

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

IN RE:

**PETITION OF TENNESSEE
WASTEWATER SYSTEMS, INC. TO
AMEND ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY**

)
)
)
)
)
)

DOCKET NO. 15-00025

PETITION TO INTERVENE

Herbert H. Slatery III, Attorney General and Reporter for the State of Tennessee, by and through the Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate”), pursuant to Tenn. Code Ann. § 65-4-118, respectfully petitions the Tennessee Regulatory Authority (“TRA” or “Authority”) to grant the Consumer Advocate’s intervention into this proceeding because consumers’ interests, rights, duties or privileges may be determined or affected by the proceeding.

The Consumer Advocate is intervening in this proceeding in order to request the TRA to determine whether it is appropriate at this time for Tennessee Wastewater Systems, Inc. (“TWSI”) to be permitted to amend its Certificate of Convenience and Necessity (“CCN”) in order to build a new wastewater system in light of environmental and/or design/construction/maintenance problems that have arisen with other systems it built and operates. In particular, the Consumer Advocate requests the TRA to determine:

- (1) Whether TWSI has the managerial, financial, and technical capability to take on a new project at this time when, as will be shown, it is or has been involved in cases at the Tennessee Department of the Environment and Conservation (“TDEC”) regarding wastewater-caused environmental problems resulting from wastewater leaks at a

minimum of four of its sites for which it is asking consumers to pay over \$1 million for repairs; in addition, TWSI has recently reported *E coli* bacteria complaints at four other sites with no cost estimates for addressing the problems yet developed; and

- (2) Whether TWSI should be allowed to use the proposed technology at the new site in light of problems at other sites. As will be shown, the problems at the four sites for which TWSI is seeking over \$1 million for repairs involved apparent failures of a portion of the system known as “drip lines” or “drip fields;” accordingly, at a minimum, TWSI should be required to demonstrate the adequacy of the design, construction and maintenance of future drip lines or drip fields before any new installation is allowed.

The position of the Consumer Advocate is consistent with the directive of the TRA in the last case in which TWSI sought to amend its CCN in order to build a new facility, TRA Docket No. 14-00006. In that case, the TRA noted TWSI’s problems with “TDEC enforcement actions instituted against TWSI as a result of deficient conditions, maintenance problems, and major repairs at its Maple Green and Cedar Hill wastewater facilities located in Robertson County, Tennessee [and] the panel noted its concern in further expanding TWSI’s CCN at this time.” *Order Approving Petition to Amend Certificate of Public Convenience and Necessity*, TRA Docket No. 14-00006 (Sept. 3, 2014) at 5-6 (footnote omitted). Accordingly, the TRA granted the amendment to the CCN in 2014 but ordered “monthly reports” by TWSI on its ongoing problems:

As such, the panel directed TRA Staff to continue working with TWSI and TDEC to closely monitor these situations and any others that might arise. In addition, the panel further found it appropriate that TWSI file detailed monthly reports that describe and explain all repairs and improvements made at its Maple Green and Cedar Hill wastewater facilities, the monetary amounts expended, and the manner in which those repairs are to be funded.

Id. at 6.

Consumers have an interest in this proceeding because it is consumers who are being asked or will be asked by TWSI to pay for the correction of environmental and/or design/construction/maintenance problems. If the new project is not within TWSI's resources at this time or will result in further environmental and/or design/construction/maintenance problems, this would be an additional financial burden on consumers.

For cause, Petitioner would show as follows:

1. The Consumer Advocate is authorized by Tenn. Code Ann. § 65-4-118 to represent the interests of Tennessee consumers of public utilities services by initiating and intervening as a party in proceedings before the Authority in accordance with the Uniform Administrative Procedures Act ("UAPA"), Tenn. Code Ann. § 4-5-101 *et seq.*, and Authority rules.

2. TWSI is a public utility regulated by the Authority. It provides wastewater utility services to consumers located in the state of Tennessee.

3. In the present *Petition of Tennessee Wastewater Systems, Inc. to Amend Its Certificate of Convenience and Necessity*, TWSI seeks to expand its service area to include a portion of Williamson County known as the Enclave at Dove Lake Subdivision.

4. At the time TWSI is seeking to expand its service area to include the Enclave at Dove Lake, TWSI has at least four matters pending at TDEC which involve significant and costly environmental and/or design/construction/maintenance problems. The significance of these environmental and/or design/construction/maintenance problems is demonstrated by the fact that TWSI has had to file a special request for a rate increase of over \$1 million at the TRA in Docket No. 14-00136 to cover the expected cost of fixing these problems.

5. In its *Petition of Tennessee Wastewater Systems, Inc. for Approval of Capital Improvement Surcharges and Financing Arrangements*, TRA Docket No. 14-00136, attached as **Exhibit A** (exhibits omitted), TWSI lists the four facilities for which it holds CCNs and for which it is seeking special funding of over \$1 million to address significant environmental and/or design/construction/maintenance problems: (1) Summit View Resort; (2) Maple Green; (3) Cedar Hill; and (4) Smoky Village. *Id.* at 2-5.

6. As TWSI reveals in its *Petition of Tennessee Wastewater Systems, Inc. for Approval of Capital Improvement Surcharges and Financing Arrangements*, TRA Docket No. 14-00136, attached as **Exhibit A**, each of these four facilities has the following environmental and/or design/construction/maintenance problems:

A. SUMMIT VIEW

The Summit View facility is located in Sevier County, Tennessee. *Director's Order and Assessment*, TDEC Case No. WPC14-0092 (September 16, 2014) at 3 (Section VI), attached as **Exhibit B**. In 2014, TDEC inspected the site and found an overflow of the wastewater system; according to TDEC, the system's "drip lines" had not been properly installed. In a *Director's Order and Assessment*, September 16, 2014, TDEC stated that:

VII.

