

Via electronic service only due to Emergency Order at M-2020-3019262

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tanya J. McCloskey, Acting Consumer Advocate : C-2014-2447138

v.

Hidden Valley Utility Services, L.P. - Water

Tanya J. McCloskey, Acting Consumer Advocate : C-2014-2447169

v.

Hidden Valley Utility Services, L.P. - Wastewater

**FIFTH POST-HEARING ORDER**

Admitting Late-Filed Exhibit of  
Hidden Valley Utility Services, L.P.

On May 15, 2019, the Commonwealth Court of Pennsylvania issued its Memorandum Opinion in which it quashed the Petition for Review filed by Hidden Valley Utility Services, L.P. (Hidden Valley) in the two proceedings cited above. Hidden Valley had filed the Petition for Review in order to appeal the Commission's Opinion and Order, dated January 17, 2019. In its Memorandum Opinion, the appellate court noted the January 17, 2019 Opinion and Order was interlocutory in nature and directed the Commission to schedule an evidentiary hearing concerning the propriety of Hidden Valley's engineer's report, with his estimated schedule included, dated April 18, 2019.

Accordingly, on February 7, 2020, the Office of Administrative Law Judge (OALJ) issued a Call-In Telephone Pre-Hearing Conference Notice and scheduled a telephonic prehearing conference in this case for Tuesday, February 25, 2020. On the same day, the presiding officer issued the Prehearing Conference Order which provided procedural instructions

to the parties and specified the issues to be discussed at the prehearing conference on February 25, 2020.

On February 25, 2020, the ALJ conducted the prehearing conference with the following parties present: OCA, Hidden Valley, the Bureau of Investigations and Enforcement (BIE) and one individual homeowner, Robert Kollar (Mr. Kollar). At the prehearing conference, the parties considered issues raised by the directives of the Commonwealth Court and established a litigation schedule.

On March 11, 2020, the presiding officer issued the Prehearing Order which memorialized the matters discussed, decided and agreed to by the parties during the prehearing conference, in addition to establishing a litigation schedule and ruling on requests from the parties concerning a potential Section 529 proceeding (pursuant to 66 Pa.C.S.A. § 529, *et seq.*).

On March 16, 2020<sup>1</sup>, Hidden Valley filed a Status Report in which it indicated, in table format, the deadline for compliance of specific tasks, the specific tasks required by the Commission, the status of compliance for each task and the date each task was completed, as applicable.

On April 16, 2020, the presiding officer issued an Interim Order which memorialized previous electronic discussions between the parties and resolved a discovery dispute.

On May 19, 2020, the presiding officer conducted a prehearing conference at which the following parties were present: Hidden Valley, OCA, BIE, Mr. Kollar and

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<sup>1</sup> On March 16, 2020, the Commission's offices closed in response to a directive from the Office of the Governor to self-isolate at home due to the Coronavirus Disease pandemic (CoVid19) and the office of the presiding officer, *inter alia*, began to tele-work remotely. The self-isolation extended from March 16, 2020 through the date of this Order.

Ms. Howard-Frieri. The parties discussed how to submit exhibits at the evidentiary hearing and various procedural matters.

On May 20, 2020, the presiding officer conducted the evidentiary hearing at which the following parties were present: Hidden Valley, OCA, BIE, Mr. Kollar and Ms. Howard-Frieri. Hidden Valley and OCA sponsored various exhibits through their witnesses or by stipulation of the parties.

### Hidden Valley Post Hearing Exhibit 3

On August 11, 2020, Hidden Valley filed a Motion for the Admission of HVUS Post Exhibit 3, with a Notice to Plead and a separate signed verification attached. Hidden Valley requested the presiding officer admit HVUS Post Exhibit 3 into evidence. HVUS Post Exhibit 3 was marked and identified as:

**Hidden Valley Post Hearing Exhibit 3:** Affidavit of James M. Kettler, dated August 11, 2020 and signed before a notary public in Frederick County, Maryland.

Post Exhibit 3 purports to add ten (10) additional facts to the hearing record.

Those averments in Mr. Kettler's affidavit are, *in verbatim*:

- (1) I am the President of Hidden Valley Utility Services, L.P. ("HVUS").
- (2) HVUS is in the process of building a water treatment plant on property it leases from Laurel Highland Investments LLC.
- (3) On July 7, 2020, HVUS received a minor land development plan approval from Somerset County for the water treatment plant (see Attachment 1).
- (4) On July 27, 2020, the building permit for the water treatment plant was issued in the name of the property owner (see Attachment 2).
- (5) HVUS received a written proposal from a general contractor to complete the water treatment plant building for \$420,000. This proposal did not include treatment equipment or underground water lines to the treatment plant building.
- (6) HVUS also received a written proposal from a general contractor to complete the

water treatment plant building for \$310,000. This proposal did not include treatment equipment or underground water lines to the treatment plant building.

