



TROUTMAN & TROUTMAN, P.C.

ATTORNEYS AT LAW

CONRAD MARK TROUTMAN

REID TROUTMAN

CONRAD E. TROUTMAN, JR.
RETIRED CIRCUIT JUDGE

JODY RODENBORN TROUTMAN,
OF COUNSEL

April 30, 2013

VIA Electronically: sharla.dillon@tn.gov

Chairman, Tennessee Regulatory Authority
c/o Sharla Dillon, Dockets and Records Manager
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: Docket No. 13-00017

Dear Ms. Dillon:

Attached to the email please find a Response to the Motion to Dismiss and Affidavit (both in PDF form) to be filed on behalf of Emerson Properties, LLC. We are also submitting via overnight delivery the originals and 4 copies of each. By cover of a copy of this letter, we are providing an electronic (PDF) version of the Answer to counsel for Tennessee Wastewater Systems, Inc and to the Consumer Advocate.

Thank you for your assistance.

Yours very truly,

A handwritten signature in black ink, appearing to be 'C. Mark Troutman', with a long horizontal flourish extending to the right.

C. Mark Troutman

Cc: George L. Potter
Henry Walker, Esq.
Charlena S. Aumiller, CPA

(c) that TWSI has allowed its operating permit issued by the Tennessee Department of Environment and Conservation to expire and lapse. (See the Exhibit A attached hereto showing that the permit lapsed February 28, 2012 and containing no indication that any efforts to renew the same were made by TWSI); and

(d) that TWSI has no contractual or other relationship with Emerson, the subdivision property or owners of lots within the subdivision.

(See paragraphs 7-12 of the Amended Petition filed by Emerson and paragraph 4 of the Affidavit of George L. Potter filed in support hereof).

2. TRA Rule 1220-04-13-.06 provides in pertinent part as follows:

(4) If wastewater service has not been provided in any part of the area which a public wastewater utility is authorized to serve within two (2) years after the date of authorization for service to such part, whether or not there has been a demand for such service, the Authority may require the public wastewater utility to demonstrate that it intends to provide service in the area or part thereof, or that based on the circumstances of a particular case, there should be no change in the certificated area, to avoid revocation or amendment of a CCN.

3. TRA Rule 1220-04-13-.09 provides in pertinent part as follows:

(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 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:

(a) A finding by the Authority of material non-compliance by the holder of a CCN with any provisions of Title 65 of the Tennessee Code dealing with obtaining a public wastewater utility CCN or providing wastewater services to customers, or any order or rule of the Authority relating to the same.

(b) A finding by the Authority of:

1. Fraud, dishonesty, misrepresentation, self-dealing, managerial dereliction, or gross mismanagement on the part of the public wastewater utility;
2. Criminal conduct on the part of the public wastewater utility;
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;
5. Persistent, serious, substantial violations of statutes or regulations governing the public wastewater utility; or
6. Failure or inability on the part of the wastewater utility to comply with an order of any other state or federal regulatory body after the public wastewater utility has been notified of its non-compliance and given an opportunity to achieve compliance.

4. Emerson respectfully submits that at this point in the proceedings, the Agency should accept as true all well-pleaded facts and all reasonable inferences drawn therefrom alleged by the party opposing the motion. *Timmins v. Lindsey*, 310 S.W.3d 834 (Tenn. Ct. App. 2009).

Emerson submits that the allegations of the Petition and Amended Petition clearly set forth a basis for termination or revocation of the CCN and shows that good cause exists under TRA Rule 1220-04-13-.09 for the termination or revocation of the CCN. Emerson submits that the Motion to Dismiss filed by TWSI should be denied.

5. As an additional grounds for termination/revocation of the CCN, Emerson points out that TWSI is not presently in compliance with TRA Rule 12-04-13-.10. That rule provides:

(1) Title to all physical assets of the wastewater system managed or operated by a public wastewater utility shall not be subject to any liens, judgments, or encumbrances, except as approved by the Authority pursuant to Tenn. Code Ann. § 65-4-109.