On March 5, 2014, Division personnel conducted a site inspection and observed ponding and overflow occurring at the site. Division personnel observed *that drip lines had not been installed appropriately and were allowed to cross surface drains*, resulting in the discharge of effluent via surface flow to a small pond located in a common recreational area of the development.

VIII.

On June 12, 2014, Division personnel conducted a follow-up site inspection and observed similar conditions to the previous site inspection on March 5, 2014. Division personnel observed ponding and overflow continuing to occur at the site. *As noted previously, drip lines were not installed appropriately*

and were installed across drains, resulting in the discharge of effluent surface flow to a small pond located in a common recreational area of the development.

IX.

On July 8, 2014, the Division issued a Notice of Violation (NOV) for violations observed during the site inspections on March 5 and June 12, 2014. The Division requested that the Respondent submit a written response to the Division along with a Corrective Action Plan (CAP) detailing actions to be taken to bring the site into compliance.

Director's Order and Assessment, TDEC Case No. WPC14-0092 (September 16, 2014) at 3-4 (Sections VII-IX) (emphasis added), attached as **Exhibit B**.

PROPOSED COST OF FIX AT SUMMIT VIEW: \$330,000. According to TWSI, the cost to address the problem is \$330,000. *Petition of Tennessee Wastewater Systems, Inc. for Approval of Capital Improvement Surcharges and Financing Arrangements*, TRA Docket No. 14-00136 (Nov. 18, 2014) at 3, attached as **Exhibit A**. TWSI has requested that the owner of the property served by the wastewater facility pay a special assessment to pay for the fix. *Id.* at 1.

B. MAPLE GREEN

Maple Green is a facility located in Robertson County, Tennessee. *Emergency Order*, TDEC Case Number WPC14-0020 (Feb. 5, 2014) at 1 (Section II), attached as **Exhibit C**. In 2014 a sinkhole opened up and, according to TDEC, 7 million gallons of wastewater leaked into a creek. *Id.* at 4 (Section VIII). As TWSI acknowledges in its *Petition of Tennessee Wastewater Systems, Inc. for Approval of Capital Improvement Surcharges and Financing Arrangements*, TRA Docket No. 14-00136:

...on February 1, 2014, a sinkhole opened underneath the treatment lagoon causing the release of wastewater into the groundwater and, eventually, into a nearby creek. After the accident, TWSI temporarily sealed off the damaged part of the lagoon but must now construct a new wetlands treatment system pursuant to a TDEC approved Corrective Action Plan.

Petition of Tennessee Wastewater Systems, Inc. for Approval of Capital Improvement Surcharges and Financing Arrangements, TRA Docket No. 14-00136 at 3-4 (footnote omitted), attached as **Exhibit A**. TWSI has attempted to portray this event as an “accident,” but in an *Emergency Order*, TDEC stated that the system as constructed failed to include the “drip irrigation system in accordance with the SOP [State Operating Permit], as noted in a Notice of Violation dated December 26, 2013.” *Emergency Order*, TDEC Case Number WPC14-0020 (Feb. 5, 2014) at 3 (Section VII), attached as **Exhibit A**.

PROPOSED COST OF FIX AT MAPLE GREEN: \$250,000. According to TWSI, the cost to address the problem is \$250,000. *Petition of Tennessee Wastewater Systems, Inc. for Approval of Capital Improvement Surcharges and Financing Arrangements*, TRA Docket No. 14-00136 (Nov. 18, 2014) at 4, attached as **Exhibit A**. TWSI has requested a surcharge on consumers to pay for the fix. *Id.* at 1.

C. CEDAR HILL

As TWSI acknowledges in its *Petition of Tennessee Wastewater Systems, Inc. for Approval of Capital Improvement Surcharges and Financing Arrangements*, TRA Docket No. 14-00136:

[i]n 2010, the Cedar Hill treatment facility, located in Robertson County and servicing the town of Cedar Hill, developed a leak in the treatment lagoon. Although TSWI found and repaired a small seep in the lagoon, it appeared that effluent was leaking into a sinkhole. After the sinkhole was filled, another one opened, leading TWSI to conclude that the most economical solution would be to build a new treatment facility on land already owned by TWSI.

Petition of Tennessee Wastewater Systems, Inc. for Approval of Capital Improvement Surcharges and Financing Arrangements, TRA Docket No. 14-00136 (Nov. 18, 2014) at 4, attached as **Exhibit A**.

Even though the facility at Cedar Hill received a TDEC permit in 2006 that authorized a drip irrigation system, TDEC found in an order dated September 26, 2011 (i.e., after the leak) that no “drip irrigation system” was constructed. *Commissioner’s Order and Assessment*, TDEC Case No. OGC11-0078 (Sept. 26, 2011) at 5 (Section X) (“Respondents completed construction of the effluent collection system and deep cell lagoon, but have yet to construct the drip irrigation system”), attached as **Exhibit D**.

PROPOSED COST OF FIX: \$300,000 AT CEDAR HILL. According to TWSI, the cost to address the problem is \$300,000. *Petition of Tennessee Wastewater Systems, Inc. for Approval of Capital Improvement Surcharges and Financing Arrangements*, TRA Docket No. 14-00136 (Nov. 18, 2014) at 4, attached as **Exhibit A**. TWSI has requested a surcharge on consumers to pay for the fix. *Id.* at 1.

