

Your Filing with the Public Service Commission of Wisconsin has been accepted.

Document ID: 463518

Date Filed/Received: 04/04/2023 01:29:00 PM

Docket: 9300-SI-126

Document Type: Petition

Document Description: Request to Open Docket / Complaint Regarding Sewer Rates

Original File Name: Complaint.pdf

Accept Date: 04/06/2023 12:25:51 PM

PSC Records Management Unit

4822 Madison Yards Way

PO Box 7854

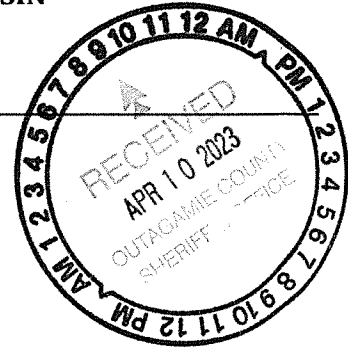
Madison Wisconsin 53707-7854

Phone: (608) 266-5481

Fax: (608) 266-3957

Email: PSCRecordsMail@wisconsin.gov

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN
REQUEST TO OPEN DOCKET



Public Service Commission of Wisconsin
RECEIVED: 4/4/2023 1:28:47 PM

CITY OF KAUKAUNA
c/o Sally Kenney, City Clerk
144 W. Second Street
P.O. Box 890
Kaukauna, WI 54130-0890

Complainant,

vs.

Docket No. *9300-SI-126*

**HEART OF THE VALLEY
METROPOLITAN SEWERAGE DISTRICT**
Brian Helminger, District Director
801 Thilmany Road
Kaukauna, WI 54130

Respondent.

COMPLAINT

The City of Kaukauna files this Complaint against the Heart of the Valley Metropolitan Sewerage District pursuant to Wis. Stat. §§ 66.0821(5) and 196.26 through 196.40, and Wis. Admin. Code § PSC 2.07. Kaukauna is entitled to relief from the Public Service Commission of Wisconsin for the following reasons:

THE PARTIES

1. Petitioner City of Kaukauna (Kaukauna) is a municipality located in Outagamie and Calumet Counties, Wisconsin, with its principal office at 144 W Second Street, Kaukauna, WI. Kaukauna operates a municipal wastewater system pursuant to Wis. Stat. § 66.0821.

2. Respondent Heart of the Valley Metropolitan Sewerage District (HOVMSD) is a metropolitan sewerage district under Wis. Stat. §§ 200.01 to 200.15. HOVMSD's principal office is 801 Thilmany Road, Kaukauna, WI.

3. HOVMSD is governed by a five-member commission with commissioners appointed by the Outagamie County Executive.

JURISDICTION

4. The Public Service Commission (Commission) is authorized under Wis. Stat. § 66.0821(5) to investigate and provide relief in response to a user's complaint that wastewater rates, rules and practices are unreasonable or unjustly discriminatory.

5. HOVMSD is a "municipality" under Wis. Stat. § 66.0821(1)(a).

6. Kaukauna is a "user" of HOVMSD's wastewater services under Wis. Stat. § 66.0821.

BACKGROUND

HOVMSD and its Municipal Customers

7. HOVMSD was formed in 1974 to provide wastewater treatment services to the City of Kaukauna and the Villages of Kimberly, Little Chute, and Combined Locks.

8. HOVMSD was later expanded to include the Darboy Sanitary District.

9. The City of Kaukauna, the Villages of Kimberly, Little Chute, and Combined Locks, and the Darboy Sanitary District are hereafter referred to as HOVMSD's municipal customers in this Complaint.

10. HOVMSD provides wastewater transmission and treatment service to its five municipal customers.

11. HOVMSD does not provide wastewater service directly to the residents of its five municipal customers or any other individual or entity other than the municipal customers.

12. Each of HOVMSD's five municipal customers has their own wastewater collection system and bills their own residents for wastewater service.

