

**STATE OF DELAWARE ENVIRONMENTAL APPEAL BOARD**

APPEAL OF WELL PERMIT  
APPLICATIONS #267708 AND  
#267709

APPEAL NO. EAB ~~2020-02~~

**JOINT COMPENDIUM OF EXHIBITS**

1. Lewes Board of Public Works service Area Map
2. Letter from Darrin Gordon to Alan Pongratz – November 7, 2019
3. Letter from Alan Pongratz to J. Frank Peter – January 7, 2020
4. Lewes BPW Resolution 13-004
5. Letter from DNREC to Wendell Alfred – October 12, 2016
6. Letter from Darrin Gordon to J. Frank Peter – July 20, 2020
7. E-mail Exchange between J. Frank Peter and Matthew Hartigan

**DEPARTMENT OF JUSTICE**

/s/ Kayli H. Spialter, Esq.  
Kayli H. Spialter, Esquire (#5955)  
820 North French Street  
Wilmington, DE 19801  
(302) 577-8508  
[Kayli.Spialter@delaware.gov](mailto:Kayli.Spialter@delaware.gov)  
*Attorney for the Delaware Department  
of Natural Resources and Environmental  
Control*

**TARABICOS GROSSO, LLP**

/s/ Daniel F. McAllister, Esq.  
Daniel F. McAllister, Esquire (#4887)  
Michael J. Hoffman, Esquire (#5349)  
100 Commons Blvd, Suite 415  
New Castle, DE 19720  
(302) 757-7816  
[dan@tarabicosgrosso.com](mailto:dan@tarabicosgrosso.com)  
*Attorneys for Board of Public Works  
of the City of Lewes*

Dated: September 11, 2020

# **EXHIBIT 1**



# **EXHIBIT 2**



November 7, 2019

**Alan Pongratz**  
**Environmental Control Supervisor**  
**DNREC- Water Supply**  
**89 Kings Highway**  
**Dover, DE. 19901**

RE: Well Applications- # 267708 and #267709  
New Road, Lewes DE. - Parcel # 335-08.00-0009.00

Dear Mr. Alan Pongratz:

The Lewes Board of Public Works (the "Lewes BPW") opposes Well Application Numbers 267708 and 267709 concerning the above-referenced property, which is approximately 1.87 acres located at 2458 Pilottown Road in Lewes, Delaware (the "Peter Property"). The Peter Property is located within the Lewes BPW water service area, for which the Lewes BPW currently has an established Certificate of Public Convenience and Necessity from the Public Service Commission. The Lewes BPW has infrastructure available and stands ready to provide utility service for the Peter Property.

Section 4.12.2 of the Lewes BPW Charter, which was adopted by the Delaware General Assembly on April 9, 2009, as amended, expressly authorizes the Lewes BPW to "require any or all premises within the corporate limits of the City [of Lewes] or [the Lewes BPW] Service Area, to be and to remain connected to the municipal utility systems." The Lewes BPW has informed the owner of the Peter Property that it is requiring the Peter Property to be and remain connected to the Lewes BPW utility systems.

In the case of the Peter Property, connection to the Lewes BPW water utility system serves an important public purpose. The Lewes BPW takes its obligations to protect the water supply quality for the greater Lewes area very seriously, including from risks of saltwater intrusion related to wells that weaken our protection, and has been firm in its opposition to all wells within the Lewes BPW service area, particularly where Lewes BPW infrastructure is readily available.

Please do not hesitate to contact me should you have any questions.

Respectfully,

Darrin Gordon  
General Manager  
Lewes Board of Public Works



# **EXHIBIT 3**



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF WATER  
RICHARDSON & ROBBINS BUILDING  
89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

WATER SUPPLY

PHONE  
(302) 739-9945

**SENT FIRST CLASS AND CERTIFIED MAIL # 7007 0710 0000 9506 9441  
RETURN RECEIPT REQUESTED**

January 7, 2020

Jerry Peter  
116 Front Street, Unit 16  
Lewes, DE 19958

**SUBJECT: Application for permit #267708 to construct a (potable) geo-thermal supply well on property identified by tax map number: 3-35-8.00-9.00.**

Dear Mr. Peter,

Enclosed is the application for a (potable) geo-thermal supply well submitted on your behalf by Atlantic Well Drilling Inc., submitted October 14, 2019. The application is **denied** for the following reasons:

**7 Del. Admin C. §7301 Delaware Regulations Governing the Construction and Use of Wells**

Subsection 3.10.5 states: "When proposed wells, with the exception of monitor, observation, and recovery wells, are to be located within the jurisdiction or service area of a municipality serving public water, the applicant shall submit a written **statement of approval** for said municipality with the permit application."