D. SMOKY VILLAGE

The Smoky Village facility is located in Sevier County, Tennessee. In its *Petition of Tennessee Wastewater Systems, Inc. for Approval of Capital Improvement Surcharges and Financing Arrangements*, TRA Docket No. 14-00136, TWSI acknowledges problems with the “drip field” of the system:

Although TDEC accepted the soil studies which were conducted when the system was built and results complied with federal and state standards in effect at the time, the system’s drip field does not drain properly and is inadequate to handle the usage for which the system was designed.

Petition of Tennessee Wastewater Systems, Inc. for Approval of Capital Improvement Surcharges and Financing Arrangements, TRA Docket No. 14-00136 at 5, attached as **Exhibit A**.

In an inspection of Smoky Village in April, 2009, TDEC found that “drip lines had been damaged allowing ponding of wastewater effluent.” *Director’s Order and Assessment*, TDEC Case No. WPC09-0102 (Aug. 4, 2009) at 4 (Section IX), attached as **Exhibit E**. In addition,

TDEC found *E.coli* “in exceedance of the effluent limit of 23 CFU/100ml set forth in the permit.” *Id.* On a follow-up inspection on June 26, 2009, TDEC found that “[t]he drip lines had not been repaired, and ponding of wastewater effluent continued at the site.” *Id.* at 6 (Section XII). *See also Agreed Order*, TDEC Case # WPC09-0102, Docket No. 4.30 – 104980A (Aug. 17, 2010) between TDEC and TWSI, attached as **Exhibit E-1**. The *Agreed Order* stated, *inter alia*:

XVII.

On March 25, 2010, the division conducted a further follow-up inspection at the site. *The Respondent had not repaired the damaged drip lines; signs were not posted at all approaches to the drip irrigation lot; standing water was observed in the drip fields; the public health hazard and/or nuisance continued to exist.* Based on the inspection, it was evident that little work had been done to repair the failing drip irrigation system at this site since the last division inspection on April 30, 2009. No portion of the drip field had been disturbed to allow for repair of dispersal lines, header lines, air release valves, or any other components of the drip irrigation system. *E coli* was sampled at 141 colonies/100 ml which is a violation of the effluent limit of 23 colonies/100 ml set forth in the permit.

The on-going failure by the Respondent to meet their E coli limits in a residential subdivision--across the street and adjacent to a school/day care center--led the division to conclude that the facility was unnecessarily exposing local residents to multiple health hazards associated with fecal-based pathogens in violation of their permit.

Respondent states that they have excavated and inspected the drip lines, and installed check valves in the drip lines in the presence of Division staff. During the inspection, Respondent staff explained to the Division staff the Corrective Action Plan items that had been completed to date. These included: pressure testing of the collection system; inspection and pressure testing of the individual septic tanks and service connections; repair of two severed sewer mains found as a result of the pressure testing; installation of an inlet flow meter at the sand filter with a determination of no excessive sewer inflows; and the identification of periodic high ground water elevations adjacent to the sand filter with resulting inflow through the top of the filter wall. There was no observed discharge of any effluent or surface water from the site.

The Respondent states their Corrective Action Plan investigations to date have shown that the effluent drip dispersal system has not failed. As a result of the entrance of high volumes of ground water through the top of the filter wall,

the drip dispersal system has been dispersing significantly more effluent than it was designed to handle.

The Department has not provided or referenced any sample results showing e-coli form concentrations in any of the surface water on the site nor in any discharge from the site.

Agreed Order, TDEC Case No. WPC09-0102, Docket # 4.30 – 104980A (Aug. 17, 2010) at 6-7 (Section XVII) (emphasis added).

PROPOSED COST OF FIX AT SMOKY VILLAGE: \$175,000. According to TWSI, the cost to address the problem is \$175,000. *Petition of Tennessee Wastewater Systems, Inc. for Approval of Capital Improvement Surcharges and Financing Arrangements*, TRA Docket No. 14-00136 (Nov. 18, 2014) at 5, attached as **Exhibit A**. TWSI has requested a surcharge on consumers to pay for the fix. *Id.* at 1.

7. The four facilities referred to above (Summit View, Maple Green, Cedar Hill and Smoky Village) have a combined proposed cost of \$1,055,000 (\$330,000 + \$250,000 + \$300,000 + \$175,000 = \$1,055,000). In its *Petition of Tennessee Wastewater Systems, Inc. for Approval of Capital Improvement Surcharges and Financing Arrangements*, TRA Docket No. 14-00136, attached as **Exhibit A**, TWSI has asked for ratepayers to pay for the proposed solutions to these problems.

8. Upon information and belief, none of the environmental and/or design/construction/maintenance problems at the four sites referred to above (Summit View, Maple Green, Cedar Hill and Smoky Village) have been completely fixed.

9. It is likely that TWSI will have to expend considerable financial, technical, and managerial resources to address the environmental problems at the four sites referred to above (Summit View, Maple Green, Cedar Hill and Smoky Village).

10. Furthermore, based on the reference by TDEC to “drip fields” or “drip lines” in connection with the environmental and/or design/construction/maintenance problems at the four sites referred to above (Summit View, Maple Green, Cedar Hill and Smoky Village), there are reasonable questions as to the soundness of TWSI’s wastewater treatment technology and/or design/construction/maintenance.