6. TWSI argues that such is irrelevant and that since it owns the CCN it will in the future own the assets. Such argument ignores that at present, the assets are already encumbered and that it simply cannot comply with this Rule. (See paragraph 5 of the Affidavit of George L. Potter).

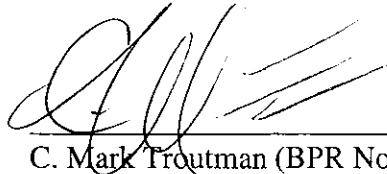
7. All of the foregoing constitutes good cause under TRA Rule 1220-04-13-.09 for the termination or revocation of the CCN under the circumstances of this case.

8. TWSI also references the Chancery Court ruling and argues collateral estoppel bars relitigating certain issues regarding the lack of contract rights and ownership of the waste water treatment facilities. However, contrary to such argument, the Court's ruling attached to the Answer of TWSI provided on page 4 that the Counterclaim filed by Emerson was dismissed because it failed to exhaust its administrative remedies before the TRA such that the Chancery Court lacked subject matter jurisdiction. The Court further states on page 4 of the Order that the dismissal as to Emerson, is "without prejudice to the rights of Emerson Properties, LLC to proceed before the TRA." Accordingly, such ruling does not bar Emerson in these proceedings from raising the issues alleged in its Petition and Amended Petition as grounds for the revocation or termination of the CCN.

9. Finally, in the event the CCN is revoked or terminated, Emerson is prepared to enter into an agreement with the Caryville Jacksboro Utility Commission for the providing the management of the sewer treatment system for this subdivision and such Utility Commission is willing to provide such services. (See paragraph 6 of the Affidavit of George L. Potter). Therefore, the rights and interests of the residents of the subdivision will be protected.

WHEREFORE, Emerson submits that its Petition and Amended Petition set forth a sufficient claim for relief for the revocation or termination of the CCN pursuant to TRA Rule 1220-04-13-.09 and that the Motion to Dismiss filed by TWSI should be denied.

Respectfully submitted this 30th day of April, 2013.



C. Mark Troutman (BPR No. 011712)
TROUTMAN & TROUTMAN, P.C.
P.O. Box 757
LaFollette, TN 37766
(423) 566-6001
Attorney for Emerson Properties, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing documents have been served Henry Walker, Bradley Arant Boult Cummings LLP, 1600 Division Street, Suite 700, Nashville, TN 37203, counsel of record for the Respondent and to Charlena S. Aumiller, CPA, Assistant Attorney General, Consumer Advocate and Protection Division, Office of the Tennessee Attorney General, 425 Fifth Avenue North, Nashville, Tennessee 37243-3400, via email and/or United States mail addressed to said counsel at his office with sufficient postage thereon to carry it to its destination.

This is 30~~th~~ day of April, 2013.

By: _____

C. Mark Troutman

EXHIBIT A

TO THE RESPONSE OF EMERSON

PROPERTIES, LLC TO THE MOTION TO

DISMISS FILED BY TENNESSEE WASTEWATER

SYSTEMS, INC.



[WPC Permits in TN](#) [Exceptional TN Waters](#) [WPC Permit Appeals](#) [WPC Complaints](#) [WPC Inspections](#)

WPC Permit Information

[Help](#) [Back to Previous Page](#)

Permit Number **SOP-07001**

Permittee Name **TN Wastewater Systems - Villages at Norris Lake**

Permit Type **SOP**

Status **New**

Permit Rating

Facility Classification **M**

Discharge Code **DI**

Application to EFO **23-OCT-2006**

Application to NCO **25-OCT-2006**

Application Complete **09-JAN-2007**

Application Returned

Public Notice **22-JAN-2007**

Issuance Date **28-FEB-2007**

Effective Date **01-APR-2007**

Expiration Date **28-FEB-2012**

Modification Date

Termination Date

Receiving Stream **N/A**

Effluent Description **No discharge allowed from this system**

SIC Code

Activity Description **Septic tanks, effluent collection system, recirculating packed bed filter and drip irrigation**

