19, Ex 3) The water system had 10 months of non-acute MCL's. (Tr. 20, L. 5 - 7; Ex. 4) The water system did not become compliant with maximum contaminant level of coliform violations until January of 1994. (Tr. 28, L. 6 - 11) The water system had one of the longest periods for non-compliance. (Tr. 33, L. 5-7). The water system had one major monitoring violation and several repeat monitoring violations. (Tr. 55, L 8 - 13) The

water system had water outages. (Tr. 45, L. 15 - 21, Ex. 38) The water system delivered water that was not adequate for drinking for ten months. (Tr. 66, L. 10 - 17) November of 1992, through December of 1993, the water system did not provide continuous and effective disinfection. (Tr. 72, L. 9 - 12) Four chlorinator pumps have been installed by the water system without the approval of the Department of Health. (Tr. 72, L. 21:- Tr. 73, L. 3) The water system has dead ends and has no means of flushing the system. (Tr. 74, L. 13 - 22, Tr. 279, L. 4 & 5) Jerry Lease stated as follows:

> A We are chlorinating and flushing the system.
>
> Q Can you explain why that was sent out to all system users?
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> A At the time that's what Fred told me to put on there.
>
> Q Did you in fact flush the system?
>
> A No, I didn't. (Tr. 277, L. 21 - Tr. 278, L. 2, Ex. 24)

The water system operated for months without a Certified Water Operator. (Tr. 76, L. 9 - 12) The water system is still not in compliance with Department of Health regulations. (Tr. 87, L. 5 - 8) The community was placed under a moratorium because of the failing water system from June 30, 1993, through July 5, 1994. (Ex. 33, p. 3, #5) Customers experienced problems because of the moratorium. (Tr. 103, L. 18 - Tr.104 - Tr. 105, L. 4, Ex. 9, Tr. 111, L. 1-25, Tr. 253, L. 10 - Tr. 254, L. 6, Tr. 261, L. 13 - 20) Customers had stomach problem. (Tr.106, L. 13 - 23, Tr. 139, L. 23 - Tr. 140, L.8, Tr. 169, L. 12 - 15, Tr. 233, L. 25 - Tr. 234, L. 22) Customers were afraid to drink the water; purchased or boiled the water. (Tr. 114, L. 1 & 2, Tr. 119, L. 12 & 13, Tr. 119, L. 21 - 24, Tr. 140, L.14 & 15, Tr. 169, L. 11 & 12, Tr. 233, L. 22 & 23) Customers had strong smells and taste of chlorine in the water. (Tr. 121, L. 8 - 11, Tr. 200, L. 21 - 25, Tr. 231, L. 4 - 8) System overdosed with chlorine. (Tr. 122, L. 14 - 16, Tr. 214, L. 19 - 21) and Jim Gregg stated as follows:

Q Did you have an occasion to talk to Jerry Lease about the amount of chlorine in your water?

A Yes, I have.

Q And could you tell us something about that conversation?

A. I asked him if he did more coliform (sic chlorine) you know, and he said he had. (Tr. 155, L. 12 - 19)

Customers had sand and rocks in the water, and low water pressure. (Tr. 121, L. 21, - Tr. 122, L. 13, Tr. 232, L. 23, Tr. 233, L. 6 & 7, Tr. 278, L. 3 - 8) Customers did not receive notices each time the water exceeded the maximum contaminant level for coliform. (Tr. 154, L. 13 - 15, Tr. 199, L. 5 - 11) Mr. Barker said he would provide the missing notices to water users. (Tr. 331, L. 10 - 25). The notices were never provided. (Tr. 453, L. 7 - 13) The water company made no physical improvements. (Tr. 315, L. 1 - 4)

Customers were unable to contact the water company and phone calls were not returned. (Tr. 118, L. 14 - 16, Tr. 141, L. 15 - 17, Tr. 168, L. 8 - 24, Tr. 233, L. 11 & 12) Customers had billing problems; no due dates on bills/no address on the bill where the company could be contacted/no bill/bill shows zero paid although the bill had been paid. (Tr. 118, L. 14 - Tr. 119, L. 4, Tr. 141, L. 3 - 6, Tr. 147, L. 18 - Tr. 148, L. 10, Tr. 203, L. 23 - Tr. 209, L. 19) Customers have trouble finding the water company's business location, no sign on the building and no street numbers on the building. (Tr. 129, L. 11 - 23, Tr. 209, L. 1 - 8, Tr. 271, L. 2 - 19) A customer who didn't pay his bill had his water shut off - other customers who didn't pay their bills were not shut off. (Tr. 259, L. 22 - Tr. 260, L. 2, Tr. 327, L. 13 - 21) Customers who worked for the water system were not billed. (Tr. 281, L. 21 - Tr. 283, L. 4) and this was authorized by Mr. Barker. (Tr. 326, L. 4 - 21) The water rate is $20 per month, some customers paid more than $20, and the water company was unable to explain why this was. (Tr. 290, L. 22 - Tr. 292, L. 22, Tr. 293, L. 8 - 13), and another customer was charged a garden rate. (Tr. 427, L. 7 - 10) Delinquent accounts were sent to a collection agency but the customer's water was never

shut off. (Tr. 294, L. 21 - Tr. 296, L. 13) Water company didn't send proper shut off notices - so didn't shut any customers off. (Tr. 296, L. 16 - Tr. 297, L. 6) Water company sent shutoff notices when accounts were not delinquent. (Tr. 302, L. 24 - Tr. 303, L.15; Ex. 25) Ten accounts amounted to $1,320 that have not been collected. (Tr. 308, L. 3 - 21) Water company's records reflect a zero balance for customers who can't afford to pay. (Tr. 309, L. 3 - 12) The water company damaged property. (Tr. 257, L. 22 - Tr. 258, L.5, Tr. 430, L. 12 - 16; Ex. 21)

III.

