



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER RESOURCES

William R. Snodgrass - Tennessee Tower
312 Rosa L. Parks Avenue, 11th Floor
Nashville, Tennessee 37243-1102

March 5, 2020

Jeff Ridsen
851 Aviation Parkway
Smyrna, TN 37167-2582

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT # 9414 7266 9904 2096 0166 49

Subject: **DIRECTOR'S ORDER WPC20-0012**
Tennessee Wastewater Systems, Inc.
Robertson County, TN

05-00293

Dear Mr. Ridsen,

Enclosed is a Director's Order and Assessment issued by the Tennessee Department of Environment and Conservation, Division of Water Resources for violations of the Water Quality Control Act, including discharging wastewater without the proper permit, violating the approved provisions in the State Operating Permit, and discharging sewage into a well or a location increasing the likelihood the discharged substance will move into a well.

The violations listed above have resulted in a full penalty of \$92,155.00, with an upfront payment of \$18,431.00, to be paid on or before the 31st day after receipt of this Order and Assessment. The remaining assessment is due only if the contingent compliance schedule listed herein is not timely completed.

During the course of investigating the violations listed in this Order and Assessment, the Division incurred \$6,215.99 in damages, due and payable on or before the 31st day after receipt of this Order and Assessment. Please read the Order carefully and pay special attention to the Notice of Rights section.

If you have any questions concerning this correspondence please contact Britton Dotson at (615) 532-0774 or Britton.Dotson@tn.gov, or you may contact me at (615) 532-0676 or Jessica.Murphy@tn.gov.

Sincerely,

Jessica Murphy, Manager
Compliance and Enforcement Unit

EJM:RWRu

cc: NCO – Britton Dotson; Brian Ham; April Grippo; Jessica Murphy; Brad Harris
Nashville EFO – Michael Murphy; Tim Jenette; Jordan Fey
OGC – Stephanie Durman; Patrick Parker
Case File – WPC20-0012

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF WATER RESOURCES
)	
TENNESSEE WASTEWATER)	CASE NO. WPC20-0012
SYSTEMS, INC. (CROSS PLAINS)	
FACILITY),)	
)	
RESPONDENT.)	

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Jennifer Dodd, Director of the Tennessee Division of Water Resources,
and states:

PARTIES

I.

Jennifer Dodd is the duly appointed Director of the Tennessee Division of Water Resources ("Division") by the Commissioner of the Tennessee Department of Environment and Conservation ("Department").

II.

Tennessee Wastewater Systems, Inc. ("Respondent") is a Tennessee corporation duly authorized to do business in the state. The Respondent owns and operates septic tanks, an effluent collection system, and a deep cell lagoon system located at latitude 36.53233 and longitude -86.6611 in Cross Plains, Robertson County, Tennessee. Service of process may be made on the Respondent through its registered agent, Jeff Riden, at 851 Aviation Parkway, Smyrna, TN 37167-2582.

JURISDICTION

III.

Whenever the Commissioner has reason to believe that a violation of the Water Quality Control Act, Tenn. Code Ann. §§ 69-3-101 to -148 (“Act”), has occurred, is occurring, or is about to occur, the Commissioner may issue a complaint to the violator and the Commissioner may order corrective action be taken. Tenn. Code Ann. § 69-3-109(a). Further, the Commissioner has authority to assess civil penalties against any violator of the Act, Tenn. Code Ann. § 69-3-115, and has authority to assess damages incurred by the state resulting from the violation, Tenn. Code Ann. § 69-3-116. The Commissioner may delegate to the Director any of the powers, duties, and responsibilities of the Commissioner under the Act, Tenn. Code Ann. § 69-3-107(13), and has delegated such authorities to Jennifer Dodd.

IV.

The Respondent is a “person” under the Act. Tenn. Code Ann. § 69-3-103.

V.

Groundwater at and near the site constitute “waters” of the state as defined by Tenn. Code Ann. § 69-3-103.

VI.

Any person engaged in, or planning to engage in, the construction, installation, modification, or operation of any treatment works, the discharge of wastes to surface waters or to a location where it may reach surface waters, or the discharge of sewage, industrial wastes, or other wastes to a well or a location where it is likely that the discharged substance will move into a well, or the underground placement of fluids or other substances that do or may affect the waters of the state must first obtain a permit from the Department. Tenn. Code Ann. § 69-3-108. It is unlawful for any person to violate the conditions of a permit issued by the Department. Tenn. Code Ann. §§ 69-3-108(b) and -114(b).

FACTS

VII.

