

TENNESSEE REGULATORY AUTHORITY



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460 James Robertson Parkway
Nashville, Tennessee 37243-0505

TRA:DOCKET ROOM



Date: 12/16/2010

TO: Docket File

From: Patsy Fulton, Utilities Division

RE: Docket No. 10-00145 Petition Of Aqua Green Utility Inc. To Amend Its CCN And Expand Its Service Area To Include A Portion Of Jefferson County In Tennessee, Known As Stonebridge On Douglas Lake

Copies of the attached letters concerning Stonebridge, Jefferson County, Tennessee (SOP 10042) received by TRA Staff via e-mail on December 16, 2010.

Patsy Fulton - Stonebridge-Deputy Commissioner Paul Sloan Correspondence

From: Robert Odette
To: Fulton, Patsy
Date: 12/15/2010 9:39 AM
Subject: Stonebridge-Deputy Commissioner Paul Sloan Correspondence
Attachments: 4768 Stonebridge Palmieri ltr.PDF; 4768 Stonebridge Attachment 1.PDF; AquaGreen Allegations Response.PDF

FYI

Jefferson County Commission

Resolution 2010-35

TDEC - RESPONSE

RESOLUTION - PARAGRAPH #4

WHEREAS, at a recent meeting of this Board, evidence was provided to the Board that:

- (1) A soil map/report, regarding Stonebridge, was prepared and submitted by a soil scientist under the employ of an engineering firm.**
- (2) Subsequent to said submission (Soil map/report), said soil scientist (Mr. Kevin Davis) ceased employment with this engineering firm (S&ME) and upon information and belief became a competitor of the aforementioned utility company(AquaGreen).**
- (3) Upon information and belief, that subsequent to cessation of his (Mr. Davis) employment with the engineering firm (S&ME), official(s) at TDEC commissioned a second soil map/report from said soil scientist (Mr. Davis).**
- (4) Despite being a competitor of the aforementioned utility company (AquaGreen) and despite having submitted a previous soil map/report, the soil scientist (Mr. Davis) submitted a second, less favorable soil map/report**

TDEC RESPONSE:

The permit application used by TDEC's Division of Water Pollution Control (WPC) for a drip dispersal system states the requirements for obtaining a permit. We must receive a completed application form along with an engineering report that is based upon site conditions as certified by the applicant's soil scientist and verified on-site by our soils scientist.

This is the permit application process:

- A. The soil scientist for the applicant prepares a soils map, and arranges to visit the site with TDEC's soil scientist to ground-truth the map and the pit profile descriptions so that a final soils map can be prepared.
- B. The soil scientist for the applicant submits the final soils map to TDEC.
- C. Our soil scientist verifies it and writes a soil report, which is then sent to the applicant's engineer.
- D. The applicant's engineer prepares an engineering report based on the final soils map.
- E. The engineering report is part of the permit application package submitted to TDEC.

- F. The permit is issued or denied. The applicant may appeal either the denial of a permit or the terms of a permit.

TDEC staff believed that this process was being followed during the site evaluation on July 28, 2010, with Mr. Dart Kendall of AquaGreen Utility, the applicant and Mr. Kevin Davis, Mr. Robert O'Dette (Professional Engineer with TDEC-WPC), Mr. Billy Roach (soil scientist with TDEC). Mr. Davis had previously been representing Mr. Kendall and our staff assumed he was continuing that work. At that meeting, Mr. Kendall did not tell the TDEC staff that Mr. Davis was no longer working on his behalf or working for a competitor. We have a copy of an email exchange between Mr. Kendall and Mr. Davis discussing the soils at the site 10 days prior to the on-site meeting, so it was a surprise to us that the Mr. Davis was not involved at Mr. Kendall's request.

As a result of conversations and the on-site discussion, Mr. Davis reviewed his pit profile descriptions, and revised them to reflect the most restrictive layer in the pits. It was mutually agreed between Mr. Roach and Mr. Davis that the Apison soil unit could be changed to the Muskingum soil series because the soil had a little more sand in the profile than a typical Apison soil. Also noted, was the fact that the Sequoia unit needed to be extended to the drainage way in the back of the lot and did not go as far as shown on the previous map. Within this change, approximately 4,000 square feet was reduced from the Sequoia unit from the original soil map. The evaluations of the soil pits in the Dandridge soil unit clearly showed, as was pointed out by Mr. Roach, that the soil did not have sufficient depth, because rock was encountered at 16" and 13" within the soil pits. Therefore, the Dandridge soil did not meet the state requirements for use as a subsurface drip irrigation soil.