ARGUMENT

A. The Ownership of Marine View Heights Inc. has not been complied with as Defined in RCW 80.12.020, RCW 80.12.030, RCW 80.12.040, WAC 246-290-430 (1)(2).

RCW 80.12.020 Order required to sell, merge, etc.

> No public service company shall sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public, and no public service company shall, by any means whatsoever, directly or indirectly, merge or consolidate any of its franchises, properties or facilities with any other public service company, without having secured from the commission an order authorizing it so to do....

RCW 80.12.010 Definition

> The term "public service company," as used in this chapter, shall mean every company now or hereafter engaged in business in this state as a public utility....

RCW 80.12.030 Disposal without authorization void.

> Any such sale, lease, assignment, or other disposition, merger or consolidation made without authority of the commission shall be void.

RCW 80.12.040 Authority required to acquire property or securities of utility.

> No public service company shall, directly or indirectly, purchase, acquire, or become the owner of any of the franchises, properties, facilities, capital stocks or bonds of any other public service company unless authorized so to do by the commission...
>
> WAC 246-290-430 (1)
>
> No purveyor shall transfer system ownership without providing written notice to the department and all customers. Such notice shall be provided at least one year prior to the transfer, unless the new owner agrees to an earlier date. Notification shall include a time schedule for transferring responsibilities, identification of the new owner, and under what authority the new ownership will operate. If the system is a corporation, identification of the registered agent shall also be provided.

Customers were notified on their November 1, 1992, water bill that Jim Sahli was the new owner of the water company. Jim Sahli verbally refuted this stating he didn't have a dime in the system and was acting as a front man for the new owner. A Deed of Trust, file number 9210290360, recorded in Grant County shows Metropolitan Mortgage transferred ownership of the water company to James J. and Verlyn I. Sahli on October 23, 1992. A check with the Secretary of State's Office indicated James J. Sahli had reopened a Certificate of Inc. for Marine View Heights Incorporated, a profit organization. December 1, 1992, customers received a letter from "The Management Marine View Heights Incorporated" stating that Marine View Heights Incorporated had assumed ownership and operation of the water system and was locally owned. Identity of the owners and registered agent was not given. In this letter a phone number was given; however, no calls were to be made before December 15, 1992. In this same letter, customers were notified of a 50% rate increase and a fee for unoccupied lots, effective January 1, 1993. The letter was dated December 1, 1992 and since no calls could be made before December 15, customers had only two weeks to register their complaints and objections to the new regulations. (Ex. 13)

The community had a meeting to try and determine what could be done. Long distance phone calls were made and an attorney was contacted. The attorney advised if there were over 100 hook-ups or if the bill exceeded $25.00 the Washington Utilities and Transportation Commission had jurisdiction over the water company. Customers physically drove the streets counting hook-ups. It was determined that there were 120 hook-ups. Customers wrote letters and made long distance phone calls to the Washington Utilities and Transportation Commission in regard to the rate increase.

A hearing was set for January 27, 1993, with the Washington Utilities and Transportation Commission regarding the rate increase. An attorney was contacted seeking advice. Many hours were spent trying to put together a legal protest. Several couples went to Olympia for the hearing. More money was spent on gas/lodging and food, not to mention the stress involved. The Washington Utilities and Transportation Commission put a hold on the rate increase for further investigation. July 14, 1993, the water company withdrew their request for a rate increase.

When the customers purchased their property in Marine View Heights, they were provided documentation stating that the water system would be given to the homeowners when all of the lots in the community were sold. This was also indicated by the Realtor working for Metropolitan Mortgage, the developer. Customers wrote letters and petitioned the Attorney General's Office regarding the legality of the sale by Metropolitan Mortgage, and its promise of turning the water system over to the homeowners.

At this point customers were in an uproar -- they didn't know what to do. People were contacting every agency they could think of who might help. Customers drove to the courthouse to go through records -- a distance of 30 miles each way necessitating substantial expenditures for gas and other travel expenses. Copies of these records were purchased by the customers at their own expense.

To make matters more confusing, customers received a letter from the water company listing the heading as Marine View Heights, Inc. and Lakeview Water Co. The

letter stated "It is time to take a survey, to get your input into the water co. Lakeview Water Co. is owned by Marine View Heights, Inc." (Ex. 16) Now customers were really confused regarding ownership or even the name of the water company. Was there another transfer of ownership?

A state agency told customers there was a possibility the water company would go into receivership and it would be best if customers were an association and not just a community. Marine View Heights Homeowners Association was formed. Again, many hours were spent drafting Articles of Inc., By-laws & Covenants. People in the community were fighting over the covenants. It was necessary for an attorney to review some of the paperwork. This was very expensive. An association would never had been formed if not for the problems.

April 16, 1993, a Quit Claim Deed, file number 930416079, recorded in Grant County showed that ownership of the water company was transferred from James J. and Verlyn I. Sahli to Marine View Heights Incorporated, Fredrick R. Barker Jr., President James J. Sahli, Secretary. This was not approved by the State Department of Health or by the Washington Utilities and Transportation Commission. The Health Department told the customers the water company couldn't do this; however, it was done.

At the formal complaint hearing there were discrepancies between the Washington Utilities and Transportation Commission and the Department of Health. Each recognizes the water company with different wording regarding the name of the company. To date, no one seems to know true ownership. Clearly the water company has not complied with the laws regarding ownership, or transfers of ownership. The law should be upheld. All sales and/or transfers made without the approval of the Washington Utilities and Transportation Commission should be declared void, pursuant to RCW 80.12.030.

WAC 246-290-430

> (2) It shall be the responsibility of the utility transferring ownership to ensure all health-related standards pursuant to chapter 246-290 WAC are met during transfer

of the utility. It shall also be the responsibility of the utility transferring ownership to inform and train the new owner regarding operation of the utility.