The Respondent owns and operates the Cross Plains Treatment facility pursuant to state operating permit number SOP-05057 (the “SOP”). The SOP was most recently reissued on May 31, 2017, with an effective date of August 31, 2017. The SOP authorizes the operation of “septic tanks, effluent collection system, deep cell lagoon and drip irrigation (fenced) system” with a design capacity of 10,600 gallons per day. Properly designed, installed, and operated, the deep cell lagoon should provide partial treatment of the wastewater through microbiological processes to secondary treatment levels with some nitrification and denitrification. However, this process requires sufficient depth and volume and detention time of wastewater. The drip irrigation system, which was to include a fenced drip field, would have completed the treatment of the effluent in the soil profile before reaching groundwater. The first page of the SOP provides that work must be done “in conformity with approved plans, specifications, and other data submitted to the Department.” The Division has approved design plans for both the deep cell lagoon and the drip irrigation system. Part I.A. of the SOP authorizes wastewater collection, treatment, storage, and disposal of treated wastewater through the approved land application area. Part I.A. of the SOP further requires “[c]omplete hydraulic infiltration within the soil profile” and provides that “[s]ystem compliance is reliant on the utilization and performance of the soil profile.” Part II.B.4. of the SOP provides, “The permittee shall at all times properly operate and maintain all facilities and systems (and related appurtenances) for collection and treatment which are installed or used by the permittee to achieve compliance with the terms and conditions of this permit.”

VIII.

The Department issued underground injection control authorization, file number ROB 0000023 (the “UIC Authorization”), to the Respondent on March 9, 2017. The UIC Authorization allows discharges to groundwater through the drip dispersal system, but does not authorize discharges to groundwater from the lagoon.

IX.

The facility was first permitted in September 2006. The first customer was connected to the lagoon in February 2010. A compliance inspection was conducted on July 6, 2011, which documented concerns about the poor condition of the lagoon and the failure to install the drip field. Inspections conducted in February 2014 and March 2017 confirmed that the drip field had not been installed and public access to the treatment area had not been excluded. Tracks of four-wheelers were observed around the treatment area during both of these inspections.

X.

On November 8, 2019, Division staff conducted a site visit, documenting that the lagoon had not been constructed according to approved plans, the drip field had not been installed, the wastewater treatment area had not been fenced, and ATV tracks were observed in the lagoon area. There was only about 0.25 acres of wastewater inundation in the lagoon.

XI.

On November 20, 2019, Division staff returned to the site. Approaching the property from the southwest, public access to the treatment area was not excluded, and no posted signs identified the site as a wastewater treatment facility. Wastewater was observed flowing into the lagoon and approximately 0.25 acres of inundation were observed in the lagoon. Numerous rock outcroppings were observed in the lagoon, and two soil dropouts were documented in the lagoon in close proximity to the area of inundation. Soil dropouts occur when an area is underlain by bedrock with sufficient, inter-connected voids that are large enough to allow the passage of the

overlying material (soil). With the passage of this material voids in the soil profile are created. When the void in the soil profile becomes too large to support the overlying soil, the overlying soil collapses into the void. When this process extends to the surface of the ground the resulting feature is identified as a soil dropout. These features, which are common in karst areas, are indicative of the loss of material to the subsurface and are reflective of underlying preferential pathways for the transfer of material and effluent to groundwater.

XII.

On November 26, 2019, the Division received water use records for three non-residential facilities served by the Cross Plains Treatment facility (a store, a gas station, and a church). Daily average flows totaled about 3,600 gallons. In addition, the facility serves 19 homes, with an estimated daily flow of 2,850 gallons per day, for a total of approximately 6,450 gallons per day of effluent. However, the estimated amount of water in the lagoon represents only a small fraction of the wastewater and precipitation contributed to the lagoon in the approximately 10 years since it has been operating. The lagoon should have been constructed as permitted to retain effluent for secondary treatment. Annual averages for evaporation are lower than precipitation rates in Tennessee such that a net gain in water is anticipated. As such, evaporation would not account for a reduction of effluent volume over this timeframe. Accordingly, partially treated wastewater is being discharged from the lagoon to groundwater.

XIII.

On November 26, 2019, the Division issued a Notice of Violation (NOV) to the Respondent via email, citing the following violations:

- The drip dispersal area was never constructed.
- The lagoon was not constructed as designed, has limestone rock outcrops, and is not retaining wastewater for treatment in a deep cell environment.
- Effluent is being discharged to groundwater without a UIC authorization.

- As constructed and operated, the system does not treat, store, or land apply wastes as required by the SOP.

The NOV requested a number of corrective actions, including installation of a flow meter, compilation of a list of connections to the wastewater system, submission of an updated design for wastewater treatment, conducting a water use survey within a two-mile radius to identify any residences using groundwater as a domestic water source, and conducting a dye trace. The NOV also required the Respondent to immediately cease discharges to the lagoon until an approved treatment design had been installed.