The soil at this site has been evaluated by four soil scientists (three in private practice: Jeffrey Cox, Grant Dunn, Kevin Davis and one from TDEC: Billy Roach) over the past five years and all of these soil scientists have all come to basically the same conclusion, that the majority of soil at the Stonebridge site is not suitable for a subsurface drip irrigation wastewater treatment system.

(5) TDEC has refused to approve the proposed trickle filtration system.

TDEC RESPONSE:

TDEC has not yet received a complete and acceptable permit application. Specifically, We have not received an acceptable engineering report nor acceptable soils map from the applicant. We informed the applicant of our disagreement with the soils map and we have not received either a revised map or an engineering report based on the one with which we disagree. In other words, the ball is in the utility's court at this point. Once the utility makes its submittal, TDEC will be able to take the next step of the permit process.

In fact, TDEC staff has been working with the developer of Stonebridge to find another solution since 2009. During 2009, Mr. Mark Weston and Mr. Davis looked at multiple properties for possible use as drip irrigation sites including existing lots in the subdivision and adjacent property. One of those was an 11- acre parcel of land of Mr. Jimmie Jones. TDEC issued a permit for a pump and haul operation with the stipulation that permanent sewer service would be provided in less than 6 months through a connection to Newport Utilities.

To move successfully through the permit process outlined above, TDEC-WPC must receive a complete and acceptable application.



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
NASHVILLE, TENNESSEE 37243-0435

JAMES H. FYKE
COMMISSIONER

PHIL BREDESEN
GOVERNOR

December 7, 2010

Mr. Dart Kendall
Aqua Green Utility Inc.
3350 Galts Road
Acworth, Georgia 30102

Re: Allegations of inappropriate conduct by TDEC staff

Dear Mr. Kendall:

I attended a meeting on November 23 with you and others during which you asserted inappropriate conduct on the part of TDEC staff and presented written materials supporting your allegations. I've reviewed your handouts and grouped your concerns into three separate items for my response. I've now gone over the information you presented, reviewed our files in this matter, and made determinations for each of the allegations.

Item 1

TDEC staff member Bob O'Dette made inappropriate comments to the Jefferson County Regional Planning Commission and others demeaning Aqua Green Utilities Inc ("Aqua Green").

Response

TDEC was being portrayed in the media (Don Dare, TV Channel 6 Knoxville story posted July 12, 2010) as the problem at Stonebridge. The statement was made by Don Dare, "*The field was originally approved for use, but the rules have changed.*" Mr. O'Dette was scheduled to go to site evaluation at Stonebridge on July 28, 2010. Since the Jefferson County Regional Planning Commission meeting was scheduled for the night before (July 27, 2010), Mr. O'Dette attended the Planning Commission meeting, after having obtained the approval of his director.

Mr. O'Dette told the Planning Commission that Aqua Green's permit application for Stonebridge was not complete and not acceptable. He pointed out that the engineering report for Stonebridge that had been submitted on behalf of Aqua Green contained the following statement that was not true: "*A high-intensity soils map and soil report was prepared by Kevin Davis and approved by Billy Roach of TDEC.*" Mr. O'Dette also called into question Tom Carter's certification relative to sewage on the plat for Stonebridge which allowed the Planning Commission to approve the plat for Stonebridge on August 6, 2008. This certification allowed the Stonebridge lot sales to be closed.

Based on the above, I have determined that Mr. O'Dette told the truth to the Jefferson County Planning Commission relative to Aqua Green concerning a matter that was of interest to the Commission and the public. That is not inappropriate.

Item 2

TDEC's Bob O'Dette inappropriately communicated with third parties, including property owners, regarding this project without notice to Aqua Green.

Response

Members of the public are often affected by activities that we regulate, and these citizens have a legal right to copies of public documents. In this case, property owners in Stonebridge made information requests of Mr. O'Dette. In such instances, TDEC is not obligated to copy any other person on emails or letters.

