

TENNESSEE REGULATORY AUTHORITY



July 31, 2009

460 James Robertson Parkway
Nashville, Tennessee 37243-0505

RECEIVED
2009 JUL 31 PM 4:01
TRA DOCKET ROOM

VIA FACSIMILE AND U. S. MAIL

Melvin J. Malone, Esq.
Miller & Martin, PLLC
One Nashville Place, Suite 1200
150 Fourth Avenue, North
Nashville, TN 37219-2433

Re: Reimbursement to Greeneville Sewage, LLC for the operation of HC Sewage Treatment, LLC (TRA Docket No. 08-00183)

Dear Mr. Malone,

This letter will confirm receipt by your client, Greeneville Sewage LLC, of payment in the amount of \$20,000 for services rendered in the continued operation and maintenance of the HC Sewage facility in Hampton, Tennessee up through the date of transfer of authority from HC Sewage, LLC to Greeneville Sewage, LLC. This payment includes all funds obtained by the TRA from the Letter of Credit which was posted to secure the continued operation of the wastewater treatment facility.

As you know, HC Sewage Treatment, LLC ("HC Sewage") received a Certificate of Public Convenience and Necessity ("CCN") in January, 2002 for the operation of a small wastewater treatment plant in Hampton, Tennessee serving two commercial customers: Greeneville Oil and Petroleum, Inc. ("Greeneville Oil") and Pizza Plus. On September 23, 2008, the Tennessee Regulatory Authority ("Authority" or "TRA") was notified by way of a letter from T. Arthur Scott, Jr., counsel for HC Sewage, that HC Sewage was insolvent and no longer able to continue the operation of its wastewater treatment plant in Hampton, Tennessee. Mr. Scott asked the TRA to "... appoint a receiver or take other appropriate action pursuant to Rule 1220-4-13-.11." The letter further stated that the wastewater treatment plant would be operated through October 10, 2008, at which time the Stricklands, the owners of HC Sewage, would no longer provide funds, the responsibility for the power and the water would have to be transferred or terminated, and the technical person operating the system would be dismissed. Following receipt of the September 23, 2008 letter, the TRA opened Docket No. 08-00183.

At an Authority Conference held on October 6, 2008, the General Counsel of the TRA provided a report to the panel regarding the operational status of HC Sewage's wastewater treatment facility. The General Counsel stated that an agreement in spirit had been reached between HC Sewage and Greeneville Oil under which Greeneville Oil would proceed to take

over the operation of the utility immediately, with the details of the transfer of the system to be finalized at a later date. Counsel for HC Sewage, who participated in the Authority Conference, confirmed that his client was in support of the transfer of HC Sewage to Greeneville Oil.

Rule 1220-04-13-.09(1) of the TRA's wastewater rules empowers the Authority to take appropriate action concerning the operation of a wastewater treatment facility where good cause is shown. Under TRA Rule 1220-04-13-.09(2)(b) 3 and 4, good cause is described as including the "actual, threatened, or impending insolvency of a public wastewater utility" or the "actual or threatened abandonment of the utility by its owners or operators." At the October 6, 2008 Conference, the panel found that HC Sewage's letter of September 23, 2008 demonstrated sufficient good cause under TRA Rule 1220-04-13-.09 to require immediate remedial action by the Authority. Based upon good cause shown, the panel voted unanimously to authorize the General Counsel to act on behalf of the Authority to take whatever legal measures would be necessary to ensure that HC Sewage continued to comply with the Authority's rules and that wastewater treatment service to customers of HC Sewage would not be interrupted.

On October 7, 2008, General Counsel issued, on behalf of the Authority, an *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* ("Show Cause Order"). The *Show Cause Order* was served on HC Sewage and First Bank and Trust Company, the financial institution that issued a letter of credit for HC Sewage, with a copy sent to Greeneville Oil. A duly noticed public hearing was held on October 13, 2008. Mr. Scott participated in the hearing telephonically on behalf of HC Sewage and reported that, as of October 10, 2008, it appeared that all the arrangements regarding the operational status of the wastewater facility had been made to avoid interruption in service. Mr. Scott further stated that HC Sewage did not object to the TRA ordering a draw on the \$20,000 Letter of Credit of HC Sewage. Mr. Scott expressed his understanding that no funds from the draw on the Letter of Credit would be distributed to Greeneville Oil until after Greeneville Oil had formally taken over the operation of the facility and the transfer of HC Sewage's CCN to Greeneville Oil had been approved. First Bank had previously sent a letter to the TRA stating that it did not contest the action and would comply with the terms of the Letter of Credit.

During the hearing, the General Counsel stated that as of October 10, 2008, the engineer who was certificated to operate the system was continuing to maintain and operate the system, the electric utilities for the plant had been transferred to Greeneville Oil and the engineer was working with Greeneville Oil to arrange for payment for his services, all of which allowed for there to be no interruption in service to customers during the transition.

Tenn. Code Ann. § 65-4-201(e) provides, in pertinent part:

The authority shall direct the posting of a bond or other security by a public utility providing wastewater service or for a particular project proposed by a public

Melvin J. Malone, Esq.
July 31, 2009
Page 3

utility providing wastewater service. *The purpose of the bond or other security shall be to ensure the proper operation and maintenance of the public utility or project.* [Emphasis supplied.]

Based upon its findings following the hearing, the panel voted unanimously to require First Bank & Trust Company to pay over to the TRA the sum of \$20,000 secured by HC Sewage's Letter of Credit Number 2006-016 in order that the funds be used to ensure the proper operation and maintenance of the wastewater system previously operated by HC Sewage.


On October 29, 2008, the TRA issued its *Order Requiring First Bank & Trust Company to Release Funds Secured by HC Sewage Treatment, LLC's Letter of Credit* ("October 29, 2008 Order"). A copy of the October 29, 2008 Order was sent to First Bank and First Bank released the funds from the Letter of Credit (\$20,000) to the TRA.

On December 15, 2008, Greeneville Oil filed a petition with the TRA for the transfer of authority from HC Sewage to Greeneville Oil. Later, Greeneville Sewage, LLC was substituted as the entity to which HC Sewage's CCN would be transferred. The Petition finally went to hearing on April 14, 2009 following several delays brought on by the parties' inability to complete a purchase agreement. On May 27, 2009, an Initial Order was entered granting the transfer of authority to Greeneville Sewage LLC. The sales transaction between HC Sewage and Greeneville Sewage, LLC was consummated on June 4, 2009. Thereafter, on June 10, 2009, the Authority received the request of Greeneville Sewage, LLC for disbursement of the \$20,000 funds collected from the Letter of Credit in payment for services rendered in continuing the operation and maintenance of the wastewater treatment system prior to the closing of the sale and the transfer of authority.

With the reimbursement to Greeneville Sewage, LLC, no further action by the TRA is required and this matter is concluded. As such, unless notified otherwise, the TRA will proceed to close this docket.

Thank you for your assistance throughout the course of this matter.

Very truly yours,



J. Richard Collier
General Counsel

c: Chairman Sara Kyle
Laura Foreman
Copy in Docket File No. 08-00183