



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

OFFICE OF GENERAL COUNSEL
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November 22, 2013

Chairman James M. Allison
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

RE: TRA Docket No. 13-00017

AMENDED PETITION OF EMERSON PROPERTIES LLC FOR REVOCATION OF
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY HELD BY TENNESSEE
WASTEWATER SYSTEMS INC. FOR THE PORTION OF CAMPBELL COUNTY,
TENNESSEE, KNOWN AS THE VILLAGES OF NORRIS LAKE, PURSUANT TO TENN.
CODE ANN. 65-4-201

Chairman Allison,

The Tennessee Department of Environment and Conservation would like to make clear that it does not favor either side in the above listed case. The Department stated as much in its March 16, 2013 letter to Mr. Frank D. Wallace of the Caryville-Jacksboro Utilities District: "The Department is not a party to these actions and it intends to remain neutral as to how those actions are ultimately resolved."

The letter was intended to be cautionary in nature and point out that Caryville-Jacksboro had to secure the necessary easements before continuing. There has been no enforcement action commenced in this case.

Sincerely,

A handwritten signature in black ink, appearing to read "Devin M. Wells", followed by a long horizontal flourish.

Devin M. Wells
Environmental Legal Counsel

Attachment



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

OFFICE OF GENERAL COUNSEL
401 Church Street
20th Floor, L. & C Tower
Nashville, Tennessee 37243-1548
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March 6, 2013

Mr. Frank D. Wallace
Executive Secretary
Caryville-Jacksboro Utilities Commission
P.O Box 121
Jacksboro, TN 37757

Re: The Villages At Norris Lake-Campbell County

Dear Mr. Wallace:

The Department is in receipt of a Chancery Court decision dated January 7, 2013 rendered in favor of Tennessee Wastewater Systems Inc. We are also in receipt of a Petition for Declaratory Order filed January 16, 2013 on behalf of Emerson Properties, LLC. Clearly, both of these actions affect Caryville-Jacksboro Utilities Commission ability to provide wastewater treatment service to the Villages at Norris Lake under State Operating Permit (SOP) No. Sop-10051. The Department is not a party to these actions and it intends to remain neutral as to how those actions are ultimately resolved.

When the Department issued the above referenced SOP to Caryville Jackson Utilities Commission on August 1, 2011 the Caryville Jackson Utilities Commission was informed of the previous issuance of SOP-07001 to Tennessee Wastewater Systems, Inc. Specifically the Caryville Jackson Utilities Commission was told:

The division has already issued a sewer system permit (SOP-07-001) for the general scope of this activity to Tennessee Wastewater Systems, Inc. This company holds a Certificate of Convenience and Necessity (CCN) from the Tennessee Regulatory Authority for some, or all, of the service area associated with a sewerage system proposed by a former developer. Note that Part II. A.5 of both SOPs provide as follows: The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any property rights in either real or personal property or any invasion of personal rights, nor any infringement of Federal, State, or local laws or regulations.

Further, Part II.D.2 of both SOPS state, "Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any application of state law." The division is not in a position to regulate service area. Please consult with your legal staff regarding your service area issue(s).

On May 22, 2012, the Department issued an approval of construction plans and specifications for the Caryville Jackson Utilities Commission wastewater treatment system under tracking #WPC 12-0102 pursuant to Rule 1200-4-2-.05. That Rule provides, in part:

Construction work shall not be commenced on any new construction or major change of existing facilities or for any activity outlined in Section 69-3-108 of the Act until complete and final plans and specifications for such activities have been submitted to and approved in writing by an authorized representative of the Commissioner.

The final plans and specifications shall be prepared in accordance with generally accepted wastewater engineering practices. The Design Criteria published from time to time are used internally by the Division as a compilation of such practices and are available to the public. Other designs may also be used if adequately supported by calculations and actual testing data.

The May approval acknowledges that the submitted plans and specifications meet the minimum design criteria. However, Caryville Jackson Utilities Commission is not currently authorized to construct *or* operate. Caryville Jackson Utilities Commission's permit contains the following provision:

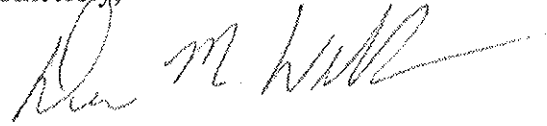
Evidence of ownership of the treatment facility land application site(s) and /or a copy of the perpetual easement(s) must be furnished to the division for approval prior to construction of the wastewater collection and treatment system."(SOP-10051Sec. G paragraph a. Page 13).

The Department has not received the above referenced evidence.

The Department has been informed that construction of a wastewater treatment facility is underway in the Villages at Norris Lake. If that is true, such construction is in violation of your permit and Department rules and should cease. Further, it appears to the Department that the January 7, 2013 Chancery Court decision prohibits operation pending the outcome of the Petition for Declaratory Order before the Tennessee Regulatory Authority.

Please contact me if you would like to discuss or if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Devin M. Wells", with a long horizontal flourish extending to the right.

Devin M. Wells
Environmental Legal Counsel
Tennessee Department Of
Environment and Conservation

CC: Wade Murphy-TDEC Division Of Water Resources
C. Mark Troutman-Attorney for Emerson Properties, LLC.
Christopher A. Bowles-Attorney For Tennessee Wastewater Systems, Inc.