Treatment Description **Septic tanks, effluent collection system, recirculating packed bed filter and drip irrigation**

Flow Rate [MGD] **.01**

Record Last Updated **27-SEP-2011**

Parent Site

Site	Location	City	County
Tennessee Wastewater Systems, Inc. - Villages at Norris Lake	LaFollette	LaFollette	Campbell

1 - 1

Permit Documents

View	File Type	Description	Document Date ▲
	Application	2007 app	JAN-08-2007
	Permit	Final Permit	FEB-28-2007

1 - 2

Case Documents

no data found



If you have any questions or comments, Email ask.tdec@tn.gov or call at (888) 891-TDEC (8332).





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SITE or FACILITY INFORMATION

[Help](#) [Back to Previous Page](#)

Name **Tennessee Wastewater Systems, Inc. - Villages at Norris Lake**

Description Septic tanks, effluent collection system, recirculating packed bed filter and drip irrigation

Location LaFollette

County Campbell

Other Counties

Within MS4

City LaFollette

Zip 37766

WPC Permits at this Site

<u>Permit No</u>	<u>Permittee</u>	<u>Type ▲</u>	<u>Action</u>	<u>Receiving Stream</u>	<u>Rating</u>	<u>Issuance Date</u>	<u>Effective Date</u>	<u>Expiration Date</u>
<u>SQP- 07001</u>	TN Wastewater Systems - Villages at Norris Lake	<u>SQP</u>	New	N/A	N/A	FEB-28-2007	APR-01- 2007	FEB-28-2012

1 - 1



If you have any questions or comments, Email ask.tdec@tn.gov or call at (888) 891-TDEC (8332).





Tennessee Department of Environment and Conservation
Division of Water Pollution Control
401 Church Street, 6th Floor L. & C Annex
Nashville, TN 37243-1534
(615) 532-0625

HUA
SOP-07001

APPLICATION FOR A STATE OPERATION PERMIT (SOP)

Type of application: ☒ New Permit ☐ Permit Reissuance ☐ Permit Modification

Permittee Identification: (Name of city, town, industry, corporation, individual, etc., applying, according to the provisions of Tennessee Code Annotated Section 69-3-108 and Regulations of the Tennessee Water Quality Control Board.)			
Permittee Name (applicant): Tennessee Wastewater Systems, Inc.			
Permittee Address: 1920 Breezy Ridge Trail Concord, TN 37922			
Official Contact: Michael Hines, M.S., P.E.		Title or Position: Vice President	
Mailing Address: 1920 Breezy Ridge Trail		City: Concord	State: TN
Phone number(s): 865-675-5917		Zip: 37922	
E-mail: mikehines@charter.net			
Optional Contact:		Title or Position:	
Address:		City:	State:
Phone number(s):		Zip:	
E-mail:			

Application Certification (must be signed in accordance with the requirements of Rule 1200-4-5-.05)		
I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.		
Name and title, print or type	Signature	Date
Michael Hines, M.S., P.E. Vice President		10-17-2006