HOVMSD's Wastewater System

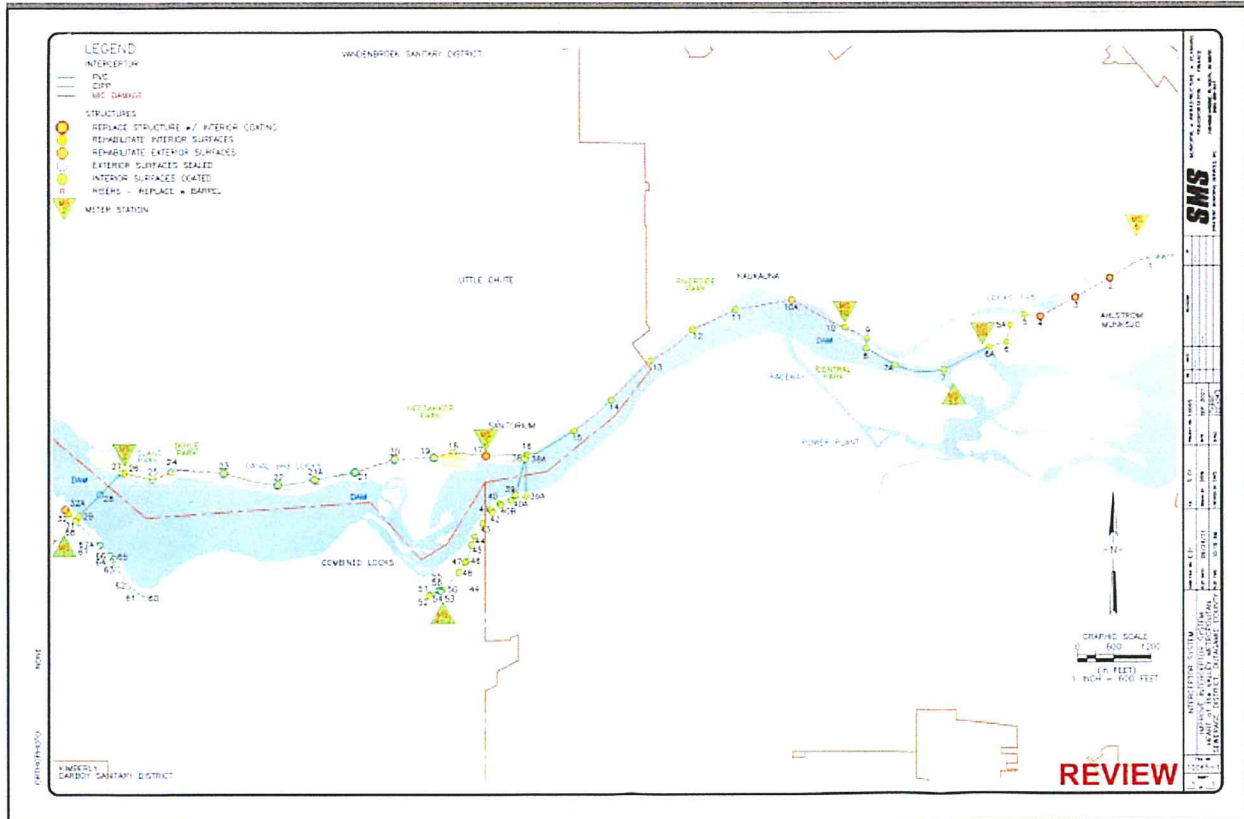
13. HOVMSD's wastewater system consists of a wastewater treatment plant and a wastewater interceptor.

14. After HOVMSD was formed, it purchased Kaukauna's existing wastewater treatment plant and expanded and improved that wastewater treatment plant.

15. In addition, HOVMSD constructed a wastewater interceptor to transport wastewater flow from its municipal customers to HOVMSD's wastewater treatment plant.

16. HOVMSD's interceptor has a total length of approximately 5.5 miles and runs along, in and across the Fox River westerly from HOVMSD's wastewater treatment plant in Kaukauna.

17. The location of HOVMSD's interceptor is shown on the graphic below which was prepared by HOVMSD's engineer. A larger copy of this graphic is attached to this Complaint as Attachment A.



18. On Attachment A, HOVMSD's wastewater treatment plant is shown at Manhole 1 which is located on the right side of the graphic.

Use of HOVMSD's Interceptor

19. Kaukauna's wastewater collection system is connected to HOVMSD's interceptor at Meter Station 5N, Meter Station 5S and Meter Station 10.

