

The Sanitary Projects Act



NMED Drinking Water Bureau

1 SPA Training Credit

Overview

- The Sanitary Projects Act (SPA) was enacted in 1947 to address health impacts due to inadequate water supplies in rural New Mexico.
- SPA is the law governing Mutual Domestic Water Consumer Associations (MDWCA)
- Funded the construction of MDWCA infrastructure
- MDWCAs are local governments
- SPA was significantly amended in 2006

Political Subdivision

3-29-3 states MDWCAs are political subdivisions of the state. This means:

- MDWCAs are eligible for public funding for infrastructure projects
- MDWCAs are operated and maintained for the public good
- MDWCAs are subject to various state laws and regulations including:
 - Procurement Code
 - Open Meetings Act
 - Inspection of Public Records Act
 - Audit Act
 - Tax Administration Act

Public Body Corporate

3-29-15

- A MDWCA constitutes a “Public Body Corporate” which means that:
 - The association can sue and be sued
 - Make contracts
 - Acquire and dispose of real or personal property
 - Accept grants
 - Incur debt
 - Impose fees and assessments
 - Do all things necessary and proper to carry out purpose

Board Powers & Duties

3-29-6

- Board of directors acts on behalf of the Association as its agent
- Board has power of eminent domain for right of way for projects, but must do the least disturbance to public or private property
- Board may set and adjust rates and fees for services

Board Powers & Duties

3-29-6

- Fees may include:
 - membership fees;
 - a base monthly service fee for each active connection delivering water;
 - a base monthly service fee for each inactive connection;
 - a standby charge for the privilege of connecting into the association's water service at some date in the future;
 - assessments based on the volume of water delivered;
 - a connection charge; and
 - an assessment necessary to cover the cost of extending either water or sewer service.

Board Powers & Duties

3-29-6

- Board may place a lien “on property to which services have been extended in the amount of all outstanding assessments, charges and fees associated with the services”
- “After notice is given, the board of directors of the association **shall** shut off unauthorized connections, illegal connections or a connection for which charges are delinquent in payment. The board of directors may file suit in a court of competent jurisdiction to recover costs associated with an unauthorized or illegal connection or delinquent connection, including the cost of water delivered, charges for facility connection and disconnection, damages and attorney fees.”

Board Training Rule

- “Each member of the board of directors of the association shall complete training, as determined by rules of the department.”
- Training rule went into effect April, 2008.
- Requires all MDWCA board members to obtain 12 hours of training in first 2 years on the board
- Requires 2 hours of continuing education for each year on the board after.

Board Training Rule

- Required topics in initial 12 hours are:
 - responsibilities of governing bodies (certificate of association, bylaws, election procedures and Governmental Conduct Act);
 - Sanitary Projects Act;
 - Safe Drinking Water Act and drinking water regulations;
 - Utility Operator Certification regulations;
 - Open Meetings Act;
 - Inspection of Public Records Act;
 - Audit Act and Requirements for Contracting and Conducting Audits of Agencies;
 - State Procurement Code;
 - Office of the state engineer reports and requirements; and
 - basic accounting, budgeting, and rate setting.

NMED Powers

- NMED (the Department) is the enforcement authority over SPA requirements
- The Department may:
 - conduct periodic reviews of the operation of the association;
 - require the association to submit information to the department;
 - require submittal of financial reports required pursuant to the Audit Act;
 - review and require changes to the rate-setting analysis described in Section 3-29-12;
 - after a hearing, intervene in the operation and management with full powers, including the power to set and collect assessments from members of the association, to set and collect service charges and use the same for the proper operation and management of the association; and
 - appoint and delegate authority to a representative to oversee operation of the association for a specified period.

NMED Powers

- The department may in its discretion or shall, upon a petition of twenty-five percent of the members of the association, conduct investigations as it deems necessary to determine if the association is being operated and managed in the best interests of all the members of the association.
- Whenever the department determines that an association violated or is violating the Sanitary Projects Act or a rule adopted pursuant to that act, the department may:
 - issue a compliance order requiring compliance immediately or within a specified time period, or both; or
 - commence a civil action in district court for appropriate relief, including injunctive relief.
- If an association fails to take corrective actions within the time specified in a compliance order, the department may assess a civil penalty of not more than two hundred fifty dollars (\$250) for each day of continued noncompliance with the compliance order.