The Lewes Board of Public Works holds a valid Certificate of Public Convenience and Necessity to an area that includes your property. The Lewes Board of Public Works has informed the Department in writing of a potable water source available for domestic consumption, and denies the issuance of a potable geo-thermal supply well inside of their City limits.



STATE OF DELAWARE  
**DEPARTMENT OF NATURAL RESOURCES AND  
ENVIRONMENTAL CONTROL**

DIVISION OF WATER  
RICHARDSON & ROBBINS BUILDING  
89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

PHONE  
(302) 739-9945

WATER SUPPLY

You have the right to appeal the decision of the Secretary to the Environmental Appeals Board. Any appeal must be filed within **20 days** of the date you received this Letter of Denial. An appeal must be directed to the attention of Sascha Mohammad, Administrative Assistant to the Environmental Appeals Board, at 89 Kings Highway, Dover, DE 19901.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Alan Pongratz".

Alan Pongratz  
Environmental Control Supervisor

enc. Denied well application  
pc: Lewes Board of Public Works  
Atlantic Well Drilling Inc.  
Matthew Grabowski  
Steven Smailer



MAIL TO:

WATER SUPPLY SECTION  
DIVISION OF WATER  
RESOURCES  
89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

PHONE: 302-739-9944  
FAX: 302-739-7764

STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL


http://www.dnrec.state.de.us/

APPLICATION MUST BE SUBMITTED  
AND PERMIT RECEIVED BEFORE  
DRILLING IS STARTED.

APPLICATION FOR A PERMIT  
TO CONSTRUCT A WELL

- OFFICIAL USE ONLY -

PAGE #      OF      PAGES  
PERMIT #: **267708**

<b>Owner:</b> Peter, Jerry	<b>LOCATION MAP - ROAD MAP</b>			
<b>Address:</b> 116 Front Street Unit 16 Lewes DE US 19958	<b>County:</b> Sussex	<b>Tax Parcel:</b> 3-35-08.00-0009.00		
<b>Telephone:</b>	<b>Lot #:</b> Parcel A	<b>Subdivision:</b>		
<b>Email:</b>	<b>ADC Map Grid:</b> 36 E7	<b>Name of Nearest Town:</b> Lewes		
<b>Licensed Preparer / WC:</b> Atlantic Well Drilling Inc	<b>Distance to Nearest Town:</b> 0.00	<b>X:</b> 222485.27		
<b>License #:</b> 789	<b>Y:</b> 86103.07			
<b>Estimated Construction Date:</b> 10/18/2019	<b>Parcel Size:</b> Greater than 0.5 Acre			
<b>Purpose:</b> Permanent	<b>Proposed Well will be:</b>			
<b>Use:</b> Geothermal Supply	150.00 Feet of the FRONT property line			
<b>Use Other:</b>	315.00 Feet of the BACK property line			
<b>Is an Emergency well?</b> No	110.00 Feet of the LEFT property line			
<b>Is a Replacement well?</b> No	105.00 Feet of the RIGHT property line			
<b>Reason:</b>	150.00 Feet from the NEAREST road			
<b>Is public water available?</b> No	0.00 Feet from the SEPTIC TANK and all components			
<b>Utility:</b>	0.00 Feet from the SEPTIC DRAINFIELD/CESSPOOL			
<b>On public sewage?</b> Yes	150.00 Feet from the CENTRAL SEWER LINE			
<b>Septic Permit #:</b>	<b>Distance between SUPPLY and RECHARGE wells:</b> 20.00			
<b>PROPOSED WELL CONSTRUCTION:</b>				
<b>Approximate Total Depth:</b> 110.00 feet				
<b>Maximum capacity:</b> 20.00 (GPM)				
<b>Max. Daily Withdrawal:</b> 1,500.00 (GPD)				
<b>Casing</b>	<b>Top</b>	<b>Bottom</b>	<b>Diameter</b>	<b>Material</b>
Inner Casing	0.00	100.00	4.00	PVC
<b>Screen Material:</b> PVC	<b>Top:</b> 100.00	<b>Bottom:</b> 110.00		
<b>Type of Grout:</b> Bentonite	<b>Top:</b> 0.00	<b>Bottom:</b> 90.00		
<b>Gravel Pack Interval:</b>	<b>Top:</b> 90.00	<b>Bottom:</b> 110.00		
<b>Type of Non-Grout Backfill of Well Annulus:</b> None	<b>Top:</b> 0.00	<b>Bottom:</b> 0.00		
<b>Will the operation of this well by itself or in combination with any other well(s), owned or operated by the permittee, withdraw greater than 1,000,000 gallons in any 24hr. period?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
I HEREBY AFFIRM THE INFORMATION I HAVE SUBMITTED IS ACCURATE AND CORRECT.				
<b>Signature - Licensed Preparer/Well Contractor</b>		<b>Date</b>		
<b>Signature - Property Owner</b>		<b>Date</b>		

