

**IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE**

IN RE:

**SHOW CAUSE PROCEEDING AGAINST
TENNESSEE WASTEWATER SYSTEMS,
INC., FOR MATERIAL NON-
COMPLIANCE AND/OR VIOLATION OF
TENN. R. & REGS. 1220-04-13, *et seq.***

DOCKET NO. 14-00041

AMICUS BRIEF OF THE CONSUMER ADVOCATE

Robert E. Cooper, Jr., Attorney General and Reporter for the State of Tennessee, through the Consumer Advocate and Protection Division (“Consumer Advocate”), respectfully submits this Amicus Brief in Tennessee Regulatory Authority (“TRA” or “the Authority”) Docket No. 14-00041.

I. INTRODUCTION

As discussed in the Consumer Advocate’s *Post-Hearing Brief* in Docket No. 13-00017, this case initially presented itself as a matter between two companies wanting to serve the same area, neither of which appeared to pose a threat to the public interest. After hearing all the public comments, evidence, and arguments in Docket No. 13-00017, it was clear there would be adverse effects on the public interest if Tennessee Wastewater Systems, Inc. (“TWSI”) keeps its certificate of public convenience and necessity (“CCN”) intact for the service area known as The Villages of Norris Lake (“The Villages”). Consequently, the Consumer Advocate recommends that the Authority revoke TWSI’s CCN for the service area of The Villages. If the Authority determines TWSI may keep its CCN, the Consumer Advocate recommends the Authority find the public interest requires additional services for The Villages since TWSI cannot currently provide service, and, therefore, that entities other than TWSI may provide wastewater services.

Additionally, if the Authority determines TWSI may keep its CCN, the Consumer Advocate recommends it consider applying the maximum penalties under Tenn. Code Ann. § 65-4-120.

II. BACKGROUND

The Consumer Advocate incorporates by reference the “Background” section from its *Post-Hearing Brief* in Docket No. 13-00017, reproduced as Appendix A of this Amicus Brief. Since that information was written, the Authority opened this Docket No. 14-00041 and issued a *Show Cause Order* for TWSI to show cause why the Authority should not revoke its CCN to serve The Villages. At the January 13, 2014 Conference, the Authority ordered a show cause proceeding for these issues in February. The Authority gave TWSI additional time to prepare and addressed the matter at the April Conference. Prior to the April Conference, TWSI filed a *Motion to Continue*, which was granted. The hearing is currently scheduled for June 10, 2014. At the time of filing this Amicus Brief, there are only two parties in this Docket: the TRA Party Staff (“Party Staff”) and TWSI.¹ In this Docket, only two depositions were taken by TWSI, only one of which was filed on May 30, 2014.

The status of the wastewater services at The Villages remains unchanged since the hearing on November 25, 2013 in Docket No. 13-00017. That is, even though it has been seven years since TWSI obtained its CCN, it is not providing wastewater service to the property known as The Villages. The changes to the design of the development have been significant and the wastewater system originally designed and permitted by TWSI is no longer economically or

¹ The Tennessee Attorney General acting through the Consumer Advocate filed a petition to intervene in this contested case matter. That petition was denied and the order limited our opportunity to represent the public interest of ratepayers to filing an amicus brief before the hearing and without access to discovery available to parties. The Consumer Advocate's filing of this brief in no way limits or alters its right to appeal the denial of intervention and related issues at the conclusion of this case.

physically feasible.² Emerson, the developer that rescued The Villages from bankruptcy, has contracted with Braeburn Construction to build its wastewater system.³ After the system is completed, Emerson intends to give the system to the Property Owners' Association ("POA").⁴ TWSI has already admitted that the TRA does not regulate homeowners' associations like The Villages POA.⁵ TWSI has also admitted that it has no interest in operating a system that is owned by another entity,⁶ and it has no intention of building its own system.⁷ The Secretary of the POA and other members of the POA have requested the TRA revoke TWSI's CCN for The Villages so the POA can contract with another entity to operate the wastewater system.⁸ The Secretary of the POA also filed a letter clearly stating that the POA has no intention of voluntarily giving TWSI the system or property or easements thereto, nor does it intend to otherwise deal with TWSI.⁹

As set forth in the letter filed in Docket No. 13-00017 on November, 22, 2013 and reproduced for convenience in Appendix B, the Tennessee Department of Environment and Conservation ("TDEC") is neutral as to the outcome of the dispute. And, in a letter submitted by TWSI as an attachment to its *Reply Brief* on the *Motion to Dismiss* filed on May 7, 2013 in Docket No. 13-00017 and reproduced for convenience in Appendix C, TDEC considers both TWSI's permit and Caryville-Jacksboro Utility Commission ("CJUC") to be valid, but "neither can be used until all conditions for actual operation are met. That specifically includes the acquisition of requisite property rights."

² *Transcript*, Docket No. 13-00017, pgs. 47, 61, 66-67 (Nov. 25, 2013); *see also Post-Hearing Brief of the Consumer Advocate*, Docket No. 13-00017, pg. 5 (Dec. 9, 2013).

³ Potter Dep., pg. 34 (May 12, 2014).

⁴ *Transcript*, Docket No. 13-00017, pg. 74 (Nov. 25, 2013); Potter Dep., pgs. 34-35 (May 12, 2014).

⁵ *Transcript*, Docket No. 13-00017, pg. 123 (Nov. 25, 2013).

⁶ *Transcript*, Docket No. 13-00017, pg. 120 (Nov. 25, 2013).

⁷ *Transcript*, Docket No. 13-00017, pg. 117-18 (Nov. 25, 2013).

⁸ *Transcript*, Docket No. 13-00017, pg. 123 (Nov. 25, 2013).

⁹ *Letter from The Villages*, Docket No. 14-00041 (June 3, 2014), reproduced for convenience in Appendix D.

III. LEGAL AUTHORITY TO REVOKE THE CCN

The TRA has the statutory authority to revoke or otherwise amend an existing CCN under Tenn. Code Ann. § 65-4-203, which allows the modification of a CCN when a public utility is unwilling or unable to provide service to a certificated area, and under Tenn. Code Ann. § 65-4-114, which allows the TRA to compel a utility to provide service “or to abandon any service when, in the judgment of the authority, the public welfare no longer requires the same.” The Authority created rules specific to these circumstances, particularly that a CCN may be revoked when a wastewater utility has failed to provide service for over two years since obtaining a CCN. TRA Rule 1220-4-13-.06.

IV. THE CONSUMER ADVOCATE RECOMMENDS THE AUTHORITY REVOKE TWSI’S CCN BECAUSE IT CANNOT PROVIDE WASTEWATER SERVICE TO THE VILLAGES OF NORRIS LAKE.

The Authority should revoke the portion of TWSI’s CCN related to The Villages because it is no longer in the public interest. TWSI is unwilling and unable to provide wastewater services to The Villages under the current facts and circumstances, namely that TWSI has no reasonable expectation of obtaining the system or obtaining easements to build its own system. Currently, TWSI’s CCN is the only reason service to The Villages has been delayed. And TWSI only intends to try to further delay service by its refusal to voluntarily surrender its CCN for The Villages and use of litigation tactics to delay the decision in this matter. Further delay of wastewater service is against the public interest. Therefore, the Consumer Advocate recommends the Authority revoke TWSI’s CCN to serve The Villages so other willing and able entities can provide service. Such a result is clearly indicated by the public utility law principles that a CCN is intended to protect the public interest in securing safe and continuous utility service, not hinder it. In addition, revoking the CCN is consistent with bankruptcy law principles

intended to encourage purchases of bankrupt property by making it free from the hassles of encumbrances incurred by the previous bankrupt owner.

A. TWSI cannot provide wastewater service to The Villages because it does not have the property rights required by TDEC to operate a wastewater system.

TDEC has informed TWSI that it cannot use its permit until it meets all the conditions of the permit, including “the acquisition of requisite property rights.” But, TWSI does not currently have any property rights in the existing partially built system. Even if TWSI would want to build its own system,¹⁰ it could not do so because it does not have any property rights in any land at The Villages. Emerson has no intention of giving TWSI the system or any property rights in the land to build a system. Rather, Emerson intends to give the system to the POA. The POA has no intention of giving TWSI the system or any property rights in the land to build a system. Therefore, TWSI cannot meet the conditions of the TDEC permit and, thus, TWSI cannot provide wastewater service.

TWSI could argue that it can theoretically obtain the property through eminent domain. While it is certain that Tenn. Code Ann. § 29-17-102 confers eminent domain authority to public and private utilities, it is doubtful that TWSI could meet the “public use” requirement. Surely, the eminent domain authority was not conferred upon public utilities so they can go around taking systems from homeowners’ associations that function properly without the public utility’s involvement. And, if the CCN is revoked for The Villages, it is also highly questionable whether TWSI would even have the authority to condemn the system and take it from either Emerson or the POA. Thus, any argument that TWSI would be “able” to provide service because it *might* be

¹⁰ Charles Hyatt testified that TWSI is not willing to build its own system (*Transcript*, Docket No. 13-00017, pgs. 117-18, 130 (Nov. 25, 2013), nor is it willing to operate a system owned by somebody else. *Transcript*, Docket No. 13-00017, pg. 120 (Nov. 25, 2013). Thus, in addition to being unable to provide service, TWSI appears to be unwilling at this time to provide service under any circumstances other than the system being given to TWSI for free.

able to obtain the system and land through eminent domain is purely conjecture intended to delay this matter further.

Even if the Authority is persuaded that eminent domain may be possible, *maybe* being able to get the property through eminent domain still does not make TWSI in compliance with the rules today. Here and now, seven years after TWSI obtained the CCN, it still does not have the necessary property rights to operate the system in compliance with TDEC's conditions. Since it has been seven years since TWSI got the CCN, and it has been over five years since it has been in dispute with Emerson over the system, it is reasonable to assume that TWSI has made all its reasonable efforts to acquire the system. Even if TWSI has not made use of all its reasonable efforts at this time, it has had ample opportunity to do so in the seven years since it obtained the CCN, the over five years since the dispute with Emerson started, and in the six months since the Authority rendered its decision that it would hold a show cause hearing. The Villages should not bear the costs of further delay for TWSI's failure to use all its efforts to acquire the system and provide service *before* the show cause hearing. A public utility has the responsibility to provide safe and continuous utility service. At this time, TWSI has failed to provide service for seven years and it cannot provide a reasonable request for additional time when it failed to properly make use of the time it has had.

The bottom line is TWSI is presently unable to provide service in a place where it has had the obligation to provide wastewater service for seven years and, therefore, the Authority should revoke its CCN for The Villages so wastewater service can commence and progress can continue. If TWSI wants to seek a condemnation action, it can try to do so without the CCN. Alternatively, if the Authority decides to give TWSI even more time to obtain the property rights, the Consumer Advocate recommends the Authority at least amend the CCN to allow other

entities to provide service since it is against the public interest to delay wastewater service even longer pending the outcome of a condemnation action, which could take years.

B. It is in the public interest to revoke TWSI's CCN for The Villages.

The Consumer Advocate incorporates here Part III of its *Post-Hearing Brief* in Docket No. 13-00017, reproduced for convenience in Appendix A, which provided the legal history and purpose of CCNs, as well as the reasons why it is in the public interest to revoke TWSI's CCN. To provide a brief recap, utilities exist to serve the public interest. *See Federal Communications Comm'n v. Pottsville Broadcasting Co.*, 309 U.S. 134, 138 (1940) ("In granting or withholding permits for the construction of stations, and in granting, denying, modifying or revoking licenses for the operation of stations, 'public convenience, interest, or necessity' was the touchstone for the exercise of the Commission's authority.") When a utility ceases to serve the public interest or otherwise becomes a detriment to the public interest, it no longer has the right to serve the public. *Hohorst v. Greenville Bus Co.*, 17 N.J. 131, 146 (N.J. S.Ct. 1954) ("The incidental adverse effects on operators of the existing services may readily be justified by the significant furtherance of the paramount public interest and they in nowise constitute any unconstitutional deprivation of property."). Therefore, particularly when a utility has become a detriment to the public interest, the State can and should stop or limit the utility from offering service in order to protect the public interest. *See Order Denying Certificate of Public Convenience and Necessity and Requiring Divestiture of Water System*, Docket No. 12-00030 (Apr. 18, 2013).

Here, it cannot be reasonably denied that TWSI's CCN and its use of litigation tactics are the only reasons The Villages do not have wastewater service at this time. In fact, had TWSI been cooperative with Emerson over five years ago when Emerson first acquired The Villages out of bankruptcy, TWSI would likely be providing wastewater service for The Villages today. But, TWSI did not cooperate with Emerson. Instead, Mike Hines, then-Vice President of

TWSI,¹¹ demanded \$100,000 from Emerson as payment owed after the final order in the bankruptcy was issued and also insisted that the system had to be built in accordance with TWSI designs, which was a \$3 million system.¹²

After the initial interaction between Emerson and Mr. Hines, TWSI was absent for the first three years of Emerson's ownership and when TWSI finally did address the issue, it was through litigation tactics rather than through a collaborative approach. The next communication after Mr. Hines' made his demands to Emerson was a letter sent from TWSI to Emerson's attorney, indicating that it was seeking a declaratory action to get a ruling that it has the exclusive right to provide wastewater service. *See Rebuttal Testimony of Charles Hyatt*, Docket No. 13-00017, Attachment of May 25, 2012 Letter from TWSI to Emerson (Oct. 25, 2013). TWSI made good on its threat and went to the chancery court to try to stop another willing and able wastewater utility from providing service to Emerson. In addition, TWSI tried to stop TDEC from permitting another entity to serve the area, to which TDEC responded that it could issue two valid permits. *See TWSI's Reply Brief*, Docket No. 13-00017, Attachment of May 3, 2013 Letter from TDEC to TWSI (May 7, 2013) (reproduced for convenience as Appendix C); Permit of Caryville-Jacksboro, Appendix E.¹³ It was not until the end of the chancery court case, nearly *four years* after Emerson rescued The Villages from bankruptcy and the dispute began, did

¹¹ *Transcript*, Docket No. 13-00017, pgs. 108-09, 112 (Nov. 25, 2013) (Hyatt testifying that Hines was Vice President in 2009 and signed permits for TDEC as Vice President of TWSI in early 2012). TWSI has not denied this interaction occurred, but merely contends that Mr. Hines must have been acting in his role as an employee of the construction company formerly contracted to build the system, an arrangement which was approved by TWSI. *Transcript*, Docket No. 13-00017, pg. 107 (Nov. 25, 2013). If there was any confusion as to what role Hines was serving during the demands, it was TWSI's responsibility to clear up that confusion in a timely manner since Hines was its agent when he was a Vice President.

¹² *Transcript*, Docket No. 13-00017, pgs. 53-54 (Nov. 25, 2013). The system estimate of \$3 million was also included in TWSI's petition for a CCN amendment in Docket No. 06-00277.

¹³ The "Rationale" page of the permit, written by Wade Murphy from TDEC, refers to a utility services operator of Evergreen Utility Services. Included in Appendix E are the Secretary of State forms showing that Evergreen Utility Services was owned by Doug S. Hodge, but is now dissolved and now Mr. Hodge operates the utility services company called DSH & Associates.

TWSI reach out to Emerson in a non-litigious manner.¹⁴ But, the non-litigious approach was short-lived and only occurred once.

TWSI continued using litigation tactics to delay providing service in this Docket and the related Docket No. 13-00017, in which Emerson petitioned the TRA to revoke TWSI's CCN. After that, TWSI fought Emerson's petition to the Authority to revoke the CCN in Docket No. 13-00017 with a *Motion to Dismiss*, in which TWSI failed to make the argument that the Authority could not provide Emerson relief without a separate show cause hearing. Rather, TWSI waited over eight months before making that argument in its post-hearing brief, which was conveniently the last opportunity it could make any arguments in that docket. Since this Docket has been created, it has filed a *Motion to Continue* in order to take two depositions, one of which was not filed. And, since those depositions, TWSI has provided a "settlement offer" to the Secretary of the POA, an entity that is not a party to either docket, which provided a choice: use TWSI or TWSI will appeal any revocation and attempt to further delay the wastewater service for another six months to a year. See *Letter from The Villages*, Docket No. 14-00041 (June 3, 2014) (Appendix D). Basically, even TWSI's purported settlement is uncooperative because it is still using coercive tactics to try to force unregulated entities to give it a system and use TWSI for services.