20. Kaukauna does not and cannot use any of HOVMSD's interceptor west of Meter Station 10 which connects at Manhole 10.

21. Kaukauna's wastewater collection system is also connected directly to HOVMSD's wastewater treatment plant at Meter Station 6 and Meter Station 9. Meter Station 6 is shown on Attachment A but Meter Station 9 is not. Wastewater flows through Meter Stations 6 and 9 do not enter HOVMSD's interceptor.

22. Over 25% of Kaukauna's wastewater flow is discharged directly to HOVMSD's wastewater treatment plant and does not enter HOVMSD's interceptor at all.

23. Little Chute's wastewater collection system is connected to HOVMSD's interceptor at Meter Station 2 and Meter Station 3 and all the wastewater flow from Little Chute is transmitted through HOVMSD's interceptor to HOVMSD's wastewater treatment plant.

24. Kimberly's wastewater collection system is connected to HOVMSD's interceptor at Meter Station 1 and all the wastewater flow from Kimberly is transmitted through HOVMSD's interceptor to HOVMSD's wastewater treatment plant.

25. Combined Locks's wastewater collection system is connected to HOVMSD's interceptor at Meter Station 4-7 and all the wastewater flow from Combined Locks is measured by Meter 4 and transmitted through HOVMSD's interceptor to HOVMSD's wastewater treatment plant.

26. Darboy Sanitary District's wastewater collection system is also connected to HOVMSD's interceptor at Meter Station 4-7 and all the wastewater flow from Kimberly is measured by Meter 7 and transmitted through HOVMSD's interceptor to HOVMSD's wastewater treatment plant.

Original Construction of HOVMSD's Interceptor

27. HOVMSD's interceptor was originally constructed between 1975 and 1979.

28. HOVMSD allocated capital costs for the initial construction of its interceptor to its municipal customers based on the "reach" method.

29. Under the "reach" method, HOVMSD divided the interceptor system into geographic sections or "reaches" and determined the total construction cost of each reach.

HOVMSD then allocated the cost of each reach to the municipalities that discharged wastewater through that particular reach based on the municipalities' anticipated design wastewater flows as estimated for the year 2025.

30. In 1979, Combined Locks, Little Chute and Kimberly filed a complaint with the Commission alleging that HOVMSD's use of the "reach" method to allocate capital costs for the construction of HOVMSD's interceptor was unreasonable.

31. In an October 2, 1980 Order, the Commission concluded that the "reach" method using design flows for the year 2025 was a reasonable method for allocating interceptor costs attributable to the municipal customers. *See 64 Wis. PSC 382.*

32. The Commission's Order stated that "[t]he 'reach' method of allocating interceptor costs closely reflects the costs of providing service in that the charges are based on only the portions of the interceptor system used by each municipality."

33. The Commission determined, however, that capital costs for the interceptor's excess capacity attributable to potential future customers, and not to current municipal customers, could not be allocated based on the reach method but rather had to be allocated to current municipal customers on the basis of a uniform volume charge.

34. After the Commission's October 2, 1980 Order, the percentage of capital costs for the construction of HOVMSD's interceptor attributable to each of the four original municipalities was:

Kaukauna	11.4%
Combined Locks	14.3%
Little Chute	31.6%
Kimberly	42.6%

HOVMSD's Interceptor Capital Costs After Initial Construction

35. In 2005 HOVMSD constructed improvements to its interceptor which included a new 30-inch siphon across the Fox River necessary to transport wastewater flows from two of its municipal customers, the Village of Combined Locks and the Darboy Sanitary District.

36. Pursuant to a January 1, 2005, Intermunicipal Agreement with Combined Locks and Darboy Sanitary District, HOVMSD assigned costs for the 2005 interceptor improvements to Combined Locks and Darboy Sanitary District in a manner which reflected their use of the 2005 interceptor improvement project.

37. The cost share per the January 1, 2005, Intermunicipal Agreement was:

Combined Locks	16.07%
Darboy Sanitary District	69.00%
HOVMSD	14.93%

38. HOVMSD currently has two outstanding Clean Water Fund loans, one of which is related to its interceptor and one of which is related to its wastewater treatment plant.

39. The Clean Water Fund loan related to HOVMSD's interceptor funded an interceptor improvement project in 2007, which, among other work, installed a liner inside the portion of the interceptor between Manholes 4 and 9, used by all five municipal customers, and between Manholes 15 and 18 and 25 and 29.

40. HOVMSD allocates its debt service costs for the Clean Water Fund loan related to its interceptor to its municipal customers through its volumetric user charge.