# **EXHIBIT 4**

**Resolution No. 13-004**

**A RESOLUTION OF THE BOARD OF PUBLIC WORKS  
OF THE CITY OF LEWES, DELAWARE,  
TO AMEND THE PROCEDURE  
FOR APPLICATION FOR UTILITY SERVICES FOR  
AREAS BEYOND THE LIMITS OF THE CITY OF LEWES.**

**WHEREAS**, the Board of Public Works exists so that current and future customers have availability and accessibility to safe, reliable and affordable water, electricity, wastewater disposal and other public services; and

**WHEREAS**, the Board of Public Works provides these services for life sustaining use while being environmental stewards; and

**WHEREAS**, the Board of Public Works is authorized by its Charter, being Chapter 10, Volume 77, Laws of Delaware as amended, to provide utility services for areas beyond the municipal boundaries of the City of Lewes; and

**WHEREAS**, the Board of Public Works has, historically, provided such services; and

**WHEREAS**, on March 27, 2007 the Board of Public Works adopted Resolution 07-002, titled "A Resolution of the Board of Public Works of the City of Lewes to Establish a Procedure for Application for Utility Services for areas Beyond the Limits of the City of Lewes"; and

**WHEREAS**, the Board of Public Works deems it in the best interest of the rate payers and potential applicants for utility services to amend the procedure established under Resolution 07-002, such that (1) the pre-annexation agreement required under the procedure must be signed prior to the start of utility construction, and (2) reimbursement agreements providing for developer reimbursement for extension of a utility service shall run for a period not to exceed twenty (20) years; and

**WHEREAS**, the Board of Public Works deems it in the best interest of the rate payers of the City's utilities to provide this coordination of utility services and City expansion.

**NOW THEREFORE, BE IT RESOLVED** BY THE BOARD OF DIRECTORS OF THE LEWES BOARD OF PUBLIC WORKS, in session met this 4<sup>th</sup> DAY OF DECEMBER, 2013, a quorum pertaining at all times thereto, THAT:

**Section 1.** The *Policy on providing Board of Public Works utility services outside the Lewes city limits*, shall be amended as provided in Exhibit A attached hereto.

**Section 2.** This Resolution shall take effect immediately upon its adoption by the Board of Directors of the Lewes Board of Public Works.

Adopted by the Board of Directors  
of the Lewes Board of Public Works  
August 22, 2012

I, D. Preston Lee, Secretary of the Board of Directors of the Lewes Board of Public Works, do hereby certify that the foregoing is a true and correct copy of the resolution passed by Board of Directors of the Lewes Board of Public Works at its regular meeting on December 4, 2013, at which a quorum was present and voting throughout and the same is still in full force and effect.

  
Secretary

## EXHIBIT A

### **Policy on providing Board of Public Works utility services outside the Lewes city limits**

There is hereby established as hereinafter set forth a policy and orderly program to provide water, sanitary sewer, stormwater and electric services for those areas and subdivisions outside the Lewes City limits which are within the City's and the Board of Public Works' planning area.

When a utility service extension is desired to any property within the areas stated above the person(s) (Applicant) desiring said extension shall petition the Board of Public Works and pay the applicable application fees.

The property owner of the premises to be served by the Board of Public Works shall sign an agreement with the City of Lewes, prior to the start of utility construction, which provides for annexation to the City upon request by the City. If there is more than one property owner of the proposed service area, then a majority of the property owners must sign agreements. All title holders of each property shall execute the agreement. The agreement(s) shall be recorded, shall run with the land, and inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns. The agreement(s) shall be submitted with the application petition to the Board.

