

Patsy Fulton

From: Jeanne Faith-Garton [faithgarton@yahoo.com]
Sent: Tuesday, September 01, 2015 9:26 PM
To: Patsy Fulton
Cc: tstan053@gmail.com
Subject: Re: Hammerland Utilities CCN (Docket No. 14-00124)

14-00124

Thank you Patsy.

Jeanne

Sent from my iPhone

On Sep 1, 2015, at 3:47 PM, Patsy Fulton <Patsy.Fulton@tn.gov> wrote:

Dear Ms. Faith-Garton:

I don't recall speaking with anyone recently about the requirements for a Certificate of Public Convenience and Necessity in this matter. However, it is my understanding that the issue concerning ownership of the septic system property is currently pending review in the Stewart County Chancery Court, Case No. CH-13-CV-14. As such, TRA Docket No. 14-00124, *In re Petition of Hammerland Utilities, Inc. for a Certificate of Public Convenience and Necessity to Provide Wastewater Service in Tennessee*, has been placed in abeyance.

As you are a party in this matter, should you have additional questions, we would respectfully refer you to your attorney, Mr. Thomas Stanley, who has filed a Notice of Appearance on your behalf and on behalf of the other specifically named River Trace II Property Owners. I am also copying this response to the attorneys of record for the parties and to the TRA Docket Manager for the docket file.

Sincerely,
Patsy Fulton
Utilities Division

cc:
Michael Ainley, Attorney for Hammerland
Thomas Stanley, Attorney for River Trace II Property Owners
Erin Merrick and Vance Broemel, Attorneys for the Consumer Advocate's Office
Sharla Dillon, TRA Docket Manager

From: Jeanne Faith-garton [<mailto:faithgarton@yahoo.com>]
Sent: Tuesday, September 01, 2015 11:19 AM
To: Patsy Fulton
Cc: Wade Murphy; Tre Hargett
Subject: Hammerland Utilities CCN

Hi Patsy,

A couple of months ago my husband and I were in court with Hammerland Inc. Hammerland was trying to lift our injunction. While we were waiting to be called into court, Mike Ainley (Hammerland's attorney) and Mike Callahan (engineer) asked to meet with us and our attorney to try to resolve the injunction issue. Mr. Ainley was new to the case and said he wasn't familiar with everything yet.

During our conversation, we explained our interest in Hammerland Inc. remaining the owner of the septic property. We explained that we believe Hammerland, Inc. should be financially responsible for River Trace II's sewer system since they were responsible for the improper build out...it is not built properly to accommodate all 39 lots. We believe they should remain financially responsible through completion of the approved/installed system.

Mike Callahan stated that TRA would not allow them to be named the owner of the project. We told them we were told they could be named owner on the CCN. It was suggested they call TRA to confirm if this could be done. Mike Ainley and Mike Callahan went into another room to call TRA. They came into the court room and confirmed to us and our attorney that TRA said they could transfer the CCN back into Hammerland, Inc's name. **Did either of you receive a call from Mr. Ainley or Mr. Callahan asking if Hammerland, Inc. could apply for the CCN? If so, what was your response at that time?**

My husband and I have recently received a copy of written information from Pam Bygden stating that TRA will not accept a CCN in the name of Hammerland, Inc. because they are the developers of our subdivision. Pam states that you and/or Wade Murphy told Mike Callahan (engineer) that TRA rules have changed and developers can no longer own a utility or "plant".

Is this a true statement? Did either of you tell Mike Callahan and/or Mike Ainley that Hammerland Inc can not apply for the CCN in question?

Your prompt response is greatly appreciated.

Kindest Regards,
Jeanne Faith-Garton

Patsy Fulton

From: Jeanne Faith-Garton [faithgarton@yahoo.com]
Sent: Wednesday, September 02, 2015 9:07 AM
To: Wade Murphy
Cc: Tre Hargett; Patsy Fulton; Tommy Stanley
Subject: Re: Hammerland Utilities CCN

***** This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. - OIR-Security*****

Thank you Wade.

As usual your professionalism and delivery is much appreciated.

Kindest regards,
Jeanne Faith-Garton

Sent from my iPhone

On Sep 2, 2015, at 7:52 AM, Wade Murphy <Wade.Murphy@tn.gov> wrote:

Good morning Ms. Garton,

Thanks for copying me on your email. The Division of Water Resources has a regulatory requirement that places business arrangements into consideration. Rule 0400-40-16-.02(9), requires that,

Ownership and Operational Organization.

Prior to the approval of final plans and specifications for sewerage facilities that are not owned and operated by a municipality or public utility district, the Department must receive evidence of the ownership of the system by a satisfactory organization that will be responsible for the operation and maintenance (such organization as a corporation set up under the General Corporation Act of 1969, an organization that has a charter from the Tennessee Public Service Commission, or a title deed on FHA insured loans) of the system. (<http://share.tn.gov/sos/rules/0400/0400-40/0400-40-16.20131216.pdf>)

The Public Service Commission is now the Tennessee Regulatory Authority (TRA).

By letter dated September 23, 2013, this agency sent a letter to the Pam Bygden requesting explanation regarding how the applicant would be able to meet a permit condition we impose to ensure compliance with this rule requirement.