If this CCN is revoked, it is sending at least two messages to utilities: (1) use it or lose it—use the CCN and provide service or lose the CCN; and (2) the CCN is not an immutable right—utilities have to serve the public interest, and they cannot use the CCN to intimidate unregulated entities into working with them. A public interest law like CCN laws should not be used to strong-arm members of the public, or in legal terms, use economic duress to try to force the public to conform to its business model. TWSI has tried everything in its power to force and

¹⁴ *Transcript*, Docket No. 13-00017, pgs. 82-84 (Nov. 25, 2013).

coerce Emerson to give it the system. If the Authority revokes this CCN, it is not saying that every CCN will be revoked after bankruptcy. It is merely evening the playing field between purchasers of property out of bankruptcy and a utility that has nothing but a CCN (*i.e.*, no infrastructure, no easement, no contract, etc.). In fact, it encourages TWSI to use non-litigious methods and acts of peaceful cooperation with new developers to accomplish the goal of providing service. Such a result is certainly in the spirit of the law.

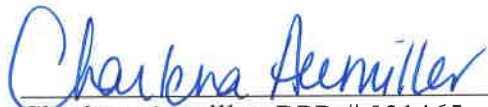
V. CONCLUSION

The Consumer Advocate recommends the TRA find (1) TWSI has failed to provide service in the seven years that it has had the CCN; (2) TWSI has demonstrated the incapacity to provide adequate, safe, and proper wastewater services to the Villages under the current circumstances; (3) the public interest requires wastewater service to The Villages by a willing and able entity; and (4) the allowance of other service providers to provide service to the Villages in compliance with applicable laws serves the public interest. Furthermore, the Consumer Advocate recommends that, based on these findings, the TRA order the revocation of TWSI's CCN.

If the Authority decides TWSI should keep its CCN, the Consumer Advocate recommends the Authority consider an amendment to the CCN to allow other willing and able entities to provide service until TWSI can do so. In addition, if the Authority decides TWSI should keep its CCN, the Consumer Advocate recommends the Authority impose a penalty it deems appropriate to get TWSI's attention. Given the ratepayers have been totally without service, the Consumer Advocate recommends the TRA consider a maximum penalty calculated under Tenn. Code Ann. § 65-4-120 for each day that TWSI has failed to provide service under its CCN, which according to its petition filed in Docket No. 06-00277 and as articulated on page 2

of the Show Cause Order filed on March 25, 2013 in this Docket, was 60 days from obtaining all necessary approvals in accordance with the order approving the CCN issued on January 8, 2007 (\$50 per day since April 28, 2007, 60 days from the approval of the TDEC permit on February 28, 2007) until service is actually provided to The Villages. The maximum penalty is warranted in this case because of TWSI's egregious acts to delay wastewater service to The Villages. While the Consumer Advocate was not provided the opportunity to get TWSI's financial information since it was denied intervention, any protests by TWSI that it would cause financial difficulty to pay the maximum penalty should be weighed against the financial losses Emerson and the property owners have incurred and their inability to use the property as they wish by not having wastewater service. Also, the Authority could consider a plan for TWSI to pay the penalty over a reasonable period of time instead of reducing the amount of the penalty. Since it is against public policy to include penalties for violations of the law in rates, this penalty would be borne by the company and not passed through to any of its ratepayers. The Consumer Advocate recommends the Authority provide an option for relief from the penalties if TWSI voluntarily surrenders its CCN within 15 days of its final order.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Appeal was served via U.S.

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This the 4th day of June, 2014.


Charlena Aumiller

**IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE**

IN RE:

**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**

DOCKET NO. 13-00017

POST-HEARING BRIEF OF THE CONSUMER ADVOCATE

Robert E. Cooper, Jr., Attorney General and Reporter for the State of Tennessee, through the Consumer Advocate and Protection Division ("Consumer Advocate"), respectfully submits this Post-Hearing Brief in Tennessee Regulatory Authority ("TRA" or "the Authority") Docket No. 13-00017.

I. INTRODUCTION

At first, this case presented itself as a matter between two companies wanting to serve the same area, neither of which appeared to pose a threat to the public interest. After hearing the arguments from the motion to dismiss, reading the pre-filed testimony, and listening to the adverse effects on concerned consumers, however, it became apparent this dispute does substantially affect the public interest. Based on the facts and circumstances in this case, the Consumer Advocate believes that allowing the law to provide only Tennessee Wastewater Systems Inc. ("TWSI") with the privilege of serving the area at issue known as the Villages at Norris Lake ("VNL" or "Villages") is not in the public interest. Consequently, the Consumer

Advocate recommends that the TRA either (1) revokes TWSI's certificate of public convenience and necessity ("CCN") for the service area of the Villages or, alternatively, (2) find the public interest requires additional services for the Villages, that TWSI does not have a preference for serving the area, and that entities other than TWSI may provide wastewater services.

A CCN is a privilege, not an immutable right. The U.S. Supreme Court has described the purpose of the CCN process: "In granting or withholding permits for the construction of stations, and in granting, denying, modifying or revoking licenses for the operation of stations, 'public convenience, interest, or necessity' was the touchstone for the exercise of the Commission's authority." *Federal Communications Comm'n v. Pottsville Broadcasting Co.*, 309 U.S. 134, 138 (1940); *see also W. Radio Communic., Inc. v. Two-Way Radio Serv. Inc.*, 718 P.2d 15, 21 (Wyo. S.Ct. 1986) ("The public interest is to be given paramount consideration; desires of a utility are secondary."); *Hohorst v. Greenville Bus Co.*, 17 N.J. 131, 146 (N.J. S.Ct. 1954) ("The incidental adverse effects on operators of the existing services may readily be justified by the significant furtherance of the paramount public interest and they in nowise constitute any unconstitutional deprivation of property.").

Although Tenn. Code Ann. § 65-4-201 requires only public utilities, as defined by Tenn. Code Ann. § 65-4-101, to have a CCN, other entities that are not considered a "public utility" can provide utility service pursuant to statutes outside of the TRA jurisdiction. The TRA does not choose which entity will best provide service: a public utility under its jurisdiction or a non-utility outside of its jurisdiction. Rather, the TRA has the statutory authority to determine whether a public utility is serving the public interest pursuant to its CCN. If a public utility fails to serve the public interest, the TRA has the authority (and, arguably, the duty) to revoke or amend the CCN to allow for additional services by other entities that can and will serve the

public interest. *See, e.g.*, Tenn. Code Ann. § 65-4-202; § 65-4-203; and TRA Rule 1220-04-13-.06.

The statutes allow for the TRA to revoke or amend the CCN by setting the standards for the TRA to issue a CCN to another public utility (see Tenn. Code Ann. § 65-4-202 and § 65-4-203); but another CCN is not being sought in this case. Rather, the wastewater system being built to serve the Villages is intended to go to a non-profit utility homeowner's association ("HOA") serving its members. The current CCN granted to TWSI has hindered the HOA's pursuit of securing services from Caryville-Jacksboro Utility Commission ("CJUC"), an experienced municipal utility service provider. Under Tenn. Code Ann. § 6-51-301(a)(1), municipalities, such as CJUC, are prohibited from providing utility service outside of their municipal boundaries "when all of such area is included within the scope of a certificate or certificates of convenience and necessity or other similar orders of the Tennessee regulatory authority or other appropriate regulatory agency outstanding in favor of any person, firm or corporation authorized to render such utility water service."

Although this action was brought by Emerson Properties, LLC ("Emerson") to revoke TWSI's CCN, this action ultimately presents the TRA with the issue of whether TWSI can serve the public interest or whether additional services are needed. The evidence clearly shows that TWSI is providing no service to the Villages, and that TWSI is unable to provide service unless Emerson gives TWSI a system. Thus, the Villages require another service provider. The most efficient and effective means to accomplish the allowance of another service provider to the Villages is to revoke TWSI's CCN; such revocation eliminates further litigation brought by TWSI asserting that it has preference or favor to provide services or any other question of whether Tenn. Code Ann. § 6-51-301(a)(1) prevents CJUC from providing service.

II. BACKGROUND

TWSI is a public utility that provides wastewater service pursuant to its CCN, issued by the TRA's predecessor, the Tennessee Public Service Commission, in Docket No. 93-09040 on April 6, 1994. Since the issuance of its original CCN, TWSI petitions the TRA for amendment to the CCN—as opposed to a new CCN altogether—when it wants to expand its service area. The TRA approved the amendment to the CCN expanding TWSI's service area to the Villages in Docket No. 06-00277 on January 8, 2007. *Order Approving Petition to Amend Certificate of Public Convenience and Necessity*, Docket No. 06-00277, pg. 3 (Apr. 11, 2007). This petition for the amendment was based on the evidence that Land Resources Company ("Land Resources"), the developer of the Villages at the time, requested TWSI to provide wastewater service and that the nearby municipality and utility district stated they did not intend to provide wastewater services in the next 12 months. *See id.*

The order also noted that TWSI stated "the system should be completed within approximately 60 days" after receiving all required approvals. *Id.* TWSI obtained its permit approval from the Tennessee Department of Environment and Conservation ("TDEC") on February 28, 2007, with an effective date of April 1, 2007. *Response of Emerson Properties, LLC to the Motion to Dismiss Filed by Tennessee Wastewater Services, LLC*, Docket No. 13-00017, Ex. A, pg. 1 (Apr. 30, 2013). Despite having the necessary approvals, the system was not completed within the 60 days indicated in the order approving its CCN. Indeed, the system remains incomplete to this day, nearly seven years later.

In mid-2008, Land Resources filed for bankruptcy. *Direct Testimony of George L. Potter on Behalf of Emerson Properties, LLC*, Docket No. 13-00017, pg. 2 (Oct. 11, 2013). In February 2009, Emerson acquired the property out of bankruptcy. *Id.* Ex. 1. Although companies go bankrupt for many reasons, there is one common characteristic in all bankruptcies: the bankrupt

company had problems. This case was no different. After acquiring the property, Emerson began tackling the problems. One problem was getting the bond money. Tr. 43-44. The county had called the bonds six months earlier, but the bond company indicated it would not pay. Tr. 43-44. Some of the infrastructure projects were over-bonded, and many were under-bonded. Tr. 94-95. The bonding company only pays out the amount actually spent up to the bond amount; so Emerson would not receive any additional funds from the over-bonded infrastructure, but it would have to pay the shortfall of the under-bonded infrastructure. Tr. 71-72. Emerson worked with the bond company to come to a settlement that gave Emerson \$6.5 million of the \$10.9 million. Tr. 94-95. Emerson used the bond money to develop the infrastructure, including fixing some of the infrastructure already built like moving a road that encroached on a private lot by 15 feet. Tr. 62-64, 75.

Emerson also found problems with the land that could be developed, which resulted in a change to the location of the wastewater treatment plant. Originally, the property was supposed to have 650 lots that could be developed. Tr. 47. After evaluating the terrain, Emerson found only about 400 lots could be developed. Tr. 61. Emerson began working with lot owners to trade the lots on terrain that was too difficult to develop with lots that would be developed. Tr. 66-67; *Direct Testimony of George L. Potter on Behalf of Emerson Properties, LLC*, Docket No. 13-00017, pg. 5 (Oct. 11, 2005). Emerson changed the location of the wastewater treatment plant from TWSI's designs, which had the plant in the area of the undevelopable lots to a location that could be developed and serve consumers effectively and efficiently. Tr. 66. After all was said and done, Emerson purchased 650 lots out of bankruptcy and ended up with 400 lots that could be developed, a reduction of nearly 40% of the lots that could be developed.

The completion of the wastewater system and working with TWSI presented itself as just another problem that Emerson needed to solve. Emerson's first interaction with TWSI was with

Mr. Mike Hines (Tr. 50) who was Vice President of TWSI at the time and provided services and maintenance for TWSI until at least September 30, 2012.¹ Tr. 113. Emerson had an unpleasant conversation with Mr. Hines, in which it became apparent that TWSI was not going to help solve any problems. Tr. 50; *Direct Testimony of George L. Potter on Behalf of Emerson Properties, LLC*, Docket No. 13-00017, pgs. 3-8 (Oct. 11, 2005). There was no other contact from TWSI other than infrequent contact from Mr. Hines for nearly four years. Tr. 50-51; 124. Accordingly, Emerson decided that it would work with another utility service provider. Tr. 48. It found Caryville-Jacksboro Utility Commission (“CJUC”) was willing to help design, construct, and manage the wastewater services. Tr. 48-49. CJUC and Emerson worked together on the TDEC permit. Tr. 48-49. When issuing the permit, TDEC told Emerson that the CJUC permit for the Villages was the most highly scrutinized permit to date. Tr. 48-49. At this time, both CJUC and TWSI hold TDEC permits to allow either entity to provide wastewater service to the Villages. *Letter from TDEC*, Docket No. 13-00017 (Nov. 22, 2013).

At some point, TWSI became aware that Emerson intended to work with CJUC as the wastewater service provider for the Villages. Instead of reaching out to Emerson to discuss the issue, however, TWSI filed a petition for a declaratory order at the TRA and subsequently the Chancery Court requesting an order prohibiting CJUC from providing services to the Villages under Tenn. Code Ann. § 6-51-301 because TWSI had a CCN.² *See Petition*, Docket No. 11-00199 (Nov. 16, 2011); *see also* Tr. 124 (showing Mr. Hyatt agreed the first contact since TWSI’s contact through Mr. Hines in 2009 was in December 2012). The Chancery Court issued

¹ The record is devoid as to whether Mr. Hines or any of the companies he works at or is an officer of continued to work with TWSI as one of TWSI’s preferred contractors.

² TWSI did not provide notice and service to the Consumer Advocate in either TRA Docket No. 11-00199 or the ensuing Chancery Court case, Docket No. 12-0143-II.

a declaratory order that stated TWSI's CCN survived bankruptcy and that the TRA has the power to award, amend, or revoke a utility's CCN.³

As is typical of property out of bankruptcy, Emerson obtained the property free and clear of any contracts or encumbrances. *Id.* Ex. 1 & Ex. 2. Meaning, any amounts that would have been due TWSI from its dealings with Land Resources were dealt with in the bankruptcy proceeding and did not encumber the property under Emerson's ownership. Moreover, the contracts with TWSI and another company, Utility Capacity Corporation ("UCC"), were specifically rejected during bankruptcy. *Id.* Ex. 2. TWSI does not have any easements in or ownership of the land upon which the system would sit. Tr. 96, 131 (Nov. 25, 2013). Nor does TWSI have any bonds for the Villages area since its bonds are based on the utility's annual revenue and TWSI has no revenue for the Villages.⁴ TWSI also has no legal interest in any of the partial sewage system that has already been constructed. Tr. 131. In addition, Emerson has stated that it intends to build the system and give it to the non-profit homeowners' association serving its members in the Villages. Tr. 18, 74. Emerson has also stated that it has no intention of contracting with TWSI or giving TWSI the wastewater system, land, or easements. Tr. 73.

³ As TWSI has pointed out many times, based on the arguments presented, the Chancery Court declaratory order indicated TWSI had an exclusive right to provide public wastewater services to the Villages. *Answer to the Petition, Motion to Dismiss the Petition, and Counterclaim by Tennessee Wastewater Systems, Inc. Against Emerson Properties, LLC*, Docket No. 13-00017. Ex. 1, pf. 4 (Mar. 27, 2013). Although the language sounds broad, a court can issue orders only to the extent it has jurisdiction. The Chancery Court's jurisdiction was pursuant to Tenn. Code Ann. § 4-5-225 because the TRA declined to interpret Tenn. Code Ann. § 6-51-301 in Docket No. 11-00199, but the TRA did not decline to interpret the CCN. The Chancery Court's jurisdiction to interpret the CCN was limited to the extent necessary to interpret Tenn. Code Ann. § 6-51-301. See *Initial Order Declining to Accept or to Set Petition for Declaratory Ruling for Hearing*, Docket No. 11-00199, pg. 4-5 (Jan. 11, 2012). Moreover, the broad interpretation of the Chancery Court's order that TWSI uses appears to be inconsistent with the TRA's previous order finding CCNs are not exclusive. *Order Affirming Hearing Officer's Findings and Conclusions in Initial Order Issued February 4, 2005*, Docket No. 03-00329, pg. 11 (May 16, 2006) ("The holder of a CCN for the provision of wastewater treatment services does not enjoy an exclusive right to provide such services within the certificated area."). The extent of the exclusivity of the CCN in the past is an issue that does not need to be decided by the TRA to resolve this case. Nevertheless, nothing in this brief should be construed as the Consumer Advocate waiving its right to petition the Chancery Court to clarify its order.

⁴ See *Order Approving Alternative Financial Security*, Docket No. 11-00187 (Dec. 19, 2011) (approving a bond valued at 80% of TWSI's annual revenues as an alternative financial security to satisfy the requirements of TRA Rule 1220-4-13-.07(5)).