(7) HVUS will not hire a general contractor for the water treatment project. Instead, HVUS will complete the project itself, subcontracting as necessary. This approach will allow HVUS to complete the water treatment plant at lower cost than proposed in the two written proposals HVUS received. In addition, HVUS will be able to proceed with the work more quickly because it will not need to negotiate an acceptable contract with a general contractor.

(8) I have a degree in Architecture from Cornell University, and I was licensed as an architect in the State of Maryland in 1986. I have been an owner, managed and rmi [sic] a residential and general contracting company since 1988.

(9) HVUS will not contract with any affiliated entities without submitting an appropriate affiliated interest agreement to the Commission for approval.

(10) Before receiving the building permit for the water treatment plant, HVUS ordered equipment for the water treatment plant and has performed work at the site that did not require a building permit. This work included work that was covered by the Public Water Supply Permit issued by the Pennsylvania Department of Environmental Protection on March 8, 2020.

No party objected to the request. On September 1, 2020, Hidden Valley notified the presiding officer and the parties that it mailed on that date the signed original Affidavit of James M. Kettler, along with the Motion, to the Secretary's Bureau.

### Discussion

Pursuant to 52 Pa.Code § 5.403(a), the presiding officer has all "necessary authority to control the receipt of evidence," including ruling on the admissibility of proposed evidence, placing limits on the production of further evidence and any other necessary limitations in order to effectuate due process. Pursuant to 52 Pa.Code § 5.404(a), the presiding officer is empowered to call for further admissible evidence at the hearing or after the hearing has been adjourned.

No party objected to Hidden Valley's request to submit Post Hearing Exhibit 3 for admission. The material contained in the proposed exhibit relates to new relevant facts which allegedly occurred after the hearing and after the filing of briefs. This information informs the

Commission concerning the status of Hidden Valley’s efforts to replace and improve its water and wastewater systems. Due to its relevance to the issue in this proceeding, the information is relevant and provides context for any “future steps” which the Commission might consider entering in this matter. Accordingly, I will grant the Motion of Hidden Valley and order that HVUS Post Hearing Exhibit 3 be admitted into the hearing record in this proceeding.

Furthermore, an evidentiary hearing having been held, the parties having had an opportunity to submit Main Briefs and Reply Briefs, and because no additional proceedings are to be scheduled in this matter, the hearing record in this matter will be closed, in an Ordering Paragraph below, and a decision will be prepared and issued.

THEREFORE,

IT IS ORDERED:

1. That HVUS Post Hearing Exhibit 3 of Hidden Valley Utility Services, L.P., attached hereto, is marked and admitted into the hearing record.
2. That the records at the docket numbers listed above are closed.

Date: September 11, 2020

\_\_\_\_\_/s/  
Katrina L. Dunderdale  
Administrative Law Judge

**HVUS Post-Hearing Exhibit 3**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**ADMINISTRATIVE LAW JUDGE  
KATRINA L. DUNDERDALE**

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Tanya J. McCloskey, Acting Consumer Advocate :  
v. : Docket No. C-2014-2447138  
Hidden Valley Utility Services, L.P. – Water :

and

Tanya J. McCloskey, Acting Consumer Advocate :  
v. : Docket No. C-2014-2447169  
Hidden Valley Utility Services, L.P. – Wastewater :

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**AFFIDAVIT OF  
JAMES M. KETTLER**

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On this 11<sup>th</sup> day of August, 2020 before the undersigned Notary Public in and for Frederick County, Maryland, personally appeared James M. Kettler, who, being duly sworn according to law, deposes and says that:

- (1) I am the President of Hidden Valley Utility Services, L.P. (“HVUS”).
- (2) HVUS is in the process of building a water treatment plant on property it leases from Laurel Highland Investments LLC.
- (3) On July 7, 2020, HVUS received a minor land development plan approval from Somerset County for the water treatment plant (see Attachment 1).
- (4) On July 27, 2020 the building permit for the water treatment plant was issued in the name of the property owner (see Attachment 2).

(5) HVUS received a written proposal from a general contractor to complete the water treatment plant building for \$ 420,000. This proposal did not include treatment equipment or underground water lines to the treatment plant building.