SOP-07001

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10-17-2006

Permit Section

Permit Number: SOP-_____

Facility Identification:		Existing Permit No.	
Facility Name:	Villages at Norris Lake	County: Campbell	
Facility Address or Location:	LaFollette, TN	Latitude: 35.314444N	
		Longitude: 84.04825W	
Name and distance to nearest receiving waters: Unnamed Tributary of Norris Reservoir - 100'			
If any other State or Federal Water/Wastewater Permits have been obtained for this site, list their permit numbers:			
Name of company or governmental entity that will operate the permitted system: Tennessee Wastewater Systems, Inc.			
Operator address: 1920 Breezy Ridge Trail, Concord, TN 37922			
Has the owner/operator filed for a Certificate of Convenience & Necessity (CCN), or an amended CCN, with the Tennessee Regulatory Authority (TRA) (may be required for collection systems and land application treatment systems)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A			
If the applicant listed above does not yet own the facility/site or if the applicant will not be the operator, explain how and when the ownership will be transferred or describe the contractual arrangement and renewal terms of the contract for operations.			
TWSI will own the collection & treatment system upon completion of construction. There is a utility easement covering access to all portions of the collection system. Perpetual easements will be granted to TWSI for exclusive use by TWSI of those lands containing treatment or effluent dispersal systems.			
Complete the following information explaining the entity type, number of design units, and daily design wastewater flow:			
Entity Type	Number of Design Units		Flow (gpd)
<input type="checkbox"/> City, town or county	No. of connections:		
<input checked="" type="checkbox"/> Subdivision	No. of homes: 600	Avg. No. bedrooms per home: 2-3	180,000
<input type="checkbox"/> School	No. of students:	Size of cafeteria(s):	
		No. of showers:	
<input type="checkbox"/> Apartment	No. of units:	No. units with Washer/Dryer hookups:	
		No. units without W/D hookups:	
<input type="checkbox"/> Commercial Business	No. of employees:	Type of business:	
<input type="checkbox"/> Industry	No. of employees:	Product(s) manufactured:	
<input type="checkbox"/> Resort	No. of units:		
<input type="checkbox"/> Camp	No. of hookups:		
<input type="checkbox"/> RV Park	No. of hookups:	No. of dump stations:	
<input type="checkbox"/> Car Wash	No. of bays:		
<input type="checkbox"/> Other			
Describe the type and frequency of activities that result in wastewater generation.			
Single and multifamily residences.			

Engineering Report (required for collection systems and/or land application treatment systems):		<input type="checkbox"/> N/A
<input type="checkbox"/> Prepared in accordance with Rule 1200-4-2-.03 and Section 1.2 of the Tennessee Design Criteria (see website for more information) <input checked="" type="checkbox"/> Attached, or <input type="checkbox"/> Previously submitted and entitled: _____		
Approved? <input type="checkbox"/> Yes. Date: _____		<input type="checkbox"/> No
Wastewater Collection System:		<input type="checkbox"/> N/A
System type (i.e., gravity, low pressure, vacuum, combination, etc.): STEP/STEG small diameter sewer system		
System Description: STEP/STEG small diameter sewer system		
Describe methods to prevent and respond to any bypass of treatment or discharges (i.e., power failures, equipment failures, heavy rains, etc.): Tanks and sewers are water tight. There are no bypass points in the system. TWSI also has emergency generators to run the pumps.		
In the event of a system failure describe means of operator notification: 24-hour phone contacts provided to each customer		
List the emergency contact(s) (name/phone): Mike Hines 865-675-5917, James Magill 865-740-5551		
For low-pressure systems, who is responsible for maintenance of grinder pumps and septic tanks (list all contact information)? There are no grinder pumps. All notification comes to Tennessee Wastewater Systems, Inc. at 865-675-5917		
Approximate length of sewer (excluding private service lateral): 34,500 feet		
Number/hp of pump stations:	N/A /	Number/hp of grinder pumps N/A /
Number/volume of low pressure pump tanks	N/A /	Number/volume septic tanks 600 / 1,500 gal
Attach a schematic of the collection system. <input checked="" type="checkbox"/> Attached		
If you are tying in to another system complete the following section, listing tie-in points to public sewer system and their location (attach additional sheets as necessary):		
<u>Tie-in Point</u>	<u>Latitude (xx.xxxx°)</u>	<u>Longitude (xx.xxxx°)</u>
N/A		