Even though TWSI has no investment in the property or the wastewater system, and it has no contracts, TWSI wants the TRA to compel Emerson to contract with it, construct the system, and give the system free of charge to TWSI to allow it to service the Villages. *See, e.g., Answer to the Petition, Motion to Dismiss the Petition, and Counterclaim by Tennessee Wastewater Systems, Inc. Against Emerson Properties, LLC*, Docket No. 13-00017 ¶ 17 (Mar. 27, 2013). Thus, from Emerson's perspective, the contact from TWSI from 2009 to date—or nearly five years—has been consistently hostile, litigious, and little more than an attempt to strong-arm Emerson into dealing with TWSI under the sole argument that TWSI is entitled to serve the area because it holds the CCN. Since TWSI has stated that it does not intend to build its own system (Tr. 117-18; *see also* Tr. 106 (“We do not build systems.”)), TWSI's sole basis that it will acquire the system from Emerson is that it has a CCN and no other entity has one. That is, TWSI believes that Emerson will eventually have to give TWSI the system for no payment because, according to TWSI, no other entity can operate in its territory.

While the parties remain in a holding pattern of litigation, the lot owners of the Villages wait. There is a sewer system that is eight to ten weeks away from completion and serving the Villages, weather permitting. Tr. 7. The value of the lots, which is 80-90% less than what it was pre-bankruptcy and continued to lose value for years after bankruptcy, will remain devalued until the sewer system is completed. Tr. 20-24. Owners who build on their property are faced with the burden of paying for expensive pump-and-haul services. Tr. 25-29. Economic development for this community is at a stand-still pending a solution to the problem of who may provide utility service. Tr. 7-24. The lot owners suffer losses both personally and financially awaiting the completion of the system and have a personal interest in who provides their sewer system. Tr. 7-24. In addition to the loss from lots that cannot be developed, if Emerson went along with TWSI's demand that it give TWSI the system, Emerson would face increased costs to pay more

for a sewer system just to meet TWSI's more expensive specifications. Tr. 79, 85; *Rebuttal Testimony of Charles Hyatt*, Docket No. 13-00017, pg. 4 (Oct. 25, 2013) ("[A]ny construction work that is not consistent with our specifications and with the treatment technologies used by TWSI will have to be redone."); *Order Approving Petition to Amend Certificate of Public Convenience and Necessity*, Docket No. 06-00277, pg. 3 (Apr. 11, 2007) (indicating the system under TWSI's specifications would cost \$3 million). In contrast to the personal and financial investments of the lot owners and Emerson, TWSI has admitted to having no financial investment in the property or the sewer system. See, e.g., Tr. 131; *Answer to the Petition, Motion to Dismiss the Petition, and Counterclaim by Tennessee Wastewater Systems, Inc. Against Emerson Properties, LLC*, Docket No. 13-00017 ¶ 17 (Mar. 27, 2013). Emerson, with the support of the HOA and its members (Tr. 4-18), has stated that it would like to move forward with completing the system and not use TWSI to provide wastewater service and, therefore, has filed this action requesting the TRA to revoke TWSI's CCN. Tr. 52-53.

III. THE CONSUMER ADVOCATE RECOMMENDS THE AUTHORITY EITHER REVOKE TWSI'S CCN FOR THE VILLAGES OR FIND THE PUBLIC INTEREST REQUIRES OTHER SERVICE PROVIDERS, SIGNALING OTHER ENTITIES MAY SERVE THE VILLAGES IN COMPLIANCE WITH THE LAW.

The purpose of laws requiring a CCN is contradicted by TWSI's insistence that it be the only provider of wastewater services to the Villages. The TRA has the authority to revoke or amend CCNs when a utility has failed to provide service. The public interest requires wastewater service to the Villages. Here, TWSI has failed to provide service and has not demonstrated that it can provide adequate, safe, and proper wastewater service to the Villages. For these reasons, the Consumer Advocate recommends the TRA revoke TWSI's CCN for the amendment of serving the Villages or, alternatively, amend it or clarify it to signal to other utility service providers that they may provide service.

A. *TWSP's use of the CCN to demand ownership of the system and to serve the Villages directly contradicts the statutory intent of the law requiring CCNs.*

Utilities exist to serve the public interest. See *Federal Communications Comm'n v. Pottsville Broadcasting Co.*, 309 U.S. 134, 138 (1940) ("In granting or withholding permits for the construction of stations, and in granting, denying, modifying or revoking licenses for the operation of stations, 'public convenience, interest, or necessity' was the touchstone for the exercise of the Commission's authority.") When a utility ceases to serve the public interest or otherwise becomes a detriment to the public interest, it no longer has the right to serve the public. *Hohorst v. Greenville Bus Co.*, 17 N.J. 131, 146 (N.J. S.Ct. 1954) ("The incidental adverse effects on operators of the existing services may readily be justified by the significant furtherance of the paramount public interest and they in nowise constitute any unconstitutional deprivation of property."). Therefore, particularly when a utility has become a detriment to the public interest, the State can and should stop or limit the utility from offering service in order to protect the public interest. See *Order Denying Certificate of Public Convenience and Necessity and Requiring Divestiture of Water System*, Docket No. 12-00030 (Apr. 18, 2013).

While the law requires the utility to be adequately compensated for reasonable, prudent, and necessary utility services provided, under no circumstances does the law force the public to be at the mercy of the utility. Instead, the law is designed to protect the public interest from utilities that could abuse their role. See, e.g., Tenn. Code Ann. § 65-4-122(b) ("Any such corporation which charges, collects, or receives more than a just and reasonable rate of toll or compensation for service in this state commits extortion, which is prohibited and declared unlawful."). The needs of the utility are addressed by the law in order to ensure the utility can continue serving the public. Thus, the utilities' needs are a means to the end of upholding the public interest; the utilities' needs are secondary to the public interest. See, e.g., *W. Radio*

Communic., Inc. v. Two-Way Radio Serv. Inc., 718 P.2d 15, 21 (Wyo. S.Ct. 1986) (“The public interest is to be given paramount consideration; desires of a utility are secondary.”).

In some cases, the public interest is served by having only one utility provide service to an area.⁵ Such a natural monopoly is not given to protect the utility, but rather to protect the public when competition or multiple service providers would be detrimental to the public interest. As one court explained, there is a distinction between the intent to create a monopoly and the intent to protect the public interest by means of allowing a monopoly:

[T]here is no rule in this jurisdiction giving to an existing utility the absolute right, or imposing upon it the absolute duty, to make its service adequate, before a new utility will be permitted to enter the field . . . [T]he reason for denial of a certificate to the new utility [in a prior opinion] was to prevent unnecessary duplication of plants, facilities and service, and ‘ruinous’ competition, and the basis of the decision was the nature and extent of the inadequacy of service was not such as to establish the necessity for a new service system.

Kentucky Utils. Co v. Public Serv. Comm’n, 252 S.W.2d 885, 889-90 (Ky. Ct. App., 1952).

Another court explained:

It is a basic tenet of public utility regulation that there be no wasteful duplication of facilities. To carry out this concept General Orders of the Commission are designed to prohibit uneconomic and wasteful practices. Such a standard, and the reasons for requiring certificates of convenience and necessity, is to prevent the unnecessary duplication of facilities and to protect the consuming public from inadequate service and higher rates. Public convenience and necessity therefore require that there be no wasteful duplication and that the need be such that duplication will not result in waste.

⁵ For an in-depth history of CCNs generally and how the natural monopoly effect can serve the public interest, see William K. Jones, *Origins of the Certificate of Public Convenience and Necessity: Developments in the states, 1870-1920*, 79 COL. L. REV. 426 (Apr. 1979). Professor Jones was a professor of Trade Regulation at Columbia University for 42 years, author of the law textbook *Cases and Materials on Regulated Industries*, served as a consultant to the President’s task force on telecommunications and the Federal Communications Commission, and served as a public service commissioner for New York from 1970 to 1974. See his biographies at http://www.law.columbia.edu/fac/William_Jones and http://www.law.columbia.edu/media_inquiries/news_events/2009/july2009/jones. In his article, Professor Jones articulated: “If there are ‘evils’ to multiple firm operation in natural monopoly markets, the sword should cut two ways: not only should entry of new firms be scrutinized, but exclusion of incumbents should be possible.” *Id.* at 515. This approach appears consistent with the level of review required of the services that both CCN applicants and the incumbent utility can provide set forth in Tenn. Code Ann. § 65-4-202 and § 65-4-203.

So. Message Serv., Inc. v. Louisiana Pub. Serv. Comm'n, 370 So.2d 874, 880 (La. S.Ct., 1979).

Even the TRA has stated:

The holder of a CCN for the provision of wastewater treatment services does not enjoy an exclusive right to provide such services within the certificated area. Nevertheless, the holder of a CCN does enjoy the protection of Tenn. Code Ann. § 65-4-201 (2004) and § 65-4-203 (2004) which exclude other applicants from providing such services to areas served by a holder of a CCN unless the Authority first determines that the ***present or future public convenience and necessity require or will require granting the applicant's petition*** for such a CCN and that the ***holder's existing facilities are inadequate to meet the reasonable needs of the public or*** that the holder of the CCN has refused, neglected, or is unable to make necessary additions and extension.

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February 4, 2005, Docket No. 03-00329, pg. 11 (May 16, 2006).

Here, wasteful duplication is not an issue. TWSI has no investment in the system. Only one system is expected to be built and used to service the area. And, TWSI does not intend to build that system. The reasons to allow the utility to be a monopoly simply do not exist in this instance.

Like the dog wags its tail, the public's needs dictate how the utility serves it and whether a monopoly is in the public interest. In this case, however, the tail is trying to wag the dog. TWSI insists that because it has the CCN, it is a monopoly and only it can serve the Villages. TWSI has turned to litigation in order to ensure that other utility service providers willing and able to provide wastewater service are prohibited from doing so. Put another way, TWSI has gone out of its way to try to force the public to give TWSI its system and allow only TWSI to provide service. TWSI has not pleaded any of the reasons why the public interest would be served by it being a monopoly. Instead, TWSI has only indicated that it believes it has the right to be the monopoly and, therefore, the public will "eventually" give in to TWSI's demands for Emerson to give the system to TWSI instead of the HOA: "Since no utility other than TWSI can

legally provide wastewater service at this location, TWSI will eventually acquire ownership of the system” *Answer to the Petition, Motion to Dismiss the Petition, and Counterclaim by Tennessee Wastewater Systems, Inc. Against Emerson Properties, LLC*, Docket No. 13-00017 ¶ 17 (Mar. 27, 2013). TWSI’s use of the CCN to put the public at its mercy directly contradicts the statutory intent requiring the issuance of CCNs to utilities in the *public* convenience and necessity (as opposed to the *utility* convenience and necessity) and, therefore, undermines the purpose that utilities serve the public interest, as opposed to hinder it.

B. The TRA has the authority to revoke or amend the CCN or otherwise find that the Villages require other service providers and signal that entities other than TWSI may provide such service in compliance with applicable laws.

TWSI argues that the TRA can only revoke its CCN if the TRA first finds that TWSI is not “willing” or “able” to provide service, basing its argument on Tenn. Code Ann. § 65-4-203. But Tenn. Code Ann. § 65-4-203 is not controlling here. Under Tenn. Code Ann. § 65-4-203, the TRA must go through certain steps before granting a CCN to a utility other than the public utility operating a same or similar system. As a threshold matter, there is no other public utility seeking a CCN in this docket. Emerson’s petition is seeking a revocation of TWSI’s CCN, but it is not applying for a CCN itself. Indeed, Emerson has testified that it does not intend to operate the system, but rather it intends to give the wastewater system to the non-profit HOA to serve its members. If Emerson and the HOA are not public utilities, they do not require a CCN. At this time, Mr. Pat Perry, the Secretary of the HOA, has indicated that the HOA wants to contract with CJUC, which is certainly not a public utility that would require a CCN. Because there is no public utility seeking a CCN in this Docket, neither Tenn. Code Ann. § 65-4-202 nor § 65-4-203 is controlling.

Moreover, even if § 65-4-203 did control here,⁶ it plainly states that no CCN shall be granted to a competitor until the TRA first determines that “the facilities of the existing route, plant, line, or system are inadequate to meet the reasonable needs of the public,” Here, TWSI has admitted it has no facilities. Since TWSI has no “existing” facilities and does not intend to construct facilities, it cannot assert that it has adequate facilities to provide adequate, safe, and proper service. Consequently, the TRA should authorize other service providers to ensure the Villages can be served adequately, safely, and properly.

Even if one does accept TWSI’s argument that the TRA cannot revoke a CCN unless the existing public utility with a CCN is unwilling or unable to provide service, TWSI’s argument still fails. By its own admission, TWSI is unable to provide service unless conditions change. Emerson has no intention of voluntarily giving the system to TWSI, and Emerson has no intention of contracting with TWSI. TWSI’s contention that it is “willing and able” to provide service is accurate only if the conditions change and a system is given to it. The statutes certainly do not state that a utility must be willing and able to provide service *if* all the conditions are in the utility’s favor. Nor do the statutes authorize the TRA to change conditions to make them favorable to the utility with the current CCN.

Although Tenn. Code Ann. § 65-4-203 does not appear to control the issues in this petition, it does appear the TRA has contemplated that a need may arise to revoke a public utility’s CCN for inadequacy of facilities in TRA Rule 1220-4-13-.06. The following subparts of TRA Rule 1220-4-13-.06 appear specifically applicable to this Docket:

⁶ TWSI appears to rely on the Chancery Court order to argue that Tenn. Code Ann. § 65-4-203 controls this issue. *See* Tr. 38-39. But, again, TWSI’s interpretation expands the Chancery Court’s order to a meaning beyond what the court was asked to interpret. *See* footnote 3. The TRA was not asked to interpret Tenn. Code Ann. § 65-4-201 or § 65-4-203 in TWSI’s petition in Docket No. 11-00199, nor did the TRA actually decline to interpret such statutes, so these statutes were not before the Chancery Court pursuant to Tenn. Code. Ann. § 4-5-225(b). TWSI’s argument that TRA attorneys presented arguments before the Chancery Court regarding such statutes does not displace the TRA’s authority as the tribunal with the primary jurisdiction to interpret the CCN it issued and the statutes authorizing the TRA to issue such CCNs. Nonetheless, the Chancery Court order need not be interpreted at all to determine the TRA’s authority in this Docket to revoke the CCN going forward.

(3) If the Authority finds that any public wastewater utility has failed to provide service to any customer reasonably entitled thereto, the Authority may amend the CCN to delete the area not being properly served by the public wastewater utility, or it may revoke the CCN of that public wastewater utility.

(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.

The rules do not require that there be a certain level of failure, nor do they require only certain reasons for failure—that is, the utility is unwilling or unable—to provide service. Rather, subpart (3) simply states if the utility “has failed to provide service”, then the TRA may amend or revoke the CCN. And, subpart (4) requires a showing by the utility 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.” (Emphasis added.)

Other TRA rules also confer on the TRA the authority to revoke the CCN when, as here, a wastewater system has demonstrated the incapacity to serve an area or the inability to comply with the rules or statutes. TRA Rule 1220-04-13-.09(1) states that where a public wastewater utility has demonstrated the incapacity to comply with the rules or statutes, the “Authority shall take the appropriate action based on good cause that may include suspension revocation of a public wastewater utility’s CCN” The use of the word “shall” actually indicates the TRA has the duty to suspend or revoke a wastewater utility’s CCN when it cannot comply with the rules or the statutes. Here, TWSI cannot comply with the service requirements because it does not have a system to be able to provide wastewater system, it has no intention of building a system, and Emerson does not intend to give TWSI its system. This lack of title to the system

also means that TWSI cannot comply with TRA Rule 1220-04-10(a), requiring the physical assets of the wastewater system operated or managed by a public utility to be free and clear of all liens, judgments, and encumbrances. Without title to the property, TWSI cannot prevent Emerson from encumbering the wastewater system and, indeed, the system is currently encumbered. *Direct Testimony of George L. Potter on Behalf of Emerson Properties, LLC*, Docket No. 13-00017, pgs. 6-7 (Oct. 10, 2013).

These rules clearly provide the TRA with the authority to revoke or amend CCNs regardless of whether there is no other public utility applying for a CCN. And nothing in these rules supports TWSI's argument that the TRA is limited to revoking CCNs only when the utility decides it is unwilling or unable to provide service. Rather, the rules are clear: if the utility fails to provide service or has the incapacity to comply with the rules and statutes, the TRA can revoke or amend the CCN. The rules allow the utility to demonstrate why the CCN should remain in effect. But, as discussed in the next two sections, TWSI has failed to demonstrate why the CCN should remain in effect for the Villages.

