

HANOVER FOODS CORPORATION,

Petitioner

v.

TOWN OF RIDGELY, MARYLAND,

Respondent

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IN THE

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MARYLAND TAX COURT

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Case No. 19-MI-00-0187

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MEMORANDUM AND ORDER

In the present case, the Petitioner, Hanover Foods Corporation (“HFC” or “Petitioner”), has appealed the decision of the Town of Ridgely, Maryland (the “Town” or “Respondent”) to deny Petitioner’s request for a refund of water and sewer payments as well as the Bay Restoration Fund payments made to the Town on or after July 20, 2015. The Petitioner’s primary contention is that the Town uses an inaccurate metered water volume method as the basis for determining sewer volume in calculating charges. Petitioner claims that its industrial process returns water to the Town’s sewer system by pumping it to nearby lagoons for use in irrigation. HFC claims that the current method for calculating wastewater charges for commercial and industrial customers is unfair and inequitable when the users dispose of their process water elsewhere. The Town maintains that its methodology is fair and in compliance with all applicable laws.

The Court must first address the State law requirements for water service rates set forth in Sections 9-724(a), 9-723 and 9-726 of the Environment Article of the Annotated Code of Maryland. Section 9-724(a) provides that the water service rates shall:

“(1) Be based on estimates of the amount water used by the types of users specified in the rates; and

(2) Consist of:

(i) A minimum charge based on the size of the meter on the water connection leading to the property; and

(ii) A charge for water used, based on the amount of water passing through the meter during the period between the last 2 readings.”

Section 9-723 requires that water and sewer rates be uniform, and Section 9-726 provides that the political subdivision, such as the Town, shall select a reasonable basis for imposing sewer service charges without requiring a specific methodology.

However, Section 9-946(c)(1) of the Environment Article, Annotated Code of Maryland, provides that rates, fees and charges for the services and facilities operated by a water and sewer authority may be based on:

- (i) The quantity of water used;
- (ii) the amount of the water bill;
- (iii) The number and size of sewer connections;
- (iv) The number and kind of plumbing fixtures in use in the premises that are connected with the sewerage system;
- (v) The number or average number of individuals who reside in, work in, or are otherwise connected with the premises that are connected with the sewerage system;
- (vi) The type or character of the premises that are connected with the sewerage system;
- (vii) Any other factor that affects the use of the facilities furnished; or

(viii) Any combination of these factors.

The Town's water and sewer charges are set forth in Resolution 2011-04 (the "Resolution") which provides that all water and sewer customers are assessed a quarterly charge for water and sewer service based upon the amount of water passing through the water meter. The Resolution was adopted on June 6, 2011, following a public hearing. The actual rates for water and sewer service for commercial customers are set forth in the Resolution. In addition, the Town collects the Bay Restoration Fund ("BRF") fees pursuant to Section 9-1605.2 of the Environment Article, Annotated Code of Maryland, which are remitted to the Maryland Department of the Environment ("MDE"). The BRF fees are based on the water usage of the number of equivalent dwelling units ("EDU") multiplied by \$15.00.

On February 22, 2018, HFC contacted the Town through its counsel to express concerns as to the bills for water and sewer service and BRF fees that it had paid to the Town. An audit conducted by the energy group at McNees, Wallace & Nurik LLC ("MWN") revealed that two (2) of HFC's sewer service accounts (Account Nos. 4054 and 4058) were billed on the basis of metered water usage. HFC suggested that although it utilizes a significant amount of Town water in its industrial process, a large majority of the process water is pumped out to lagoons and used for irrigation of nearby fields and never re-enters the Town's sewer system. HFC claims that the Town's practice of billing for sewer service based on water intake is flawed, imprecise and unfair to certain manufacturers such as HFC. HFC requested that its analysis indicates a significant billing issue that requires adjustment going forward, as well as refunds for excessive sewer service payments, water payments, and BRF fees payments made on or after July 20, 2015. HFC also

requested that the BRF fees be removed from active water Account 4055 with no service attached and that the capped and unusable water Account 4057 be eliminated from any charges.