Land Application Treatment System:	<input type="checkbox"/> N/A
Type of Land Application Treatment System: <input checked="" type="checkbox"/> Drip <input type="checkbox"/> Spray <input type="checkbox"/> Other, explain: _____	
Type of treatment facility preceding land application (recirculating media filters, lagoons, other, etc.): Recirculating Packed Bed Filter	
Attach a treatment schematic. <input checked="" type="checkbox"/> Attached	
Describe methods to prevent and respond to any bypass of treatment or discharges (i.e., power failures, equipment failures, heavy rains, etc.): There are no bypass points in the system. TWSI also has emergency generators to run the pumps.	
For land application, list: <input checked="" type="checkbox"/> Proposed acreage involved: 25 acres <input checked="" type="checkbox"/> Inches/week to be applied: 2.25	
Describe how access to the treatment area will be restricted if wastewater disinfection is not proposed:	
Attach required additional Engineering Report Information (see website for more information)	
<input checked="" type="checkbox"/> Topographic map (1:24,000 scale presented at a six inch by six inch minimum size) showing the location of the project including GPS coordinates, latitude and longitude in decimal degrees should also be included.	
<input checked="" type="checkbox"/> Scaled layout of facility showing the following: lots, buildings, etc. being served, the wastewater collection system routes, the pretreatment system location, the proposed land application area(s), roads, property boundaries, and sensitive areas such as streams, lakes, springs, wells, wellhead protection areas, sinkholes and wetlands.	
<input checked="" type="checkbox"/> Soils information for the proposed land disposal area in the form of an extra high intensity soils map (50 foot grid stake). The soils information should include soil depth (borings to a minimum of 4 feet or refusal) and soil profile description for each soil mapped.	
<input checked="" type="checkbox"/> Topographic map of the area where the wastewater is to be land applied with no greater than two-foot contours presented at a minimum size of six inches by six inches.	
<input checked="" type="checkbox"/> Describe alternative application methods based on the following priority rating: (1) connection to a municipal/public sewer system, (2) connection to a conventional subsurface disposal system as regulated by the Division of Groundwater Protection, and/or (3) land application.	

Permit Number: SOP-_____

Pump and Haul:	<input checked="" type="checkbox"/> N/A
Reason system cannot be served by public sewer:	
Distance to the nearest manhole where public sewer service is available:	
When sewer service will be available:	
Volume of holding tank: _____ gal.	
Tennessee licensed septage hauler (attach copy of agreement):	
Facility accepting the septage (attach copy of acceptance letter):	
Latitude and Longitude (in decimal degrees) of approved manhole for discharge of septage:	
Describe methods to prevent and respond to any bypass of treatment or discharges (i.e., power failures, equipment failures, heavy rains, etc.):	

Holding Ponds (for non-domestic wastewater only):	<input checked="" type="checkbox"/> N/A
Pond use: <input type="checkbox"/> Recirculation <input type="checkbox"/> Sedimentation <input type="checkbox"/> Cooling <input type="checkbox"/> Other (describe):	
Describe pond use and operation:	
If the pond(s) are existing pond(s), what was the previous use?	
Have you prepared a plan to dispose of rainfall in excess of evaporation? <input type="checkbox"/> Yes <input type="checkbox"/> No	
If so, describe disposal plan:	
Is the pond ever dewatered? <input type="checkbox"/> Yes <input type="checkbox"/> No	
If so, describe the purpose for dewatering and procedures for disposal of wastewater and/or sludge:	
Is(are) the pond(s) aerated? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Volume of pond(s): _____ gal.	Dimensions: _____
Is the pond lined (Note if this is a new pond system it must be lined for SOP coverage. Otherwise, you must apply for an Underground Injection Control permit.)? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Describe the liner material (if soil liner is used give the compaction specifications):	
Is there an emergency overflow structure? <input type="checkbox"/> Yes <input type="checkbox"/> No	
If so, provide a design drawing of structure.	
Are monitoring wells or lysimeters installed near or around the pond(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No	
If so, provide location information and describe monitoring protocols (attach additional sheets as necessary):	