When Metropolitan Mortgage owned the water company water tests showed a maximum contaminant level. James Sahli purchased the water company in October of 1992. The water test for the month of October was not taken. November and December of 1992, the water exceeded the maximum contaminant level. James Sahli transferred ownership of the water company in April of 1993. Departmental Order 93-013 was issued by the Health Department in April of 1993. The water company was not in compliance with health departments rules and regulations. Clearly the health related standards were not met during these transfers of ownership.

How much informing and training was provided during either ownership transfer? Apparently little or none. The water company did not put due dates on bills or give an address where they could be contacted for the first few months. These problems were corrected and then when Jerry Lease started doing the billing, customers had the same problems all over again. Water samples were not taken properly by not allowing the water to run five minutes; using hot water instead of cold. Customers were continually having to watchdog the water company in order to make certain the company was doing business according to state rules and regulations.

WAC 246-290-400 Operator Certification

A certified water operator is required per chapter 70.119 RCW and Chapter 246-292 WAC for the following public water systems: (1) Those serving one hundred services or more

RCW 70.119.030 Certified operators required for certain public water systems.

(a) The system serves one hundred or more services in use at any one time; or

(b) It is a group A water system using a surface water source or a ground water source under the direct influence of surface water.

> (2) The certified operators shall be in charge of the technical direction of a water system's operation, or an operating shift of such a system, or a major segment of a system necessary for monitoring or improving the quality of water....

Customers physically counted the number of hook-ups and communicated with the Washington Utilities and Transportation Commission that there were over 100 hook-ups and that they should be under the jurisdiction of the Commission. Marine View Heights Inc. had told the Commission there were only 99 hook-ups. (Tr. 395) Marine View Heights Inc. is a group A water system.

Marine View Heights Inc. operated without a Certified Water Operator from October of 1992, until November of 1993. For over a year the company did not have a certified water operator. In March of 1993, the water company hired a Certified Water Operator. He only looked at the well one time, did not take any water tests and terminated his employment after only three or four days.

Jerry Lease was employed as a certified water operator and performed the duties of a certified water operator, but in fact did not become certified until November, 1993. He wasn't trained. He did not know how to take water tests. Some customers knew how to take better water tests than he did. In March of 1993, customers accompanied the water operator when he took water tests. It was noted that he used hot water instead of cold water. The customer finally told him he needed to use cold water. He did not let the water run for five minutes as required. After customers learned how the tests were being taken they became even more concerned and began taking their own tests at their own expense.

Customers were told the results of a water test showed coliform present, fecal absent. Customers were afraid of the implications of this statement and when the water operator was asked what this meant, he could not explain. Customers were told the system was being flushed and chlorinated to improve the problem. Customers knew the chlorinator had not been approved by the department of health and knew there was no means for the water company to flush the system. Customers couldn't believe what they were being told by the water company. Publication from the Department of Health,

"Coliform Monitoring Plan" states, "Coliform bacteria are a group of microorganisms found in the feces of all warm blooded animals (including humans), although these bacteria are not unique to feces." Customers were afraid to drink the water. (Ex. 8)

The law states the certified water operator is to be in charge of technical direction of a water system's operation. The certified water operator was not allowed to make any decisions which involved money - The certified water operator was not even allowed to testify without the direction of Mr. Barker, as was evidenced in the hearing on July 26, 1994. (Tr. 283, L. 9 - 20) Mr. Barker testified he had made no improvements to the water system, other than installing chlorinator pumps, which are still not approved by the Department of Health. Testimony also revealed Mr. Barker told a customer "he hadn't had time to work on the water system - he was too busy working on the golf course." (Ex. 9)

WAC 246-290-120 (2) Construction Documents

> Construction documents shall be submitted to the department for written approval prior to installation of any new water system, or water system extension or improvement....

The water company installed the first chlorinator pump in December of 1992, without the approval of the Health Department. It failed. Two months later another chlorinator pump was installed. It failed. Two months later another chlorinator pump was installed and it too failed. Finally a fourth chlorinator pump was purchased which was apparently large enough to handle the problem. None of this work was ever approved by the Department of Health and in fact to date the chlorinator has not been approved. This remains an outstanding violation with the Department of Health and one which keeps the water system in non-compliance.

The water company was to submit a water system plan and produce a project report as required by the Department of Health, under WAC 246-290-100, and 246-290-110. The comprehensive plan was submitted to the Department of Health by Marine View Heights

Inc. in December of 1993. This plan has not been approved by the Department of Health. Correspondence from the Department of Health to Marine View Heights Inc. dated October 25, 1994, listed 18 issues of concern regarding the plan. (attachment)

The portion of the plan that comprises the chlorination system talked about using flow through pressure tanks for contact time but failed to provide alternatives such as a separate feed line to the reservoir. All alternatives must have cost estimates and advantages/disadvantages listed and discussed. To date the water company still does not have proper chlorine contact time and has not satisfied the request of the Department of Health.

In December of 1992, customers found an empty Clorox (name brand) bottle at the well. At this point customers didn't know this was a product of the chlorinator - they were afraid - simply did not understand what was going on with the water. The cover to the well was left partially ajar which left an opening for people or animals to get into the well. Mr. Barker told customers he left the lid ajar to act as a vent for the chlorination system - there were supposed to be vents but there were none. This was left open for months. According to the Health Department the cover to the well vault should be locked.

The smell and taste of chlorine in the water was strong, which several customers testified to. (Ex. 19) At times the smell of chlorine was as strong as the chlorine in swimming pools. The chlorine is exceptionally strong a couple of days prior to water tests being taken. Customers have to let their water run for five to thirty minutes prior to using it. This is one of the reasons people started buying bottled water or boiling their water. (Ex. 10) Bottled water is an added expense. Pots were ruined for those who boiled their water. It was an added burden to make ice cubes with boiled water - some customers couldn't use their icecube makers. This went on for months.