11. In Docket No. 14-00006, a case in which TWSI was seeking to amend its CCN to add a new facility, the TRA noted TWSI’s problems with “TDEC enforcement actions instituted against TWSI as a result of deficient conditions, maintenance problems, and major repairs at its Maple Green and Cedar Hill wastewater facilities located in Robertson County, Tennessee [and] the panel noted its concern in further expanding TWSI’s CCN at this time.” *Order Approving Petition to Amend Certificate of Public Convenience and Necessity*, TRA Docket No. 14-00006 (Sept. 3, 2014) at 5-6 (footnote omitted), attached as **Exhibit F**. Accordingly, the TRA granted to amendment to the CCN in 2014 but ordered “monthly reports” by TWSI on its ongoing problems:

As such, the panel directed TRA Staff to continue working with TWSI and TDEC to closely monitor these situations and any others that might arise. In addition, the panel further found it appropriate that TWSI file detailed monthly reports that describe and explain all repairs and improvements made at its Maple Green and Cedar Hill wastewater facilities, the monetary amounts expended, and the manner in which those repairs are to be funded. Further, in the event other compliance issues arise concerning these or any other TWSI facilities, the panel further determined that the Utility should timely notify the Authority and provide similar information concerning all repairs and improvements to those facilities. In conclusion, the panel strongly encouraged TWSI to prioritize its available resources to repair these troubled systems as quickly and efficiently as possible.

Id. at 6.

12. In the “monthly report” to the TRA for January, 2015, TWSI reported additional environmental problems, namely, E. coli limits not being met, for four additional projects: (1) Star Crest; (2) Star Crest II; (3) Townsend Town Square; and (4) Legacy Mountain East:

Wastewater Location	Date Complaint /Repair Needed	Complaint	Date added to Report	Explain Repairs/Improv
Cedar Hill			9/29/2014	see Docket 14-00136
Maple Green			9/29/2014	see Docket 14-00136
Summit View				see Docket 14-00136
Smokey Village				see Docket 14-00136
Star Crest	11/17/2014	E Coli limits not met	11/30/2014	Fencing Required
Star Crest II	11/17/2014	E Coli limits not met	11/30/2014	Fencing Required
Townsend Town Sq.	11/17/2014	E Coli limits not met	11/30/2014	Fencing Required
Legacy Mtn East	10/1/2014	E Coli limits not met	10/30/2014	Fencing Required

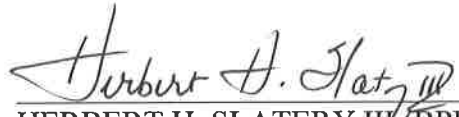
TWSI Monthly Report, 31 January, 2015, TRA Docket No. 14-00006, attached as **Exhibit G**.


13. In the event there are other pending matters at TDEC involving environmental problems the Consumer Advocate requests that TWSI inform the TRA and Consumer Advocate as soon as possible in the present Docket No. 15-00025 so that information can be used in evaluating the present request for the amendment to the CCN. If TDEC action is involved identifying case numbers should be provided along with copies of any TDEC correspondence, Notice of Violation, etc.

14. Only by participating as a party to this proceeding can the Consumer Advocate adequately carry out its statutory duty to represent the interests of Tennessee consumers.

WHEREFORE, the Consumer Advocate requests the Authority to grant the Petition to Intervene.

RESPECTFULLY SUBMITTED,


HERBERT H. SLATTERY III (BPR #09077)
Attorney General and Reporter
State of Tennessee

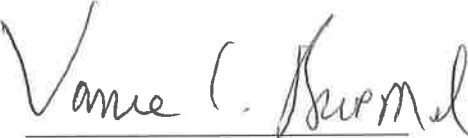

VANCE L. BROEMEL (BPR #11421)
Senior Counsel
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, Tennessee 37202-0207
(615) 741-8733
(615) 741-1026-FAX

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:

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

This the 18 day of March, 2015.


Vance L. Broemel

EXHIBIT

A

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

November 18, 2014

IN RE:

**PETITION OF TENNESSEE
WASTEWATER SYSTEMS, INC.
FOR APPROVAL OF CAPITAL
IMPROVEMENT SURCHARGES
AND FINANCING ARRANGEMENTS**

)
)
)
)
)
)
)

DOCKET NO. 14-00136

**PETITION OF TENNESSEE WASTEWATER SYSTEMS, INC. FOR APPROVAL OF
CAPITAL IMPROVEMENT SURCHARGES AND FINANCING ARRANGEMENTS**

Tennessee Wastewater Systems, Inc. ("TWSI") petitions the Tennessee Regulatory Authority ("TRA") to approve, pursuant to T.C.A. § 65-5-101 and 103, a capital improvement surcharge of approximately \$3.27 per customer, per month, to allow the utility to make repairs and improvements at three wastewater treatment facilities. At two facilities, sinkholes have opened underneath the treatment lagoons. At the third facility, unanticipated drainage problems require that that existing drip field be closed and a new one built nearby. Although each system has been temporarily stabilized, the Tennessee Department of Environment and Conservation ("TDEC") has ordered that permanent repairs be made. TWSI has arranged for a ten-year loan of up to \$725,000 to pay for the estimated cost of these repairs. The loan will be secured by a mortgage on TWSI's assets and therefore must be approved by the Authority pursuant to T.C.A. § 65-4-112. TWSI seeks Authority approval of both the loan and the capital improvement surcharge which will be charged to all TWSI customers in Tennessee.

TWSI also seeks the Authority's approval of a capital improvement surcharge to be collected from thirty-seven property owners at Summit View Resort near Pigeon Forge,

Tennessee. The Resort includes thirty commercial lodges, three residential cabins, and four vacant lots. Based on information provided by property owners when the development was built, TWSI designed the wastewater system to treat up to 8,000 gallons per day. The actual usage, however, runs as high as 18,000 gallons per day. Since the need to build additional capacity is the direct result of customer usage in excess of the amounts anticipated when the system was built, TWSI proposes to recover the cost of enlarging the system through a one-time assessment on each property owner in Summit View.