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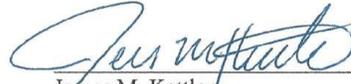
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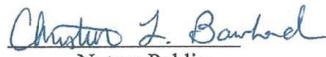
(9) HVUS will not contract with any affiliated entities without submitting an appropriate affiliated interest agreement to the Commission for approval.

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Further deponent saith not.

  
James M. Kettler  
President, Hidden Valley Utility  
Services, L.P.

Subscribed and sworn to before me  
this 11<sup>th</sup> day of August, 2020

  
Notary Public

**Christina L. Barnhard**  
NOTARY PUBLIC  
FREDERICK COUNTY  
MARYLAND  
MY COMMISSION EXPIRES April 27, 2024



SOMERSET COUNTY  
PLANNING COMMISSION

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July 7, 2020

Highlands Land Development, LLC  
Robert Nutting  
777 Waterwheel Drive  
Champion, PA 15622

Tax Map #20-005-035-000  
Filter Building  
Jefferson Township

Dear Mr. Nutting,

The Minor Land Development Sketch submitted for your property in Jefferson Township meets the requirements set forth in the definitions and in Section 1005 of the Somerset County Subdivision and Land Development Regulations. An exemption is hereby granted pursuant to that section of the regulations.

A copy of your plan is enclosed. If you change the submitted plan, you will be required to resubmit the plan for further review. If you have any questions, please call.

Sincerely,

William L. Lehman  
Planner

pc : Jefferson Township Supervisors  
PA Municipal Code Alliance  
SEO - The Eads Group, Bryan DiFebo  
The Eads Group, Phil Will  
Somerset County Conservation District, Keith Largent  
file

## Jefferson Township - Somerset County

### ► Uniform Construction Code Building Permit ◀

**Permit Number:** 2020-1649C-SOM

**Site Address:** 121 Craigherd Drive, Hidden Valley, PA 15502

**Property Owner:** Highland Land Investments LLC 777 Waterwheel Drive, Champion, PA 15622

**Permit Holder/Applicant:** Highland Land Investments LLC 777 Waterwheel Drive, Champion, PA 15622

**Permit Date:** 7/24/2020

**Permit Expiration Date:** 7/24/2021

**Construction Type:** IIB

**Use Group:** F1

**Applicable Code Year** 2015 IBC and all referenced codes as amended by the UCC.

**This Permit is obtained for the purpose of:**

"Hidden Valley Utilities Services LP"

Construction of a New 32' x 48' Concrete Block Building to be used as a Water Filtration Facility.  
ALL APPROVED PROJECT PLANS & DOCUMENTS MUST BE ON JOBSITE AT ALL TIMES.

This Permit is issued specifically for the Purpose and Site Address indicated above. This Building Permit has been granted in accordance with the provisions of The Pennsylvania Uniform Construction Code (35 Pa Code 7210.101 et seq.) and municipal ordinance regulations. This Permit has been granted to the Property Owner or Permit Holder under the condition that all work on this project shall conform to the Pennsylvania Uniform Construction Code, municipal ordinance, the submitted and approved Construction Documents, and any other applicable laws and regulations.

The Property Owner and/or Permit Holder agrees by acceptance of this permit that he/she shall bear responsibility for compliance with the applicable laws, regulations, and codes. Title 34 XIV 403.43 (g) & 403.63 (g) states: "A permit becomes invalid unless the authorized construction work begins within 180 days after the permit's issuance or if the authorized construction work permit is suspended or abandoned for 180 days after the work has commenced."

Furthermore, the Property Owner and/or Permit Holder shall be responsible for insuring that all required inspections are scheduled and performed and that right of entry, for inspection purposes, shall be granted to the appropriate Code Inspection and Enforcement Authorities. Access shall be granted during normal business hours in accordance with the Pennsylvania Uniform Construction Code and municipal ordinance and regulation.

By acceptance of this Permit (including inspection check lists, plan review documents, any notes or addendums on or attached to the permit and/or submitted construction documents) and execution of the work herein permitted; I acknowledge that I understand the obligations, as well as the privileges granted by this permit and agree, that the work shall be performed in accordance with all applicable codes, regulations, and requirements.