Customers were having stomach problems and some had skin rashes, which required medication. It was unknown if the water was safe for bathing, or for animals. There was a report of fish dying in the fish tank. Many customers were required to seek

medical attention and some were advised not to drink the water but to buy bottled water. Some customers were afraid to use the water for cooking thus used bottled water for this. In addition to the added expenses of medical bills and bottled water, many customers have suffered physically due to the water system's flagrant disregard for the laws and regulations of the State of Washington.

> WAC 246-290-310 - Maximum Contaminant Levels (MCLs) - (1) The purveyor shall be responsible for complying with the standards of water quality identified in this section. If a substance exceeds its maximum contaminant level (MCL), the purveyor shall take follow-up action in accordance with WAC 246-290-320.
>
> Section (3) Bacteriological - (b) Notwithstanding subsection (1) of this section, if coliform presence is detected in any sample, the purveyor shall take follow-up action in accordance with WAC 246-290-320(2).
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> WAC 246-290-320 - Follow-Up Action - (a) If water quality exceeds any MCLs listed under WAC 246-290-310, the purveyor shall notify the department and take follow-up action as described in this section. (b) (ii) Notify the customers served by the system in accordance with WAC 246-290-330 and (iii) Determine the cause of the contamination

Water exceeded the maximum contaminant level in December of 1992, January, March, April, and July through December of 1993. When this occurs the water company is required to notify the customers and determine the cause of the contamination. Customers received only five notifications. Mr. Barker testified he had made all ten notifications, however, when given the opportunity to produce the notifications, he failed to do so.

Because of inconsistencies in receiving notification customers called the water company to find out the water tests results. Because customers did not feel they could trust the water company's response they were forced to ask for written documentation. Customers were also making long distance phone calls to the Department of Health (they do not have a 1-800 number) checking test results and requesting documentation.

The regulation states when water exceeds the maximum contaminant level the water company is to determine the cause of contamination. For months the only thing the water

company did to try and correct the problem was overdose the system with chlorine. Jerry Lease told a customer he overdosed the system with chlorine. Valves were turned off to divert water but the root cause of the problem was never determined.

WAC 246-290-300(2) and 246-290-480(2) specifies the number of routine water samples required by the Health Department. It also specifies the number of repeat samples required when the water exceeds the maximum contaminant level. The water company did not take the required frequency of samples for the months of October and December 1992, January through March, and July of 1993.

Again when the proper amount of water samples were not being taken customers were required to make phone calls to the company and Department of Health.

The water company has one major monitoring violation and several repeat monitoring violations. (Tr. 55, L. 8 - 13; Ex. 4)

> WAC 246-290-250(3) The minimum level of treatment for all public water supplies shall be continuous and effective disinfection.

The water company did not provide continuous and effective disinfection and therefore did not even provide its customers with the "minimum level of treatment" for the water system. Had they complied with this regulation the customers would not have been supplied with substandard water until the end of December 1993. (Tr. 72, L. 9 - 12)

> WAC 246-290-440 - Treatment Facility Operation
>
> (5) All water purveyors using chlorination shall monitor chlorine residual at representative points in the system on a daily basis....

The water company did not comply with this regulation. When they did begin to comply the test was taken by the un-certified water operator at his residence, instead of at "representative points in the system."

WAC 246-290-300(3) requires a water company to monitor for complete inorganic chemical and physical standards every thirty six (36) months and to report to the Department as required under WAC 246-290-480-(2).

According to WAC 246-290-300(3) some of the inorganic chemicals consist of arsenic, floride, lead, mercury, nitrate (asN), selenium, silver, sodium, turbidity, chloride, copper, hardness iron, sulfate and zinc, which are chemicals that could potentially be harmful to public health or cause aesthetic problems. The last reported sample was taken on January 17, 1989. The test was a year overdue - customers could have suffered severe problems had these substances shown up and not been discovered until a year later.

The water company did not take the test as required. Either they simply failed to conduct the test or was unaware it was required. If they didn't know the test was required, this is another example of neglect of informing and training the new owner, as required under WAC 246-290-430 (2).

WAC 246-290-300(7) requires a water company to monitor radionuclides once every forty-eight (48) months and to report to the Department as required under WAC 246-290-480(2).

The purpose of this test is to check for the presence of certain radioactive elements in terms of gross alpha and beta levels in uraniums for health-related problems with those constituents. The last reported sample was taken March 8, 1988. The water system is less than 100 miles from the Hanford Nuclear Facility and it is feasible that radioactive elements could get into the system. This test was not taken as required. Again the water company either neglected to take the test or was unaware of the requirement. Again showing neglect of informing and training as required under WAC 246-290-480(2).

Administrative Order #93-013 was issued to Marine View Heights Inc. by the Department of Health in April of 1993 for non-compliance. Marine View Heights Inc. was fined in November of 1993 for non-compliance of the Order. (Ex. 1) To date this Order

has not been resolved. Marine View Heights Inc. continues to operate in non-compliance with the Department of Health rules and regulations.

One of the non-compliant issues is the lack of an approved water comprehensive plan. A letter dated October 25, 1994, to Marine View Heights Inc. from the Department of Health lists eighteen (18) issues that must be addressed. (attachment) These issues are significant indicators the water company will not become compliant in a timely manner. This water system has one of the longest periods of non-compliance the Department of Health has seen. (Tr. 33, L. 5 - 7)

By Administrative Order #93-013, dated April 1993, issued by the Health Department, a moratorium was imposed under the Growth Management Act, effective June 30, 1993, on the Marine View Heights properties. Mr. Barker owns another water system, Desert Water Company, in Benton City, Washington, which had a moratorium from 1985 to 1993. Customers were fearful this moratorium could last that length of time. This did not impose a hardship for the water company or help bring the water company into compliance. Once again the customers suffered the hardships. They were unable to obtain septic or building permits. Some customers had already purchased manufactured housing which had been delivered to their properties, but were unable to hook up to water because of the moratorium.

