July 6, 2005

FROM: TDEC/WPC, Permit Section
TO: Alan Leiserson

Subject: Review Comments\
Tennessee Regulatory Authority
Ch. 1220-4-12, Wastewater Regulations

The following are WPC comments, suggestions, questions, etc. These rules do a good job over all in addressing the financial responsibility issues that TDEC faces with regard to decentralized wastewater treatment systems.

1. .02 – Definitions: The term STEP (Septic Tank Effluent Pumped) and STEG (Septic Tank Effluent Gravity) may not be appropriate for use in the definition of Building Outfall Line. Some decentralized systems may use small grinder pump stations (not a septic tank) as the first unit into which the sewage flows after leaving the building. We would suggest the following definition of Building Outfall Line. the line that carries waste from the building to the first collection, storage, and/or treatment unit.

2. .04 – Data to be Filed with the Authority: In 1200-4-12-.04 (3) regarding TDEC documentation needed for a CCN
   a. Para (3)(a) [Statement by TDEC that design has been approved] -- should be easy to
   b. accomplish – the applicant just provides a copy of WPC's design approval letter.
   c. Para (3)(b) [Statement by TDEC that the utility was installed according to plans and specifications.] TDEC will not be able to provide this statement as explained below:
   d. Timing – we typically issue a final discharge permit following review of the permit application, publication of a draft permit and a 30-day Public Notice period. The design review occurs on a separate, but parallel track to ensure that the final permit and the design are approved at approximately the same time. Actual construction of the project may not take place for up to 12 months after approval of the design. It is assumed that the utility would want to be assured that they have their CCN prior to committing the dollars for construction of the treatment facilities.
   e. Resources: Our Envir. Field Offices are not always able to review the construction process or conduct As-Built inspections. In most cases, the technical disciplines and training for this inspection function have not been developed in all offices. Alternatively, we rely on the applicant, their design engineering consultant, and the contractor to see that the facilities are constructed in accordance with TDEC approved plans and specifications. As a special condition of our permit, we can require that the design engineering consultant provide the As-Built certification.

i. Suggested Wording: "Statement by the Design Engineer that the utility was installed according to TDEC approved plans and specifications."

3. 04 – Data to be Filed with the Authority. We would like to see a section added at 1220-4-12-.04 (3) (c) requiring that a detailed statement of the cost of construction of the treatment and disposal system be submitted to TRA and TDEC. Cost data are needed on each facility in order to determine the amount of reserve funds that must be accumulated for future replacement of the components of the system at the end of their useful life
   a. Para (5) – [Annual Report] A copy of the annual report should be made available to TDEC, Division of Water Pollution Control.

4. 1220-4-12-.05 Maps and Records. We agree that all utilities should obtain title to all physical assets of each and every decentralized system managed. This statement needs to make it clear that this includes the land upon which the treatment system resides. There may arise certain instances where the land must be leased (we have some situations where a decentralized system may serve a marina or camping area leased from a Federal agency such as the Corps of Engineers or TVA. There needs to be a mechanism to allow for this.

5. Sec .06 Adequacy of Facilities: In para (2), records shall be kept two (2) years – You might consider three (3) years, since the WPC permit requires the applicant to keep these same O&M records for 3 years.

6. Sec .07 – Financial Security: This section seems to be something that is needed to ensure the viability of these systems. We have several questions however:
   a. Will TRA always hold a hearing on an application .07 (2), and is this hearing the forum to review the set the amount of the security .07 (2)(a)? Or do you expect the applicant to submit an amount they determine to represent the necessary funds?
   b. What is the trigger for the "proceeding to determine or adjust rates"? Do you have an annual financial review or something similar which tells you that a "segregated escrow account" is needed for system upgrades?
   c. If and when TRA requires forfeiture of the trust and escrow accounts, does the first $10,000 in the reserve account also get forfeited?
   d. Under 1220-4-12-.07 (1) (b) Security for a Single Business. - We generally agree that a security is not needed for a single business, so long as the business is one that can be readily forced to close in the event of a wastewater treatment failure. However, businesses that serve residents may be quite difficult to close. Examples would be nursing homes, retirement centers, apartments, gated communities, etc, where residents have property ownership or long term lease agreements. In these situations, we cannot shut down the operation. For such facilities, some type of financial security is needed to be able to provide continued wastewater collection and treatment in the event of abandonment or other failure on the part of the utility.