C. TWSI cannot furnish adequate, safe, and proper wastewater service to the Villages.

TWSI has no wastewater system in place to serve the Villages. It also has stated it has no intention of building a wastewater system. TWSI's proposed solution is that the TRA force Emerson to build the system and give it to TWSI. But this solution does not work. TWSI has not shown that the TRA has jurisdiction over Emerson or the HOA. The facts presented in this case suggest Emerson is not a public utility because it does not intend to provide service. Emerson plans to build the system and give it to the HOA. The facts in this case also suggest the

HOA is not a public utility because it is a non-profit serving its members.⁷ Thus, TWSI has failed to demonstrate how the TRA has jurisdiction over either Emerson or the HOA. If the TRA has no jurisdiction over Emerson, it certainly cannot require Emerson to build a system and give it to TWSI. If the TRA does not have jurisdiction over the HOA, it cannot require the HOA to contract with TWSI for services.

Moreover, even if the TRA had jurisdiction over Emerson or the HOA, it would raise numerous constitutional questions to have a state agency forcing one private entity to build an asset and give it away to another private entity, particularly in the absence of any showing that there are health and safety concerns with either of the entities providing service.

In addition, if Emerson is forced to contract with TWSI because no other entity is allowed to provide service, then such contract could be unenforceable because it would have been formed under duress. The Tennessee courts have long held that contracts formed when one party is under duress are unenforceable. *Holloway v. Evers*, 2007 WL 4322128, *1, at *8 (Tenn. Ct. App., 2007) (citing *Belote v. Henderson*, 45 Tenn. (5 Cold.) 471 (1868)); *see also Johnson v. Ford*, 245 S.W. 531, 540 (Tenn. 1922). The Court of Appeals has defined “duress” as “a condition of mind produced by the improper external pressure or influence that practically destroys the free agency of a party, and causes him to do and act or make a contract not of his own volition, but under such wrongful external pressure.” *Holloway*, 2007 WL 4322128, at *9.

⁷ The HOA is not a party in this Docket. Nevertheless, at the hearing, TWSI attempted to gather information about the HOA in its cross examination of Emerson’s witness, Mr. Potter. Tr. 54-60. Such questioning could be considered inappropriate because it sought discovery from a non-party entity through a witness called to represent a legally separate entity that is a party. The HOA had no notice that it needed to have its attorney present to determine whether to object to such questioning. Every entity has the right to choose who represents it, even if it is a non-party. Tenn. R. Civ. P. 30.02(6). In this case, there is no showing that the HOA designated Mr. Potter to represent it. Instead, Mr. Pat Perry came to speak during the public comments on behalf of the HOA. Tr. 4-18; *Public Comments from Owners at Villages of Norris Lake*, Docket No. 13-00017, (Nov. 22, 2013) (showing 31 emails from lot owners and members of the HOA sending their comments to Mr. Perry as representative of the HOA). There is no evidence to suggest that Mr. Potter’s part ownership of Emerson has prevented him from fulfilling his fiduciary duties to the HOA as one of its board members. *See* Tenn. Code Ann. § 48-58-302. Moreover, there is no statute or case law to suggest that a non-profit entity’s nature changes based on the ownership or full-time job of its individual board members.

To be clear, the Consumer Advocate is not asserting that TWSI will use duress to force Emerson into a contract. Indeed, the Consumer Advocate is aware of an instance in which TWSI has recognized the inappropriateness of using a CCN to force another party to contract with it and, consequently, TWSI petitioned the TRA to revoke its CCN. *See Response of TWSI to Complaint*, Docket No. 06-00077 (Nov. 3, 2008) (filed as Appendix A).

Although TWSI has voluntarily walked away from CCNs under conditions similar to those presented in this Docket, it appears that TWSI has taken an opposite approach with Emerson. TWSI has attempted to eliminate any competition first by seeking the declaratory order from the Chancery Court and, second, by heavily relying on TWSI's interpretation that the Chancery Court's order applies to all other entities, not just municipal wastewater service providers.⁸ Moreover, TWSI has shown that it intends to use the approach of blocking all other service providers to acquire the system in this Docket: "Since no utility other than TWSI can legally provide wastewater service at this location, TWSI will eventually acquire ownership of the system" *Answer to the Petition, Motion to Dismiss the Petition, and Counterclaim by Tennessee Wastewater Systems, Inc. Against Emerson Properties, LLC*, Docket No. 13-00017 ¶ 17 (Mar. 27, 2013). Even if TWSI were to use duress to acquire ownership, such transfer would arguably be unenforceable under Tennessee's case law that contracts are unenforceable when formed under duress. Moreover, it is against public policy to allow the law to be used in such a manner.

For these reasons, TWSI cannot provide adequate, safe, and proper wastewater service.

D. Wastewater service providers other than TWSI are necessary to serve the public interest.

The Villages require wastewater service. The lack of a wastewater system is directly stalling economic development. Without wastewater service, the property of the Villages will

⁸ See footnote 3.

remain devalued and the homeowners who want to reside there will need to pay for expensive pump-and-haul services. For the reasons previously discussed, TWSI cannot provide adequate, safe, and proper service to the Villages. Therefore, other service providers are required to serve the public interest.

The survival of CCNs during bankruptcy is consistent with the underlying purpose of CCNs to protect the public. In order to protect the public interest, utility service must be continuous, regardless of a bankruptcy. In many cases, the public's health and safety could be at risk if a CCN were to be revoked automatically in a bankruptcy. Here, however, the public policy reasons for maintaining a CCN after bankruptcy do not exist. TWSI had no investment in the facility. No service was or is being provided, so the health and safety concern of discontinued service is not an issue. And, even though TWSI currently has an inactive TDEC permit, it is likely the designs approved for such permit require changes and re-approval from TDEC as a result of the original designs putting the treatment plant on undevelopable property. Moreover, TWSI has no investment in the facility partially built, so there is not even an argument that TWSI deserves to serve the area under arguments of equity. It is in the public interest for the TRA to revoke the CCN or otherwise signal that other entities may provide wastewater service under applicable laws.

Even though it is correct the CCN survived bankruptcy, it does not necessarily follow that the CCN is immutable going forward or will remain in the public interest after bankruptcy. Each case is different as to whether the CCN remains in the public interest after bankruptcy. In this case, maintaining TWSI's CCN can actually hinder the public health and safety in the long-term, since it will require homeowners to pump and haul sewage. TWSI's insistence that it has the right to prevent any other entity from providing services merely because it has a CCN for an

area for which it has never provided any services turns the purpose of a CCN upside down by putting the utility's interest before that of the public.

It is impossible to ignore that the public interests for this CCN have changed since the bankruptcy. Prior to bankruptcy, TWSI supported its petition that the nearby municipalities did not intend to serve the area and the prior developer/owner, Land Resources, wanted to contract with TWSI to provide service. Since bankruptcy, the new developer has no intention of contracting with TWSI and a nearby municipal service provider is willing and able to provide service. It is highly unlikely TWSI would even petition for a CCN under the current circumstances. But, even if TWSI were to apply for a CCN to serve the Villages under the current circumstances, it would inarguably be denied. Since the bankruptcy, the public interest has changed.

Revoking TWSI's CCN to allow other wastewater service providers to provide service is warranted here. Alternatively, the TRA could amend or clarify the scope of the CCN to allow other providers, including municipal providers, and express that the CCN does not confer TWSI a preference or other favoritism to provide service. But, if the CCN is simply amended or the scope clarified, it is still possible that TWSI will seek litigation to oppose the CCN application of other providers or continue to advance new arguments that it has an exclusive right of service, regardless of what the TRA's amendment says. Even if this position of exclusivity is ultimately rejected, the process would likely be long and drawn-out, thus adding to the woes of the long-suffering VNL owners.

Based on the history of litigation that TWSI has sought, the Consumer Advocate recommends the TRA revoke the CCN as the most effective and efficient method of allowing wastewater services to the Villages. To allow TWSI to be the sole provider despite the wishes of the new developer can only delay services to the Villages as well as potentially burden future

bankruptcies and further devalue bankrupt property with similar circumstances. While there is no compelling reason to allow TWSI to be the sole service provider, there are several compelling reasons to allow other service providers access to provide service so long as service is provided in compliance with the law.

IV. CONCLUSION

The Consumer Advocate recommends the TRA find that (1) the public interest requires wastewater service to the Villages; (2) TWSI has failed to provide service in the seven years that it has had the CCN; (3) TWSI has demonstrated the incapacity to provide adequate, safe, and proper wastewater services to the Villages under the current circumstances; and (4) the allowance of other service providers to provide service to the Villages in compliance with applicable laws serves the public interest. Furthermore, the Consumer Advocate recommends that, based on these findings, the TRA order either (a) TWSI's CCN amendment to provide service to the Villages is revoked as it is no longer in the public interest, or (b) the scope of TWSI's CCN is amended or otherwise clarified to state that the CCN does not give TWSI a preference or other favoritism to provide service and that interpretation of the CCN going forward should be that entities other than TWSI are allowed to provide wastewater services under applicable laws.

RESPECTFULLY SUBMITTED,



CHARLENA S. AUMILLER, BPR No. 31465
Assistant Attorney General
Consumer Advocate and Protection Division
P.O. BOX 20207
Nashville, Tennessee 37202-0207
Telephone: (615) 741-2812
Facsimile: (615) 741-1026

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail upon:

C. Mark Troutman, Esq.
Troutman & Troutman, P.C.
P.O. Box 757
LaFollette, TN 37766
(423) 566-6001

Henry Walker, Esq.
Bradley Arant Boult Cummings, LLP
1600 Division Street, Suite 700
Nashville, TN 37203
615-252-2363

This the 9th day of December, 2013.


Charlena S. Aumiller

APPENDIX

A



BOULT ■ CUMMINGS®
CONNERS ■ BERRY PLC

Henry Walker
(615) 252-2383
Fax: (615) 252-8383
Email: hwalker@boultoncummings.com

November 3, 2008

filed electronically in docket office on 11/03/08

J. Richard Collier, Esq.
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Re: Petition of Tennessee Wastewater Systems, Inc. to Expand Its Service Area
to Include a Portion of Jefferson County, Tennessee, Known as Parrott's Bay
Docket No. 06-00077

Dear Richard:

On behalf of Tennessee Wastewater Systems, Inc. ("TWS"), I am responding to the complaint filed in this docket by Mr. Chip Leonard regarding the provision of wastewater treatment service to a portion of Jefferson County called Parrott's Bay.

TWS was awarded a certificate to serve this area by order of the Authority on August 29, 2006. In its application, TWS noted that the developer of this proposed subdivision had requested in writing that TWS provide sewer services for the development and had agreed to pay the cost of constructing the wastewater system. A letter from the developer is included with the application.

The land for the proposed development has now been sold and the new owner, Mr. Leonard, is no longer interested in obtaining wastewater services from TWS. At this time, no houses have been built in the development and no sewer system has been built. Mr. Leonard has declined to sign an agreement with TWS to provide sewer service and presumably intends to find another provider. He asks the TRA to revoke the certificate of TWS "in order to have another utility petition the TRA for our subdivision in the near future."

Under these circumstances, TWS agrees that the new owner of the development should be able to choose another provider. TWS would not have applied for this certificate without the agreement and support of the former development owner. Therefore, TWS will file a petition requesting voluntary cancellation of its certificate. After the certificate is cancelled, TWS will have no further obligation to provide sewer service in this territory. Mr. Leonard will be free to contact other potential providers.

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105845-001
11/3/2008

LAW OFFICES
1800 DIVISION STREET - SUITE 700 - P.O. BOX 340025 - NASHVILLE - TN - 37203
TELEPHONE 615.244.2582 FACSIMILE 615.252.8380 www.boultoncummings.com

The cancellation of the certificate by TWS will render moot the complaint filed by Mr. Leonard. Nevertheless, TWS would like to respond briefly to the two issues raised in Mr. Leonard's letter.

First, Mr. Leonard states that TWS has informed him that TWS "will not operate a system that their affiliates do not sell or construct." He charges that this practice has "forced us to purchase goods and services from their affiliates at above market rates."

That allegation is untrue. Like every developer doing business with TWS, Mr. Leonard has the choice of building the system himself or hiring a contractor to do it. The contractor may be anyone of the developer's choosing, including an engineering and construction firm that is affiliated with TWS. But regardless of the developer's decision, TWS requires that the system be built in accordance with the technical specifications of TWS and will closely monitor and inspect the construction of the system to insure compliance.

Here, Mr. Leonard was offered two contracts. Copies of those contracts are attached. One contract is the standard agreement between TWS and a developer. It requires the developer to build the system and then turn it over to TWS to operate and maintain. The contract does not require the developer to use any particular construction company, but it does state that TWS must give final approval to the construction plans and the completed system. It also provides that TWS will inspect and monitor the project as it is being built.

The second contract is a proposed agreement between the developer and Utility Capacity Corporation, Inc. ("UCC"), a company which designs and builds sewage collection and treatment systems.¹

Mr. Leonard is not required to hire UCC to construct the sewer system in Mr. Leonard's development. Mr. Leonard is free to hire anyone to build that system as long as it is built in accordance with the specifications of TWS. Mr. Leonard's allegation that he was required to do business with UCC, or any other particular construction firm, is incorrect.

Second, Mr. Leonard complains that he should not be required to pay a charge of \$800 per lot to TWS for "connecting into a system we just paid them for." He also states that this \$800 fee is not included in the tariffs of TWS on file at the TRA.

Mr. Leonard apparently did not notice that this \$800 fee is explained in paragraph 4 of the proposed contract between the developer and TWS. That section states, "The aforementioned fee shall be used by Tennessee Wastewater to pay for expenses associated with obtaining public service commission approvals and for inspections of the system design and

¹ UCC is not an affiliate of TWS. UCC is owned by Mike Hines who also owns Southeast Environment Engineering which manages TWS properties in East Tennessee.

J. Richard Collier, Esq.
November 3, 2008
Page 3


construction and residential tank installations." In other words, the fee covers all project management costs incurred by TWS from the time TWS first visits the site until the last customer's tank is installed under the supervision of TWS. The utility believes it is more appropriate to charge these costs to the developer rather than to end users. Charges agreed to between TWS and developers are not charges for sewer service and are therefore not included in the utility's retail tariffs.

In sum, TWS submits that neither of Mr. Leonard's complaints has any merit. TWS has always made it clear in its filings with the TRA that the developer is responsible for building the sewer system in accordance with the design specifications of TWS. In this case, TWS sought a certificate to serve this project only after being requested to do so by the former developer. Now that the current owner of the property wants to explore other options, TWS agrees that he should do so.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:


Henry Walker

HW/cas

cc: Chip Leonard
Senator Mae Beavers

SEWERAGE SYSTEM MAINTENANCE AND MANAGEMENT CONTRACT
JEFFERSON COUNTY – THE PENINSULA AT LAKE DOUGLAS

This sewerage system maintenance and management contract, made and entered as of this ____ day of May, 2008, by and between, Tennessee Wastewater Systems, Inc., a Tennessee corporation, herein referred to as “Tennessee Wastewater” and Southeastern Development Group, Inc., herein referred to as “Developer”:

WHEREAS, Developer is developing a tract of real property located in Jefferson County, Tennessee and is generally referred to herein as The Peninsula at Lake Douglas project; and

WHEREAS, Developer requires public utility ownership of a sewage collection, treatment, and disposal system for The Peninsula at Lake Douglas project; and

WHEREAS, Tennessee Wastewater Systems, Inc. has the capability to manage and maintain the sewerage treatment, collection, and disposal system for The Peninsula at Lake Douglas project, the parties hereto have entered into the following agreements:

WITNESSETH

1. Developer is developing a tract of real property in Jefferson County, Tennessee and such property is generally referred to herein as The Peninsula at Lake Douglas development. The development project has been mapped, platted, and surveyed. The plat for The Peninsula at

Lake Douglas project as recorded in the Register's Office for Jefferson County is attached hereto as Exhibit 1.

2. Developer shall, at its own expense, design and construct a wastewater collection, treatment, and effluent dispersal system to serve the 80 lots in the project. All design plans shall be approved by Tennessee Wastewater prior to construction of the system. Developer is to perform all of the necessary work for the installation of said system, completely install the system at no cost whatsoever to Tennessee Wastewater, all in accordance with the drawings, plans, and specifications herein above referred to, and for that purpose has entered into a contract for completion of that work.

3. All construction begun, continued, and completed hereunder shall be subject to the supervision and approval of Tennessee Wastewater's engineers and/or representatives who shall have a continuous right of inspection throughout the progress of the work. No pipe, fittings, or connections shall be covered until inspected and approved by Tennessee Wastewater.

4. In addition to the costs of the installation herein provided for, the Developer hereby agrees to pay to Tennessee Wastewater a fee of \$800 per platted lot to be connected to the sewerage system, said fee payable at the time Tennessee Wastewater signs the final plat for the proposed lots. The aforementioned fee shall be used by Tennessee Wastewater to pay for expenses associated with obtaining the public service commission approvals and for inspections of the system design and construction and residential tank installations.