I've determined that Mr. O'Dette's communications were appropriate and not in conflict with any TDEC policy.

Item 3

TDEC's Bob O'Dette has unfairly favored Aqua Green's competitors, specifically Kevin Davis and Mike Hines, by allowing them access to information, by including them in the site visit, or by recommending them in conversations with property owners and county officials.

Response

Kevin Davis is a private soil scientist who has done work for a variety of clients, including Aqua Green. It was not TDEC who invited Mr. Davis to the July 28, 2010 site visit. You were present and participated in this site visit without ever indicating that you had any problem with Mr. Davis being there or that you considered Mr. Davis' presence inappropriate. TDEC's communications with Mr. Davis were consistent with communications the agency has had with other soil scientists doing similar work on similar projects.

TDEC's communications with Mike Hines (Southeast Environmental Engineering and Tennessee Wastewater Systems Inc.), Jeffrey Cox (IRM Utilities), and Mr. Doug Hodge (Evergreen and formerly Southeastern Development), were seeking information on the Stonebridge and the Peninsula (formerly Parrott's Bay) projects. All of the information they received from us was contained in our files and is public information.

The site visit on January 15, 2009 at the Peninsula project site was called by TDEC to evaluate the soils, and also to determine if the sewer lines at this site had been installed without the required construction approval by TDEC. The reason Mr. Hines was asked to participate was that allegations had been made that the developer (Chip Leonard, The Peninsula on Douglas Lake, LLC, also with Southeastern Development) had constructed the collection system based upon the engineering plans for which Mr. Hines had obtained approval from TDEC. That matter took only a few minutes to resolve, at which point Mr. Hines left the site. We determined that the

Mr. Dart Kendall
December 7, 2010
Page 3 of 3

collection system was in fact installed without our approval, and on July 30, 2009, Mr. Leonard was issued a Director's Order and assessed a civil penalty for this illegal activity.

Rick Pfendler (owner Lot #61) called Mr. O'Dette, and said he had talked to an engineer at one of the meetings, but did not know that person's name. Mr. O'Dette suggested that was probably Mr. Hines.

There was no inappropriate conduct in this regard.

In summary, I have carefully considered all of your concerns and my determination is there was no inappropriate conduct by TDEC staff in this matter. There have been misstatements, mistakes and misunderstandings made in this matter, but the record does not show any of those having been made by Mr. O'Dette. My hope now is that an approvable plan for wastewater disposal at Stonebridge will be worked out and that this and other issues at that development will be settled soon.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul L. Sloan", written over a horizontal line.

Paul L. Sloan
Deputy Commissioner

PLS:cm

From: Robert Odette
To: Fulton, Patsy; Janjic, Vojin; Murphy, Wade; Roach, Billy; Smith, Woo...
Date: 12/16/2010 10:24 AM
Subject: Stonebridge updates
Attachments: LTR_Odette to Faulhaber_12-16-2010.PDF; LTR_Faulhaber to Odette12-13-2010.PDF

Good Morning all:

Attached are letters from Bob Faulhaber dated 12-13-2010 answering my letter dated August 10, 2010, and my response letter dated 12-16-2010.

Robert G. O'Dette, M.S., P.E.
Assistant Manager, Municipal Facilities
and State of Tennessee Biosolids Coordinator
Tennessee Department of Environment and Conservation
Division of Water Pollution Control
6th Floor, L & C Annex
401 Church Street
Nashville, TN 37243-1534
TEL: (615) 253-5319
FAX: (615) 532-0686
Email: Robert.Odette@TN.GOV



Faulhaber Engineering & Sustainability | 1045 E. 10th Street - 106 | Cookeville, TN 38501

December 13, 2010

Mr. Bob O'Dette
Division of Water Pollution Control
6th Floor, L&C Annex 401 Church Street
Nashville, TN 37243-1534

RE: Revised Engineering Report for Stonebridge
SOP-10042, Jefferson County, Tennessee

Mr. O'Dette:

This shall serve as my official response to your letter dated August 10, 2010 regarding the revised engineering report submitted on August 6, 2010. A previous response was not submitted because I felt that the response from Mr. Kendall as well as subsequent telephone and email correspondence was appropriate. However, it appears from subsequent correspondence from TDEC that a formal response from me is required in order for the Stonebridge application to proceed. I offer the following responses to your bulleted comments :