41. HOVMSD also allocates all operation and maintenance costs related to its interceptor to its municipal customers through its volumetric user charge.

HOVMSD's Interceptor Improvement Project

42. HOVMSD is currently planning a new interceptor improvement project to extend the life of its interceptor so that the interceptor can continue to serve HOVMSD and its municipal customers for an estimated 50 years without major upgrades.

43. The interceptor improvement project involves installing a liner inside portions of the existing interceptor pipe and rehabilitating certain manholes and meter stations.

44. The interceptor improvement project will not add capacity to the interceptor.

45. Attachment A, which was prepared by HOVMSD's engineer, shows the location of the existing interceptor and the portions of the interceptor to be addressed by the interceptor improvement project.

46. The portions of the interceptor to be addressed by the interceptor improvement project are shown by a dashed red line.

47. The manholes and other structures to be addressed by the interceptor improvement project are shown as indicated in the legend to Attachment A.

48. All meter stations shown on Attachment A, other than MS 4-7, will also be addressed by the interceptor improvement project.

49. Only a small portion of the proposed interceptor improvement project will provide service to Kaukauna.

50. The most expensive portion of this project will be between Manholes 10 and 15 as this construction will need to take place in the Fox River.

51. Kaukauna does not use and will not use any portion of HOVMSD's interceptor west of Manhole 10.

52. In 2017, HOVMSD's engineer prepared a Budget Planning document dividing the HOVMSD interceptor improvement project into parts and estimating the cost of each part and the total cost of the project. A copy of the summary page of HOVMSD's Budget Planning document is attached to this Complaint as Attachment B. For the full Budget Planning document, see Attachment D, Exhibit B.

53. The initial cost estimate for HOVMSD's interceptor improvement project was \$21.475 million. The actual cost of the interceptor improvement project will not be known until bids are let.

54. At a HOVMSD Commission meeting on March 2, 2021, the HOVMSD Commission voted (4-1) to pay the debt service for the interceptor improvement project through HOVMSD's volumetric user charge.

55. If project costs are allocated on a volumetric basis, the approximate percentage share of costs for HOVMSD's interceptor improvement project that would be borne by each municipal customer based on 2022 flow data would be:

Kaukauna	35.8%
Combined Locks	5.9%
Little Chute	35.0%
Kimberly	8.9%
Darboy Sanitary District	14.4%

56. Under HOVMSD's volumetric user charge, Kaukauna would bear \$7.688 million of HOVMSD's initial cost estimate for the interceptor project ($\$21.475\text{M} \times 35.8\%$).

Kaukauna's Outreach to HOVMSD

57. On October 16, 2018, Kaukauna sent a letter to HOVMSD raising concerns about how costs for the interceptor improvement project would be allocated and advocating that costs be allocated using the original reach methodology.

58. On March 3, 2021, Kaukauna sent a second letter to HOVMSD expressing disappointment in and opposition to HOVMSD's decision to include interceptor improvement project costs in HOVMSD's volumetric user charge and advocating that the reach methodology be used to allocate project costs instead.

59. Based on Kaukauna's invitation in its March 3, 2021 letter, two HOVMSD representatives attended the City of Kaukauna Board of Public Works meeting on March 15, 2021. No changes to HOVMSD's allocation methodology resulted from this meeting.

60. Due to Kaukauna's significant concerns about the financial impact to its ratepayers from HOVMSD's interceptor project, Kaukauna's legal counsel retained William Stannard, P.E. of Raftelis to provide expert opinions related to HOVMSD's proposed methodology for allocating its interceptor project costs.

61. On July 12, 2022, Mr. Stannard issued his Report and Opinions concluding that "HOVMSD's revised methodology for allocating the capital costs related to the major interceptor rehabilitation project" based on HOVMSD's volumetric user charge "will result in an unreasonable allocation of costs to the Municipal Customers and charges which are unjustly discriminatory." A copy of Mr. Stannard's Report and Opinions is attached to this Complaint as Attachment C.

62. On July 27, 2022, Kaukauna sent a letter to HOVMSD, including a copy of Mr. Standard's Report and Opinions, asking HOVMSD to meet with Kaukauna staff to work

towards a resolution of Kaukauna's concerns with the volumetric methodology HOVMSD adopted to allocate its interceptor project costs.