Each of these requests and the details of the proposed bank loan are discussed further below.¹

1. Summit View Resort

As discussed, this development consists of thirty commercial lodges, three residential cabins, and four vacant lots. The lodges are rented on a day-to-day basis, typically to groups of from eight to sixteen or more people. Prior to designing the system, TWSI obtained from each property owner a "sewer service agreement" in which the owner described the cabin or lodge on the property, the number of bedrooms, and the "maximum" number of overnight guests the building could accommodate. Based on that information, TWSI designed a wastewater system to treat up to 8,000 gallons per day. In practice, several of the lodges now advertise accommodations for more people than the property owners had originally indicated and actual usage now runs as high as 18,000

¹ In Docket 14-00006, the Authority asked for monthly updates on Maple Green and Cedar Hill and for any other facilities which are subject to a TDEC Notice of Violation. This Petition provides current information on Maple Green, Cedar Hill, Summit View and Smokey Village. TWSI will separately file current information on the status of two other facilities which are the subject of TDEC investigations.

gallons per day.² The Tennessee Department of Environment and Conservation ("TDEC") has issued an Order directing TWSI to build a new and larger recirculating sand filter and construct an additional drip field by June 30, 2015. A copy of the TDEC Order is attached as Exhibit B. The estimated total cost of this project is \$330,000. TWSI proposes that the cost of the additional capacity be proportionally allocated to all the properties in Summit View based on the size of each cabin or lodge. The thirty-three buildings range from 1,920 square feet to 7,116 square feet or an average of 2,916 square feet. There are also four vacant lots that the TWSI has been asked to serve by the home owners association. If the assessment is allocated on a per-square-foot basis, each property would be assessed \$3.06 per square foot. The assessments would range from \$5,875.20 for the smallest cabin to \$21,774.96 for the largest lodge. The vacant lots would be assessed based on the average square footage of 2,916 square feet, which is \$8,922.96 for each lot.

2. Maple Green

The Maple Green wastewater system serves customers in Robertson County, Tennessee. At the time the system was built, TWSI submitted—and TDEC accepted—seismic and geotechnical surveys indicating that the site chosen for the treatment lagoon met all applicable safety and environmental standards. Nevertheless, on February 1, 2014, a sinkhole opened underneath the treatment lagoon causing the release of

² Attached as Exhibit A are advertisements from some of these lodges as well as the "sewer service agreements" between the property owners and TWSI. "Summit View Lodge," one of the largest in the Resort, advertises that it has nine bedrooms and will sleep twenty-six people. The sewer service agreement signed by the property owner, Mr. David Goodale, states that the lodge has nine bedrooms and that the "maximum number cabin will sleep" is sixteen. This lodge rents for \$1,200 per night on a "peak" weekend or \$1,825 per night during next year's holiday season. The "Grin n' Bear It" lodge and the "Sweet Emotions" lodge advertise that each will sleep twelve people. Each property owner, however, signed a sewer service agreement stating that the maximum number of people who can sleep overnight is eight. "Sweet Emotions" rents for \$410 a night during peak season and \$670 per night during the holidays.

wastewater into the groundwater and, eventually, into a nearby creek.³ After the accident, TWSI temporarily sealed off the damaged part of the lagoon but must now construct a new wetlands treatment system pursuant to a TDEC-approved Corrective Action Plan. A copy of the TDEC letter of approval is attached as Exhibit D. The estimated cost of this project is \$250,000.

3. Cedar Hill

In 2010, the Cedar Hill treatment facility, located in Robertson County and serving the town of Cedar Hill, developed a leak in the treatment lagoon. Although TWSI found and repaired a small seep in the lagoon, it appeared that effluent was leaking into a sinkhole. After the sinkhole was filled, another one opened, leading TWSI to conclude that the most economical solution would be to build a new treatment facility on nearby land already owned by TWSI. The proposed project will consist of two, free surface, wetland cells with a third to be built after usage of the first two reaches 80% of capacity. This is the same technology that TWSI has proposed and TDEC has approved for the Maple Green site. The estimated cost of this new treatment facility is \$300,000. At this time, TDEC's Division of Water Resources has not approved the use of this technology for Cedar Hill "until such time that the success of the technology [at Maple Green] has been demonstrated." A copy of the Division's letter of November 4, 2014, is attached as Exhibit E. TWSI is in the process of appealing this decision. TWSI will not proceed with this repair until TDEC has approved a Corrective Action Plan.

³ A subsequent investigation determined that the opening of the sinkhole was a naturally occurring event and "unrelated to any alleged maintenance issues." A copy of that report is attached as Exhibit C.

4. Smoky Village

Smoky Village, a subdivision located in Sevier County, Tennessee, is served by a recirculating sand filter and a drip irrigation field designed to handle a peak flow of 5,600 gallons per day.

Since 2009, there have been drainage problems at this site. Although TDEC accepted the soil studies which were conducted when the system was built and the results complied with federal and state standards in effect at the time, the system's drip field does not drain properly and is inadequate to handle the usage for which the system was designed. Working with TDEC, TWSI has tried several corrective actions without success and has concluded that it is necessary to build a new drip field on property adjacent to the subdivision. The estimated cost of building the new drip field, including the purchase of the additional land, is \$175,000. A copy of the TDEC Order directing TWSI to correct this problem is attached as Exhibit F.

5. Financing

The total, estimated cost of capital repairs at Maple Green, Cedar Hill and Smoky Village is \$725,000. In order to fund these projects, TWSI has negotiated a ten-year loan of up to \$725,000 from FirstBank. The terms and conditions of the loan are described in Exhibit G. Money will be borrowed as needed to pay for expenses as they are incurred, including the costs of this proceeding. If the entire loan amount is spent and the cost is spread evenly among all TWSI customers, each customer would pay a monthly surcharge of approximately \$3.27 over a ten year period. That amount will decline as new

customers are added and could also change if interest rates are adjusted.⁴ If additional funds are required, TWSI will seek approval from the Authority.