Membership

3-29-11

- All persons within a community who participate or desire to participate in any project may become members of an association upon complying with the rules and regulations prescribed by the board of directors of the association, Any person or persons who did not participate in an original project shall be admitted to membership in an association upon payment to the association of a reasonable fee as determined by the board of directors and the department.
- The Department reviews and approves a MDWCA's rules
- The department is not actively approving membership fees, but reserves the right to review and make changes to membership fees.
- A MDWCA does not have a defined service area, but serves a "rural community".

Board of Directors

3-29-12

- The Board shall be composed of an odd number of at least three members.
- Members of the board of directors shall:
 - be elected annually or as specified in the bylaws of the association;
 - be members in good standing of the association; and
 - serve staggered terms of up to four years to ensure that terms will end in different election years.
- The board of directors shall choose among its members a president, a vice president and a secretary-treasurer or a secretary and a treasurer.

Board of Directors

3-29-12

- Funds sufficient to provide for proper operation and maintenance of the association shall be identified through a rate-setting analysis that will ensure enough revenue to cover yearly expenses and emergencies, a reserve fund for non-major capital items and equitable pay for staff. The rate-setting analysis may be reviewed and changed if necessary on a yearly basis, and the funds shall be obtained by the association by a monthly assessment against the users of the facilities, the assessment to be determined by the board of directors.

Certificate of Association

3-29-16

- Each MDWCA is required to have a Certificate of Association containing:
 - the name of the association;
 - the name of the individuals organizing the association;
 - the location of the principal office of the association in this state;
 - the objects and purposes of the association;
 - the address of the initial registered office of the association and the name of the initial registered agent at that address;
 - the plan and manner of acquiring membership and of providing funds or means for the acquisition, construction, improvement and maintenance of its work and for its necessary expenses;
 - the duration of existence of the association, which may be perpetual;
 - the number and manner of electing the board of directors of the association and the length of the terms that the directors will serve;
 - the definition of a member of the association and the voting rights associated with the membership; and
 - the manner of dissolution of the association as a public body.

Bylaws

- Every MDWCA is required to have bylaws that must contain:
 - Name of Association
 - Association seal
 - Fiscal year
 - Guidelines for membership, including a non-discrimination clause
 - Guidelines for membership meetings including notification
 - Function of Board, including a conflict of interest policy
 - Duties of Officers
 - Provision for rule making to govern day to day operations
 - Frequency of elections

Bylaws

- Make sure bylaws do not conflict with rules or any state or federal laws or regulations
- Bylaws must be approved by a majority vote of a quorum of the association
- Amendments to Bylaws require approval by a majority of the members present at any regular or special membership meeting

Rules

- Rules are required and must contain:
 - Connection and disconnection requirements
 - Membership requirements
- Rules and rule amendments are approved by the board
- Rules are subject to review and approval by NMED

Reporting

- Annual Report

- Due to PRC on or before the fifteenth day of the fifth month following the end of its fiscal year
- Contains:
 - the name of the association;
 - the address of the registered office of the association in the state and the name of its registered agent in this state at that address;
 - a brief statement of the character of the affairs that the association is actually conducting; and
 - the names and respective addresses of the directors and officers of the association.

Reporting

- **Accountability Report**
 - Submitted to NMED along with the CCR by July 1 following the calendar year being reported
 - The report must include:
 - a financial statement prepared in accordance with generally accepted accounting principles
 - a copy of the Open Meetings Act [10-15-1.1 NMSA 1978] resolution stating what notice for a public meeting is reasonable.
 - The report shall be signed and sworn to as to accuracy and completeness by members of the board
 - The CCR shall include a statement that the member accountability report is available to the public upon request.

For More Info

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- View DWB web site:
www.nmenv.state.nm.us/DWB
- View Drinking Water Watch
<http://eidea.nmenv.state.nm.us/SDWIS/>