63. On August 25, 2022, representatives of HOVMSD and Kaukauna met but reached no resolution on the allocation of costs.

64. Subsequent to this meeting, Kaukauna directed that a detailed analysis of the financial impact to HOVMSD's municipal customers from using HOVMSD's volumetric methodology to allocate interceptor project costs as compared to Kaukauna's proposed reach methodology be prepared. A copy of the resulting Allocation Method Packet is attached to this Complaint as Attachment D.

65. On February 9, 2023, Kaukauna sent a letter to HOVMSD enclosing the Allocation Method Packet and inviting HOVMSD to continue discussions to resolve Kaukauna's concerns.

66. On March 15, 2023, Kaukauna received a letter from HOVMSD stating that HOVMSD will not alter its decision to include its interceptor improvement project costs in its volumetric user charge and that HOVMSD did not view additional discussions as fruitful.

CLAIM ONE

HOVMSD'S VOLUMETRIC RATE IS UNREASONABLE AND UNJUSTLY DISCRIMINATORY AS APPLIED TO KAUKAUNA BECAUSE OVER 25% OF KAUKAUNA'S WASTEWATER DOES NOT ENTER HOVMSD'S INTERCEPTOR

67. All of HOVMSD's interceptor costs are currently included in HOVMSD's volumetric rate.

68. HOVMSD charges its municipal customers a volumetric charge based upon the volume of wastewater the municipal customer discharges to the HOVMSD wastewater system multiplied by HOVMSD's volumetric rate.

69. The Villages of Kimberly, Little Chute, and Combined Locks, and the Darboy Sanitary District discharge all of their wastewater to HOVMSD's interceptor.

70. Kaukauna discharges only a portion of its wastewater to HOVMSD's interceptor. Over 25% of Kaukauna's wastewater is discharged directly to HOVMSD's wastewater treatment plant and never enters HOVMSD's interceptor.

71. Kaukauna's wastewater that is discharged directly to HOVMSD's wastewater treatment plant is separately metered.

72. HOVMSD's volumetric charge to Kaukauna is based on all of Kaukauna's wastewater.

73. HOVMSD's volumetric charge to Kaukauna fails to account for the fact that HOVMSD incurs no transmission service cost for over 25% of Kaukauna's wastewater.

74. HOVMSD's volumetric charge to Kaukauna results in Kaukauna paying a disproportionate share of HOVMSD's transmission service costs.

75. It is unreasonable and unjustly discriminatory for HOVMSD to recover a disproportionate share of its transmission service costs from Kaukauna.

76. HOVMSD's volumetric rate results in Kaukauna subsidizing HOVMSD's transmission costs for HOVMSD's other municipal customers.

77. It is unreasonable and unjustly discriminatory for HOVMSD to charge rates that result in Kaukauna subsidizing HOVMSD's transmission costs for HOVMSD's other municipal customers.

CLAIM TWO

**HOVMSD'S ADOPTED COST ALLOCATION METHODOLOGY FOR ITS
INTERCEPTOR PROJECT IS UNREASONABLE AND
UNJUSTLY DISCRIMINATORY AS APPLIED TO KAUKAUNA BECAUSE
KAUKAUNA USES ONLY A SMALL PORTION OF HOVMSD'S INTERCEPTOR**

78. Kaukauna does not and cannot use HOVMSD's interceptor west of Manhole 10.
See Attachment A.

79. As a result, Kaukauna's wastewater does not flow through approximately 80% of HOVMSD's interceptor.

80. Also, as discussed above, over 25% of Kaukauna's wastewater does not enter any part of HOVMSD's interceptor, but rather discharges directly to HOVMSD's wastewater treatment plant.

81. The HOVMSD Commission approved recovering its debt service costs for its interceptor project through its volumetric charge.

82. HOVMSD's adopted volumetric methodology would result in allocating debt service costs for its interceptor project to each municipal customer based on the volume of each municipal customer's wastewater treated at HOVMSD's wastewater treatment plant.

83. It would be unreasonable and unjustly discriminatory for HOVMSD to allocate its debt service costs for its interceptor project based on the volume of each municipal customer's wastewater treated at HOVMSD's wastewater treatment plant.