The Applicant agrees to accept all utility services offered by the Board of Public Works and available to that property now or in the future at the sole discretion of the Board. Available is defined as an adequate distribution or collection main/line within 500 feet of the proposed property.

The petition will be reviewed by the City of Lewes/Board of Public Works Departmental Review Team. The Board will complete a preliminary report and submit it to the Applicant. If the project is approved at a regular meeting of the Board of Public Works, and the Applicant wishes to proceed, the Applicant shall provide engineering and design of the proposed utility extension, which will be submitted to the Board for consideration and approval. Utility service to current Board customers and to potential customers within the City of Lewes will take precedence over consideration of Applicants for services outside of the city limits.

The Applicant is required to deposit an amount equal to ten percent (10%) of the Probable Project Cost with the Board. This fee is to provide, including but not limited to, the following: review of drawings, inspection, administrative and all costs associated with this particular utility extension.

The cost of all improvements of utility service lines on or adjacent or necessary to bring a service line adjacent to new subdivisions, areas to be developed or redeveloped, shall be the full responsibility of the developer and in accordance with the utility master plan.

The developer causing an extension of a sewer main shall locate it in rights-of-way or easements and shall pay in full the engineering, construction and inspection costs of the lines and

appurtenances.

Plans and specifications shall be prepared in accordance with appropriate standards established by the Board of Public Works.

Each lot or parcel of land to be served with sanitary sewer service shall abut a sewer main. Each lot or parcel of land to be served with water service shall abut a water main.

Each lot or parcel of land to be served with electric service shall abut a distribution main.

All lines shall be sized in accordance with the utility master plan, except that the Board General Manager may increase or decrease the size of mains when requirements so dictate.

In all new developments such as subdivisions, multifamily tracts, commercial centers, shopping centers, industrial facilities or other similar developments, the developer shall furnish and install, to Board specifications, all mains, service connections, service and main stubs and appurtenances within the boundary of the development as well as the streets abutting the development, and shall make line extensions as determined necessary by the Board General Manager.

Acceptance of all extensions shall require the written approval of the Board Engineer.

The Board shall acquire ownership of all extensions of public mains when completed, approved and accepted. The utility system shall be conveyed to the Board free and clear of all clouds to title, including liens and encumbrances.

Impact fees shall be paid according the fee schedule in place at the time construction of the extension begins.

If utility mains/lines extended by a developer provide a means of service to property owned by persons other than the developer, the developer may request the Board to enter into an agreement, providing for reimbursement to the developer of a portion of such extension costs when other persons receive utility service by connection to the extension. Such agreements shall be executed within one (1) year from date of acceptance of the main/line by the Board and shall run for a period not to exceed twenty (20) years from said date of execution by the General Manager.

Rev. 1/18/07 3:19PM

Rev. 2/12/07 2:38 PM

Rev. 3/13/07 4:19 PM

Rev. 12/04/13 7:35 PM

# **EXHIBIT 5**



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES &  
ENVIRONMENTAL CONTROL  
DIVISION OF WATER  
89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

Telephone: (302) 739-9945  
Facsimile: (302) 739-2296

October 12, 2016

President C. Wendall Alfred  
Lewes Board of Public Works, 107 Franklin Avenue  
Lewes, DE 19958

**SUBJECT: Procedures for processing applications for permits to construct wells within municipal boundaries pursuant to 7 Del. C. § 6075.**

Dear President Alfred,

This letter serves as an advisory notice clarifying the statutory process required to be utilized by the Department of Natural Resources and Environmental Control ("Department") to review well permit applications and issue well construction permits, with the exception of monitor, observation, recovery and dewatering wells, located within the jurisdiction or service area of municipalities with established Certificates of Public Convenience and Necessity ("CPCNs") throughout the State.

On July 9, 1991, the Delaware General Assembly amended Chapter 60, Title 7 of the Delaware Code by adding a new Subchapter V, titled "Water Utilities." It was the stated legislative intent of this subchapter "to establish procedures to best effect the establishment and extension of the facilities of water utilities while, at the same time, preserving to as great an extent as possible, the traditional patterns of water utilization for agriculture, for rural, single-family residential units not part of a development or unincorporated community, for industry and for other traditional users of groundwater in unincorporated areas." Of particular significance to the captioned subject, 7 Del. C. § 6076(b) originally stated, "The Department shall not withhold a water well permit, or require an applicant for a water well in an area served by a water utility to utilize the services of the utility, unless...the applicant is a resident of a municipality, county water district, or a recorded development where public water is available . . . ." The original statutory language did not differentiate between potable and non-potable water wells.