- I have no comment regarding the information provided in the first bullet point.
- Please note that we are not requesting a reduced flow rate. This is acknowledged in the last sentence of bullet point two.
- The only soils report that I have seen or reference is the report prepared by S&ME dated August 8, 2008. I have not seen a copy of the "Field and Activity Report" dated 7/28/2010 that you reference in bullet point three and therefore I cannot respond to any data located in that report. In addition, neither I or a representative of S&ME was present during Mr. Roach's visit so we cannot confirm or protest his findings. It is stated that the Dandridge soil must be excluded from consideration based on hard shale located at depths ranging from 14"-24". Please note that in the S&ME soil report, which again is the only report that I have to reference, it clearly states that hand auger refusal was not encountered at less than 24" at any location on the site. Based on the data in the S&ME report that was provided for the site the Dandridge soils meet the requirements from Chapter 17, as stated in my engineering report.
- The comments and guidelines for reduced loading rates and increased line spacing for areas in which the slopes exceed 9% are for areas where the restrictive layer (bedrock) is less than

or equal to 23". Again, the soil report that I was given and have used clearly states that hand auger refusal was not encountered in the first 24". Based on that information the reductions for slope do not apply. According to the S&ME soils report all of the soils noted in my engineering report meet the Chapter 17 requirements and these soils provide a total area of 3.06 acres. (It was noted that the SOP shows 2.99 acres, which is what it required for the loading rate, while the engineering report shows what is available according to the soils report.) Mr. Roach's "Field and Activity Report" may provide information that suggests that some soils do not meet Chapter 17 criteria or have shallower bedrock, but I have not been provided with a copy of that report, nor was I or a representative of S&ME present to confirm or protest his finding so I can only use the data in the soils report that was provided to me.

- I acknowledge that the proposed system is an acceptable system that conforms to the state rules and design criteria requirements as noted in the final sentence of your final bullet point. No mention of the Delta Environmental Bio-Pod system was made in my report so I am unclear why it was noted that it would not be approved.

It appears that the soils report is the only area where there is disagreement. To date, the only soils report or soils data that I have to reference in my calculations and engineering report is that provided by S&ME dated August 8, 2008. Based on that report I believe that my report dated August 6, 2010 meets all of the state design criteria and guidelines. If TDEC disagrees with the data contained in the S&ME soil report then S&ME needs to be given the opportunity to defend their report. As I understand it Mr. Kendall is in contact with S&ME and is trying to establish a time when we can all meet at the project site to view the soils and make a final determination. If I am given different soil data by S&ME at that point in time I will adjust my report according to that data, but unless that happens I must reference the report that was provided to me. If there are any other areas that I need to address or that you have questions about please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Faulhaber", with a stylized, flowing script.

Bob Faulhaber - PE, LEED AP



TENNESSEE DEPARTMENT OF ENVIRONMENT & CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 CHURCH STREET
6th FLOOR L & C ANNEX
NASHVILLE, TENNESSEE 37243

CERTIFIED MAIL #7007 2680 0000 8142 6634

December 16, 2010

Mr. Bob Faulhaber, P.E., LEED AP
Faulhaber Engineering & Sustainability
1045 E. 10th Street – 106
Cookeville, TN 38501

**RE: Revised Engineering Report for Stonebridge
SOP-10042, Jefferson County, Tennessee**

Dear Mr. Faulhaber:

This letter is in response to your letter dated December 13, 2010, relative to the above referenced project. The following comments are offered for your consideration:

- The rationale for our State Design Criteria has been explained in detail to you in my letter dated August 10, 2010, and you had no comment regarding it.
- At this point in time, I acknowledge that you are not requesting a reduced design flow rate and have used 300 gallons per day per unit for 107 homes. As noted in my August 10, 2010 letter, you have used the correct design flow rate of 32,100 GPD.
- The issues relative to the soils map and the soils report can best be explained by understanding the key elements of the process by which an applicant obtains a State Operation Permit (SOP) from TDEC-Division of Water Pollution Control (WPC). The SOP application form used by WPC for a drip dispersal system outlines the requirements for obtaining an SOP. (Note: Underground Injection Control (UIC) requirements are also contained in the SOP/UIC application, but will not be discussed herein). WPC must receive an engineering report (ER) that is based upon site conditions that are certified by the applicant's soil scientist and field verified by a TDEC-Division of Ground Water Protection (GWP) soil scientist. The process is as follows:

1. The soil scientist for the applicant prepares a soils map in accordance with Chapter 17.2.2, and arranges to visit the site with GWP's soil scientist to field verify the soils map and the pit profile descriptions so that the final soils map can be prepared.
2. The soil scientist for the applicant submits the final soils map to GWP's soil scientist.
3. GWP's soil scientist verifies the final soils map and prepares a soils report memo (Field and Activity Report) and sends a copy to WPC. This memo contains information relative to the field verification of the soils map done by both parties' soil scientists.
4. Once the final soils map has been verified by GWP's soil scientist, the ER, in accord with the final soils map, is submitted to WPC as part of the SOP application package.
5. WPC reviews the SOP application package and if it is acceptable, drafts the SOP, places it on public notice with a 30-day comment period, and if no comments or request for a public hearing are received, issues the SOP. (Note: If comments are received and/or a public hearing is held, WPC would prepare a Notice of Determination).
6. The SOP is issued or denied. The applicant may appeal either the denial of the SOP or the terms of the SOP.

One of the most important aspects of this process is Step 3 above. The soil map must be verified by a GWP soil scientist to be considered a final soils map. Furthermore, a final soils map acceptable to TDEC does not guarantee that the soil area is adequate for the proposed design flow. Such a determination is made in reviewing the ER. To be clear, a soils map that is not verified by a GWP soil scientist is not a final soils map. Thus, the soils map dated August 8, 2008, which was submitted with your ER, is not considered by WPC to be a final soils map because it has never been field verified by a GWP soil scientist.

- It is important to understand that soil areas that meet the Chapter 17 requirements may be restricted for hydraulic loading rate depending upon the slope. I provided guidance to you relative to the slope issue in my August 10, 2010 letter. This guidance is consistent with Chapter 17 (17.1.3), expert opinion and is fortified by GWP's rules. The issues with regard to slope will have to be considered in your engineering report and in evaluating the final soils map that has been field verified by a GWP soil scientist.

Mr. Bob Faulhaber
December 16, 2010

- I acknowledge that the wastewater treatment system you have proposed for the Stonebridge project is a decentralized wastewater system consisting of primary treatment in the form of septic tanks at each home, effluent pumps and pressure lines to transport the effluent and secondary treatment in the form of a fixed film trickle filter and drip dispersal of treated effluent. As stated in my August 10, 2010 letter, this is an acceptable system that conforms to our state rules and design criteria requirements. I made the comment about the Delta Environmental Bio-Pod system because this system was used for the Peninsula project and engineers sometimes change their proposed wastewater treatment system during the design phase.

In order for AquaGreen Utility Inc. to provide an acceptable SOP application, the first step would be to provide a field verified soils map showing an adequate amount of useable soil area to handle the design flow of 32,100 GPD. The soil area proposed to be used must meet our design criteria relative to texture and structure, depth and drainage. The required soil area will be dependent upon factors such as hydraulic loading rate, nutrient loading rate and slope. These issues will have to be addressed in your ER, in accord with the final soils map that has been field verified by a GWP soil scientist. Regardless of what information is shown on the August 8, 2008 soils map, it is not acceptable to WPC without field verification by a GWP soil scientist.

Currently, your ER and the soils map dated August 8, 2008, are not acceptable. Therefore, WPC has yet to receive an acceptable SOP application for the Stonebridge project. Nevertheless, we remain willing to help in any way and to work with you, S&ME and the applicant to complete this task.

If you have any questions, please contact me personally by Email: Robert.Odette@TN.GOV or by telephone at (615) 253-5319.

Sincerely yours,



Robert G. O'Dette, M.S., P.E.
Assistant Manager
Municipal Facilities

cc: TDEC-WPC Knoxville Environmental Field Office
Permit Section, WPC-Central Office
Mr. Billy Roach, TDEC-GWP, Knoxville Environmental Field Office
Mr. Dart Kendall, AquaGreen Utility
Ms. Patsy Fulton, TRA