

January 25, 2023

**Via Electronic Filing**

Rosemary Chiavetta, Esquire  
Secretary  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Docket No. C-2022-3037260  
New Garden Center LLC v. Aqua Pennsylvania Wastewater, Inc.  
Motion to Dismiss**

Dear Secretary Chiavetta:

Attached for filing is the Motion of Respondent, Aqua Pennsylvania Wastewater, Inc. to dismiss the Formal Complaint filed by New Garden Center LLC (Complainant) in the above-captioned proceeding.

A copy of the Motion to Dismiss has been forwarded to the Complainant in the manner indicated on the attached Certificate of Service.

If there are any questions, please contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/co  
Enclosures

cc: The Hon. Mark A. Hoyer, PA Public Utility Commission [w/encl.]  
Mary McFall Hopper, Esquire, Aqua Pennsylvania, Inc. [w/encl.]  
Blaise Saienni, New Garden Center LLC [w/encl.]

**Re: Docket No. C-2022-3037260  
New Garden Center LLC v. Aqua Pennsylvania Wastewater, Inc.  
Motion to Dismiss**

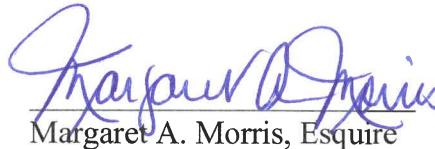
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served upon the person(s) listed below, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

**Via Electronic and First-Class Mail**

Blaise Saienni  
New Garden Center  
255 Airport Road  
New Castle, DE 19720  
[saiennient@verizon.net](mailto:saiennient@verizon.net)

Dated: January 25, 2023

  
Margaret A. Morris, Esquire

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NEW GARDEN CENTER LLC

v.

AQUA PENNSYLVANIA WASTEWATER,  
INC.

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:  
:  
:

Docket No. C-2022-3037260

**NOTICE TO PLEAD**

Pursuant to 52 Pa. Code § 5.103, you are hereby notified that if you do not file a written response to the enclosed Motion to Dismiss of Aqua Pennsylvania Wastewater, Inc., within **twenty (20) days** from service of this Notice, the facts set forth by Aqua Pennsylvania Wastewater, Inc. in the Motion to Dismiss may be granted. All pleadings, such as a Reply to the Motion to Dismiss, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Aqua Pennsylvania Wastewater, Inc., and the Honorable Mark A. Hoyer presiding over this proceeding.

**File by Mail or e-file with:**

Rosemary Chiavetta, Esquire  
Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**With a copy to:**

Margaret A. Morris, Esquire  
Reger Rizzo & Darnall LLP  
Cira Centre, 13<sup>th</sup> Floor  
Philadelphia, PA 19104  
[mmorris@regerlaw.com](mailto:mmorris@regerlaw.com)

The Hon. Mark A. Hoyer  
[mhoyer@pa.gov](mailto:mhoyer@pa.gov)

Date: January 25, 2023



Margaret A. Morris, Esquire  
Attorney ID No. 75048  
Reger Rizzo & Darnall LLP  
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Philadelphia, PA 19104  
(215) 495-6524 (tel.)  
[mmorris@regerlaw.com](mailto:mmorris@regerlaw.com)

*Counsel for Aqua Pennsylvania Wastewater, Inc.*

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

NEW GARDEN CENTER LLC	:	
	:	
v.	:	Docket No. C-2022-3037260
	:	
AQUA PENNSYLVANIA WASTEWATER, INC.	:	
	:	

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**MOTION OF AQUA PENNSYLVANIA WASTEWATER, INC.  
TO DISMISS FORMAL COMPLAINT**

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TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Aqua Pennsylvania Wastewater, Inc. (Aqua or the Company) by and through its attorneys, Reger Rizzo and Darnall, LLP, files this Motion to Dismiss, pursuant to 52 Pa. Code §5.103. In support, Aqua avers as follows:

**I. Introduction**

1. In this Motion, Aqua seeks the dismissal of the Formal Complaint captioned *New Garden Center LLC v. Aqua Pennsylvania Wastewater, Inc.* filed by Blaise Saienni on behalf of New Garden Center LLC, (Complainant), a business entity registered on May 7, 2007. As a Pennsylvania corporation with the Pennsylvania Bureau of Corporations, the Complainant is required at this stage of the proceeding to be represented by an attorney at law in accordance with 52 Pa. Code §§ 1.21-1.23. Documentation of the Complainant’s corporate status is provided as Attachment 1.

**II. Factual Background**

2. The Formal Complaint was filed against Aqua on December 16, 2022 and relates to the non-residential wastewater service in the Complainant’s for service to 739 West Cypress

Street, Kennett Square, Pennsylvania (Service Location) under Account No. 0026928991496445 (Account).<sup>1</sup> The Complainant alleges incorrect charges on the Account.

3. On January 5, 2023, Aqua filed an Answer admitting that Complainant's rates recently increased in compliance with its Commission-approved tariff.

4. A Hearing Notice, dated January 9, 2023, was issued for the Call-in Telephonic Hearing on Wednesday, February 22, 2023, before the Honorable Mark A. Hoyer (Judge Hoyer).