In its response letter to HFC, the Town maintained that HFC was correctly billed for water and sewer usage but determined that the BRF fees were incorrectly calculated, resulting in HFC being underbilled by \$3,579.32 on Account Nos. 4054 and 4058. The Town initially agreed that Account Nos. 4055 and 4057 should not have been billed for BRF fees because they did not receive sewer service, but MDE representatives determined that BRF fees were correct as long as there was actual water usage.

The Town's water and sewer rates fall into one of four categories – Single Family Residential, Apartments, Commercial and Industrial – each of which has a uniform billing rate. HFC, which is billed at the commercial rates, proposes that it should be billed based on actual wastewater deposited rather than metered wastewater. If the Town adopted this billing methodology for HFC, then it would have to bill all commercial users in such a manner in order to comply with the State law uniformity requirement.

Moreover, at the direction of MDE's Water Quality Financial Administration, the water and sewer rates set forth in Resolution 2011-04 were required to provide zero-interest financing for major improvements to the Town's wastewater treatment plant. The Town was required to increase its water and sewer rates by 33% over 3 years beginning in 2009 and ending in 2011. The improvements were required to adequately supply water and sewer service to its customers.

HFC incorrectly refers to "usage fees" as "wastewater usage" and "not water usage." Furthermore, there is no language in the Town Code stating that the usage fee for sewer service is based on the volumetric measurement of wastewater used through the use of a wastewater meter.

In fact, there is no provision in the Town Code providing for wastewater meters or some other means of measuring wastewater usage.

HFC also claims a refund of BRF fees on Account Nos. 4054 and 4058 based upon the false premise that the Town cannot bill for sewer service based upon metered water usage. The Town acknowledges that it incorrectly assessed BRF fees based on fixed EDUs and not based on water used as required by Section 9-1605.2 of the Environment Article of the Annotated Code of Maryland. The BRF statute states that “for the purposes of measuring average daily wastewater flow, the local government shall use existing methods of measurement, which may include water usage or other estimation methods.” The Town’s existing method of billing for wastewater flow is water usage, and it is irrelevant that an alternative method of measurement may be used.

The Court further finds that HFC is not entitled to any refund for Account Nos. 4054 and 4058. The Town’s billing practice of measuring water usage is in accordance with State law requirements as well as Town Resolution No. 2011-04. HFC has not offered sufficient justification for its general allegation that the Town’s practice of billing for sewer service based on metered water usage is unreasonable, unfair or unjust.

In addition, there is no genuine dispute that Account No. 4055 is subject to BRF fees because there was water usage.

The water line for Account No. 4057 was connected to the Town’s water main, although its water meter was removed. HFC was not using the water line on its property that was connected to the Town’s water main, and HFC is entitled to a refund of the water service payments on Account No. 4057.

Accordingly, it is this 16th day of Jan., 2020, ORDERED, by the Maryland Tax Court, that the decision of the Respondent to deny the claim for refund for Account No. 4057 is hereby REVERSED and the decision by the Respondent to deny all the other claims for refunds involved in this matter is hereby AFFIRMED.

CC: Matthew L. Garber, Esq.
Patrick W. Thomas, Esq.
Jeffrey G. Comen, Esq.
Kent Finkelsen, Administrator

CERTIFIED TRUE COPY
TEST: John T. Hearn, Clerk

NOTICE: You have the right of appeal from the above Order to the Circuit Court of any County or Baltimore City, wherein the property or subject of the assessment may be situated. The Petition for Judicial Review **MUST** be filed in the proper Court within thirty (30) days from the date of the above Order of the Maryland Tax Court. Please refer to Rule 7-200 et seq. of the Maryland Rules of Court, which can be found in most public libraries.