Other customers were unable to obtain financing for their homes. Lending institutions would not make loans. One lending institution was found which would loan money, however, the interest rate would be higher than the going rate. The majority of customers could not sell or purchase property because of the lack of financing. In one instance a customer had a severe medical problem and needed to move to a location closer to medical facilities. Because financing was not available to buyers it was a considerable length of time before he was able to sell his home. Just recently this customer suffered another heart attack. Realtors were unable to sell property because financing wasn't available.

Customers contacted their State Representative for help, who spent many hours assisting customers with their problems. While it is a Representative's duty to assist the public, many of the customers now feel an obligation to offer financial support and/or to support the Representative at election time. In July 1994, the moratorium category was changed from "red"to "yellow" which allowed property owners to hookup to water and obtain septic and building permits. However, the customers' problems are not over. Lending institutions will still not lend money to customers.

The moratorium was imposed under the Growth Management Act

> 1 RCW 19.27.097 provides that an applicant for a building permit must provide evidence of an adequate supply of potable water. The authority to make this determination is the local agency that issues building permits.
>
> If water is not supplied from a public water system, the local agency issuing building permits has more discretion to determine if the water supply is adequate for purposes of RCW 19.27.097. At a minimum, there must be sufficient quality and quantity of water for the intended purpose of the building.

Marine View Heights Inc did not supply the customers an adequate supply of potable water or sufficient quality and quantity or there would not have been a moratorium. This regulatory scheme backfired - the customers suffered again.

> RCW 80.28.080 Published rates to be charged
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> No ... water company shall extend to any person ... any form of contract or agreement or any rules or regulation or any privilege or facility except such as are regularly and uniformly extended to all persons and corporations under like circumstances.
>
> RCW 80.28.090 Unreasonable preference prohibited
>
> No ... water company shall make or grant any undue or unreasonable preference or advantage to any person, corporation, or locality, or to any particular description of service in any respect whatsoever or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.
>
> RCW 80.28.100 Rate discrimination prohibited

> No ... water company shall, directly or indirectly, or by any special rate, rebate, drawback or other device or method charge, demand, collect or receive from any person...a greater or less compensation for ... water or for any service...than it charges, demands, collects or receives from any other person ... for doing a like or contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions

At the pre-hearing for this complaint in June, 1993, it was confirmed that three customers, James Saldi, Willie Womack and Jerry Lease, who are also employees of the water company, were not paying a water bill. Reportedly this has been corrected, but not confirmed. There was no collection for the months these three customers did not pay. Mr. Barker testified he had authorized this arrangement. This is yet another flagrant violation of Washington law and also a violation of IES regulations. Apparently Mr. Barker believes he can arbitrarily ignore the law if he feels it will benefit him or his employees.

Other customers used water for months and were not billed by the water company. The water company was not aware they were even hooked up to the water. It is very easy for a customer to hook-up to water without the knowledge of the water company. Mr. Lease testified he did not drive the streets to determine if there were any new hook-ups, he simply relied on the customer to contact the water company. It is unbelievable to assume all customers are honest, or even know who to contact. Many property owners live in other cities and use their Marine View Heights property only for weekends or vacations. These property owners rarely occupy their properties during regular business hours and since the water system has made every effort not to be available to its water users it is unreasonable to expect these people to attempt to hunt down a business office or telephone number which would not be available to them on weekends in any event.

Mr. Lease testified that all customers were billed $20 per residence. The records reflected some customers, with one residence, paid $42.50 and $32.50. Mr. Lease could not explain this. Diana Otto testified one customer was charged a garden lot rate. Many customers have garden lots - why was only one customer charged this rate? The law states the water company can not charge or collect any rates from one customer which are

special or different from the rates that it charges or collects from all customers. The water company's records clearly reflect it did in fact do just that.

WAC 480-110-071 and the water company's tariff allows customers to request the water company disconnect their water. A reconnect fee of $20 is then charged. A customer did request his water be disconnected. Later during a discussion between the customer and Mr. Barker regarding water rates, Mr. Barker threatened to dig up the customer's pipes to disconnect the water and then charge a $300 service connection fee, instead of the $26 reconnect fee. A tariff is also part of the rules and regulations of a water company. Mr. Barker was violating the company's own tariff and the law which states the rules and regulations are extended to all customers and cannot be changed or altered arbitrarily.

The water company sent nine delinquent accounts to a collection agency, but did not discontinue service for these customers. These customers were allowed to continue to use water. The water company has a large number of outstanding accounts but does not discontinue service. (Tr. 297, L. 9 - 11) After a very brief examination of the water company's records during the hearing; it was determined ten accounts totaling $4,320 were in the arrears. (Tr. 308, L. 3 - 21) WAC 480-110-071 allows the water company to discontinue service for the non-payment of bills, but prior notice of the discontinuance of service must be given to the customer. The water company has given a substantial amount of shut-off notices to customers with delinquent accounts, but the fact remains they have never shutoff any customers water. Are they simply trying to harass the customers? If so, they did a fine job. Customers were afraid to leave their homes for fear of their water being shutoff. Ultimately they discovered the water company was merely threatening to shutoff their water service. If not a form of harassment , why does the water company continue to allow non-paying customers to use water?

Many of the shut-off notices that were delivered were incorrect. Mr. Lease testified the water company allows a bill to be delinquent for three months before they

even start discontinuance of service. And yet, testimony revealed that two customers had received discontinuance notices when their accounts were not even delinquent. (Ex. 27)

Mr. Barker testified a customer has put cement in the pipes to avoid discontinuance of service. This cement has been in the pipes for over a year. The water company has not taken the appropriate steps to rectify the problem. The customer continues to get free water.

The water company's method of billing, collection and shutoff notices is unjust, unfair and discriminating against the paying customers.