5. Tennessee Wastewater hereby agrees to own, operate, maintain, and manage the sewerage system for the properties identified in Exhibit. Developer agrees for Tennessee

Wastewater to have exclusive responsibility for the ownership, operation, maintenance, and management of the sewerage system as installed and as may be expanded from time to time.

6. Developer agrees to provide Tennessee Wastewater with copies of all plans, specifications, drawings, and other documentation accompanying the design and installation and any expansions of the sewerage system. Tennessee Wastewater shall secure all local, state, and federal permits, licenses, or other approval necessary for the operation of a sewerage system on the property identified as Exhibit 1.

7. *Developer agrees to require as a condition of sale that the owner of each parcel of property shown on Exhibit 1 for which a service connection to the sewerage system is available, installed, or expanded but for which no residence, building, or structure has been attached to the service connection, shall pay Tennessee Wastewater a yearly sewer access fee of \$84.00. Such yearly sewer access fees for each lot shown on Exhibit 1 shall be first payable on or before December 15, 2008, for all owners of record of December 1, 2008. Once residences, buildings, or structures on any parcel of property shown on Exhibit 1 are connected to the sewer system through a service connection, the owner of such property shall no longer be liable for the sewer access fee for that calendar year, and, thereafter, the annual sewer access fee referenced herein shall not apply.*

8. *Developer agrees to require as a condition of sale or lease of each lot that any building, residence, or other structure, constructed on the lot to be attached to the sewerage system, shall have a lockable shut off valve installed on the property owner's side of the water meter on the water supply line to the building. Such conditions shall be included in any restrictive covenants prepared and recorded for the property included in The Peninsula at*

Lake Douglas project. This valve is for the exclusive use of Tennessee Wastewater Systems, Inc. in accordance with its sewer service agreement with the property owner and is to be used to shut off water supply to the property in the event that the monthly sewer fee is not paid.

9. To allow for maintenance and management of the sewer system, Developer shall provide Tennessee Wastewater an all-weather access road, the necessary power lines, and power drop to the sewage treatment site and the drip effluent dosing station. Developer shall provide written five (5) foot sewerage easements on each side of the centerline of all sewers and all interceptor tanks installed in the development other than those sewers and those connections that are located along the public right of way.

10. Tennessee Wastewater Systems, Inc. shall approve all plans and drawings accompanying the initial sewerage system and any additions or expansions to the system as installed or the additional capacity associated with the system. The actual design and construction and installation of the sewerage system and any expansions to it shall be subject to the final approval and final inspection of Tennessee Wastewater Systems, Inc. Developer shall provide Tennessee Wastewater a one (1) year warranty for the collection system and assign to Tennessee Wastewater the one (1) year warranty provided to Developer by Utility Capacity Corporation, Inc. (UCC) for the treatment and effluent dispersal systems wherein the Developer and UCC shall warrant that, for the first year after the initial system is placed into service following acceptance by Tennessee Wastewater, the Developer or UCC shall immediately repair, or cause to be repaired, all breaks, leaks, or defects of any type in the installation, construction, or materials included in the sewerage system. After the expiration of the one (1) year period,

Tennessee Wastewater shall be responsible for the repair of all breaks, leaks, or defects of any type in the installation, construction, or materials used in the sewerage system.

11. Tennessee Wastewater shall hold and manage any excess capacity of the sewerage system for future use and. Once the sewerage system, or necessary sections thereof, are installed, completed, and functioning, those elements of the system shall be turned over or dedicated to Tennessee Wastewater for ownership, operation, management, and maintenance of the sewerage system operations. Prior to the delivery or the turn over of the ownership, operation, maintenance, and management of the system to Tennessee Wastewater and the acceptance of same by Tennessee Wastewater, Tennessee Wastewater shall inspect and approve the initial system as installed and any expansions of such system as may be constructed from time to time.

12. Property Rights and Ownership

a. Developer hereby grants Tennessee Wastewater an exclusive right to own and operate all of the sewage collection, treatment, and disposal systems and exclusive use of the land on which said systems are located in the development shown on Exhibit 1 and Developer hereby conveys to Tennessee Wastewater said exclusive right to own and operate all of said systems and lands therein without the necessity of any further contract, deed, conveyance, or easement, for a period of 99 years or so long as said property is used and operated for wastewater collection, treatment, and disposal, whichever shall first occur. Tennessee Wastewater shall have the right to renew at any time said exclusive rights to operate all of the sewerage collection, treatment, and disposal systems, and the land on which said systems are located in The Peninsula at Lake Douglas shown on Exhibit 1.

- b. Developer will grant Tennessee Wastewater a permanent, platted, easement to the 4+ acre tract identified, mapped, and approved for use as the sewage treatment and drip dispersal site for the system.
- c. In addition, Developer further agrees to execute, acknowledge, and deliver to Tennessee Wastewater any and all easements that may be necessary or appropriate as determined by Tennessee Wastewater for the construction, operation, and maintenance of Tennessee Wastewater's sewerage system, or any portion thereof.
13. Upon installation, testing, approval, and acceptance for use by Tennessee Wastewater, all sewerage system improvements up to the property line of any lot shall become and remain the sole property of Tennessee Wastewater without the necessity of a formal conveyance from the Developer to Tennessee Wastewater. Developer does hereby warrant that title to the same shall be free and unencumbered. Notwithstanding said provision as to title, Developer further agrees that it will execute, acknowledge, and deliver a deed formally conveying title to said sewerage system improvements and utility easements over individual lots to Tennessee Wastewater upon demand by Tennessee Wastewater.
14. Developer agrees to execute, acknowledge, and deliver to Tennessee Wastewater any and all easements that may be necessary or appropriate as determined by Tennessee Wastewater for the construction, operation, and maintenance of Tennessee Wastewater's sewerage system, or portion thereof.
15. The Developer warrants that, should its development include restrictive covenants, said covenants shall include paragraphs regarding the sewerage system as drafted by

Tennessee Wastewater and shall specifically reference include the necessary shut off valve described in Paragraph 8 herein.

16. Developer agrees to inform each lot buyer or lessee, at the time of closing or before, that each buyer or lessee shall provide or cause to be provided, installed, or constructed the appropriate and necessary lines, filters, tanks, pumps, or interceptor tanks at its expense for each planned unit to connect to the wastewater system contemplated under this agreement; and that all tanks, pumps, filters, control panels, and appurtenances shall be as approved by Tennessee Wastewater.

17. Developer agrees to inform each lot buyer or lessee, at the time of closing or before, that the lot is served by a public utility sewerage system for which monthly sewer charges will be billed to the property owner or lessee at rates established by the Tennessee Regulatory Authority, the state's public service commission.

18. This contract is valid only so long as Developer remains the owner of project. This contract is not assignable to or for the benefit of any other person or entity without Tennessee Wastewater's prior written consent. Likewise, Tennessee Wastewater may not assign this contract to any other person or entity without Developer's prior written consent. The Developer commitments and covenants contained in Paragraph 4 shall survive the termination of this contract as to Developer. Nothing in this agreement shall be pledged, mortgaged, hypothecated, or utilized as collateral for any obligations of Developer to any third parties.

19. This agreement shall be governed and interpreted under the laws of the State of Tennessee without regard to any other choice of law statutes or procedures.

20. Should any part of this agreement be found or held invalid or unenforceable by any court or government agency, regulatory body, or utility regulatory commission, such invalidity or unenforceability shall not affect the remainder of this agreement which shall survive and be construed as if such invalidity or unenforceability part had not been contained therein.

21. This agreement cannot be amended except by a written agreement signed by the authorized agents of both Developer and Tennessee Wastewater.

22. Developer and Tennessee Wastewater Systems, Inc. and their respective officers and directors of each company are not agents, representatives, or employees of each other company and neither party shall have the power to obligate or bind any other party in any manner except as otherwise expressly provided in this agreement.

23. Neither party shall be in breach of this agreement by reason of its delay in performance or for failure to perform any of its obligations herein if such delay or failure is cause in whole or in part by strikes or other labor disputes, acts of God or the public enemy, riots, incendiaries, interference by civil or military authorities, delays in transit or delivery, or subsequent events which are beyond its reasonable control or without its fault or negligence.

For

SOUTHEASTERN DEVELOPMENT
GROUP, INC

For

TENNESSEE WASTEWATER SYSTEMS, INC.

Chip Leonard, Managing Partner

Michael Hines, P.E., Vice President

**PENINSULA AT LAKE DOUGLAS
WASTEWATER SYSTEM
DESIGN AND CONSTRUCTION CONTRACT**

This wastewater system construction and expansion contract, made and entered as of this _____th day of May, 2008, by and between, Utility Capacity Corporation, Inc., a Tennessee corporation, having a principal place of business in Knoxville, Knox County, Tennessee, herein referred to as "UCC" and Southeastern Development Group Inc., a Tennessee corporation, having a principle place of business in Knoxville, Tennessee, herein referred to as "Developer":

WHEREAS, the Developer is the owner and developer of a tract of real property located in Jefferson County, Tennessee, within the jurisdiction limits of the Jefferson County Planning Commission, containing approximately 165 acres more or less and generally referred to herein as The Peninsula at Lake Douglas development project; and;

WHEREAS, The Peninsula at Lake Douglas development project shall have approximately 80 residential lots that will require wastewater disposal, and;

WHEREAS, the Developer requires a sewage treatment, collection, and disposal system, be designed and constructed to serve the aforementioned units, and;

WHEREAS, UCC is in the business of designing and constructing wastewater collection, treatment, and disposal systems, and has the capability to design, construct, and expand the necessary sewage collection, treatment, and disposal system for The Peninsula at Lake Douglas development project;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties warrant, covenant, grant, and make the following agreements:

WITNESSETH

1. Developer is the owner of a tract of real property in Jefferson County, Tennessee, within the jurisdictional limits of the Jefferson County Planning Commission, of approximately 165 acres, and such property is generally referred to herein as The Peninsula at Lake Douglas development project. The Peninsula at Lake Douglas development project has been mapped, platted, and surveyed. The plat for this development as submitted to the Jefferson County Planning Commission for approval, showing 80 lots to be recorded in the Register's Office for Jefferson County, is attached hereto as Exhibit 1.
2. UCC shall design the appropriate wastewater collection, treatment, and reuse system of sufficient size and capacity to collect, treat, and reuse all of the wastewater resulting from the proposed 80 total lots. Total design flow to the system shall not exceed a maximum of 16,000 gallons per day based on peak daily flow expected from those residential units to be located within The Peninsula at Lake Douglas development development.
3. Developer shall provide all materials and labor to install the collection system sewers in accordance with the approved plans and the specifications and requirements of Tennessee Wastewater Systems, Inc.
4. UCC shall provide all materials and labor to install a recirculating packed-bed filter treatment system, an effluent pumping system, and an effluent drip dispersal system in accordance with the approved plans and the specifications and requirements of Tennessee Wastewater Systems, Inc.
5. Developer shall provide permanent access to sufficient land area to site the treatment units and to the four acres approved by the Tennessee Department of Environment and Conservation for drip dispersal of the treated effluent from the sewerage system installed to serve the units described in the previous sections.

6. UCC represents and warrants that the system, as constructed, will meet or exceed all requirements of the Tennessee Department of Environment and Conservation, which has regulatory authority over the design and construction of this system.

7. The Developer has agreed for UCC to have exclusive responsibility for the design, development, construction, and expansion of the wastewater system for the property identified in Exhibit 1. By execution of this agreement, the Developer represents to UCC that it has full right, title, and authorization to allow the construction of the wastewater system contemplated by this agreement.

8. In addition to the original plat shown as Exhibit 1 to this agreement, the Developer agrees upon written request by UCC to provide UCC a boundary line survey of the property shown on Exhibit 1.

9. The Developer agrees upon written request by UCC to provide UCC a copy of the warranty deed(s) evidencing the actual ownership of the property known as the Peninsula at Lake Douglas development project as shown on Exhibit 1.

10. The Developer shall provide UCC a topographic map in electronic format, compatible with AutoCAD R14 or higher, which map includes the acreage to be developed or improved by the Developer in connection with the Peninsula at Lake Douglas development project and the location and boundaries of all roads, lots, and common areas. The Developer shall provide any revisions or updates of the aforesaid topographic map to UCC.

11. To allow access to and the construction and expansion of the initial wastewater system, the Developer shall provide UCC an all weather access road and easement, the necessary power lines, and necessary power drop to the wastewater treatment site and to the effluent drip dispersal site. Such access road and easement shall be free of structures, buildings, woody vegetation, and any uses that would interfere with or obstruct access to wastewater treatment

sites and any lift stations. The power lines shall include all lines, poles, conduit, etc. and related excavations to bring power to the power disconnect and meter base to be set by UCC.

12. UCC shall design, construct, and install the wastewater treatment and effluent dispersal systems and any future expansions thereof as required to serve the units described herein. The location of the treatment and effluent dispersal components of the wastewater system is, or will be, as shown on the plat and the Developer agrees to dedicate such areas as may be needed to be used for the purposes of proper wastewater treatment and effluent dispersal. The location of the collector lines, pump stations, and other reasonably necessary appurtenances or components shall be within the necessary utility easements or rights-of-way shown on Exhibit 1.

13. Developer agrees that only residential facilities shall be connected to the wastewater system and that no restaurant or other commercial food preparation or dining facility or unless shall be connected to the wastewater system unless and until sufficient capacity exists in or is added to the wastewater system and unless and until the Developer provides the necessary and sufficient pretreatment waste stream units for any restaurant, commercial food preparation operations, or dining facility (excluding catered events), or any other non-domestic wastewater generating facility as may be required and approved by Tennessee Wastewater Systems, Inc.

14. As compensation for the design and construction of the sewerage system described above, Developer shall pay UCC the sum of Two Hundred Ninety Thousand Dollars (\$290,000) as stipulated in the payment schedule in Paragraphs 15 and 16 below. Upon completion of the system, Developer is entitled to connect 80 residential lots to the system provided that said lots shall not produce more than 16,000 gallons per day of actual sewage flow based on average daily flows as measured at the discharge to the drip dispersal system.

15. Developer shall make periodic progress payments to UCC for the \$290,000 total cost for system design and construction of Phase 1 of the wastewater system herein described as follows:

- a. \$100,000 upon signature of this agreement; and
- b. \$35,000 upon completion of installation of the recirculating packed-bed filter unit, the influent blend tank, and the effluent pumping tank; and
- c. \$65,000 upon completion of installation of the effluent transfer pumps, Arkal filter, UV units, and control panel; and
- d. \$60,000 upon completion of installation of the drip dispersal fields, and
- e. \$30,000 upon completion of the construction and receipt of a written acceptance of the system from Tennessee Wastewater Systems, Inc.

16. All payments due under Paragraphs 15 and this agreement shall be made within twenty (twenty) calendar days of their invoice dates by check or by electronic funds transfer to a bank account designated by UCC to the Developer. The Developer agrees to pay a one and one-half percent (1.5%) late charge for each month or any portion thereof that any payment due under this agreement is not received by UCC within the agreed upon time.

17. Final payment for construction of the wastewater system shall be made prior to the transfer of ownership of the system to Tennessee Wastewater Systems, Inc. for their ownership, management, and operation of the wastewater system. Tennessee Wastewater Systems, Inc. shall approve all plans and drawings accompanying the wastewater system and any additions or expansions to the system as installed. The actual construction and installation of the wastewater system and any expansions to it shall be subject to the final approval and final inspection of Tennessee Wastewater Systems, Inc.

18. Tennessee Wastewater Systems, Inc. shall hold, manage, and access any excess capacity of the wastewater system for the undeveloped property for future use and expansion

consistent with the development plan identified and attached hereto. Once the wastewater system, or the necessary sections thereof, is installed, completed, and functioning, those elements of the system shall be turned over or dedicated to Tennessee Wastewater Systems, Inc. for management and maintenance of the wastewater system operations as the operator of the wastewater system. UCC shall have no obligation or responsibility to manage or maintain the wastewater system, or certain sections thereof, once it has been installed, completed, and dedicated to Tennessee Wastewater Systems, Inc. Prior to the delivery or the turn over of the maintenance and management of the system to Tennessee Wastewater Systems, Inc., Tennessee Wastewater Systems, Inc. shall inspect and approve the initial system as installed.

19. At the time the wastewater system is to become operational, UCC warrants to the Developer or its assigns the design, construction, and operational characteristics of the wastewater treatment and effluent dispersal systems for a period of one (1) year following the date that such system is dedicated to Tennessee Wastewater Systems, Inc. During such warranty period, UCC will, promptly and in a manner to ensure no unreasonable interruption of wastewater service to the property owners within the Peninsula at Lake Douglas development project, undertake any repairs or replacements necessary to ensure the proper operation of the wastewater system.