6. Conclusion

Each of these capital improvement projects is mandated by TDEC and is necessary to protect public health and the environment. To finance these projects, TWSI has obtained a bank loan at reasonable terms and requests approval of the loan as well as approval of the rate surcharges which are needed to repay the loan and to pay for additional capacity at Summit Ridge. Absent TRA approval of the loan and surcharges, TWSI cannot make these required repairs and improvements. Because these repairs are required by TDEC, TWSI asks that the TRA approve the proposed loan and surcharges on an expedited basis so that the utility may begin work on these projects as soon as practical.

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS LLP

By: 

Henry Walker (B.P.R. No. 000272)
Bradley Arant Boult Cummings, LLP
1600 Division Street, Suite 700
Nashville, TN 37203
Phone: 615-252-2363
Email: hwalker@babbc.com

⁴ Under the terms of the loan, the interest rate is fixed at 6% for the first five years but is variable for the next five years. If the interest rate stays at 6% and TWSI spends the entire amount of the loan, the monthly loan obligation with interest is \$8,048.99. Based on TWSI's customer count of 2,459 as of September 30, 2014, the monthly surcharge would be \$3.27 per customer.

EXHIBIT

B

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:

**TENNESSEE WASTEWATER SYSTEMS,
INC.**

RESPONDENT

**DIVISION OF WATER
RESOURCES**

CASE NUMBER WPC14-0092

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Tisha Calabrese Benton, Director of the Tennessee Division of Water Resources, and states:

PARTIES

I.

Tisha Calabrese Benton is the duly appointed Director of the Tennessee Division of Water Resources by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "Division" and the "Department" respectively).

II.

Tennessee Wastewater Systems, Inc. (hereinafter the "Respondent"), is an active corporation licensed to conduct business in the state of Tennessee and is the owner and operator of the Summit View Resort wastewater treatment facility (hereinafter the "site") located in Sevier County. Service of process may be made on the Respondent through Mr. Charles Hyatt, Registered Agent, at 851 Aviation Parkway, Smyrna, Tennessee 37167.

JURISDICTION

III.

Whenever the Commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*, the Water Quality Control Act (the "Act"), has occurred, or is about to occur, the Commissioner may issue a complaint to the violator and the Commissioner may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the Commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 0400-40-03 and 0400-40-04 (the "Rule"). Pursuant to T.C.A. § 69-3-107(13), the Commissioner may delegate to the Director any of the powers, duties, and responsibilities of the Commissioner under the Act.

IV.

The Respondent is a "person" as defined by T.C.A. § 69-3-103(26) and, as herein described, has violated the Act.

V.

Tennessee Code Annotated § 69-3-108(c) requires any person operating a sewerage system to obtain a permit.

FACTS

VI.

The Respondent holds a valid State Operation Permit (SOP) (hereinafter the "permit") for the operation of septic tanks, an effluent collection system, recirculating sand filter ultraviolet disinfection and drip irrigation with the capacity to serve approximately 32 cabins located in the Summit View Resort in Sevier County, Tennessee. The Division issued coverage on September 1, 2012, with tracking number SOP-06035. The permit expires on August 31, 2017.

VII.

On March 5, 2014, Division personnel conducted a site inspection and observed ponding and overflow occurring at the site. Division personnel observed that drip lines had not been installed appropriately and were allowed to cross surface drains, resulting in the discharge of effluent via surface flow to a small pond located in a common recreational area of the development.

VIII.

On June 12, 2014, Division personnel conducted a follow-up site inspection and observed similar conditions to the previous site inspection on March 5, 2014. Division personnel observed ponding and overflow continuing to occur at the site. As noted previously, drip lines were not installed appropriately and were installed across drains, resulting in the discharge of effluent via surface flow to a small pond located in a common recreational area of the development.

IX.

On July 8, 2014, the Division issued a Notice of Violation (NOV) for violations observed during the site inspections on March 5 and June 12, 2014. The Division requested that the Respondent submit a written response to the Division along with a Corrective Action Plan (CAP) detailing actions to be taken to bring the site into compliance.

X.

On August 4, 2014, the Respondent submitted a response to the Division as required by the July 8, 2014, NOV. The Respondent stated that the actual flow to the system is greater than the permitted design flow of 8,000 gallons per day (gpd) and that the system, including the drip area, would need to be expanded to accommodate the actual flow. The Respondent further stated that additional funds would be necessary to fund the system expansion. The Respondent failed to submit a CAP along with the response as required by the July 8, 2014, NOV. Subsequent to receiving the August 4, 2014 response, Division personnel reviewed Monthly Operating Reports (MORs) submitted by the Respondent and discovered that, while daily peak flows were unavailable, reported monthly average flows did not exceed the permitted design flow of 8,000 gpd.

XI.

During the course of investigating this case, the Division incurred DAMAGES in the amount of SEVEN HUNDRED AND FORTY-THREE DOLLARS AND TWENTY-FIVE CENTS (\$743.25).

VIOLATIONS

XII.

By failing to comply with the terms and conditions of the SOP, the Respondent has violated T.C.A. §§ 69-3-108(b)(5), (6) and 114(a),(b), which state in part:

§ 69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (5) The discharge of sewage, industrial wastes, or other wastes into water, or a location from which it is likely that the discharged substances will move into waters;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

§ 69-3-114(a):

It is unlawful for any person to discharge any substance into the waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in § 69-3-103, unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

§ 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

ORDER AND ASSESSMENT

XIII.