Permit Number: SOP-_____

Mobile Wash Operations:		<input checked="" type="checkbox"/> N/A
<input type="checkbox"/> Individual Operator <input type="checkbox"/> Fleet Operation Operator		
Indicate the type of equipment, vehicle, or structure to be washed during normal operations (check all that apply):		
<input type="checkbox"/> Cars	<input type="checkbox"/> Parking Lot(s): sq. ft.	
<input type="checkbox"/> Trucks	<input type="checkbox"/> Windows: sq. ft.	
<input type="checkbox"/> Trailers (Interior washing of dump-trailers, or tanks, is prohibited.)	<input type="checkbox"/> Structures (describe):	
<input type="checkbox"/> Other (describe):		
Wash operations take place at (check all that apply):		
<input type="checkbox"/> Car sales lot(s)	<input type="checkbox"/> Public parking lot(s)	
<input type="checkbox"/> Private industry lot(s)	<input type="checkbox"/> Private property(ies)	
<input type="checkbox"/> County(ies), list:	<input type="checkbox"/> Statewide	
Wash equipment description:		
<input type="checkbox"/> Truck mounted	<input type="checkbox"/> Trailer mounted	
<input type="checkbox"/> Rinse tank size(s) (gal.):	<input type="checkbox"/> Mixed tanks size(s) (gal.):	
<input type="checkbox"/> Collection tank size(s) (gal.):	Number of tanks per vehicle:	
Pressure washer: psi (rated) gpm (rated)	Pressure washer: <input type="checkbox"/> gas powered <input type="checkbox"/> electric	
Vacuum system manufacturer/model:	Vacuum system capacity: inches Hg	
Describe any other method or system used to contain and collect wastewater:		
List the public sewer system where you are permitted or have written permission to discharge waste wash water (include a copy of the permit or permission letter):		
Are chemicals pre-mixed, prior to arriving at wash location? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Describe all soaps, detergents, or other chemicals used in the wash operation (attach additional sheets as necessary):		
Chemical name:	Manufacturer:	Primary CAS No. or Product No.