e. Under 1220-4-.07 (2) (a) (v) Age, Condition and Type of Equipment - We do not understand why this consideration is only applied to an applicant acquiring an existing company. A major concern is that all utilities have adequate reserve funds to replace equipment that has reached the end of its useful life. Thus the amount of security (including reserve funds) should be greater for older facilities that have not had equipment upgrades.

7. Sec .08 – Sale, Transfer, Etc. Sec (2) There are several questions relative to the concept of Sale, Transfer, Merger, Termination , or Abandonment.
   i. If termination or abandonment occurs, what happens if no new privately owned public utility offers to take over the system?
   ii. In the event of a sale, transfer or merger, what if the new utility does not agree to take all of the facilities being serviced by the old utility (for instance, they might agree to service the large developments, but not the small developments)?
   iii. What is the remedy if the utility fails to file the petition and provide the information required under (2)? How can TRA stop a private company from going out of business if they chose to do so.
   iv. How can TRA prevent reserve funds (escrow) from being spent prior to a termination or abandonment if financial reports are filed only once per year? We would suggest asking for the current financial status of the reserve and escrow accounts, perhaps once per quarter.

8. Sec .09 – Receiverships (1)(a)&(b) - In the case of abandonment by a utility, it is certainly desirable to find another utility or government agency to acquire the system. However, the abandoning utility may have numerous facilities spread all over the entire state. In the event that no other utility steps forward, the appointment of a receiver is included as an option. Our concern is what happens if no receiver agrees to take the facilities? Does TRA have authority to hire emergency contractors to operate these systems until a permanent solution can be found? How quickly could the bond be forfeited and an emergency contract be let? Should an emergency contractor be selected now and kept on standby (similar to what the Division of Superfund does within TDEC)? Section (4) (b) We recommend that the sentence be changed to read "A plan for deferring or accelerating certain improvements and the recovering of costs in phases."

9. 1220-4-12-11 Customer Relations - It is suggested that a section (6) be added that states that "Where a service failure or emergency may cause a condition of pollution or health hazard affecting a public water supply, the utility shall notify the public water supply authority as soon as the service failure or emergency is known.

10. 1220-4-12-.12 Customer Billing. - Under section (3) in regard to justification for allowing a different rate for customers we would suggest the following be added "(e.g. unique wastewater constituents or quantity, to offset additional treatment cost due to the establishment of unique effluent discharge criteria by TDEC and/or the need to set aside adequate reserve funds [escrow] for purposes of equipment replacement)." The concept

of charging all wastewater customers the same monthly fee presents a problem in the view of Water Pollution Control where small systems are involved. Our State Operation Permits (SOP) are written for individual treatment facilities, not for a utility as a whole The effluent limits and monitoring requirements in an SOP are designed to protect water quality and do not differ significantly for a project serving a large number of customers versus a project serving a single customer. Thus there is a significant economy of scale favoring the larger projects. Or, put another way, there is a significant financial disincentive for operation of a facility serving a very few customers if the rate charged must be the same as for a facility serving many customers. The concern for WPC is that a decentralized system serving an individual home, a duplex or any development with 20 customers or less, cannot be financially viable with typical TRA approved individual customer fees on the order of $35 to $40 per month. These rates were derived for an decentralized system serving developments averaging 40 homes. We contend that an individual home decentralized wastewater treatment unit will cost approximately $12,000 to construct and assuming a 20 year life, the necessary reserve fund (escrow amount) would be $50.00 per month just to accumulate the funds to replace the system. In addition, the maintenance cost would be on the order of $200 per month. We believe that these small individual projects should be structured to be financially viable and provide stand alone financial security. The small system customer should pay at a rate that assures this viability.