20. Developer shall provide UCC and/or Tennessee Wastewater Systems, Inc. a platted and recorded perpetual utility easement to the collection lines, on-lot or common property interceptor tanks, any sewage lift station sites, the treatment and disposal sites, or sites of other necessary components of the wastewater system that may be necessary for the operation, management, and expansion of the wastewater system.

21. In the event of any changes to the initial plat, as recorded, identified as Exhibit 1, the development plan, identified as Exhibit 2, the costs and payments identified herein may be

increased in a pro rata amount to cover the additional costs of design, construction, or building of the wastewater system expansion.

22. This agreement shall be governed and interpreted under the laws of the State of Tennessee without regard to any other choice of law statutes or procedures.

23. Should any part of this agreement be found or held invalid or unenforceable by any court or government agency, regulatory body, or utility regulatory commission, such invalidity or unenforceability shall not affect the remainder of this agreement which shall survive and be construed as if such invalidity or unenforceability part had not been contained therein.

24. This agreement cannot be amended except by a written agreement signed by the authorized agents of both the Developer and UCC.

25. The Developer, UCC, and Tennessee Wastewater Systems, Inc. and their respective officers and directors of each company are not agents, representatives, or employees of each other company and no party shall have the power to obligate or bind any other party in any manner except as otherwise expressly provided in this agreement. Nothing in this agreement shall operate or be construed to establish a partnership, limited partnership, or other joint venture by or between the Developer, UCC, or Tennessee Wastewater Systems, Inc.

26. Neither party shall be in breach of this agreement by reason of its delay in performance or for failure to perform any of its obligations herein if such delay or failure is cause in whole or in part by strikes or other labor disputes, acts of God or the public enemy, riots, incendiaries, interference by civil or military authorities, compliance with governmental laws, rules, regulations, delays in transit or delivery, or subsequent events which are beyond its reasonable control or without its fault or negligence.

27. To ensure that any subsequent property owners, developers, lenders, or contractors have notice of these covenants, agreements, and the obligations contained therein regarding the operation and installation of the wastewater system, the Developer will include in

all instruments conveying, offering, or describing any portion or all of the property and units described herein, specific reference to these covenants and agreements along with the recorded plat(s) referenced herein. The covenant and agreements contained herein are permanent and shall run with the land. This construction and expansion agreement, exclusive of the exhibits, may be recorded in the Register's Office for Jefferson County, Tennessee.

For Developer

SOUTHEASTERN DEVELOPMENT
GROUP, INC.

For UCC

UTILITY CAPACITY CORPORATION,
INC.

Chip Leonard, Managing Partner
Southeastern Development Group, Inc.

Michael Hines, M.S., P.E., President
Utility Capacity Corporation, Inc.



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
OFFICE OF GENERAL COUNSEL
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
Telephone: (615) 532-0131

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 dark ink, appearing to read "Devin M. Wells", with a long, sweeping horizontal line extending to the right.

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
Telephone: (615) 532-0131

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 dark 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.



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
OFFICE OF GENERAL COUNSEL
401 Church Street
20th Floor, L & C Tower
Nashville, Tennessee 37243-1548
Telephone: (615) 532-0131
May 3, 2013

VIA Email

Christopher A. Bowles
BOULT, CUMMINGS, CONNERS & BERRY PLC
1600 Division Street, Ste. 700
Nashville, TN 37203

Re: The Villages at Norris Lake-Campbell County

Dear Mr. Bowles:

This letter is to confirm that Tennessee Wastewater Systems, Inc. ("TWSI") currently holds a valid State Operating Permit (SOP-07001) for the operation of a wastewater treatment facility at the Villages at Norris Lake. Prior to the permit's February 28, 2012 expiration date, the department received a renewal application. Pursuant to T.C.A. 4-5-320 (b), the permit is administratively extended until the department takes further action on the renewal application.

To be clear, the department's position concerning Tennessee Wastewater Systems, Inc.'s SOP-07001 and Caryville-Jacksboro Utilities Commission's SOP-10051 has not changed. Both have been issued valid wastewater treatment operating permits for the Villages at Norris Lake - Campbell County. However, neither can be used until all conditions for actual operation are met. That specifically includes the acquisition of requisite property rights.

Sincerely,

A handwritten signature in cursive script, appearing to read "E. Joseph Sanders", is written over a horizontal line.

E. Joseph Sanders
General Counsel

CC: Wade Murphy-TDEC Division of Water Resources

C. Mark Troutman-Attorney for Emerson Properties, L.L.C. - cmtroutman@troutmanlaw.net

Frank D. Wallace-Caryville-Jacksboro Utilities Commission office@jacksboro.org
cjuc@ccdi.net

Sharla Dillon

From: Pat Perry [popperry@verizon.net]
Sent: Tuesday, June 03, 2014 10:16 AM
To: Sharla Dillon
Subject: Letter to Chairman Allison re: docket 1400041 TWSI Proposed Settlement

Importance: High



Sharla Dillon,
Please deliver this letter to Chairman Allison and enter it into docket 1400041.

Dear Chairman Allison,

When I tried to purchase transcripts of the May 12th depositions, I was told by the Court Recorder that I had to call Henry Walker to get permission. On May 15th, I called him and he spent 15 minutes trying to convince me why it would be beneficial for the Community Association to support TWSI as the sewage provider for VNL and displace the current plan to use CJU and Doug Hodge & Associates (DSH). In his proposed settlement, Emerson would be permitted to finish the system as currently designed and TWSI would take over the operation for the same cost structure that DSH contracted with us. He strongly insinuated that he did not want to go public with what he had learned in the depositions that might be harmful to CJU and Emerson. He also threatened that if TRA revoked the TWSI CCN for VNL, they would appeal the decision to the appellate court and delay the completion of our sewage system for another 6 months to a year. After listening for most of the 15 minute conversation I told him the owners, after six years of delays caused by TWSI, had no trust in any business relationship with them and that the best outcome for all concerned would be for TWSI to voluntarily surrender their CCN to the TRA and we go our separate ways. He said there is no way that would happen and I replied we'll see what happens. He wanted to speak with our attorney and I said none of our 3 attorneys have been engaged to represent us on this case yet. We ended the call.

[Note: on May 29, 2014 the deposition for George Potter was entered into docket 1400041 but the CJU deposition was not entered as it was covered by a protective order issued the same day.]

For all the reasons mentioned in the owners' comments at the November 25, 2013 hearing in Docket No. 13-00017, the VNL association members will not be bullied by threats of having no service for another year unless we enter into a business relationship with TWSI. We remember TWSI Vice President Mike Hines demands in 2009 that Emerson pay him \$100,000 and deed him property and then he would discuss how TWSI would build the sewage system as originally planned by Land Resource for well over \$3M. We also remember that after several years of litigation through the TRA and Chancery Court, only then did TWSI even attempt to negotiate what Emerson really needed for TWSI to be the Villages sewage vendor. These delays have already cost VNL owners millions of dollars in lost property values and years that could have been spent building homes and selling lots and bringing economic value to Campbell County.

I have communicated the above settlement offer to all the property owners and we want it known for the record that we do not intend to deal with TWSI nor do we intend to give them the system and property or any easements thereto.

Sincerely,
Patrick Perry
Board Secretary VNLCA, Inc.

Patrick Perry
3309 Devonshire Ct
Flower Mound, TX 75022
972-355-2116 home
214-704-9847 cell

popperry@verizon.net

CDP-07001

DATE: 10/29/10

TO: Permit Section, WPC

FROM: Environmental Assistance Center- Knoxville, WPC

SUBJECT: Application* ☒ Draft to EAC-K ☐ Draft to Applicant ☐
Revised App. ☐ Revised Draft to EAC-K ☐ Revised Draft to App. ☐

NAME CARYVILLE-JACKSBORO UD - THE VILLAGES AT MORRIS

COUNTY CAMPBELL

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NPDES PERMIT NO. STATE W.O. PERMIT NO.

NOV 04 2010

DATE RECEIVED 10/18/10 DATE DUE

TN Division Of Water
Pollution Control

THIS APPLICATION IS FOR A SITE ALREADY
PERMITTED BY MIKE HINES & TWWS (07-001).
THE DEVELOPMENT IS NOW UNDER NEW
OWNERSHIP (I THINK THIS CAME ABOUT DUE TO
BANKRUPTCY OF PREVIOUS OWNER). THE NEW
OWNER WANTS TO DISMISS TWWS AND GIVE THE
PROJECT (WHICH HASN'T BEEN BUILT YET) TO CARYVILLE
JACKSBORO UD. THERE ARE NUMEROUS
ISSUES, INCLUDING TRA ISSUES, AND WE
DO NOT THINK TWWS IS WILLING TO VOLUNTARILY
TRANSFER THIS PERMIT.

WLS 10/29/10

*Is this application for a new discharge? Yes ☐ No ☐

Is this application for increased existing discharge? Yes ☐ No ☐

If "yes" to either question, attach a Watershed Evaluation and Anti-degradation
Policy Checklist I.

IRTEC
INNOVATIVE RECLAMATION
TECHNOLOGIES &
ENGINEERING CO., INC.

OCT 18 2010
211 Main Street
P.O. Box 306
Caryville, TN 37714
(423) 566-1915
Fax: (423) 566-1966

TRANSMITTAL

To:

Woody Smith
TDEC-DWPA
KEFO
Knoxville, Tennessee

Phone: 865.594.5521

Date: October 15, 2010

Project: The Villages at Norris Lake

RE: SOP Application and Engineering Report (4 Copies)

Transmitting the following:

<input checked="" type="checkbox"/> Attached	<input type="checkbox"/> Under Separate Cover, via _____	
<input type="checkbox"/> Installation Drawings	<input type="checkbox"/> Specifications	<input type="checkbox"/> Addendum
<input type="checkbox"/> Calculations	<input type="checkbox"/> Brochures	<input type="checkbox"/> Change Order
<input type="checkbox"/> Shop Drawings	<input type="checkbox"/> Samples	<input type="checkbox"/> Report
<input type="checkbox"/> Floppy Disk	<input type="checkbox"/> Letter Copy	<input type="checkbox"/> _____
<input type="checkbox"/> SOP Application	<input type="checkbox"/> _____	<input type="checkbox"/> _____

Copies	Date	Description
<u>4</u>	<u>October 15, 2010</u>	<u>Engineering Report</u>

Transmitted

<input checked="" type="checkbox"/> For Review	<input type="checkbox"/> For Approval	<input type="checkbox"/> No Exception Taken
<input type="checkbox"/> For Your Use	<input type="checkbox"/> For Correction	<input type="checkbox"/> Make Correction Noted
<input type="checkbox"/> As Requested	<input type="checkbox"/> For Distribution	<input type="checkbox"/> Rejected
<input type="checkbox"/> For Signature	<input type="checkbox"/> For Bid	<input type="checkbox"/> Submit as Specified
<input type="checkbox"/> For Payment	<input type="checkbox"/> For Estimate	<input type="checkbox"/> Resubmittal Not Required

Remarks Please contact me or Randy West if you have any questions

Copy To: _____

Signed: _____



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


OCT 18 2010

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):		Caryville Jacksboro Utility District	
Permittee Address:		P. O. Box 121 Jacksboro, TN 37757	

Official Contact: Frank Wallace		Title or Position: Executive Secretary	
Mailing Address: P. O. Box 121		City: Jacksboro	State: TN
Phone number(s): 423-562-9776		Zip: 37757	
Optional Contact: Tim K. Slone, PE		E-mail: cjuc@ccdi.net	
Address: P. O. Box 306		City: Caryville	State: TN
Phone number(s): 423-566-1915		Zip: 37714	
		E-mail: irtec@comcast.net	

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 Frank Wallace, Executive Secretary	Signature 	Date 10-14-2010

WPC Permit Section

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NOV 04 2010

TN Division Of Water
Pollution Control

OCT 18 2010

Permit Number: SOP-_____

Facility Identification:		Existing Permit No.	
Facility Name: The Villages at Norris Lake		County: Campbell	
Facility Address or Location: un-named road off of Rain Valley Road		Latitude: 36° 18.58'N	Longitude: 84° 03.31'W
Name and distance to nearest receiving waters: approx. 1400' to Norris Lake			
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: Caryville Jacksboro Utilities Commission			
Operator address: P. O. Box 121 Jacksboro, TN 37757			
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 type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" 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. MIROBO LLC will sign a contract/agreement with Evergreen Utility Services to provide operation and maintenance services on behalf of CJUC.			
Complete the following information explaining the entity type, number of design units, and daily design wastewater flow:			
<u>Entity Type</u>	<u>Number of Design Units</u>		<u>Flow (gpd)</u>
<input type="checkbox"/> City, town or county	No. of connections:		
<input checked="" type="checkbox"/> Subdivision	No. of homes: 450	Avg. No. bedrooms per home: 3	300gal/lot For a total of 135,000 gpd
<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. Domestic sewage produced from individual residential homes, generated on a daily basis			

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Permit Number: SOP-_____

Engineering Report (required for collection systems and/or land application treatment systems):	<input type="checkbox"/> N/A
<input checked="" type="checkbox"/> Prepared in accordance with Rule 1200-4-2-.03 and Section 1.2 of the Tennessee Design Criteria (see <u>website</u> 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.): low pressure	
System Description: STEP system using watertight septic tanks and OSI pumping systems	
Describe methods to prevent and respond to any bypass of treatment or discharges (i.e., power failures, equipment failures, heavy rains, etc.): It is a closed system	
In the event of a system failure describe means of operator notification: OSI remote telemetry	
List the emergency contact(s) (name/phone): Frank Wallace - (865) 740-2602	
For low-pressure systems, who is responsible for maintenance of grinder pumps and septic tanks (list all contact information)?	
Approximate length of sewer (excluding private service lateral): Currently under design	
Number/hp of pump stations: /	Number/hp of grinder pumps /
Number/volume of low pressure pump tanks w/ OSI pump assembly /	Number/volume septic tanks 1 @ each lot / 1500
Attach a schematic of the collection system. <input 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>

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.): AdvanTex Recirculating Filter Treatment System	
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.): It is a closed system	
For land application, list: <input checked="" type="checkbox"/> Proposed acreage involved: 15.0	<input checked="" type="checkbox"/> Inches/week to be applied: 2.32 week/acre -peak
Describe how access to the treatment area will be restricted if wastewater disinfection is not proposed: UV Treatment will be required	
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.	

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TN Division Of Water
/ Pollution Control

OCT 18 2010

Permit Number: SOP-_____

☒ 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.

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**TN Division Of Water
Pollution Control**

OCT 18 2010

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):	

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TN Division of Water
Pollution Control

OCT 18 2010

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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TN Division Of Water
Pollution Control

OFFICIAL STATE USE ONLY

Received Date	Permit Number SOP	Field Office	Reviewer
---------------	-----------------------------	--------------	----------



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
401 CHURCH STREET
L & C ANNEX 6TH FLOOR
NASHVILLE TN 37243

AUG 01 2011

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

**Re: State Operating Permit No. SOP-10051
Caryville Jacksboro Utility District - The Villages at Norris Lake
Grantsboro Community, Campbell County, Tennessee**

Dear Mr. Wallace:

In accordance with the provisions of the "Tennessee Water Quality Control Act" (Tennessee Code Annotated Sections 69-3-101 through 69-3-120) the enclosed State Operating Permit (SOP) is hereby issued by the Division of Water Pollution Control. The continuance and/or reissuance of this Permit is contingent upon your meeting the conditions and requirements as stated therein.

Please note that this permit authorizes operation of a proposed sewerage system pursuant to the Act which requires that persons planning to operate sewerage systems apply for and obtain a permit that is protective of purposes of the Water Quality Control Act. Public comment received in association with this proposed sewerage system alleges that this system is outside of the chartered service area of the Caryville-Jacksboro Utility Commission. The division has already issued a sewer system permit (SOP-07001) 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 injury to private 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 state law." The division is not in a position to regulate service area. Please consult with you legal staff regarding your service area issue(s).

Please be advised that a petition for permit appeal may be filed, pursuant to T.C.A. Section 69-3-105, subsection (i), by the permit applicant or by any aggrieved person who participated in the public comment period or gave testimony at a formal public hearing whose appeal is based upon any of the issues that were provided to the commissioner in writing during the public comment period or in testimony at a formal public hearing on the permit application. Additionally, for those permits for which the department gives public notice of a draft permit, any permit applicant or aggrieved person may base a permit appeal on any material change to conditions in the final permit from those in the draft, unless the material change has been subject to additional opportunity for public comment. Any petition for permit appeal under this subsection (i) shall be filed with the board within thirty (30) days after public notice of the commissioner's decision to issue or deny the permit.

If you have questions, please contact the Division of Water Pollution Control at your local Environmental Field Office at 1-888-891-TDEC; or, at this office, please contact Mr. Wade Murphy at (615) 532-0666 or by E-mail at Wade.Murphy@tn.gov.