84. HOVMSD's rates to Kaukauna would be unreasonable and unjustly discriminatory if they included an allocation of debt service costs for HOVMSD's interceptor project based on the volume of each municipal customer's wastewater treated at HOVMSD's treatment plant because Kaukauna does not and cannot use most of HOVMSD's interceptor.

85. Under HOVMSD's adopted volumetric method for allocating its interceptor project costs, Kaukauna would be charged for approximately 36% of the total cost of HOVMSD's interceptor project even though it uses only a small portion of HOVMSD's interceptor.

86. HOVMSD's adopted volumetric method for allocating its interceptor project costs is unreasonably and unjustly discriminatory because it fails to incorporate readily obtainable information to establish its cost to provide transmission service to its five municipal customers.

87. Given the location and layout of HOVMSD's interceptor, the costs of HOVMSD's interceptor project can be segmented by reach. It will not require burdensome implementation costs or efforts by HOVMSD to allocate capital costs for its interceptor project to each of its five municipal customers based on their use of HOVMSD's interceptor.

88. Not using readily available information to distribute the costs for HOVMSD's interceptor project to its five municipal customers would be unreasonable and unjustly discriminatory.

89. HOVMSD's adopted volumetric method for allocating HOVMSD's interceptor project costs will result in Kaukauna paying a disproportionate share of HOVMSD's interceptor project.

90. HOVMSD's adopted volumetric method for allocating HOVMSD's interceptor project costs will result in a significant and unreasonable rate subsidy from Kaukauna to HOVMSD's other municipal customers.

91. HOVMSD's rates, rules and practices that relate to its provision of transmission service are unjustly discriminatory because without justification, HOVMSD imposes significant costs on Kaukauna for infrastructure and service that Kaukauna does not use.

92. HOVMSD's rates, rules and practices that relate to its provision of transmission service are unjustly discriminatory because without justification, HOVMSD imposes

disproportionately greater costs on Kaukauna for its use of HOVMSD's interceptor than it imposes on its other municipal customers.

93. HOVMSD's rates, rules and practices that relate to its provision of transmission service are unreasonable because rates will not reflect the cost of providing service to Kaukauna.

94. It is unreasonable and unjustly discriminatory for HOVMSD to allocate its transmission service costs over all five municipal customers based on wastewater flow when those five municipalities use HOVMSD's interceptor very differently, when their differential use of the interceptor can be readily measured, and when allocating costs based on flow would not be proportional to the municipalities' use of the interceptor.

CLAIM THREE

HOVMSD'S RATES VIOLATE WIS. STAT. § 200.13(3)(B) AS THEY ARE NOT BASED ON THE COST OF SERVICE RENDERED

95. HOVMSD is authorized by Wis. Stat. § 200.13(3)(b) to charge a municipality for "the cost of service rendered" to that municipality.

96. HOVMSD's rates are not based on the cost of serving each of its five municipal customers.

97. HOVMSD's rates do not reflect the fact that HOVMSD's cost to provide wastewater transmission service to each of its five municipal customers differs significantly.

98. HOVMSD's rates violate Wis. Stat. § 200.13(3)(b) for the reasons set forth in this Complaint above.

REQUEST FOR RELIEF

The City of Kaukauna requests that the Commission:

A. Investigate HOVMSD's rates, rules and practices that relate to its provision of transmission service and its allocation and recovery of interceptor project costs;

B Hold a hearing to determine whether HOVMSD's rates, rules and practices related to its provision of transmission service and its allocation and recovery of interceptor project costs are unreasonable and/or unjustly discriminatory;

C. Find that HOVMSD's rates, rules and practices that relate to its provision of transmission service and its allocation and recovery of interceptor project costs are unreasonable and unjustly discriminatory in violation of Wis. Stat. § 66.0821;

D. Determine and fix reasonable, non-discriminatory rates as authorized by Wis. Stat. § 66.0821(5); and

E. Award such other relief as is just and equitable.

Dated this 31st day of March, 2023.

Boardman & Clark LLP
By:

/s/ Lawrie J. Kobza

Lawrie J. Kobza
State Bar No. 1009282
Jared Walker Smith
State Bar No. 1083018

1 South Pinckney Street
Suite 410
Madison, WI 53701-0927
*Attorneys for Petitioner
City of Kaukauna*

\\msnfs2\share\docs\WD\26470\6\A4852337.DOCX