Operating under the 1991 version of 7 Del. C. § 6076(b), the Department's practice has been to notify a municipality of the receipt of an application to construct a water well within the municipality's jurisdiction. Pursuant to its regulations,<sup>1</sup> the Department would provide said municipality the opportunity to object to the application prior to rendering a decision on the application. If the

<sup>1</sup> See 7 Del. Admin. C. § 7000-3.12.7 of the Department's *Regulations Governing the Construction and Use of Wells*, which section the Department intends to amend to be consistent with 7 Del. C. § 6075(c) & (d)'s directive.

*Delaware's good nature depends on you!*



municipality did not object, the Department issued the water well permit. On the other hand, if the municipality objected, the permit application was denied.

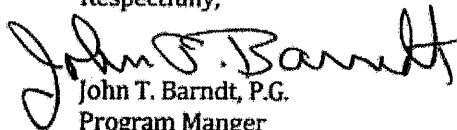
On July 6, 2000, the Delaware General Assembly further amended Title 7, Chapter 60, Subchapter V, by deleting Sections 6075 thru 6080 in their entirety and rewriting Sections 6075 and 6076. Of particular significance to the captioned subject, the new Section 6075 did differentiate between the review and approval processes for potable and non-potable wells. The requirements for processing applications and issuing permits for potable wells (Sections 6075(a) & (b)) are identical to the requirements stated in the 1991 version of Section 6076 as cited *supra*. The requirements for non-potable wells (Sections 6075(c) & (d)), however, create a materially different methodology. Under the revised Section 6075(c), the Department has a statutory obligation to issue non-potable well permits even if the non-potable well is located in a municipality that provides public water. Section 6075(d) requires that the non-potable well permit include certain minimum conditions, and that the Department provides notice to the affected municipality following the issuance of the non-potable well permit.

The net operative effect of the 2000 amendments to Subchapter V of Title 7, as it applies to permits for non-potable wells, was to mandate the Department's issuance of non-potable well permits while also ensuring that the permittee properly constructs and operates the non-potable well as authorized by the permit through specific permit conditions. One such permit condition requires the permittee to comply with all county/local requirements established by zoning procedures provided by law. Thus, if a municipality has properly enacted an ordinance affecting wells in its jurisdiction, a permittee must comply with these requirements to properly execute the permit. If a permittee fails to so comply with this or any permit condition, the Department may revoke the permit and upon revocation, the well can be ordered to be plugged and abandoned, with all attendant risks borne by the permittee.

The Department realizes that municipalities may have little time to adapt to these changes as the Department implements Section 6075's directive concerning non-potable well applications. In addition to providing a municipality with notice, pursuant to Section 6075(d), that a non-potable well permit has been issued within its jurisdiction, the Department is reviewing its internal procedures to also provide municipalities with notice of the receipt of an application for a non-potable well. It would also prove beneficial if municipalities can provide the Department with information on current ordinances the municipality may have that address well permits within their jurisdiction or area of service so that those requirements can be provided to any perspective permittee.

Should you have any questions or concerns, I may be reached at 302-739-9945 or 9944, or you may email me at [john.barndt@state.de.us](mailto:john.barndt@state.de.us).

Respectfully,



John T. Barndt, P.G.  
Program Manger  
Water Supply Section

# **EXHIBIT 6**



July 20, 2020

Mr. J. Frank Peter  
116 Front Street, Unit 16  
Lewes, Delaware, 19958

Dear Mr. Peter,

The Lewes Board of Public Works ("BPW") learned recently that you are involved in litigation with the City of Lewes regarding the provision of sewer service to your property on New Road (Sussex County Tax Parcel # 335-8.00-9.00), which is outside the municipal limits of the City. As such, I wish to clarify the BPW's position with respect to this issue.

In 2013, the BPW adopted Resolution 13-004 governing the provision of utility services beyond the municipal limits of the City of Lewes. Pursuant to that resolution, applicants outside the city must agree to accept all utility services offered by the BPW and available to the applicant in order to receive any utility services from the BPW. "Available" is defined as an adequate distribution line within 500 feet of the applicant's property.

