

7th ICA Quarterly Report for 2022-23 Term (Q3 2023)

Seventh Quarterly Report of the 2022-23 Independent Consumer Advocate (“ICA” or “Consumer Advocate”) for the Metropolitan District of Hartford County (MDC)

(Q3 2023: July 1, 2023 – September 30, 2023)

Introduction

This is the 2022-23 Consumer Advocate’s seventh quarterly report, which summarizes most of his work done in the third quarter of calendar year 2023 (July 1, 2023 – September 30, 2023). The discussion of some matters in this report is truncated because they are continuations of summaries provided in prior quarterly reports.

Consent Order Modifications and North Hartford Sewer Rehabilitation Projects

As discussed in the 2022-23 ICA’s sixth quarterly report, one of the major developments in 2023 was the amendment of the Consent Order. This new Consent Order¹ became final and effective during Q3 of 2023.² The 2023 Consent Order and associated “2023 Integrated Plan Implementation Phase I” (the “2023 Integrated Plan”) clearly changed the fundamental policies underlying the working relationship between officials from the MDC, the City of Hartford, DEEP, and the U.S. Environmental Protection Agency (“EPA”), as it relates to improving the Hartford combined sewer system per Clean Water Act (“CWA”) requirements. Most notably, the 2023 Consent Order now requires that the newly appointed community outreach liaison, the ICA, and members of the public have more regular and meaningful input into the MDC’s ongoing work being done to Hartford’s combined sewers per the 2023 Integrated Plan. The process for MDC to implement these changes necessarily must occur over a prolonged period, but it became evident to the ICA during this quarter that he and his successors need to have regular input in this process. This was not only due to the new provisions in the Consent Order that expressly require the ICA’s input in the process, but also due to the fact that—unlike prior MDC policy—the Consent Order now officially authorizes the MDC to perform repairs and replacements to customers’ sewer laterals on private property. The ICA indeed notes that there are many good policy reasons for authorizing the MDC to do this work—and he wishes to make clear that he supports it in general—but he also wishes to call attention to the likelihood that many customers may become confused or misled if they do not have clear and consistent information about how the MDC plans to perform this work going forward. The same is true for the related customer service. Thus, during this quarter the ICA tried to begin developing an internal plan of action regarding how he would plan to coordinate his efforts under the 2023 Consent Order with those of the community outreach liaison and other MDC staff, but he ultimately was unable to finalize any official plan for public dissemination.³

Notwithstanding, in years to come, the ICA hopes that his successors will become more focused on prioritizing work in connection with the 2023 Consent Order. The limited Q3 2023

¹ Hereinafter referred to as the “2023 Consent Order” or “Consent Order”, unless otherwise indicated.

² See <https://themdc.org/app/uploads/2023/12/Executed-Modified-Consent-Order-MDC-DEEP.pdf>.

³ Unfortunately, I did not have as much capacity during this quarter to do any MDC-related work as I would have preferred. This was in large part due to the fact that my other non-MDC related client litigation matters were taking up a majority of my time and attention during this quarter.

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work that the ICA was able to perform with respect to the 2023 Consent Order primarily consisted of:

- Reviewing and commenting on final/draft policy documents—which either applied under the 2018 IP/LTCP or the 2023 Integrated Plan, and some of which therefore have since become obsolete—in order to develop a strategy for meeting customer needs under the 2023 Consent Order, particularly those without resources.
- Reviewing policy documents and other publications promulgated by other Connecticut municipal or quasi-municipal wastewater authorities with respect to how they manage compliance for their own respective LTCPs or Integrated Plans
- Reviewing documents and other materials concerning the anticipated Hartford Sewerage System Repair and Improvement Fund, and advising customers about how to apply for enrollment.
- Reviewing legislative reports and testimony before the Connecticut General Assembly, state regulations and other publications (*e.g.*, DEEP’s “CT Sewage Right-to-Know” publications, statutes, as well as news articles and other public communications, about the 2023 Consent Order and the CWP; ensure accuracy of the information that was being reported to MDC’s sewer customers.
- Communicating directly with customers who would be impacted most by MDC’s sewer separation projects—or at least facilitating communication between these customers and appropriate MDC staff—in order to address their concerns and questions about how the MDC would carry out its operations under the 2023 Consent Order.
- Communicating with activists from environmental advocacy organizations such as Third Act regarding the 2023 Consent Order and about status of MDC’s work on various sewer separation projects in North Hartford.