Whether a business reorganizes existing operations to incorporate an added business function, or whether persons establish a new or subsidiary company to encompass the new business functions are decisions that the business management decide within the limitations of any applicable business law and regulation. The new activity, privately-owned, public sewer service to residential customers, falls under TRA regulation pursuant to the above regulation, so the company owners have to decide how best to organize the business function in consideration of that requirement.

I hope this explanation provides some clarity regarding why an existing business entity may choose to set up a separate business entity.

<image003.png>

Wade D. Murphy | E.I.
Division of Water Resources, Water-Based Systems Unit
William R. Snodgrass TN Tower, 11th Fl
312 Rosa L. Parks Ave 37243
p. 615-532-0666
wade.murphy@tn.gov
tn.gov/environment

From: Jeanne Faith-garton [<mailto:faithgarton@yahoo.com>]

Sent: Tuesday, September 01, 2015 11:19 AM

To: Patsy Fulton

Cc: Wade Murphy; Tre Hargett

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<SOP-13030_RiverTrace_Application_Review_-_Intent_to_Deny_Signed.pdf>

Patsy Fulton

From: Wade Murphy
Sent: Wednesday, September 02, 2015 7:53 AM
To: 'Jeanne Faith-garton'
Cc: Tre Hargett; Patsy Fulton
Subject: RE: Hammerland Utilities CCN
Attachments: SOP-13030_RiverTrace_Application_Review_-_Intent_to_Deny_Signed.pdf

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Division of Water Resources, Water-Based Systems Unit
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Jeanne Faith-Garton



State of Tennessee
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER RESOURCES

William R. Snodgrass - Tennessee Tower
312 Rosa L. Parks Avenue, 11th Floor
Nashville, Tennessee 37243-1102

September 23, 2013

Ms. Pam Bygden
River Trace II Homeowners Association
e-copy: pambygden@gmail.com
6471 East Antioch Road
Buchanan, TN 38222

Subject: **Notice of Incomplete Application - Additional Information Required**
Permit Tracking No. SOP-13030
River Trace II Homeowners Association
Stewart County, Tennessee

Dear Ms. Bygden:

The Division of Water Resources (the division) acknowledges the receipt of a permit application along with an engineering report in our office on September 10, 2013. This serves as notice that the division has reviewed your application and requires additional information and clarification pertaining to the proposed sewerage system and its operation before preparing a draft permit. The division requires the following:

- ❖ Documentation that the Rivers Trace II Howeowners Association, Inc., a for-profit corporation chartered in Tennessee, will be able to comply with the following permit condition: "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 event 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." This condition is imposed because primary residential units have the potential to generate sewage all day, every day, and water quality and human health can only protected when the the community sewerage service provider is in the business to provide service all day, every day. This documentation of public agency status may be non-confidential copies of legal arrangements or a narrative description signed by you. The documentation required in this paragraph is prerequisite to the following condition.
- ❖ State law §69-3-122 requires that persons constructing and operating a public sewerage system provide a bond or other financial security to the department prior to construction of the system. In this case, "person" means the applicant identified on the application as River Trace II Homeowners Association. The association must provide information indicating its capacaity to comply with permit terms and conditions for three categories of financial security: (1) an Operating and Maintenance (O&M) Fund to address routine operation and maintenance of the sewerage system, (2) a Reserve Fund to address major capital expenditures, and (3) a Bond, or equivalent financial security, to satisfy the requirements of Section 69-3-122 of the Water Quality Control Act. Staff in the TDEC Division of Financial Responsibility will be happy to discuss the surety bond, insurance and risk retention group coverage, letter of credit or other financial security options acceptable to the division for complying with item (3). Mr. Robert Dickson, Manager, and his staff, may be reached at (615) 532-0851.

- ❖ Your signature on the application identifies your position as “secretary”. Please provide a copy of the charter document for your organization demonstrating that the position of “secretary” meets the regulatory condition that applications for sewerage system operating permits be signed by the following:
 - (a) For a corporation: 1. by a responsible corporate officer, i.e, a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decisionmaking functions for the corporation; 2. by a manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility to assure long term environmental compliance with environmental laws and regulations; or 3. by a person in a corporate position to which signatory authority has been delegated by a corporate officer.
 - (b) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.

Please be advised that an annual maintenance fee applies to sewerage system operating permits in accordance with Rule 1200-4-11. A permittee will be invoiced subsequent to issue of a final permit. Currently, the annual fee is \$350.00 for systems with influent flow rates of less than 0.075 MGD. A fee is due for each year that permit coverage applies any part of the state fiscal year. The state fiscal year is July 1st through June 30th.

The division will maintain your application current for 180 days from the date of this letter. If we have not received all of the above requested information by that time, the division may formally public notice a denial of this permit. Alternatively, you may notify us in writing that you are withdrawing this application or request additional time to comply with the provisions of this letter. The division will consider substantive requests for additional application completion time.

If you have questions, please contact the division at your local 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,



Brad C. Harris, P.E.
Manager, Land-Based Systems

cc: Mr. Mike Callahan, P.E., CE Designers, Inc., cedesigners@frontiernet.net
Permit File
Nashville Environmental Field Office – DWR, mike.thornton@tn.gov
Mr. Fali Kapadia, TDEC-DWR, Water Quality Branch, Land Based Systems Unit, Fali.Kapadia@tn.gov