

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

October 7, 2008

IN RE:

**REQUEST OF HC SEWAGE TREATMENT, LLC
FOR AUTHORITY ACTION PURSUANT TO LETTER
DATED SEPTEMBER 23, 2008**

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**DOCKET NO.
08-00183**

**ORDER REQUIRING HC SEWAGE TREATMENT, LLC AND
FIRST BANK AND TRUST COMPANY TO APPEAR AND
SHOW CAUSE WHY THE TENNESSEE REGULATORY AUTHORITY
SHOULD NOT MAKE A CLAIM AGAINST
HC SEWAGE TREATMENT, LLC'S FINANCIAL SECURITY**

This matter is before the Tennessee Regulatory Authority (the "Authority" or "TRA") to determine whether a claim should be made against the financial security of HC Sewage Treatment, LLC ("HC" or "Company") pursuant to TRA Rule 1220-4-13-.09. The General Counsel is initiating this matter pursuant to the authority delegated to him by Chairman Tre Hargett, Director Eddie Roberson, and Director Mary W. Freeman, the voting panel of the Authority assigned to this docket, at the regularly scheduled Authority Conference held on October 6, 2008.

BACKGROUND

On September 23, 2008, Darlene Standley (Chief, Utilities Division) received a letter dated September 23, 2008 from counsel for HC.¹ HC Sewage is a small wastewater treatment plant that serves two commercial customers in rural east Tennessee: a BP service station/McDonald's restaurant and a pizza parlor. The letter of September 23, 2008 states that HC Sewage "is insolvent within the meaning of Rule 1220-4-13-.09 and is no longer able to continue the operation of the sole plant owned by the utility in Hampton, Tennessee." The letter

¹ See Exhibit 1, Letter from T. Arthur Scott, Jr.

requests that the TRA “appoint a receiver or take other appropriate action pursuant to Rule 1220-4-13-.11.” The letter further states that “the plant will continue to be operated through October 10, 2008 [and]...no further funds will be provided by the Stricklands [the current owners of HC Sewage] to make up the operating loss² and the power and the water will either have to be transferred to another person or terminated and the technical person will be dismissed.”

At the regularly scheduled Authority Conference held on October 6, 2008, the General Counsel provided an update to the panel and indicated that an agreement in spirit had been reached between HC and one of its customers, Greenville Oil (“Greenville”), for Greenville to take over the operation of the utility, but the details of the transfer had not yet been finalized. Counsel for HC, who participated in the Authority Conference by telephone, indicated that his client was in support of the transfer of the Company to Greenville. The Consumer Advocate, who has facilitated the negotiations between HC and Greenville, agreed with the General Counsel’s assessment of the current situation and requested that in light of the time sensitive nature of this situation that the Authority empower the General Counsel to take any necessary actions on behalf of the Authority to insure the continued progress of the proposed transfer. Thereafter, the panel voted unanimously to authorize the General Counsel or his designee to act on behalf of the Authority to take whatever legal measures are necessary to ensure that HC complies with the Authority’s rules and continues to serve its customers.

FINDINGS AND CONCLUSIONS

TRA Rule 1220-4-13-.09 provides:

(1) Where a public wastewater utility through the actions of its owner(s), operator(s), or representative(s) demonstrates an unwillingness, incapacity, or refusal to effectively operate and/or manage the wastewater system(s) in compliance with these rules and Tennessee statutes, or the wastewater system(s) has been abandoned, the Authority shall take appropriate action based on good

² HC Sewage currently has a rate case pending in Docket No. 08-00126; the TRA opened a contested case at the September 22, 2008 Authority Conference. A proposed settlement agreement filed in that docket has been vigorously opposed by the two customers, who object to the size of the proposed rate increase.

cause that may include suspension or revocation of a public wastewater utility's CCN, forfeiture of wastewater utility funds, and/or making a claim against the public wastewater utility's financial security.

(2) Good cause shall include, but is not limited, to the following. . .

(b) A finding by the Authority of . . .

3. Actual, threatened or impending insolvency of the public wastewater utility;

4. Actual or threatened abandonment of the public wastewater utility by its owners or its operators. . .

(3) In addition to the above, the Authority may consider one or more of the following in determining whether a public wastewater utility's CCN should be suspended or revoked, whether its wastewater utility funds should be forfeited and/or whether a claim should be made against its financial security:

(a) Whether, to the extent practicable, service to customers will remain uninterrupted under an alternative public wastewater utility or a designated third party capable of providing adequate wastewater service, including a trustee or receiver appointed by the appropriate court;

(b) Whether there are certain methods to mitigate any financial consequences to customers served by the utility subject to suspension or revocation and the adoption of a plan to implement those methods; or whether there are no practicable methods to mitigate the financial consequences to customers; and

(c) Such other factors as the Authority deems relevant to the determination.