Proposed Revisions to Sewer Ordinances re: Private Property Damage and Sewer Connection Repairs, and Storm Water (Inflow) Connections

In a similar vein to his Q3 2023 work regarding the 2023 Consent Order, the ICA particularly tried to increase his efforts on promoting the inclusion of appropriate language in draft MDC ordinances and policies which would best maintain the equitable distribution of benefits for MDC’s affected sewer customers. In particular, the ICA tried to promote the interests of sewer customers—most of whom were in West Hartford or Hartford—who sought reimbursement for costly repairs for which that had paid themselves but which had been caused by CSOs, flooding, I&I, or other harms associated with deterioration of MDC’s combined sewers. The ICA realized that these customers uniquely could be left out of receiving future benefits provided by the 2023 Consent Order’s programs. Given that these customers potentially could be ignored when they otherwise would have qualified for the program’s benefits had it not been for the timing of flooding incidents and repairs, the ICA prioritized his work to try and call attention to their situation.

A key ordinance that was proposed to MDC Commissioners in this regard was the proposed sewer ordinance titled “Ordinance re: Private Property Sewer Connection Rodding or Repair,” which had been identified on the agenda of the BPW’s April 24, 2023 Special Meeting Agenda as item #7 (see <https://themdc.org/app/uploads/2023/04/BPW-Agenda-with-Resolutions->

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[and-PPs-4.24.23.pdf](#)) and which was related to the MDC’s newly announced Sewer House Connection Program. As discussed in the ICA’s preceding quarterly report, the main concern that several customers had brought to his attention about the ordinance and the program was the fact that there did not appear to be a clear way for certain customers to seek much-needed relief for sewer lateral damage. Specifically, the customers who already had suffered property damage and who had been forced to pay for costly repairs themselves did not appear to have any recourse for seeking compensation from the MDC or elsewhere for CSO-related damage to their property. Building off of the ICA’s arguments and comments offered at the May 2023 public hearing held on the proposed ordinance, the ICA continued continuously promoted a message to Commissioners and other policymaking officials at the MDC that focused on preserving equity amongst customers, and he argued that the MDC must create a codified procedure for these customers to seek some form of redress, even if it requires retroactive reimbursement once the Program and the Sewer Ordinance are codified at a future date. The ICA argued that this could be accomplished either by amending the existing language of the draft ordinance itself, or by proposing another sewer ordinance altogether.⁴

Another key Sewer Ordinance that was proposed and discussed by Commissioners—primarily at the BPW’s August 30, 2023 Meeting—was Sewer Ordinance S2w (New or Modified Storm Water (Inflow) Connections). See Agenda Item #6/Minutes at: <https://themdc.org/app/uploads/2023/09/M-BPW-08.30.2023.pdf>. The District staff’s presentation to—and discussion among—Commissioners regarding this proposed ordinance focused on District staff’s comparison with the City of Hartford’s Zoning Regulation § 6.14.2, which concerns the City’s P&Z requirements for Stormwater and Low Impact Development. Notably, District staff pointed out a discrepancy between the Zoning Regulation and Ordinance S2w insofar as unlike the City of Hartford’s Planning & Development Staff, the MDC considers a 1-year storm runoff discharge rates—in addition to 2, 10, 25, and 100 year storm runoff discharge rates—as a cap in terms of how much stormwater runoff can be permitted for a development before its applicant will receive a permit to proceed with construction. Addition of this and other language revisions such as the addition of “total runoff volumes” and “runoff standards” into Ordinance S2w, was the result of Staff’s recommendations in proposing this Sewer Ordinance revision to the BPW. The ICA examined relevant City of Hartford Regulations, Stormwater Management Plan Design Standards, and other non-MDC materials in order to ensure the accuracy of what was being reported in the consideration of this Ordinance.