> WAC 246-290-420 - Reliability (1) Any public water system or expansion or modification of an existing system shall provide an adequate quantity and quality of water in a reliable manner at all times.

Not only was the quality of the water unreliable but the quantity was also. Customers ran out of water on June 20 & 30, July 8, August 7, 1994 and one other unknown date. Hot water tanks drained which caused elements to burn out. The reservoir is designed to hold 500,000 gallons but was only being used to approximately 1/3 its capacity. In order for the reservoir to be used to its capacity the float level would have to be raised. This meant the water company would have to pay a professional to do so. The water company did not want to have to spend any money to make improvements. Ultimately a customer assisted the certified water operator in raising the float level. However, customers again ran out of water after the float level was raised. As recent as November 2, 1994, customers on an entire street were without water for 3 1/2 hours, while the water company made an emergency repair. The fitting was not in stock to repair the broken line after installation of a water meter.

> WAC 246-290-330 - Public Notification 3 (b) The purveyor of a Community water system shall give a copy of the most recent public notice for all outstanding violations to all new billing units or new hookups before or at the time water service begins.

Numerous new customers hooked up to water after the departmental order had been issued and water exceeded the maximum contaminant level and new customers were never advised of any violations not given any written communication regarding the violations.

WAC 480-110-041 Availability of information(1)

> Each utility shall maintain a business location and a regular telephone number at which it may be contacted. ..

The water company does not have the street address on the building where the business is located. This building has a store and other various offices in it. There is no indication where the water company is located. Customers who are full time residents had a hard time determining where the water company was located. Customers who are part time residents certainly would have a hard time locating the water company. Many bills did not give an address but a P.O. Box. Customers were unable to make telephone contact with the water company, messages were left and telephone calls were not returned.

WAC 480-110-101

> Each bill shall indicate the date it becomes delinquent ...

From October 1992, until April of 1993, and February of 1994,there was no due date on the bill. Customers didn't know when their bills were due.

WAC 480-110-076 Service responsibility

> Flushing of mains - dead ends in the distribution system should be avoid if possible. Where such dead ends exist, they should be flushed at intervals frequent enough to insure satisfactory quality of water to the consumers

The water system does have dead ends. The water company told customers they were flushing the system, when they hadn't. The water company has no means to flush the water system. If the system could be flushed it would help circulate the water during low usage periods.

RCW 80.04.110(5)

Any customer or purchaser of service from a water system or company that is subject to commission regulation may file a complaint with the commission if he or she has reason to believe that the water delivered by the system to the customer does not meet state drinking water standards under chapter 43.20 or 70.116 RCW.

RCW 43.20.050(2)

In order to protect public health, the state board of health shall:

(a) Adopt rules necessary to assure safe and reliable public drinking water and to protect the public health. Such rules shall establish requirements regarding:

(i) The design and construction of public water system facilities, including proper sizing of pipes and storage for the number and type of customers;

(ii) Drinking water quality standards, monitoring requirements, and laboratory certification requirements;

(iii) Public water system management and reporting requirements;

(iv) Public water system planning and emergency response requirements;

(v) Public water system operation and maintenance requirements;

(vi) Water quality, reliability, and management of existing but inadequate public water systems; and

(vii) Quality standards for the source or supply, or both source and supply, of water for bottled water plants.

Everything that has been argued to this point are water quality standards the water company has violated according to the state drinking water standards. Water quality is inclusive of all the seven standards listed above.

If one were to argue that only section (ii) relates to drinking water quality standards, then one must also consider monitoring requirements, and laboratory certification requirements.

The water company had a substantial amount of violations regarding monitoring requirements and laboratory certification requirements. Evidence of this is Departmental Order, #93-013, dated April 28, 1993, which ordered the system to make sufficient improvement in monitoring and water quality management to alleviate non-acute coliform contaminate level situations. (Tr. 12, L. 23, Ex. 1), and Modified Order, #93-013, dated December 23, 1993, which was issued for continued non-compliance with water quality issues, water quality standards of the Department of Health, to assess the current and long

term financial stability of the company, the ability to meet current and future needs regarding water quality and improvements in the system. (Tr. 15, L. 16 - 23) The order specifically required the water company to 1) monitor for coliform quality, 2) take appropriate follow-up action per drinking water regulations, 3) install and operate and maintain disinfection equipment, 4) provide evidence of chlorine residual monitoring. (Tr. 14, L. 20 - Tr. 15, L. 7)

The customers argue that all seven sections of RCW 43.20.050(2) are state drinking water standards. The State Board of Health adopted rules necessary to assure safe and reliable public drinking water and to protect the public health under WAC 246-290, "Drinking Water Regulations", effective February, 1992, which consist of the following:

Part 1. Planning and Engineering Documents

Part 2 Design of Public Water Systems

Part 3 Water Quality

Part 4 Water System Operations

If one were to argue Part 3 Water Quality is the only applicable part then one must look at Part 3 in its entirety. This includes four sections;

WAC 246-290-300 Monitoring requirements

WAC 246-290-310 Maximum contaminant levels (MCLs)

WAC 246-290-320 Follow-up action

WAC 246-290-330 Public Notification.

It is a fact the water company:

operated for over a year without a certified water operator

had one major monitoring violation

had several repeat monitoring violations

did not submit bacteriological/coliform monitoring plan

did not take the Inorganic chemical and physical test

did not take the Radionuclides test

did not take the volatile organic chemical test

did not take daily chlorine residual test

did not provide water without exceeding the maximum contaminant level

did not take proper follow-up action for notifing customers

did not take proper follow-up action for determining the cause of the contamination

did not take proper follow up action as directed by the Department of Health

All of the above fall under Part 3, Water Quality of WAC 246-290. Water quality is much more than just an unsatisfactory test result.