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JAN 15 2017

Permit Section

OFFICIAL STATE USE ONLY

Received Date

Permit Number

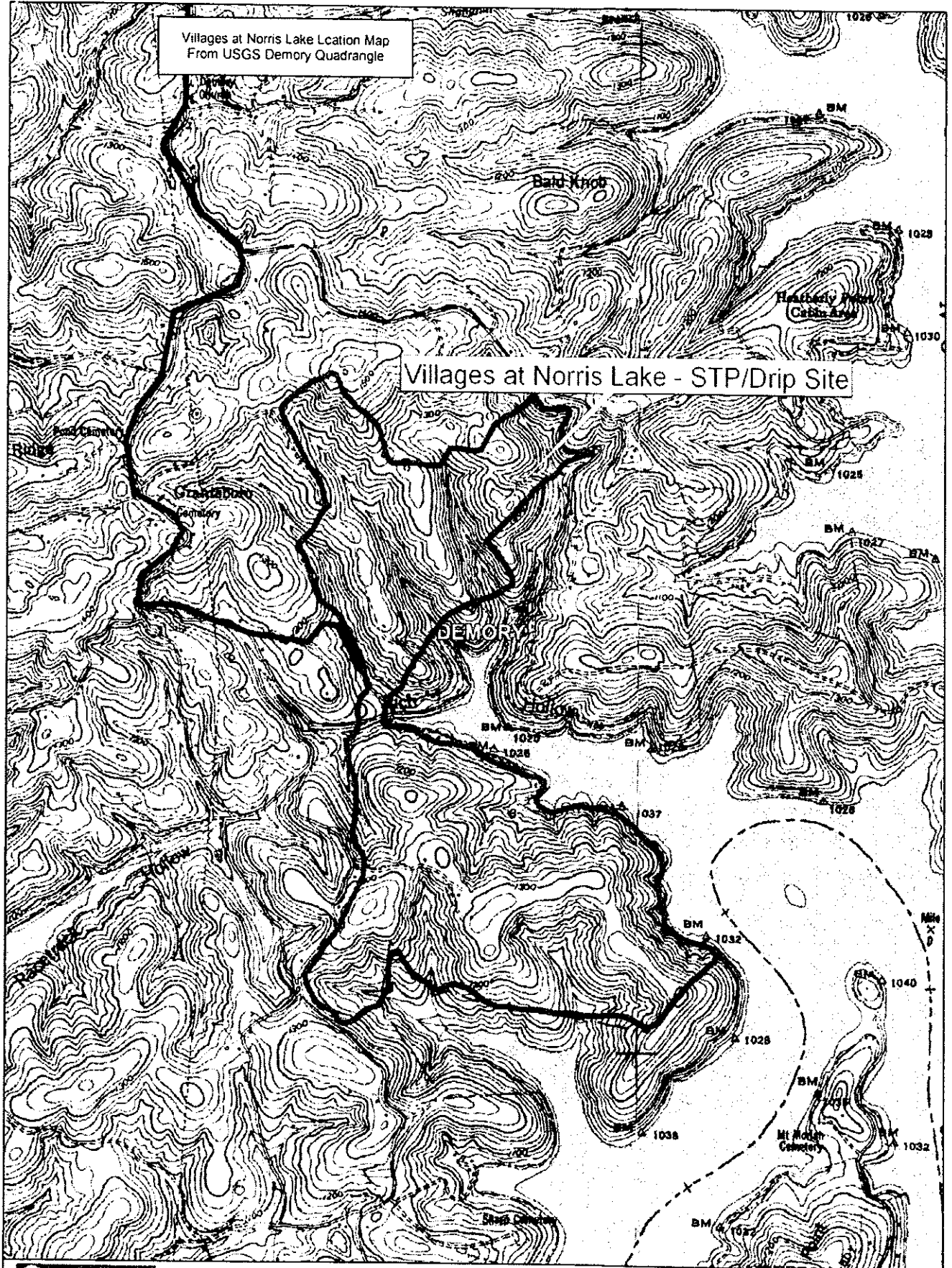
SOP-07001

Field Office

Reviewer

Villages at Norris Lake Location Map
From USGS Demory Quadrangle

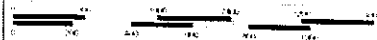
Villages at Norris Lake - STP/Drip Site



DeLORME

© 2001 DeLorme, XMap®. Data copyright of content owner.
Zoom Level: 13-0 Datum: WGS84

Scale 1 : 24,000
1" = 2,000 ft



1" = 1 mile
N
4.5-W

5. After acquiring the assets of the bankrupt prior owner, Emerson has pledged such assets as collateral for a loan from a bank. The assets mortgaged include the real and personal property that will be used as the sewer treatment system.

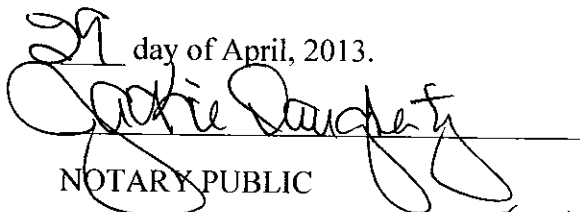
6. In the event this CCN is revoked or terminated, Emerson is prepared to enter into an agreement with the Caryville Jacksboro Utility Commission for the providing the management of the sewer treatment system for this subdivision and such Utility Commission is willing to provide such services.

Respectfully submitted this 29th day of April, 2013.



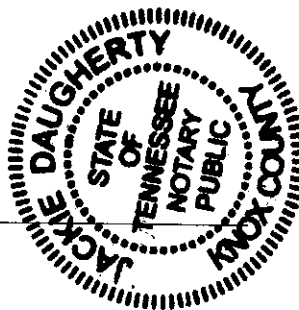
GEORGE L. POTTER

Sworn to and subscribed before me this

29 day of April, 2013.


NOTARY PUBLIC

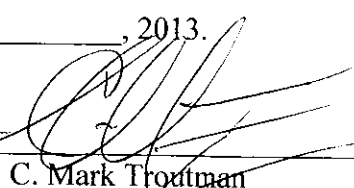
MY COMMISSION EXPIRES: 8-14-12



CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing documents has been served Henry Walker, Bradley Arant Boult Cummings LLP, 1600 Division Street, Suite 700, Nashville, TN 37203, counsel of record for the Petitioner via email and/or United States mail addressed to said counsel at his office with sufficient postage thereon to carry it to its destination.

This is 30th day of April, 2013.

By: 

C. Mark Trotman