(4) Proceedings before the Authority for suspension or revocation of a public wastewater utility's CCN, forfeiture of wastewater utility funds, and/or making a claim against the public wastewater utility's financial security shall be conducted in accordance with Tenn. Code Ann. § 65-2-106 and after notice to the public wastewater utility and its surety, and an opportunity to be heard, unless the conduct of a public wastewater utility poses an imminent threat to the health or safety of the public. In such exigent circumstances, the Authority may order the summary suspension of the CCN and follow the procedures as set forth in Tenn. Code. Ann. § 4-5-320.

The Company's September 23, 2008 letter sets out that it is insolvent and will cease to operate the wastewater plant as of October 10, 2008. This statement clearly indicates HC's "unwillingness, incapacity, or refusal to effectively operate and/or manage the wastewater system. . . ."³ This action triggers the Authority's jurisdiction to take appropriate action based on

³ TRA Rule 1220-4-13-.09(1).

good cause, including making a claim against the wastewater utility's financial security.⁴ Further, both the counsel for HC and the owner of Greenville have represented to the General Counsel that the willingness and ability of Greenville to take over operations of the wastewater system is predicated upon the availability of \$20,000 from HC's letter of credit.

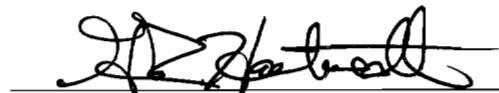
BASED UPON THE FOREGOING, the General Counsel hereby determines that HC Sewage Treatment, LLC and First Bank & Trust Company should appear and show cause why the Authority should not make a claim against HC Sewage Treatment, LLC's financial security.⁵

IT IS THEREFORE ORDERED THAT:

HC Sewage Treatment, LLC and First Bank & Trust Company shall appear before the Authority on **Monday, October 13, 2008 at 10:00 a.m. CDT** in the Hearing Room on the Ground Floor at 460 James Robertson Parkway, Nashville, Tennessee and show cause why the Authority should not make a \$20,000 claim against HC Sewage Treatment, LLC's financial security.

In lieu of personal appearance, HC Sewage Treatment, LLC and/or First Bank & Trust Company may file in advance of the Hearing a written statement with the Authority stating that it does not contest the allegations herein and agrees to the entry of an Order requiring the release of the funds.


J. Richard Collier, General Counsel


Gary Hotvedt, Counsel

⁴ Good cause includes "[a]ctual, threatened, or impending insolvency of the public wastewater utility" and/or "[a]ctual or threatened abandonment of the public wastewater utility by its owners or its operators." TRA Rule 1220-4-13-.09(2)(b)3; 4.

⁵ See Exhibit 2, First Bank & Trust Company Letter of Credit dated 3/7/06 and the Amendment to Irrevocable Standby Letter of Credit dated March 25, 2008.

T. ARTHUR SCOTT, JR.

Attorney at Law
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Kingsport, TN 37664
423-288-7883 (phone)
888-224-1737 (fax)
tscott@chartertn.net
September 23, 2008

By facsimile (615-741-9934) and U.S. Mail

Ms. Darlene Standley, Chief
Utilities Division
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

Re: HC Sewage Treatment, LLC

Dear Ms. Standley:

I represent the above wastewater utility. This letter is to advise you that my client is insolvent within the meaning of Rule 1220-4-13-.09 and is no longer able to continue the operation of the sole plant owned by the utility in Hampton, Tennessee. Further, my client requests that the Tennessee Regulatory Authority appoint a receiver or take other appropriate action pursuant to Rule 1220-4-13-.11. My client is specifically not invoking the provisions of Rule 1220-4-13-.10.

Currently, Jack and Joy Strickland are and have been for months funding a significant monthly shortfall in the operating income of the plant. In light of the delay in the rate case pending at the Tennessee Regulatory Authority (Docket No. 08-00126) due to the objection asserted by Greeneville Oil and Petroleum, Inc. and the resulting intervention by the Consumer Advocate Division of the Attorney General's Office, rate relief will not come soon enough to allow my client to survive without the personal injection of substantial additional funds by the Stricklands, which they are no longer willing to do.

My client, within the bounds of what is financially feasible, desires an orderly transition to another operator of the plant. To that end, the plant will continue to be operated through October 10, 2008 by my client. At that point, no further funds will be provided by the Stricklands to make up the operating loss and the power and water will either have to be transferred to another person or terminated and the technical person will be dismissed.

EXHIBIT 1.

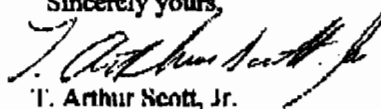
My client will assist the receiver or such other person appointed by the Authority in making the transition. Any requests for waivers of hearing or notice to accommodate this commitment should be directed to me.

Please understand that this action is being taken only after exploring every other feasible alternative. My client appreciates the Authority Staff who worked with it since February, 2008 to put together the streamlined rate case.

Discussions with representatives of Greeneville Oil and Petroleum, Inc. to have them take over the plant have not been successful. We have had discussions with a Tennessee Wastewater representative, Charles Pickney, and gave him free access to the technical person for preliminary due diligence. Unfortunately, while the plant could be incorporated into their operations, a significant amount of capital would have to be expended to bring it up to their requirements before they would take it over. My call last Friday to the attorney for Greeneville Oil & Petroleum, Inc. to broach whether his client would contribute to such capital as yet has not been returned.