5. On January 10, 2023, the undersigning attorney filed an Entry of Appearance on behalf of Aqua.

6. As of the filing of this Motion, no attorney has filed an Entry of Appearance in the instant proceeding.

### **III. Corporations must be represented by counsel.**

7. Representation before the Commission is governed by the Commission's regulations at 52 Pa. Code §§ 1.21-1.23. These regulations provide that "[i]n adversarial proceedings, partnerships, corporations, trusts, associations, agencies, political subdivisions and government entities shall be represented only by . . . an attorney." 52 Pa. Code § 1.21. An adversarial proceeding begins with the filing of an Answer. 52 Pa. Code § 1.8 *New Fizon Catering, Inc. v. PECO Energy Company*, Docket Nos. C-2008-2065498 and C-2008-2079076 (Order entered June 24, 2009).

8. A non-attorney owner/operator of a limited liability corporation may file a formal complaint pleading, without an attorney, but thereafter must be represented by counsel. *Tyler Run, LLC v. Penelec*, Docket No. C-200438888 (Order entered January 5, 3005) and *Snyderville Community Development Corporation v. Philadelphia Gas Works*, Docket No. C-20055032 (Order entered July 31, 2006).

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<sup>1</sup> The Account is billed under the Company's Rate Zone 11 Wastewater Tariff.

9. The Commission's obligation to require attorneys in adversarial proceedings for parties other than individual *pro se* proceedings is well-settled:

In Pennsylvania, the Supreme Court is responsible for regulating the practice of law, and this Commission is bound by the Supreme Court's rules. The only persons authorized to practice law in Pennsylvania are as follows: (1) persons fully admitted to the Pennsylvania Bar; (2) persons admitted *pro hac vice* under Rule 301; and (3) persons qualified as certified legal interns under Rule 321. The Pennsylvania Supreme Court in *Shorz v. Farrell*, 327 Pa. 81, 193 A.20 (1937), held that if the nature of an administrative hearing is to determine questions of fact or interpretation of administrative law, then the hearing is of a judicial character. Any participation in such a hearing constitutes the practice of law. Accordingly, it would be unlawful to allow non attorney representation in adversarial proceedings before the Commission.

*James and Judith Simon v. Franklin Water Company*, Docket No. C-00956589 (Order entered January 29, 1996).

10. Consequently, a corporation that files a formal complaint with the Commission must obtain counsel to proceed with all other aspects of the proceeding, including, without limitation, responsive pleadings, discovery, testimony preparation, attendance at hearing, examination of witnesses and briefing.

11. At this point, Aqua is required to incur the time and expense to prepare for a full evidentiary hearing without knowing if the Complainant will even be represented by counsel.

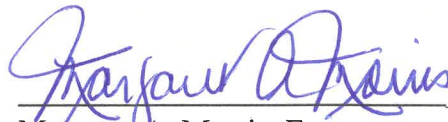
12. In order to minimize any further prejudice, time and/or expense by Aqua, the Complainant should be ordered to have a licensed attorney file an Entry of Appearance within ten (10) days of the issued order, or the proceeding will be dismissed.

**WHEREFORE**, for the foregoing reasons, the Aqua Pennsylvania Wastewater, Inc. respectfully requests that the Commission:

a) Enter an order directing the Complainant, New Garden Center LLC, to have a Pennsylvania licensed attorney enter an appearance on behalf of the Complainant within ten (10) days of the issued order; and

b) Dismiss the Formal Complaint in this proceeding if a Pennsylvania licensed attorney does not enter appearance on behalf of New Garden Center LLC in compliance with any applicable order.

Respectfully submitted,



Margaret A. Morris, Esq.  
Attorney ID No. 75048  
Reger Rizzo & Darnall LLP  
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2929 Arch Street  
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[mmorris@regerlaw.com](mailto:mmorris@regerlaw.com)

Dated: January 25, 2023

*Counsel for Aqua Pennsylvania Wastewater, Inc.*

Docket No. C-2022-3037260  
New Garden Center LLC v. Aqua Pennsylvania Wastewater, Inc.

Attachment 1

Business Entity Filing



**Search:** Public Records : Corporation Filings  
**Terms:** company(New Garden Center LLC)

<u>No.</u>	<u>Business Name</u>	<u>Address</u>	<u>Business Type</u>	<u>Filing Information</u>	<u>Jurisdiction</u>
2	<b>NEW GARDEN CENTER LLC</b>	REGISTERED OFFICE 13 KEDRON AVE MORTON, PA 19070-1513	LIMITED LIABILITY COMPANY	Name Type: LEGAL Foreign Filing Date: 05/07/2007 Registration Number: 3730860 Status: ACTIVE Record Type: CURRENT	Pennsylvania Secretary of State

Terms: company(New Garden Center LLC)  
Date/Time: Wednesday, January 11, 2023 1:57 PM  
Permissible Use: **Your DPPA Permissible Use: I have no permissible use**  
**Your GLBA Permissible Use: I have no permissible use**

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