XIV.

On December 23, 2019, the Division received a response to the NOV from the Respondent contesting the allegations of the NOV. The Respondent continues to discharge wastewater to the lagoon, has not constructed a drip field, has not conducted a dye trace, and has not presented a design plan to repair the lagoon.

XV.

On January 21, 2020, Division staff returned to the site and met with representatives of the Respondent. Prior to this visit, there had been precipitation in the area from January 13 to 20, 2020. Division staff observed approximately one acre of inundation in the lagoon. They also observed a debris line outside of the inundated area, indicating a higher water level that had retreated over a period of days. Similarly, Division staff observed shelves of ice in several areas that were suspended inches above ponded effluent, indicating rapid draining over a period of one day. For reference, the nearest National Oceanic Atmospheric Administration weather station (Springfield, TN – Station ID: USC00408562) recorded an air temperature maximum of 56 degrees Fahrenheit on the day prior to the site visit. These January 21, 2020 observations further confirm that the lagoon does not retain effluent.

XVI.

The Division has incurred \$6,215.99 in damages.

VIOLATIONS

XVII.

The Respondent has violated sections 69-3-108(b) and -114(b) of the Act.

Tenn. Code Ann. § 69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

...

(2) The construction, installation, modification, or operation of any treatment works, or part thereof, or any extension or addition thereto;

...

(6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

...

(8) The discharge of sewage, industrial wastes, or other wastes into a well or a location where it is likely that the discharged substance will move into a well, or the underground placement of fluids and other substances that do or may affect the waters of the state;

Tenn. Code Ann. § 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree that is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to this part; or to fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

ORDER AND ASSESSMENT

XVIII.

Pursuant to the Act, Tenn. Code Ann. §§ 69-3-109, -115, and -116, the Respondent is issued the following Order and Assessment:

1. The Respondent is assessed a civil penalty of \$92,155.05 to be paid to the Division as outlined in Items 2 – 9 below. Payments of the civil penalty and/or damages shall be made payable to the “Treasurer, State of Tennessee” and sent to the Division of Fiscal Services –

Consolidated Fees Section, Tennessee Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Ave., 10th Floor, Nashville, Tennessee 37243.

2. The Respondent shall pay \$18,431.00 to the Division on or before the 31st day after receipt of this Order and Assessment.

3. Within 30 days of receipt of this Order and Assessment, the Respondent shall install a flowmeter to determine the volume of wastewater received on a continuous basis and submit documentation of installation to the Division at the following addresses:

Brian Ham
brian.ham@tn.gov
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 11th Floor
Nashville, TN 37243

AND to:

Manager of the Compliance and Enforcement Unit, Division of Water Resources
Jessica.Murphy@tn.gov
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 11th Floor
Nashville, TN 37243

This case number, WPC20-0012, should be written on all correspondence concerning this matter. *Electronic submissions are encouraged and accepted by the Division.*

If the Respondent fails to comply with this Item 3, the Respondent shall pay \$3,000.05 to the Division within 30 days of default.

4. Within 30 days of receipt of this Order and Assessment, the Respondent shall compile an inventory of connections contributing wastewater to the system including specific addresses for each individual contributor and submit this inventory to the Division at the addresses listed in Item 3. If the Respondent fails to comply with this Item 4, the Respondent shall pay \$3,000.00 to the Division within 30 days of default.

5. Within 30 days of receipt of this Order and Assessment, the Respondent shall discontinue the discharge of wastewater to the lagoon. No wastewater may be discharged to the

lagoon until a Division-approved treatment design for the lagoon and the drip dispersal area has been constructed. If the Respondent fails to comply with this Item 5, the Respondent shall pay \$1,000.00 to the Division for each week of discharge, not to exceed a total of \$28,000.00, payable within 30 days of default.

6. Within 60 days of receipt of this Order and Assessment, the Respondent shall submit a corrective action plan/engineering report (CAP/ER) to the Division for approval. The CAP/ER shall propose wastewater treatment to achieve compliance with the SOP and the Act, and permanently prevent the discharge of partially treated effluent to groundwater from the lagoon. The CAP/ER shall include design for both secondary treatment and drip dispersal. If the Respondent fails to comply with this Item 6, the Respondent shall pay \$15,724.00 to the Division within 30 days of default.