Review of MDC’s Public Water Supply Master Plan Documents and Related Records

The ICA spent time during this quarter reviewing the MDC’s policy documents, plans, reports, and other materials regarding its Public Water Supply Master Plan during this quarter. The ICA reviewed these materials primarily in connection with the June 13, 2023, August 30, 2023, and September 27, 2023 Meetings of the Water Bureau,⁵ but he looked at meeting minutes and other materials from prior years as well, given that the MDC had been performing some of the work on its Raw Water Master Plan for several years prior to 2023.

⁴ This draft sewer ordinance was still being discussed as of the end of Q3 and is an ongoing issue.

⁵ The ICA wishes to thank District staff for providing a comprehensive and succinct presentation in the WB August 30, 2023 Agenda Materials on this matter in general. (See PDF pages 5-21 of 66 of: <https://themdc.org/app/uploads/2023/08/WB-Agenda-Package-08.30.2023.pdf>.)

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After receiving some of the MDC's historic records regarding its water treatment facilities and its transmission mains, the ICA communicated with staff and MDC consultants in an effort to gain a better understanding on the policy goals underpinning Staff's recommendations for the 2023-2029 Master Plan upgrades.

The ICA also analyzed the pros and cons related to staff recommendations (including those regarding the proposed water rate stabilization fund) recommendations, and he communicated with staff, Commissioners, and members of the public about how these recommendations may affect the proposed water rates to be discussed in upcoming 2024 budget discussions.

Economic Development Rate

The ICA spoke out in favor of the MDC's revision or repeal of its Economic Development Rate that had been enacted several years before 2023. In connection with making position statements against the rate, the ICA researched District records and other materials circulated to Commissioners about the Economic Development Rate, and particularly the average use, water consumption, and billing figures concerning the rate's applicability to Niagara Bottling's account. (See PDF pages 2-4 of 66 of Water Bureau's August 30, 2023 Regular Meeting Agenda materials (<https://themdc.org/app/uploads/2023/08/WB-Agenda-Package-08.30.2023.pdf>.) In evaluating the policy implications of the MDC's use of the Economic Development Rate (EDR), the ICA also reviewed comments made about the rate by ICA Silverstone during the February 24, 2020 Public Hearing before the Committee on MDC Government (see PDF pages 4-5 of 95 at <https://themdc.org/app/uploads/2020/09/M-PH-MDC-Government-02.24.2020.pdf>). The ICA also reviewed comments made by other attendees at this Public Hearing, and he ultimately gained a more informed understanding of the history and policy implications behind the EDR. Ultimately, the ICA spoke out against the maintenance of the EDR (as currently codified) at the Water Bureau's August 30, 2023 meeting held during this quarter. In doing so, the ICA echoed ICA Silverstone's February 2020 comments. To the extent that the BPW was inclined to keep the EDR on the books, the ICA stated the following: the EDR should have fixed terms for incentives, should condition qualification on yearly consumption requirements, and should make it available beyond merely large industrial users or distressed business customers. The ICA made note at this August 30, 2023 meeting that one of the rationales for the EDR in 2020 was now obsolete: the MDC was one of the only remaining water utilities in the state at that time (2020) that had not yet offered an economic development rate to its customers. The ICA made some practical recommendations about policy changes to the EDR that should be considered.