Sincerely,



Vojin Janjić
Manager, Permit Section
Division of Water Pollution Control

Enclosure

cc/ec: Division of Water Pollution Control, Permit Section, Municipal Facilities Section & Knoxville Environmental Field Office
Ms. Michelle Ramsey, Utilities Division, Tennessee Regulatory Authority, michelle.ramsey@tn.gov
Ms. Patsy Fulton, Utilities Division, TRA, patsy.fulton@th.gov
Mr. Patrick H. Perry, Secretary of the Board, The Villages at Norris Lake Community Assoc., Inc., popperry@verizon.net
Mr. Michael Hines, , M.S., P.E. Vice President, Tennessee Wastewater Systems, Inc., mikehines@charter.net
Mr. Henry Walker, Esq., Bradley, Arant, Boult, Cummings, hwalker@babco.com
Mr. Douglas S. Hodge, Ph.D., PMP, Evergreene Utility Service, LLC, hodge.dsh@gmail.com

**TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
6th Floor, L & C Annex
401 Church Street
Nashville, TN 37243**

Permit No. SOP-10051

**PERMIT
For the operation of Wastewater Treatment Facilities**

In accordance with the provision of Tennessee Code Annotated section 69-3-108 and Regulations promulgated pursuant thereto:

PERMISSION IS HEREBY GRANTED TO

**Caryville Jacksboro Utility District - The Villages at Norris Lake
Grantsboro Community, Campbell County, Tennessee**

FOR THE OPERATION OF


AdvanTex Recirculating Filter with UV disinfecting and 15 acre subsurface drip disposal system located at latitude 36.309667 and longitude -84.055167 in Campbell County, Tennessee to serve approximately 450 homes in the Villages at Norris Lake Subdivision. The design capacity of the system is 0.135 MGD.

This permit is issued as a result of the application filed on November 4, 2010, in the office of the Tennessee Division of Water Pollution Control and in conformity with approved plans, specifications and other data submitted to the Department in support of the above application, all of which are filed with and considered as a part of this permit, together with the following named conditions and requirements.

This permit shall become effective on: September 01, 2011

This permit shall expire on: July 31, 2016

Issuance date: July 29, 2011



Paul E. Davis
Director
Division of Water Pollution Control

CN-0759

RDAs 2352 & 2366

A. GENERAL REQUIREMENTS

The treatment system shall be monitored by the permittee as specified below:

<u>Parameter</u>	<u>Sample Type</u>	<u>Daily Maximum</u>	<u>Monthly Average</u>	<u>Measurement Frequency</u>
Flow *	Totalizer			Daily
BOD ₅	Grab	45 mg/l	N/A	Once/Quarter
Ammonia as N	Grab	Report	N/A	Once/Quarter
<i>E. Coli</i>	Grab	941 colonies/100 ml	N/A	Once /Quarter

* Report average daily flow for each calendar month.

Sampling requirements in the table above apply to effluent being discharged to the drip irrigation plots.

This permit allows the operation of a wastewater drip irrigation system. There shall be no wastewater ponding or pools on the surface of the disposal field as a result of improper application or irrigation of wastewater except in direct response to precipitation. There shall be no discharge of wastewater to any surface stream or any location where it is likely to enter surface waters. There shall be no discharge of wastewater to any open throat sinkhole. In addition, the drip irrigation system shall be operated in a manner preventing the creation of a health hazard or a nuisance.

Instances of ponding or pools under dry weather conditions shall be promptly investigated and remedied. Instances of ponding or pools, or any wastewater runoff shall be noted on the monthly operation report. The report shall include details regarding the location(s), determined cause(s), the actions taken to eliminate the ponding or pools, or any wastewater runoff, and the dates the corrective actions were made. Any wastewater runoff due to improper operation must be reported in writing to the Division of Water Pollution Control, Knoxville Environmental Field Office within 5 days of discovery by the permittee.

The permittee must disinfect the wastewater in order to meet the above *E. Coli* limit.

All drip lines shall be buried and maintained 6 to 10 inches below the ground surface.

The site shall be inspected by the certified operator or his/her designee, at a minimum, once per seven days. The following shall be recorded for each inspection and reported on the quarterly operating report:

- the condition of the treatment facility security controls (doors, fencing, gates, etc.),
- the condition of the drip area security controls (doors, fencing, gates, etc.),
- the condition of the site signage,
- the condition of the drip lines under pressure,
- the condition of the drip area including the location of any ponding and the height of the cover crop,
- the condition of the mechanical parts of the treatment system (pumps, filters, telemetry equipment, etc.)
- the condition of the UV bulbs (if applicable),
- the last date the UV bulbs were cleaned (if UV is used),
- the date and time of inspection,
- the name of the inspector,
- the description of any corrective actions taken.

B. MONITORING PROCEDURES

1. Representative Sampling

Samples and measurements taken in compliance with the monitoring requirements specified above shall be representative of the volume and nature of the monitored discharge, and shall be taken at the following location(s):

Effluent to drip irrigation plots.

2. Test Procedures

Unless otherwise noted in the permit, all pollutant parameters shall be determined according to methods prescribed in Title 40, CFR, Part 136.

C. DEFINITIONS

The "daily maximum concentration" is a limitation on the average concentration, in milligrams per liter, of the discharge during any calendar day.

The "**monthly average concentration**", other than for *E. coli* bacteria, is the arithmetic mean of all the composite or grab samples collected in a one-calendar month period.

A "grab sample" is a single influent or effluent sample collected at a particular time.

For the purpose of this permit, "*continuous monitoring*" means collection of samples using a probe and a recorder with at least one data point per dosing cycle.

A "quarter" is defined as any one of the following three-month periods: January 1 through March 31, April 1 through June 30, July 1 through September 30, and/or October 1 through December 31.

D. REPORTING

1. Monitoring Results

Monitoring results shall be recorded monthly and submitted quarterly. Submittals shall be postmarked no later than 15 days after the completion of the reporting period. A copy should be retained for the permittee's files. Operation reports and any communication regarding compliance with the conditions of this permit must be sent to:

Division of Water Pollution Control
Knoxville Environmental Field Office
3711 Middlebrook Pike
Knoxville, TN 37921

The first operation report is due on the 15th of the month following permit effective date.

2. Additional Monitoring by Permittee

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified in 1200-4-5-.07(4)(h)2, the results of such monitoring shall be included in the calculation and reporting of the values required in the Quarterly Operation Report. Such increased frequency shall also be indicated.

3. Falsifying Reports

Knowingly making any false statement on any report required by this permit may result in the imposition of criminal penalties as provided for in Section 69-3-115 of the Tennessee Water Quality Control Act.

4. Signatory Requirement

All reports or information submitted to the commissioner shall be signed and certified by the persons identified in Rules 1200-4-5-.05(6)(a-c).

E. SCHEDULE OF COMPLIANCE

Full operational level shall be attained from the effective date of this permit.

PART II

A. GENERAL PROVISIONS

1. Duty to Reapply

The permittee is not authorized to discharge after the expiration date of this permit. In order to receive authorization to discharge beyond the expiration date, the permittee shall submit such information and forms as are required to the Director of Water Pollution Control (the "Director") no later than 180 days prior to the expiration date.

2. Right of Entry

The permittee shall allow the Director, or authorized representatives, upon the presentation of credentials:

a. To enter upon the permittee's premises where an effluent source is located or where records are required to be kept under the terms and conditions of this permit, and at reasonable times to copy these records;

b. To inspect at reasonable times any monitoring equipment or method or any collection, treatment, pollution management, or discharge facilities required under this permit; and

c. To sample at reasonable times any discharge of pollutants.

3. Availability of Reports

All reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Division of Water Pollution Control.

4. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems (and related appurtenances) for collection and treatment which are installed or used by the permittee to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance also includes adequate laboratory and process controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. Backup continuous pH and flow monitoring equipment are not required.

The permittee must develop and implement a preventative maintenance schedule which corresponds to the manufacturer's recommendations for each of the appurtenances in the

treatment system. Documentation supporting this preventative maintenance schedule, and its implementation, must be retained for a period of three years.

The monitoring frequency stated in this permit shall not be construed as specifying a minimum level of operator attention to the facility. It is anticipated that visits to the treatment facility by the operator will occur at intervals frequent enough to assure proper operation and maintenance, but in no case less than one visit every seven days. If monitoring reports, WPC inspection reports, or other information indicates a problem with the facility, the permittee may be subject to enforcement action and/or the permit may be modified to include increased parameter monitoring, increased monitoring frequency or other requirements as deemed necessary by the division to correct the problem. The permittee shall ensure that the certified operator is in charge of the facility and observes the operation of the system frequently enough to ensure its proper operation and maintenance regardless of the monitoring frequency stated in the permit.

Dilution water shall not be added to comply with effluent requirements.

Final Plan of Operation, prepared in accordance with the State Design Criteria and manufacturer's specifications, shall be submitted to the Division of Water Pollution Control, Knoxville Environmental Field Office, 3711 Middlebrook Pike, Knoxville, TN 37921 within thirty (30) days of a request by division personnel. The permittee must comply with the submitted Final Plan of Operation.

The drip dispersal area shall not be used for vehicular traffic or vehicular parking. Dozers, trucks, tractors, and other heavy vehicles shall not be allowed to run over the drip dispersal area lines or other parts of the system.

5. Property Rights

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 injury to private property or any invasion of personal rights, nor any infringement of Federal, State, or local laws or regulations.

6. Severability

The provisions of this permit are severable. If any provision of this permit due to any circumstance, is held invalid, then the application of such provision to other circumstances and to the remainder of this permit shall not be affected thereby.

7. Other Information

If the permittee becomes aware that he failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, then he shall promptly submit such facts or information.

B. CHANGES AFFECTING THE PERMIT

1. Planned Changes

The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility.

2. Permit Modification, Revocation, or Termination

a. This permit may be modified, revoked and reissued, or terminated for cause as described in section 69-108-(F) The Tennessee Water Quality Control Act as amended.

b. The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

3. Change of Ownership

This permit may be transferred to another person (see note below) by the permittee if:

a. The permittee notifies the Director of the proposed transfer at least 30 days in advance of the proposed transfer date;

b. The notice includes a written agreement between the existing and new permittees containing a specified date for transfer of permit responsibility, coverage, and liability between them; and

c. The Director, within 30 days, does not notify the current permittee and the new permittee of his intent to modify, revoke or reissue, or terminate the permit and to require that a new application be filed rather than agreeing to the transfer of the permit.

Note: For the purposes of this part, "person" is defined as a municipality, a public utility, a wastewater authority, or a privately owned public utility (having a Certificate of Convenience and Necessity from the Tennessee Regulatory Authority), or another public agency.

4. Change of Mailing Address

The permittee shall promptly provide to the Director written notice of any change of mailing address. In the absence of such notice the original address of the permittee will be assumed to be correct.

C. NONCOMPLIANCE

1. Effect of Noncompliance

Any permit noncompliance constitutes a violation of applicable State laws and is grounds for enforcement action, permit termination, permit modification, or denial of permit reissuance.

2. Reporting of Noncompliance

a. 24-Hour Reporting

In the case of any noncompliance which could cause a threat to public drinking supplies, or any other discharge which could constitute a threat to human health or the environment, the required notice of non-compliance shall be provided to the appropriate Division environmental assistance center within 24 hours from the time the permittee becomes aware of the circumstances. (The environmental field office should be contacted for names and phone numbers of emergency response personnel.)

A written submission must be provided within five days of the time the permittee becomes aware of the circumstances unless this requirement is waived by the Director on a case-by-case basis. The permittee shall provide the Director with the following information:

- i. A description of the discharge and cause of noncompliance;
- ii. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
- iii. The steps being taken to reduce, eliminate, and prevent recurrence of the non complying discharge.

b. Scheduled Reporting

For instances of noncompliance which are not reported under subparagraph 2.a. above, the permittee shall report the noncompliance on the Quarterly Operation Report. The report shall contain all information concerning the steps taken, or planned, to reduce, eliminate, and prevent recurrence of the violation and the anticipated time the violation is expected to continue.

3. Overflow

a. **"Overflow"** means the unintended discharge to land or waters of Tennessee of wastes from any portion of the collection, transmission, or treatment system other than through permitted outfalls.

b. Overflows are prohibited.

c. The permittee shall operate the collection system so as to avoid overflows. No new or additional flows shall be added upstream of any point in the collection system, which experiences chronic overflows (greater than 5 events per year) or would otherwise overload any portion of the system.

d. Unless there is specific enforcement action to the contrary, the permittee is relieved of this requirement after: 1) an authorized representative of the Commissioner of the Department of Environment and Conservation has approved an engineering report and construction plans and specifications prepared in accordance with accepted engineering practices for correction of the problem; 2) the correction work is underway; and 3) the cumulative, peak-design, flows potentially added from new connections and line extensions upstream of any chronic overflow point are less than or proportional to the amount of inflow and infiltration removal documented upstream of that point. The inflow and infiltration reduction must be measured by the permittee using practices that are customary in the environmental engineering field and reported in an attachment to a Monthly Operating Report submitted to the local TDEC Environmental Field Office on a quarterly basis. The data measurement period shall be sufficient to account for seasonal rainfall patterns and seasonal groundwater table elevations.

e. In the event that more than 5 overflows have occurred from a single point in the collection system for reasons that may not warrant the self-imposed moratorium or completion of the actions identified in this paragraph, the permittee may request a meeting with the Division of Water Pollution Control EFO staff to petition for a waiver based on mitigating evidence.

4. Upset

a. "**Upset**" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

b. An upset shall constitute an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the permittee demonstrates, through properly signed, contemporaneous operating logs, or other relevant evidence that:

i. An upset occurred and that the permittee can identify the cause(s) of the upset;

ii. The permitted facility was at the time being operated in a prudent and workman-like manner and in compliance with proper operation and maintenance procedures;

iii. The permittee submitted information required under "Reporting of Noncompliance" within 24-hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five days); and

iv. The permittee complied with any remedial measures required under "Adverse Impact."

5. Adverse Impact

The permittee shall take all reasonable steps to minimize any adverse impact to the waters of Tennessee resulting from noncompliance with this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge. It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

6. Bypass

a. **"Bypass"** is the intentional diversion of wastewater away from any portion of a treatment facility. **"Severe property damage"** means substantial physical damage to property, damage to the treatment facilities which would cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. Bypasses are prohibited unless all of the following 3 conditions are met:

i. The bypass is unavoidable to prevent loss of life, personal injury, or severe property damage;

ii. There are no feasible alternatives to bypass, such as the construction and use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass, which occurred during normal periods of equipment downtime or preventative maintenance;

iii. The permittee submits notice of an unanticipated bypass to the Division of Water Pollution Control in the appropriate Environmental Field Office within 24 hours of becoming aware of the bypass (if this information is provided orally, a written submission must be provided within five days). When the need for the bypass is foreseeable, prior notification shall be submitted to the director, if possible, at least 10 days before the date of the bypass.

c. Bypasses not exceeding permit limitations are allowed **only** if the bypass is necessary for essential maintenance to assure efficient operation. All other bypasses are prohibited. Allowable bypasses not exceeding limitations are not subject to the reporting requirements of 6.b.iii, above.

D. LIABILITIES

1. Civil and Criminal Liability

Nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. Notwithstanding this permit, the permittee shall remain liable for any damages sustained by the State of Tennessee, including but not limited to fish kills and losses of aquatic life and/or wildlife, as a result of the discharge of wastewater to any surface or subsurface waters. Additionally, notwithstanding this Permit, it shall be the responsibility of the permittee to conduct its wastewater treatment and/or discharge activities in a manner such that public or private nuisances or health hazards will not be created.

2. Liability Under State Law

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 applicable State law.

PART III OTHER REQUIREMENTS

A. CERTIFIED OPERATOR

The waste treatment facilities shall be operated under the supervision of a Biological Natural System certified wastewater treatment operator and collection system shall be operated under the supervision of a the grade I certified collection system operator in accordance with the Water Environmental Health Act of 1984.

B. PLACEMENT OF SIGNS

Signs shall be posted at regular intervals around the perimeter of the area, and at each entrance. The recommended perimeter distance between any two (2) signs should not exceed one hundred fifty feet at all sites. The sign language shall clearly indicate that the drip areas are being used for the dispersal of treated effluent and advise against trespassing. The minimum sign size should be two feet by two feet (2' x 2') with letters not less than two inches (2") high. Each sign shall be made of durable material and have a white background with black letters.

**TREATED DOMESTIC WASTEWATER
DRIP IRRIGATED PLOTS
(PERMITTEE'S NAME)
(PERMITTEE'S PHONE NUMBER)
TENNESSEE DIVISION OF WATER
POLLUTION CONTROL
Knoxville Environmental Field Office
PHONE NUMBER: 1-888-891-8332**

No later than sixty (60) days from the effective date of the permit, the permittee shall have the above sign(s) on display in the location specified. New facilities must have the signs installed upon commencing operation.