RCW 80.04.110(5)

> If the commission determines that the water does not meet state drinking water standards, it shall exercise its authority over the system or company as provided in this title, and may, where appropriate, order a refund to the customer on a pro rata basis for the substandard water delivered to the customer, and shall order reimbursement to the customer for the cost incurred by the customer, if any, in obtaining a water quality test.

Clearly, the water delivered to the customers was substandard and it is appropriate to order a refund. The customers have proven the water did not meet the state drinking water standards as defined in WAC 246-290. The fact the water company is still out of compliance with Department of Health Rules and Regulations indicates the state drinking water standards are not being met. Costs the customers incurred in obtaining water quality tests were substantial.

The Washington Utilities and Transportation Commission testified and will argue the customers should not be granted a refund because the unsatisfactory water tests were non-acute violations. WAC 246-290-010 defines "Nonacute" as posing a possible or less

than immediate risk to human health. The word possible means it is "unknown" what the risks are. Anything could happen. There just haven't been enough studies to determine the exact problems. It's similar to the label on a cigarette package - "this product could be hazardous to your health".

The Washington Utilities and Transportation Commission will also argue that if there is a refund, it be based upon the water used for residential use for drinking and cooking, which they determined to be 10%. This is a narrow interpretation. All of the water used has the potential of being used for drinking and cooking only. The fact remains the water we pay for should be quality water regardless of how its used. This water is sold as potable water regardless of whether for watering lawns or residential use. The controlling element to consider is exposure.

The violations which keep the water company from compliance with the state drinking water standards are 1) water system plan, 2) project report detailing information not included in the water system plan, 3) construction documents, 4) install facilities for improved construction. These four issues fall under all four parts of Wac 246-290, the state drinking water regulations; Part 1) Planning and Engineering Documents, Part 2) Design of Public Water Systems, Part 3) Water Quality, Part 4) Water System Operations.

It is understandable the Washington Utilities and Transportation Commission is concerned about granting a refund. There is no case law regarding this statute and they do not want to set a precedence of granting refunds for non-acute violations. They would be inundated with customers requesting refunds.

Consideration should be given to:

> All of the uncountable violations of the water company, not only in the past but present, and in the foreseeable future.
>
> Whether the water company is financially viable.
>
> Whether or not the water company is compliant.

the length of the water company's non-compliance.

An innovative approach would be to split the refund as occurs in civil cases, and do something similar to 80.04.110(1) However, the number of noncommunicipal water systems referred to the commission in any one calendar year shall not exceed twenty percent of the water companies subject to commission regulation.... All of these considerations would help offset the Washington Utilities and Transportation Commission's budgetary problems

IV.

CONCLUSION

Marine View Heights Inc. provided water that did not meet the state drinking water standards. The company is still out of compliance with the Department of Health and the Washington Utilities and Transportation Commission. This has been one of the longest periods of non-compliance the Department of Health has seen. Orders from the Department of Health have been unsuccessful in getting the water company to become compliant. The Washington Utilities and Transportation Commission has conducted an audit of the water company which determined the company is not financially viable. The Washington Utilities and Transportation Commission has not been able to determine ownership. The Washington Utilities and Transportation Commission struggled for a long time with the water company and the customers trying to determine something as simple as the Commission's jurisdiction. The Washington Utilities and Transportation Commission and the Department of Health continue to receive complaints about this company.

Since October 1992, when Marine View Heights Inc. took over the water system there has been nothing but grief for the customers and for these agencies. As long as this company has control of the water system everyone will continue to have problems. Customers have been forced to oversee the water company to make certain they operate according to rules and regulations.

Granted some of the violations have been corrected. This does not negate the violations or assure the same violation will not reoccur. The future cannot be measured or

determined; however, the customers take exception to this by simply reviewing events in the past. The water company's previous actions as pointed out in this brief clearly demonstrate their negative attitude toward both customers and system improvements.

This community has been torn apart because of this water company. There is conflict between neighbors, board members and even spouses regarding the problems with the water company. Added stress to the customers is immeasurable.

Expenses and time spent on this problem far exceeds what was merely touched upon in the hearings and the argument. The filing of the formal complaint, stipulation agreement, hearings and brief has been expensive with just the postage, faxing and long distance phone calls. Again, there was additional stress, which is known to cause a risk to human health.

The customers have contacted everyone they could think of who might help resolve this problem including the Governor's office, Senator, State Representatives, County Commissioners, EPA offices, Public Utilities District, local and state Health Department offices, and the Washington Utilities and Transportation Commission. More than enough time and money has been spent in an attempt to force this small water company into compliance. It is time to end this small water company's disregard for laws, rules and regulations.

The customers are entitled to a full refund for all the months the water company is in non-compliance with the Department of Health and Washington Utilities and Transportation Commission. The customers are entitled to reimbursement for all expenses submitted as exhibit #11 and #12. These expenses are the results of customers obtaining water quality tests. The over all picture of water quality needs to be considered, not just drinking water purity. The customers concur with the Washington Utilities and Transportation Commission. The owner of the water company should bear the burden of a refund and not the water company so that ultimately the customers have to pay for the negligence of the water company.

The water company has previously been designated as a "significant non-complier." The water company should be ordered to comply with state board of health standards adopted under RCW 43.20.050(2)(a) as defined in WAC 246-290, within two months. Failure to comply with the order the commission should request the department of health petition the court to place the company in receivership under RCW 80.28.030.

The water company should be ordered to improve the unjust, unreasonable, improper, insufficient, inefficient or inadequate service, which includes billings/collections/special rates and discrimination within two months. Once again, because of the water company's previous designation as a "significant non-complier," failure to comply with the order the commission should request the Department of Health petition the court to place the company in receivership under RCW 80.28.040.

Once the ownership of the water company is clarified and approved by Washington Utilities and Transportation Commission and the Department of Health the customers should be notified.