Preparation for 2023 ICA Annual Consumer Public Forum, Budget Review Process, and General Meeting Attendance

As a general matter, the ICA continued to attend regular and special meetings held by the MDC's District Board, the BPW, Water Bureau, Board of Finance, and various Committees during this quarter of 2023. Further, the ICA increased focusing his efforts on preparing for the upcoming Meetings for the 2024 Budget and his 2023 Annual Public Consumer Forum.

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Customer Complaints and Inquiries

As in previous quarters, the ICA continued to address individual customer complaints and inquiries that were brought to his attention. Many of the customer inquiries or complaints discussed in the preceding quarterly report remained ongoing during this quarter, but some of the more notable additional matters are included here:

- A West Hartford residential customer contacted me vis-à-vis State Representative Farrar's Office and complained about having been misinformed by an MDC representative regarding how water usage was billed on his street. The customer claimed to have been informed that his property and others on his street would be subject to a fixed monthly charge for all months and that only on occasional months during which there was heavy usage would customers be charged for actual usage. With the assistance of District staff, however, I was able to confirm for the customer that this was not the case and that there were only two fixed charges on customer water bills: a \$15 monthly water customer service charge and a \$9 monthly sewer customer service charge. It was also determined that the customer had not correctly recalled the nature of the representative's comments, seeing as he later recalled that the representative was actually discussing other water companies by way of example.
- I assisted a West Hartford hotel customer with administering and receiving payment for the customer's claim for property damage caused by a blockage that had been caused by debris getting lodged in a sewer lateral connection after MDC had cleaned the nearby sewer main.
- I received several complaints from customers about the online billing software, a website on MDC's page related to COVID-19 that did not work, the use of illegal dirt bikes at Hogback Dam, a man's complaint "on behalf of all people who fish the Farmington River" about the MDC's alleged mismanagement of the Goodwin Dam and the release of cold water which thereby killed a large stock of trout that had been supplied, and a general complaint about the MDC website. I put all of these customers in touch with the appropriate MDC staff or department, but I was unable to verify whether or not all of these complaints in fact were true.
- I assisted a Rocky Hill customer who experienced damage to his water heater and to other parts of his home after MDC work on a blow off valve of a nearby water main transmission line caused flooding. I helped the customer prepare and pursue payment of a property damage claim with the MDC's Claims Department.
- I investigated the facts surrounding a property damage incident to a West Hartford customer's property that had been caused by a spike blockage in the customer's sewer lateral—in a portion of the lateral that was off the customer's property—and I assisted the customer in filing a claim.
- I assisted an elderly West Hartford residential customer with a leak adjustment request which ultimately revealed a leak in her connection.
- I advised and conducted a preliminary investigation of the facts surrounding a West Hartford residential customer's complaint about the MDC's installation of a backwater prevention valve in her home. According to the customer, when she was first approached by MDC representatives about the need to install a backwater prevention device, she was told that a sump pump & backwater prevention valve would be installed. The installers were in her home for about 8-9 hours during the actual installation process, but she was

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not present—only her elderly father was present. The crux of the customer’s complaint was that in the installation process, the installers cemented the drain pitch in her home’s basement. When the customer learned of this, she complained about the sump pump’s functionality, but the representatives assured the customer that there would be no problems. Approximately two days later, the customer’s basement was flooded. She also suffered more flooding damage thereafter, as well as at least one occasion when the customer’s sink overflowed, which had not happened prior to the installation. The customer was adamant that nothing in either the MDC’s or the contractors’ literature about the backwater prevention device said anything about the main drain in the home being cemented or otherwise closed. The customer also did some research and she claims to have discovered that the MDC and/or contractors may have done this in other homes, but only in West Hartford and nowhere else. The ICA was unable to verify these claims, but considered doing so if he had more time and resources. The customer asked to have her drain opened again by staff, in addition to reimbursement for her claim for the basement flooding damage. The ICA assisted her with the claims process and relayed her complaint to staff, but he was unable to continue working on the matter due to time and resource constraints.

Respectfully submitted,



Joseph D. Szerejko
Independent Consumer Advocate (2022-23)