Because water service is available to your New Road property, the BPW has always understood that you will be receiving all utility services from the BPW, including water service. When the BPW agreed last fall to waive the pre-annexation requirement for the provision of sewer services to your New Road property it was with the understanding that you would be complying with Resolution 13-004.

Since that time, however, you have sought approval of a well permit from DNREC, suggesting you do not intend to receive water service from the BPW.

In accordance with Resolution 13-004, if you do not agree to accept water service from the BPW, the BPW does not intend to provide sewer service to your New Road Property.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Darrin Gordon", is written over a faint, larger version of the same signature.

Darrin Gordon  
General Manager

# **EXHIBIT 7**

**jfpeter@comcast.net**

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**From:** Hartigan, Matthew (DOS) <Matthew.Hartigan@delaware.gov>  
**Sent:** Monday, January 13, 2020 9:43 AM  
**To:** jfpeter@comcast.net  
**Subject:** RE: FW: BPW CPCN

Hi Mr. Peter; the relationship between the City of Lewes and the BPW is the subject of the superior court case I referenced. My understanding of the case is that the City of Lewes claims the BPW is subject to it, while the BPW claims to be an independent body.

The commission has issued CPCN's to the BPW in the past, but I'm not aware of any commission precedent or decision that had to make the distinction identified in 203C(m) regarding the BPW.

Matt

**Matthew R. Hartigan, Deputy Director**  
**Department of State | Delaware Public Service Commission**  
861 Silver Lake Boulevard | Suite 100 | Dover, DE 19904  
[\(302\) 736-7532](tel:3027367532) | [matthew.hartigan@delaware.gov](mailto:matthew.hartigan@delaware.gov)

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**From:** jfpeter@comcast.net <jfpeter@comcast.net>  
**Sent:** Saturday, January 11, 2020 11:39 AM  
**To:** Hartigan, Matthew (DOS) <Matthew.Hartigan@delaware.gov>  
**Subject:** RE: FW: BPW CPCN

Thank you for your follow-up. I agree that the DNREC 200' rule guides the process. In preparing my appeal, I reread Title 26 again. I see that the basis of compliance with a CPCN includes compliance with Titles 7, 16 and 26, and there is authority for the PSC to suspend or revoke a CPCN, or assess penalties for non-compliance. This is helpful in that BPW is granted their territory by the CPCN that requires compliance with Title 7. Title 7 establishes that a utility's water main is reasonably available if it is 200' of less away from the building using the water. If the distance is more than 200', DNREC must issue a potable well permit provided the other standard conditions are satisfied. Provided other standard conditions are satisfied, DNREC must issue nonpotable well permits whether or not a the location is in a service territory defined by a CPCN. Should BPW object to well permits meeting the DNREC requirements, BPW would be in material noncompliance with the requirements of their CPCN. In this situation the PSC is authorized to suspend or revoke the utility's CPCN or penalize the utility.

It is my understanding that BPW was issued the CPCN (not the City of Lewes), and that the City of Lewes does not own BPW. BPW has its own Charter and acts as an independent identity making it not a municipally-owned water utility, water district or water authority created and operated under Titles 9 and 16. Please make a determination and inform me how the PSC classifies the BPW concerning the provisions of Title 26, Section 203C(m).

Your timely response is much appreciated as I am preparing my Appeal and have a very limited time to do so.

Thank you

J. Frank Peter  
116 Front Street Unit 16  
Lewes, DE 19958  
[jfpeter@comcast.net](mailto:jfpeter@comcast.net)

302-853-0789

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**From:** Hartigan, Matthew (DOS) <[Matthew.Hartigan@delaware.gov](mailto:Matthew.Hartigan@delaware.gov)>  
**Sent:** Thursday, January 9, 2020 3:30 PM  
**To:** [jfpeter@comcast.net](mailto:jfpeter@comcast.net)  
**Subject:** FW: FW: BPW CPCN

Hi Mr. Peter; your voicemail to me today was garbled but I wanted to follow up on our conversation yesterday. I was able to find the e-mail below from Kevin Neilson which is the extent of our comment on the matter. Regarding the 200 foot rule you referenced, since that is currently in a DNREC regulation the Environmental Appeals Board is the appropriate venue to resolve the issue. I would also point you to the current Delaware Superior Court case number S19C-07-021 between the City of Lewes and Lewes Board of Public Works regarding the annexation issue and the BPW's right to serve.