C. ADDITION OF WASTE LOADS

The permittee may not add wasteloads to the existing treatment system without the knowledge and approval of the division.

D. SEPTIC TANK OPERATION

The proper operation of this treatment system depends, largely, on the efficient use of the septic tank. The solids that accumulate in the tank shall be removed at a frequency that is sufficient to insure that the treatment plant will comply with the discharge requirements of this permit.

E. SEPTAGE MANAGEMENT PRACTICES

The permittee must comply with the provisions of Chapter 0400-48-01-.22. If the septage is transported to another POTW for disposal, the permittee shall note the amount of septage wasted in gallons and the name of the facility to which the septage was taken on the monthly operation report. Sludge or any other material removed by any treatment works must be disposed of in a manner which prevents its entrance into or pollution of any surface or subsurface waters. Additionally, the disposal of such sludge or other material must be in compliance with the Tennessee Solid Waste Disposal Act, TCA 68-31-101 et seq. and Tennessee Hazardous Waste Management Act, TCA 68-46-101 et seq.

F. DRIP SITE MANAGEMENT

The drip irrigation system must have appropriate site management practices to ensure that the nitrogen design assumptions will be achieved. The cover crop must be able to uptake the prescribed amount of nitrogen (100 lbs/acre/year). For cover crops other than trees, the cover crop shall be cut on a regular basis and the cuttings removed from the site. This requirement shall not be construed to warrant any use of the harvested product and the permittee shall assume full responsibility for its proper use or disposal.

G. OWNERSHIP OF THE TREATMENT FACILITIES

a. The permittee shall own the treatment facilities (and the land upon which they are constructed) including the land to be utilized for drip or spray irrigation. A perpetual easement (properly recorded) may be accepted in lieu of ownership. If the permittee elects to make the treated wastewater available for reuse (irrigation of a golf course for example) a backup dedicated land application site must be provided or a perpetual easement must be obtained for the property where reuse is to take place. The perpetual easement must allow year-round application of the wastewater except where the permittee has provided (and the division has approved) storage facilities for periods when reuse is not available. 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.

b. Where the treatment facility serves private homes, condominiums, apartments, retirement homes, nursing homes, trailer parks, or any other place where the individuals being served have property ownership, rental agreements, or other agreements that would prevent their being displaced in the even of abandonment or noncompliance of the sewerage system, ownership of the treatment facilities must be by a municipality, a public utility, a wastewater authority, or a privately owned public utility (having a Certificate of Convenience and Necessity from the Tennessee Regulatory Authority), or another public agency.

H. UIC AUTHORIZATION

The authorization and requirements associated with the operation of a Class V injection well (drip dispersal field) is attached to this permit in Attachment 1.

Attachment 1

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER SUPPLY
GROUND WATER MANAGEMENT SECTION
9th Floor, 401 Church Street
Nashville, Tennessee 37243-1549

MEMORANDUM

TO: Wade Murphy, WPC-CO

FROM: Allen Rather, DWS- Ground Water Management Section

DATE: 6/02/2011

SUBJECT: LCSS/SFDS (Class V Injection) Approval
Villages at Norris Lake
Lafollette, Campbell County, Tennessee
UIC File CAM 0000016

The Division of Water Supply has reviewed the submittal of an Application for Authorization to Operate a Class V Underground Injection Well (Large Capacity Septic System/Subsurface Fluid Disposal System) utilizing drip disposal for the waste water at the Villages at Norris Lake located at LaFollette, Campbell County, Tennessee. This Division approves the application dated 12/10/2010.

If at any time the Division learns that a ground water discharge system may be in violation of The Tennessee Water Quality Control Act, the Division shall:

- a. require the injector to apply for an individual permit;
- b. order the injector to take such actions including, where required, closure of the injection well as may be necessary to prevent the violation; or
- c. take enforcement action.

All groundwater discharge activities must operate in such a manner that they do not present a hazard to groundwater.

The Caryville Jacksboro Utility District shall also conduct a monthly visual inspection of the complete drip field looking for any signs of failure.

In accordance with Underground Injection Control (UIC) Rule 1200-4-6-.14 (3) "The owner of a Class V well shall be responsible for notifying the Department of change in ownership." This notification must be made to this Division within thirty (30) days of the change in ownership.

Also note that according to Underground Injection Control (UIC) Rule 1200-4-6-.14 (8)(d) "Upon completion of the well, the owner or operator must certify to the Department that the well has been completed in accordance with the approved construction plan, and must submit any other additional information required". The certification must be submitted to the UIC Program within thirty (30) days upon the completion/closure of the Class V well.

Our concurrence with your approach does not imply that this procedure is exempt from future changes or restrictions in the Underground Injection Control (UIC) Regulations, or any additional requirements set forth by the Division in order to protect the groundwater of Tennessee.

This Division will require a minimum of seven (7) working days advance notice before the construction on the drip system is to begin to allow for a witness from this Division to be present.

No drip emitters are to discharge directly into an open throat or crevice in the subsurface. All drip lines are to be installed on contour.

Submit an “as built” drawing with Surveyor/Engineer stamp to the Division of Water Supply certifying that the system has been installed in accordance with the approved construction plans as required by Rule 1200-4-6-.14 (8) (d).

A copy of this authorization must be kept on site until the development has been completed and must be made available to inspection personnel.

Should you have any questions or comments please feel free to contact me at (615) 532-5819 or allen.rather@tn.gov.

c: Brad Harris, GWP- NCO
file

Rationale
Caryville Jacksboro Utility District - The Villages at Norris Lake
STATE OPERATION PERMIT NO. SOP - SOP-10051
Grantsboro Community, Campbell County, Tennessee

Permit Writer: Wade Murphy

FACILITY CONTACT INFORMATION:
Mr. Frank Wallace, Executive Secretary
Phone: (423) 562-9776
cjuc@ccdi.net
Off of Rain Valley Road
Jacksboro TN 37757

Facility location: Off of Rain Valley Road

Name of the nearest stream: NA – No discharge allowed.

Treatment system: AdvanTex Recirculating Filter with UV disinfecting

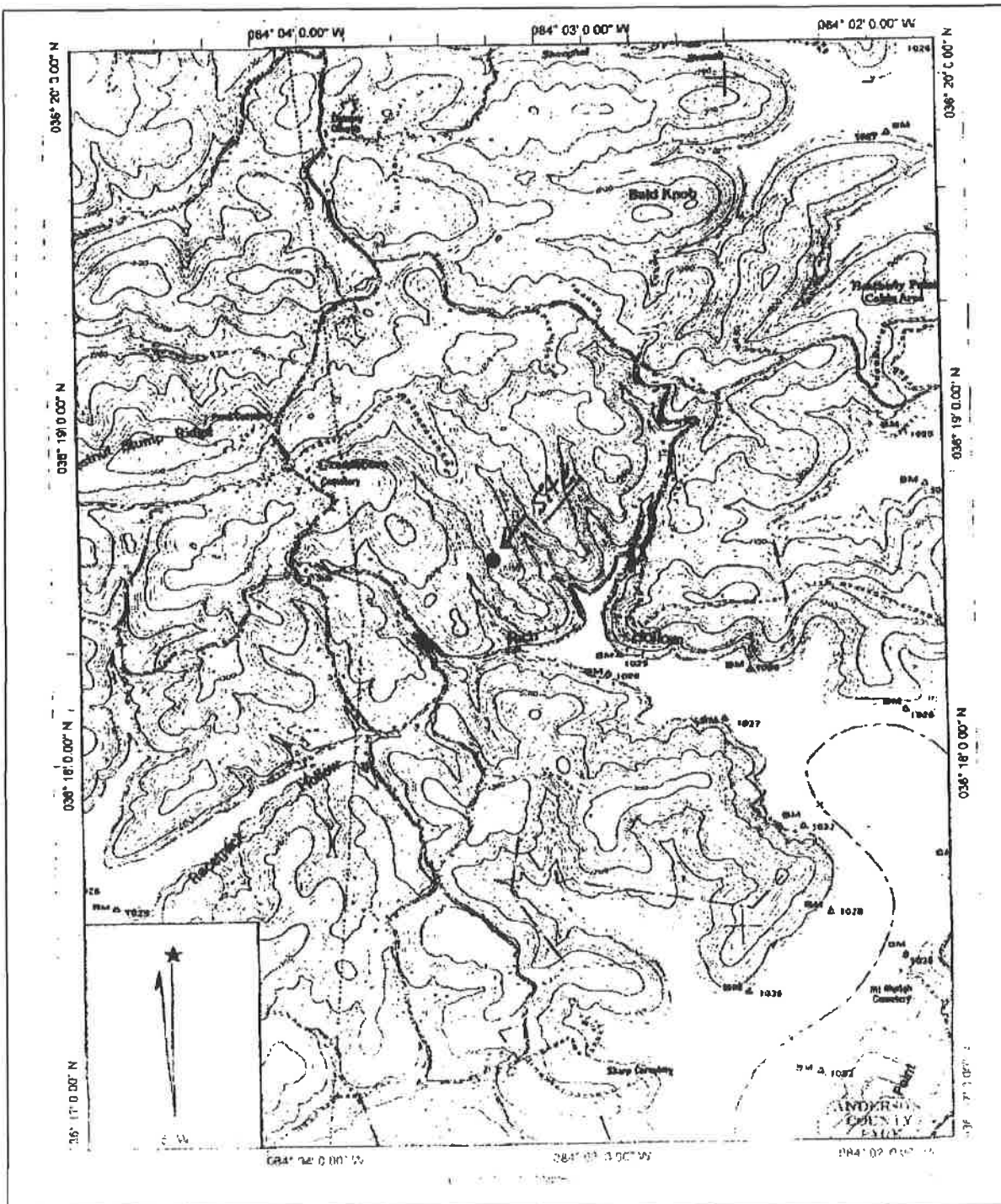
Permit period: This permit will be issued for a five year period effective from the issuance date on the title page.

This permit action proposes to permit operation of a treatment system whose general scope of activity is currently permitted via SOP-07001. The current permit is issued to Tennessee Wastewater Systems, Inc (TWS). That company holds a Certificate of Convenience and Necessity (CCN) from the Tennessee Regulatory Authority (TRA) to provide sewer service to an area defined in documents associated with TRA Docket #06-00277. To the division's knowledge, the formerly proposed wastewater treatment system is not installed and the original developer/owner is no longer involved with the project. The Caryville-Jacksboro Utility Commission(CJUC) has applied to sewer this development in conjunction with contractual arrangements between the new owner/developer and Evergreen Utility Services.

The Water Quality Control Act requires sewer systems to obtain permits with conditions that protect public waters. Protecting waters requires active and proactive management of wastewater collected for treatment and disposal. Additionally, this system will receive residential wastewater generated by persons subscribing to sewer service. Therefore, the division requires the permittee to be an entity engaged in providing wastewater services as a function of their entity operations. More specifically, the division intends for the permit holder to be either a municipality, a public utility, a wastewater authority, or a privately owned public utility (having a Certificate of Convenience and Necessity from the Tennessee Regulatory Authority), or another public agency (such as a utility commission). The change of ownership transfer requirements in Part II.B.3 of this proposed permit are tailored to clearly impose this requirement and to align it with Part III.G.

Both the Caryville-Jacksboro Utility Commission and Tennessee Wastewater Systems, Inc. are entities meeting the division's permit ownership condition. Property rights, or service area rights, of these entities are not conveyed via this sewer system permit process. Therefore, this

Proposed site for SOP-10051:





STATE OF TENNESSEE
Tre Hargett, Secretary of State
Division of Business Services
William R. Snodgrass Tower
312 Rosa L. Parks AVE, 6th FL
Nashville, TN 37243-1102

Filing Information

Name: **Evergreene Utility Services, LLC**

General Information

SOS Control # :	622768	Formation Locale:	TENNESSEE
Filing Type:	Limited Liability Company - Domestic	Date Formed:	01/26/2010
Filing Date:	01/26/2010 8:37 AM	Fiscal Year Close	12
Status:	Inactive - Dissolved (Administrative)	Member Count:	1
Duration Term:	Perpetual		
Managed By:	Member Managed		

Registered Agent Address

DOUG HODGE
4028 TALILUNA AVE
KNOXVILLE, TN 37919-8361

Principal Address

4028 TALILUNA AVENUE
KNOXVILLE, TN 37919

The following document(s) was/were filed in this office on the date(s) indicated below:

Date Filed	Filing Description	Image #
08/09/2012	Dissolution/Revocation - Administrative	A0140-0061
	Filing Status Changed From: Active To: Inactive - Dissolved (Administrative)	
	Inactive Date Changed From: No Value To: 08/09/2012	
06/02/2012	Notice of Determination	A0128-0065
03/07/2011	2010 Annual Report	A0059-0926
	Principal Address 1 Changed From: 2249 Childress Road To: 4028 Taliluna Avenue	
	Principal City Changed From: Dandridge To: Knoxville	
	Principal Postal Code Changed From: 37725 To: 37919	
	Principal County Changed From: No value To: 865-755-8066	
	Registered Agent First Name Changed From: Albert To: Doug	
	Registered Agent Last Name Changed From: Ballowe To: Hodge	
	Registered Agent Physical Address 1 Changed From: 2249 Childress Road To: 4028 Taliluna Avenue	
	Registered Agent Physical City Changed From: Dandridge To: Knoxville	
	Registered Agent Physical County Changed From: Jefferson County To: Knox County	
	Registered Agent Physical Postal Code Changed From: 37725 To: 37919	
01/26/2010	Initial Filing	6645-3042

Active Assumed Names (if any)

Date	Expires
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STATE OF TENNESSEE
Tre Hargett, Secretary of State
Division of Business Services
William R. Snodgrass Tower
312 Rosa L. Parks AVE, 6th FL
Nashville, TN 37243-1102

Filing Information

Name: **DSH & ASSOCIATES, LLC**

General Information

SOS Control # :	560182	Formation Locale:	TENNESSEE
Filing Type:	Limited Liability Company - Domestic	Date Formed:	10/03/2007
Filing Date:	10/03/2007 8:39 AM	Fiscal Year Close	12
Status:	Active	Member Count:	1
Duration Term:	Perpetual		
Managed By:	Director Managed		

Registered Agent Address

DOUGLAS S HODGE
4028 TALILUNA AVE
KNOXVILLE, TN 37919-8361

Principal Address

4028 TALILUNA AVE
KNOXVILLE, TN 37919-8361

The following document(s) was/were filed in this office on the date(s) indicated below:

Date Filed	Filing Description	Image #
04/05/2014	2013 Annual Report Registered Agent Physical Address 1 Changed From: 704 WATERS EDGE To: 4028 TALILUNA AVE Registered Agent Physical City Changed From: DANDRIDGE To: KNOXVILLE Registered Agent Physical County Changed From: JEFFERSON COUNTY To: KNOX COUNTY Registered Agent Physical Postal Code Changed From: 37725-6214 To: 37919-8361	A0233-3084
03/08/2013	2012 Annual Report	A0160-0370
07/06/2012	Reinstatement Filing Status Changed From: Inactive - Revoked (Revenue) To: Active Inactive Date Changed From: 12/19/2011 To: No Value	7072-0778
04/25/2012	2011 Annual Report Principal Address 1 Changed From: 4028 TALILUNA AVENUE To: 4028 TALILUNA AVE Principal Postal Code Changed From: 37919 To: 37919-8361 Principal County Changed From: No value To: KNOX COUNTY	A0120-0371
12/19/2011	Dissolution/Revocation - Revenue Filing Status Changed From: Active To: Inactive - Revoked (Revenue) Inactive Date Changed From: No Value To: 12/19/2011	6971-1224
03/07/2011	2010 Annual Report	A0059-0919

Filing Information

Name: **DSH & ASSOCIATES, LLC**

Principal Address 1 Changed From: 704 WATERS EDGE To: 4028 Taliluna Avenue

Principal City Changed From: DANDRIDGE To: Knoxville

Principal Postal Code Changed From: 37725 To: 37919

Managed By Changed From: Manager Managed To: Director Managed

08/03/2010 Mailing Address Update

03/23/2010 2009 Annual Report

A0011-3280

03/04/2009 Reinstatement

6463-2019

02/20/2009 2007 Annual Report

6451-2614

Principal Address Changed

Registered Agent Physical Address Changed

02/20/2009 2008 Annual Report

6451-2616

08/22/2008 Dissolution/Revocation - Administrative

ROLL 6366

06/17/2008 Notice of Determination

ROLL 6325

10/03/2007 Initial Filing

6138-2492

Active Assumed Names (if any)

Date

Expires