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-109, 69-3-115 and 69-3-116, I, Tisha Calabrese Benton, hereby issue the following ORDER and ASSESSMENT to the Respondent:

- 1) Effective immediately, the Respondent shall make no further connections or allow increased flows to the sewage collection system, except to those currently under construction or to which the Respondent is legally committed. This moratorium shall remain in effect until modified or rescinded in writing by the director of the Division of Water Resources. At any time, the Respondent may present to the Division a written request, with supporting data and a list of commitments for partial or total relaxation of the moratorium for good cause shown. The Division will not unreasonably withhold approval of any written request that is supported by the data and a list of commitments.
- 2) The Respondent shall, within 30 days of receipt of this ORDER and ASSESSMENT, submit a Corrective Action Plan (CAP) detailing the activities to be implemented to attain and maintain compliance with the permit along with a time schedule for completion. The plan shall be submitted for review and approval to the manager of the Compliance and Enforcement Unit at the Department of Environment and Conservation, Division of Water Resources, William R. Snodgrass Tower, 312 Rosa L. Parks Avenue, 11th Floor, Nashville, Tennessee, 37243.
- 3) The Respondent shall, within 15 days of receipt of this ORDER and ASSESSMENT, take immediate measures to reduce potential for public exposure to treated effluent.

- 4) The Respondent shall complete all activities in the approved CAP on or before June 30, 2015. A notice of completion of the CAP activities should be sent to the manager of the Compliance and Enforcement Unit at the address in Item 2.
- 5) The Respondent shall pay a CIVIL PENALTY of FORTY-EIGHT THOUSAND DOLLARS (\$48,000.00) to the Division, hereby ASSESSED to be paid as follows:
- a. The Respondent shall, within 30 days of entry of this ORDER, pay a CIVIL PENALTY in the amount of TWELVE THOUSAND DOLLARS (\$12,000.00)
 - b. If the Respondent fails to comply with Part XIII, item 1 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of SIX THOUSAND DOLLARS (\$6,000.00), payable within 30 days of default.
 - c. If the Respondent fails to comply with Part XIII, item 2 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount TEN THOUSAND DOLLARS (\$10,000.00), payable within 30 days of default.
 - d. If the Respondent fails to comply with Part XIII, item 3 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount TEN THOUSAND DOLLARS AND FIFTY CENTS (\$10,000.00), payable within 30 days of default.
 - e. If the Respondent fails to comply with Part XIII, item 4 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount TEN THOUSAND DOLLARS (\$10,000.00), payable within 30 days of default.
- 6) The Respondent shall, within 30 days of entry of this ORDER, pay DAMAGES to the Division in the amount of SEVEN HUNDRED AND FORTY-THREE DOLLARS AND TWENTY-FIVE CENTS (\$743.25).

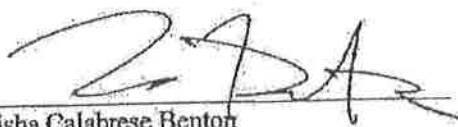
The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The Director may, for good cause shown, extend the compliance dates contained within this ORDER and ASSESSMENT. In order to be eligible for this time extension, a Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing.

Should the Respondent fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondent is advised that the foregoing ORDER and ASSESSMENT is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the ORDER and ASSESSMENT will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the Director of the Division of Water Resources on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 16 day of September, 2014.


Tisha Calabrese Benton
Director of Water Resources
Tennessee Department of Environment and Conservation

NOTICE OF RIGHTS

Tennessee Code Annotated ("T.C.A.") §§ 69-3-105(1), 69-3-109, and 69-3-116 allows the Respondent to appeal this Order and Assessment. To do so, a written petition setting forth the grounds (reasons) for requesting a hearing must be RECEIVED by the Commissioner within THIRTY (30) DAYS of the date the Respondent received this Order and Assessment or this Order and Assessment become final (not subject to review).

If an appeal is filed, an initial hearing of this will be conducted by an Administrative Law Judge (ALJ) as a contested case hearing pursuant to the provisions of T.C.A. § 69-3-110, T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Rule 1360-04-01 *et seq.* (the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies). Such hearings are legal proceedings in the nature of a trial. Individual Respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. Artificial Respondents (corporations, limited partnerships, limited liability companies, etc.) cannot engage in the practice of law and therefore may only pursue an appeal through an attorney licensed to practice law in Tennessee. Low income individuals may be eligible for representation at reduced or no cost through a local bar association or legal aid organization.

At the conclusion of any initial hearing the ALJ has the authority to affirm, modify, or deny the Order and Assessment. This includes the authority to modify (decrease or increase) the penalty within the statutory limits of T.C.A. § 69-3-115 (from \$1 to \$10000 per day per violation). Furthermore, the ALJ on behalf of the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of the ALJ and a court reporter.

Any petition for review (appeal) must be directed to the Commissioner of the Department of Environment and Conservation, c/o E. Joseph Sanders, General Counsel, Department of Environment and Conservation, 2nd Floor William R. Snodgrass Bldg., 312 Rosa Parks Avenue, Nashville, Tennessee 37243. Payments of the civil penalty and/or damages shall be made payable to the "Treasurer, State of Tennessee" and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, 10th Floor

Snodgrass Bldg., 312 Rosa Parks Avenue, Nashville, Tennessee 37243. Technical questions and other correspondence involving compliance issues should be sent to Jessica Murphy, State of Tennessee, Division of Water Resources, 11th Floor, William R. Snodgrass Bldg., 312 Rosa Parks Avenue, Nashville, TN 37243. The case number, WPC-14-0092, should be written on all correspondence regarding this matter.