7. Beginning not later than 75 days after receipt of this Order and Assessment, the Respondent shall submit all flow data from the meter installed pursuant to Item 3 on a monthly basis to the Division at the addresses listed in Item 3 or submit the data electronically to the email listed in Item 3, not later than the 15th day of each calendar month. If the Respondent fails to comply with this Item 7, the Respondent shall pay \$1,000.00 to the Division for each missed or late submittal, not to exceed a total of \$6,000.00, payable within 30 days of default.

8. Within 90 days of receipt of this Order and Assessment, conduct a water use survey in the two-mile radius surrounding the lagoon to identify any residences using groundwater as a water source, and submit the information to the Division. This shall include a door-to-door survey of residences and businesses. If the Respondent fails to comply with this Item 8, the Respondent shall pay \$3,000.00 to the Division within 30 days of default.

9. Within 180 days of receipt of Division approval of the CAP/ER, the Respondent shall complete all work required by the CAP/ER and submit a final report to the Division

documenting completion at the addresses listed in Item 3. If the Respondent fails to comply with this Item 9, the Respondent shall pay \$15,000 to the Division within 30 days of default.

10. The Respondent shall pay damages in the amount of \$6,215.99 on or before the 31st day after receipt of this Order and Assessment.

The Director may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such as extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventative measures taken to minimize the delay. Any such extension by the Director will be in writing. Should the Respondent fail to meet the requirement by the extended date, any associated civil penalty shall become due 30 days thereafter.

This Order shall be considered closed no later than two years from the date of receipt of this Order and Assessment, provided the Respondent has complied with all the requirements of the Order, has paid all assessed penalties and damages, and is in substantial compliance with the NPDES permit and the Act. Failure to comply with any of the requirements of this Order and Assessment could lead to further enforcement actions, which may include additional civil penalties, assessment of damages, and/or recovery costs.

RESERVATION OF RIGHTS

In issuing this Order and Assessment, the Department does not implicitly or expressly waive any provision of the Act or the regulations promulgated thereunder or the authority to assess costs, civil penalties, and/or damages incurred by the State against the Respondent(s). The Department expressly reserves all rights it has at law and in equity to order further corrective action, assess civil penalties and/or damages, and to pursue further enforcement action including,

but not limited to, monetary and injunctive relief. Compliance with this Order will be considered as a mitigating factor in determining the need for future enforcement action(s).

NOTICE OF RIGHTS

The Respondent(s) may appeal this Order and Assessment. Tenn. Code Ann. § 69-3-109, -115, and -116. To do so, a written petition setting forth the reasons for requesting a hearing must be received by the Commissioner within 30 days of the date the Respondent(s) received this Order and Assessment or this Order and Assessment will become final.

If an appeal is filed, an initial hearing of this matter will be conducted by and Administrative Law Judge (ALJ) as a contested case hearing. Tenn. Code Ann. § 69-3-110; Tenn. Code Ann. § 4-5-301 to -325 (the Uniform Administrative Procedures Act); Tenn. Comp. R. & Regs. 1360-04-01 (the Department of State's Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies). Such hearing are legal proceedings in the nature of a trial. Individual Respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. Artificial Respondents (corporations, limited partnership, limited liability companies, etc.) cannot engage in the practice of law and therefore may only pursue an appeal through an attorney licensed to practice law in Tennessee. Low-income individuals may be eligible for representation at a reduced or no cost through a local bar association or legal aid organization.

At the conclusion of any initial hearing the ALJ has the authority to affirm, modify, or deny the Order and Assessment. Furthermore, the ALJ on behalf of the Board has authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of the ALJ and a court reporter.

Any petition for review must be directed to the Commissioner of the Department of Environment and Conservation, c/o Jenny L. Howard, General Counsel, Department of

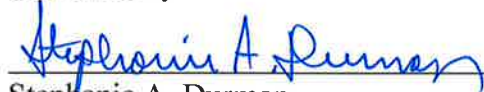
Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Ave., 2nd Floor, Nashville, Tennessee 37243. Technical questions and other correspondence involving compliance issues should be sent to Jessica Murphy, State of Tennessee, Division of Water Resources, William R. Snodgrass Tennessee Tower, 11th Floor, 312 Rosa L. Parks Ave., Nashville, Tennessee 37243. Attorneys should contact the undersigned counsel of record. The case number, WPC20-0012, should be written on all correspondence regarding this matter.

Issued by the Director of the Division of Water Resources, Tennessee Department of Environment and Conservation, on this 5th day of March, 2020.



Jennifer Dodd, Director
Division of Water Resources
TN Department of Environment and Conservation

Reviewed by:



Stephanie A. Durman
BPR Number 027783
Office of General Counsel
William R. Snodgrass TN Tower, 2nd Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243-1548
Telephone: (615) 532-3020
stephanie.durman@tn.gov