The Washington Utilities and Transportation Commission recommended the commission request the Department of Health petition the court to place the company into receivership if the company continued to experience unsatisfactory testing results. Due to the fact an unsatisfactory test result could change the moratorium category back to "red" it should be ordered that a disinterested certified water operator take the water tests at the expense of the water company for the next six months.

The Order should include a review within two months to determine if the water company is complying with the Order.

The penalty for this water company should be far greater than the threat of facing receivership. It is well known the receivership process could take as long as two years. It is also well known the way to get someone's attention is through their pocketbook. This water company has ignored every other attempt by the Department of Health and Washington Utilities and Transportation Commission to get them to comply.

Respectfully submitted this 11th day of November, 1994,

By Sandra Sanders

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Marine View Heights Homeowners
Association

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October 25, 1994

Fred Barker
Marine View Heights Water System
6897 SR. 262 S.E.
Othello, WA 99344

Re: Water System Plan

Dear Mr. Barker:

As you are aware, a revised water system plan was submitted to this office by Len Harms in December 1993. This plan has been reviewed by this office and submitted to the Utilities and Transportation Commission for review and comment on the financial portion of the plan. During the meeting with Senator Hochstatter last February a number of new issues were raised regarding the plan as well as issues regarding the system itself that must be addressed. A inspection of the water system by engineers from this office also revealed a number of observations and a list of required improvements. To date there has been no response as to the status of those improvements.

The Water System Plan is the best opportunity to address all of these issues, even though some of them are new since the plan was submitted. This letter will identify those issues that must be addressed prior to DOH approval of the plan. The March 18, 1994 and June 8, 1994 letters (attached) from this Department provide additional information which would be good to include in the plan, but which will not be required by this Department at this time.

The following comments must be addressed:

1) The plan uses a MID of 2 gpm/connection although the average day for the month of July 1993 was 3500 gallon/connection or 2.4 gpm. Either the MID needs to be increased or an aggressive program planned to lower summer usage.

2) Other alternatives need to be considered to provide chlorine contact time including as separate feed line to the reservoir. You have discussed using flow through pressure tanks for contact time, but this is not included as an alternative. All alternatives must have costs estimated and advantages/disadvantages listed and discussed.

3) If the storage tank continues to float on the system, sufficient drawdown must occur to ensure the water is kept fresh. This is particularly important during the non-peak used months. Recommendations for pump control setting to accomplish this and meet standby storage requirements must be presented.

4) If the Phase 2/5 susceptibility assessment was completed and submitted to DOH, substantial

water quality monitoring saving may be realized. A copy of the assessment must be included in the plan.

5) The coliform monitoring plan apparently has identified sampling sites which are either just used occasionally or do not have access to water. The plan must be revised to show active services that may be sampled any time during the year.

6) A cross connection program must be established to protect the system from backflow and backpressure situations and to educate the users about potential cross-connections.

7) UTC has determined the system to be financially non-viable and non-feasible because the plan did not include a basis for determining the required positive retained earnings. The financial information must be revised to show that the utility can operate in the black. It is suggested that some improvements be spread out over a few years; or that a short-term surcharge be considered; or a loan be secured to make the needed improvements in a timely fashion and spread the costs over a longer period of time. A number of different scenarios must be presented in the plan.

8) Has the well be pumped tested since the pump was lowered in 1992? How was the stated volume of 225 gpm determined? If the well begins pumping air at a certain rate, what precautions can and should be taken to prevent this from happening?

9) Apparently many of the lots have been replated due to on-site sewage restrictions. A more accurate projection of the number of realistic potential services must be made to analyze the ability of the system to meet future needs and to help in financial planning.

10) The results of the investigation as to the source of the contamination experience in 1992 and 1993 must be documented in the plan.

11) The current status of water quality monitoring, including chemical monitoring must be presented. A VOC samples was to have been collected by 6/30/94 and a nitrate analysis by 8/31/94.

12) Copies of protective covenants surrounding the well was to have been submitted by 8/31/94. The covenants must be included in the plan.

13) The plan must be revised to reflect actual reservoir capacity at 300,000 gallons.

14) Plans to seal the reservoir hatch and screen the reservoir vent were to have been submitted by 6/30/94. Include in the plan.

15) The reservoir overflow was to have been screened; a sanitary well seal and casing vent was to have been installed; all chlorination facilities relocated; and all electrical and control components inside the well vault were to inspected by 8/31/94. All cut locks and new locks were to be installed on the tank access ladder and on the cover into the well vault. Document that these were completed or scheduled in the plan for the very near future.

16) Provide a complete description of the system's alarms; how they are activated and how the operator is notified of system emergency status.

17) Investigate the feasibility of installing a pressure transducer at the tank valve vault, and installing level indication and level adjustment control at the well house.

18) Additions to ongoing operations of the system were required in the June 8, 1994 letter including:
   a) semi-annual static water level measurements of the well.
   b) maintain a distribution system maintenance log and complaint log.

It is felt that by addressing this issues at this time, a schedule for improvements and financing options can be proposed, and agreed to. This plan can also be used if the proposed transfer of ownership to the home owners or water district is completed in 1995.

The Drinking Water Fee regulation (WAC 246-290-990) allows for two reviews of a Comprehensive Water System Plan to be conducted under the base fee. After two reviews, an additional twenty-five percent of the original fee will be assessed for each additional resubmittal.

Please complete the DOH comment response form and submit it along with your revised plan.

Your revised plan is due in our office by December 27, 1994 If you have comments concerning our review please contact either of us.

Sincerely,

Dan Sander
Section Head
(509) 456-2457

Michele Vazquez
Regional Planner
(509) 456-2774

enc. DOH Comment Response Form
DOH Letters dated March 18, 1994 and June 8, 1994

cc: Jerry Lease, Manager
Ted Olson, Department of Ecology
Len Harms, Harms and Associates
Jim Ward, Utilities and Transportation Commission
Grant County Health
Grant County Planning