Matt

**Matthew R. Hartigan, Deputy Director**  
**Department of State | [Delaware Public Service Commission](http://delawarepublicservice.com)**  
861 Silver Lake Boulevard | Suite 100 | Dover, DE 19904  
[\(302\) 736-7532](tel:3027367532) | [matthew.hartigan@delaware.gov](mailto:matthew.hartigan@delaware.gov)

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**From:** Neilson, Kevin S (DOS) <[Kevin.Neilson@delaware.gov](mailto:Kevin.Neilson@delaware.gov)>  
**Sent:** Tuesday, March 12, 2019 4:53 PM  
**To:** Frank Peter <[jfpeter@comcast.net](mailto:jfpeter@comcast.net)>  
**Cc:** Driggins, Lisa (DOS) <[Lisa.Driggins@delaware.gov](mailto:Lisa.Driggins@delaware.gov)>  
**Subject:** RE: FW: BPW CPCN

Mr. Peter,

I understand that the parcel number of the property that you are inquiring about is 335-8.00-9.00.

There is a Water CPCN issued to the LBPW for the property.

The Property is in the LBPW's approved electric service territory. Municipal electric territories were determined in PSC Regulation docket 34 and there have been updates to the original service territories over the years.

The LBPW is not required to obtain a CPCN for wastewater according to Delaware Code and no CPCN has been issued for this property.

I am not a lawyer and the Commission nor its staff can advise you. You should consult with a lawyer if you have further questions concerning the LBPW.

Thanks, Kevin

Kevin S. Neilson  
Regulatory Policy Administrator  
Delaware Public Service Commission  
861 Silver Lake Blvd  
Cannon Bldg, Suite 100  
Dover, DE 19904  
(302) 736-7514

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**From:** Frank Peter [<mailto:jfpeter@comcast.net>]  
**Sent:** Tuesday, March 12, 2019 3:59 PM  
**To:** Neilson, Kevin S (DOS) <[Kevin.Neilson@delaware.gov](mailto:Kevin.Neilson@delaware.gov)>  
**Cc:** Driggins, Lisa (DOS) <[Lisa.Driggins@delaware.gov](mailto:Lisa.Driggins@delaware.gov)>  
**Subject:** Re: FW: BPW CPCN

The parcel is 335-8.00-9.00. Thanks for researching this.

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

**From:** "Neilson, Kevin S (DOS)" <[Kevin.Neilson@delaware.gov](mailto:Kevin.Neilson@delaware.gov)>  
**Date:** 3/12/19 11:34 AM (GMT-05:00)  
**To:** [jfpeter@comcast.net](mailto:jfpeter@comcast.net)  
**Cc:** "Driggins, Lisa (DOS)" <[Lisa.Driggins@delaware.gov](mailto:Lisa.Driggins@delaware.gov)>  
**Subject:** FW: BPW CPCN

Mr. Peter,

What is the parcel number of the property?

Thanks, Kevin

Kevin S. Neilson  
Regulatory Policy Administrator

Delaware Public Service Commission  
861 Silver Lake Blvd  
Cannon Bldg, Suite 100  
Dover, DE 19904  
(302) 736-7514

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**From:** Driggins, Lisa (DOS)  
**Sent:** Tuesday, March 12, 2019 10:34 AM  
**To:** Neilson, Kevin S (DOS) <[Kevin.Neilson@delaware.gov](mailto:Kevin.Neilson@delaware.gov)>  
**Subject:** Fw: BPW CPCN

Kevin,

This is the gentleman from Lewes.

Lisa Driggins

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**From:** [jfpeter@comcast.net](mailto:jfpeter@comcast.net) <[jfpeter@comcast.net](mailto:jfpeter@comcast.net)>

**Sent:** Tuesday, March 12, 2019 8:29:10 AM

**To:** Driggins, Lisa (DOS)

**Subject:** BPW CPCN

Good Morning!

Please confirm that you could only find record a CPCN for BPW covering water supply only. That is my recollection of our meeting.

Thank you again

J. Frank Peter

116 Front Street Unit 16

Lewes, DE 19958

[jfpeter@comcast.net](mailto:jfpeter@comcast.net)

302-853-0789