We await further instructions from the Authority relative to notice to the customers and any requests to facilitate the transition to another operator.

Sincerely yours,



T. Arthur Scott, Jr.

BPR # 000749

cc: Mr. Jack Strickland
Ms. Joy Strickland
J. Richard Collier, General Counsel, Tennessee Regulatory Authority
Shilina Chatterjee Brown, Esq.
Vance Broemel, Assistant Attorney General, Consumer Advocate
and Protection Division



1185 N. State of Franklin Rd., 2nd Floor • Johnson City, TN 37604 • 423-282-3850

LETTER OF CREDIT

Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

REFERENCE: H C Sewage Treatment LLC

Company ID # 05-00105
Irrevocable Letter of Credit #: 2006-016
Effective Date: 3/7/06

Sir/Madam:

You have requested of The First Bank & Trust Company, hereinafter called the "Lender" that we establish an irrevocable letter of credit which will remain available on behalf of H C Sewage Treatment LLC, hereinafter the "Company" who has applied to the Tennessee Regulatory Authority (the "Authority") for authority to provide public wastewater services in the state of Tennessee. The purpose of this letter of credit is to secure payment of any monetary obligation imposed against the Company, its representatives, successors or assigns, in any contested case proceeding brought under Tenn. Comp. R & Regs. Chapter 1220-4-13 by or on behalf of the Authority.

We hereby establish and issue, in favor of the Authority, an irrevocable letter of credit in the amount of Twenty Thousand Dollars (\$20,000.00) lawful money of the United States of America. Upon entry of an Order that finds a monetary obligation pursuant to Chapter 1220-4-13, the Authority may draw upon this letter of credit, at any time and from time to time, by delivering a Letter of Credit Notice, substantially in the form set forth below ("Notice"), which Notice shall specify the amount (the "Draw Amount") to be drawn and the account (the "Bank Account") to which the Draw Amount should be delivered and shall be signed by an official designated and duly authorized by the Authority, to Lender at the address listed below, or to such other address as the Lender shall notify the Authority in writing by certified mail. Promptly after the delivery of each Notice, the Lender hereby covenants and agrees to deliver, by wire transfer of immediately available funds, the Draw Amount to the Bank Account.

This letter of credit shall be deemed automatically renewed without amendment for successive one-year periods and may be cancelled by the Lender by giving thirty (30) days advanced written notice by certified mail of such cancellation to the Authority and the Company, it being understood that the Lender shall not be relieved of liability that may have accrued under this letter of credit prior to the date of cancellation.

EXHIBIT 2.

COMMERCIAL LENDING DIVISION
www.firstbank.com

2006 APR 25 PM 1:03
Tenn. Bank & Trust Co.

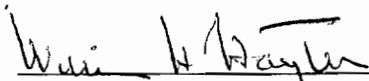
Failure to renew this letter of credit shall allow the Authority to draw upon it without the necessity of the Authority being required to hold a hearing concerning the Principal's operation or Certificate of Public Convenience and Necessity. In such an event and upon a directive from the Authority, the Lender hereby covenants and agrees to deliver by wire transfer of immediately available funds the maximum sum of this letter of credit to the Bank Account to enable the continued operation of the public wastewater utility.

The Lender hereby represents and warrants that it is qualified and authorized to issue this letter of credit and is a bank designated by the Treasurer of the State of Tennessee as an authorized depository bank for the deposit of state funds.

Except as otherwise expressly stated, this letter of credit is subject to the Uniform Customs and Practice for Documentary Credit (1993 Revision) International Chamber of Commerce Publication No. 500, or any revisions thereto.

Very truly yours,

The First Bank & Trust Company



William H. Hayter, President & Chief Executive Officer
1185 N. State of Franklin Road, Johnson City, TN 37604

APPROVAL AND ENDORSEMENT

This is to certify that I have examined the foregoing letter of credit and found the same to be sufficient and in conformity to law and that the same has been filed with the Tennessee Regulatory Authority, State of Tennessee, this _____ day of _____, 2006.

Name:

Title:



1185 N. State of Franklin Road, 2nd Floor • P.O. Box 4627 • Johnson City, TN 37602-4627 • 423-282-3850

**AMENDMENT TO
IRREVOCABLE STANDBY LETTER OF CREDIT**

Applicant:

H C Sewage Treatment LLC
Company ID # 05-00105
Irrevocable Letter of Credit #: 2006-016
Effective Date: 3/7/06

Payable Through:

The First Bank and Trust Company
1185 N. State of Franklin Rd.
Johnson City, TN 37604

Beneficiary:

Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

We hereby amend our Letter of Credit Number 2006-016 to reflect the following change only. All other terms and conditions shall remain unchanged.

EXPIRATION DATE: March 7, 2009

Countersigned At **Johnson City, Tennessee**
This 25th day of March, 2008.

THE FIRST BANK AND TRUST COMPANY

Authorized Signature

Approved - 5-16-08;