*R. Clem Mast*

7/24/2020

Building Code Official or Authorized Agent

Date

*Spencer Mast*

August 6, 2020

Owner or Authorized Agent

Date

**PA Municipal Code Alliance**

318 Georgian Place Somerset, PA 15501

Phone: 814 444-6112

*Pennsylvania Municipal Code Alliance Inc.  
Plan Review Comments*

Date: 7/20/2020

Permit Number: 2020-1649 C-SOM

Municipality: Jefferson Township

Project Name: Hidden Valley Utility Services (Water Filtration Building)

Location: 121 Craigherd Dr.

*The above referenced project is found to be in full Compliance with the Pennsylvania Uniform Construction Code and has been Approved, all comments listed on the plan approval letter must be addressed before occupancy will be granted. Under section 403.122 of the Pennsylvania Uniform Construction Code Act 45 regulations you may seek a variance or appeal any conditions listed on this approval letter.*

All materials and methods used must fully comply with all applicable requirements of the IBC-2015, as amended by the UCC and IBC-2018 Chapter 11, even if not clearly depicted on the drawings.

A Copy of This Letter Must Be Available At The Jobsite At All Times For Inspectors Review.

Use Group: F-1      Type of Construction: II-B      Occupant Load: 4

Construction of 1536 ft.<sup>2</sup> building to house water filtration system approved.

All of the following comments must be addressed before occupancy will be granted.

- a. Portable fire extinguishers must be provided as required in section 906 IFC.
- b. Proposed structure must be fully handicap accessible and on an accessible route.
- c. All door hardware must be ADA compliant lever type.
- d. Restroom facilities must be provided within 500' and must be on an accessible route.
- e. Tactile exit signs must be installed at all designated exits.
- f. Energy compliance certificate (COM-CHECK) for building envelope, interior & exterior lighting and HVAC systems must be submitted and approved before occupancy will be granted.
- g. Emergency lights must be provided to illuminate the exterior of all designated exits.

Manufacturer's specifications, bracing requirements and recommended installation instructions for all new roof truss systems must be available at the jobsite. Trusses must be designed to meet a minimum 115 mph ultimate wind speed, 105 mph ultimate wind speed if it is listed as category I structure in table 1604.5 IBC, 120 mph ultimate wind speed if it is listed as a risk category III structure in table 1604.5 IBC.

Permanent individual truss member restraint/bracing shall be installed using standard industry lateral restraint/bracing details in accordance with generally accepted engineering practice. Locations for lateral restraint shall be identified on the truss design drawing.

The trusses shall be designed so that the buckling of any individual truss member is resisted internally by the individual truss through suitable means (i.e., buckling reinforcement by 7-reinforcement or 1-reinforcement proprietary reinforcement, etc.). The buckling reinforcement of individual members of the trusses shall be installed as shown on the truss design drawing or on supplemental truss member buckling reinforcement details provided by the truss designer.

1. **Building Permit must be posted on the job site at all times.**
2. **One set of approved drawings must be on site during construction.**
3. **Any code related items not specified on the plans must be field verified by the inspector. (truss drawings and placement etc.)**
4. **Notify your local PMCA office for all inspections.** Please plan and call ahead.
5. **Do Not proceed beyond an indicated inspection without first obtaining the necessary inspection.**
6. **Occupancy is not permitted without the final occupancy inspection.**
7. **Universal Accessibility to all services, goods, events and functions offered within the Commonwealth of Pennsylvania is a guaranteed civil right. Please review your construction documents to insure that this right has not been violated. Basic compliance with all provisions of the standard ANSI A117.7 and chapter 11 of the IBC must be met to insure all citizens enjoy access to goods and services offered within Pennsylvania. Full compliance is mandatory for receipt of a Certificate of Occupancy.**
8. **All applicable provisions of the UCC Pa Act 45 and the 2015 IBC must be fully met even if not depicted on the plans NO EXCEPTIONS.**

*William Chittester UCC # 000817*

*Pennsylvania Municipal Code Alliance Inc.*

*billc@pacodealliance.com*

*If you have questions on plan review comments please call,*

*Cell: 814-494-7339*

*Fax: 814-561-1282*

**C-2014-2447138/C-2014-2447169 - OFFICE OF CONSUMER ADVOCATE v. HIDDEN VALLEY UTILITY SERVICES LP**

*Updated 6/25/2020*

ROBERT J KOLLAR & KELLIE A KUHLEMAN  
1374 LANGPORT DRIVE  
PITTSBURGH PA 15241  
**412.257.4129**

Via electronic service only due to Emergency Order at M-2020-3019262  
[bob@kkacpas.com](mailto:bob@kkacpas.com)

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CHRISTINE M HOOVER ESQUIRE  
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