EXHIBIT

C

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:	)	DIVISION OF WATER RESOURCES
)	
TENNESSEE WASTEWATER)	
SYSTEMS, INC., AND)	
ADENUS SOLUTIONS GROUP, LLC,)	
ADENUS OPERATIONS, LLC,	)	CASE NUMBER WPC14-0020
)	
RESPONDENTS)	

EMERGENCY ORDER

NOW COMES Robert J. Martineau, Jr., Commissioner of the Tennessee Department of Environment and Conservation, and states:

PARTIES

I.

Robert J. Martineau, Jr., is the duly appointed Commissioner of the Tennessee Department of Environment and Conservation (the "Department").

II.

Tennessee Wastewater Systems, Inc. (hereinafter "Respondent TWS") constructed and owns the Maple Green Facility (hereinafter the "Facility") located in Coopertown, Robertson County, Tennessee. Service of process on TWS may be made through its registered agent, Mr. Charles Hyatt, 851 Aviation Parkway, Smyrna, Tennessee 37167.

III.

Adenus Solutions Group, LLC. employs all of the Respondents. Service of process on Adenus may be made through its registered agent, Mr. Charles Hyatt, 849 Aviation Parkway, Smyrna, Tennessee 37167.

IV.

Adenus Operations, LLC. is listed on the application as the facility that will operate the system. Service of process on Adenus Operations LLC., may be made through its registered agent, Mr. Charles Pickney, 851 Aviation Parkway, Smyrna, Tennessee 37167.

JURISDICTION

V.

Whenever the Commissioner, with the concurrence of the Governor, finds that an emergency exists imperatively requiring immediate action to protect the public health, safety, or welfare, or the health of animals, fish, or aquatic life, or a public water supply, or recreational, commercial, industrial, agricultural, or other reasonable uses, the Commissioner may, without prior notice, issue an order reciting the existence of such an emergency and requiring that such action be taken as the Commissioner deems necessary to meet the emergency, pursuant to Tennessee Code Annotated § 69-3-109(b)(1), the Water Quality Control Act, (the "Act"). Further, if the violator fails to respond or is unable to respond to the Commissioner's Order, the Commissioner has authority to take such emergency action as the Commissioner deems necessary, or contract with a qualified person or persons to carry out the emergency measures. The Commissioner may assess the person or persons responsible for the emergency condition for actual costs incurred by the Commissioner in meeting the emergency, pursuant to T.C.A. § 69-3-109(b)(2) of the Act.

VI.

"Waters of the State" are defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, "*Use Classifications for Surface Waters, et al*", is contained in the *Official Compilation of Rules and Regulations for the State of Tennessee*. Accordingly, Miller's Creek is "Waters of the State."

FACTS

VII.

On July 1, 2013, the Division of Water Resources (hereinafter "DWR") issued State Operation Permit SOP-01028 (hereinafter the "SOP") to Respondent TWS for the Maple Green Reclamation facility. The permit became effective August 1, 2013, and expires on June 30, 2018. Respondent TWS timely applied for permit reissuance. The permit authorized Respondent TWS to operate an effluent collection system with deep cell lagoon effluent treatment and final discharge to a drip irrigation system in accordance with effluent limitations, monitoring requirements and other conditions set forth therein. Respondents completed construction of the effluent collection system and deep cell lagoon, but have yet to construct the drip irrigation system in accordance with the SOP, as noted in a Notice of Violation dated September 26, 2013.

VIII.

On Saturday February 1, 2014, TDEC was contacted by the Robertson County Emergency Management Agency regarding the failure of the Maple Green wastewater treatment lagoon in

Robertson County. Upon arrival at the site (at approximately 4:45 PM Central) TDEC personnel found the lagoon to be empty. Multiple collapse features were noted in the southeastern corner of the lagoon in the vicinity of the influent supply line. These features apparently formed during the overnight hours and allowed the contents of the lagoon (Reported by Adenus to be 7 million gallons) to discharge into the underlying karst formation where the slug of liquid and earthen material traveled to Millers Creek.

IX.

Tennessee Wildlife Resources Agency (hereinafter "TWRA") identified concerns in the stream earlier in the day on Saturday and followed the indications of the release (color, smell) to a point on Millers Creek where the discharge was entering the creek. TWRA then encountered Adenus staff at the location of the lagoon. Adenus staff was reportedly onsite in response to an alarm received during the overnight hours.

X.

DWR staff observed Adenus personnel attempting to construct a berm across the lagoon for the purpose of directing the flow into the portion of the lagoon that was not compromised by the collapse features. While DWR staff was on site the lagoon was empty; however, effluent was still entering the lagoon at the original location and flowing into the compromised portion of the lagoon. The berm had been constructed to a height of approximately four feet.

XI.

The bypass report indicated that the bypass ended at 7:00 PM. The report further indicated that corrective actions were to be complete as 8:00 PM on February 2.

XII.

On February 3, 2014 at approximately 1:30 PM, DWR staff returned to the site and observed the influent supply line had been routed to the side of the berm that was opposite the collapse features; however, the effluent level in the lagoon exceeded the height of the berm and effluent was entering the lowest of the collapse features. Adenus personnel were onsite preparing to attempt to lower the effluent level by pressurizing the existing drip lines with a temporary pump.

XIII.

DWR staff again returned to the site on February 4, 2014 to collect samples at various locations in Millers Creek. While there DWR staff observed that the berm had been raised and that at that time the effluent was being retained on the side of the berm away from the collapse features.

ORDER

XIV.

WHEREFORE, after consideration of the foregoing and with the concurrence of the Governor, I, Robert J. Martineau, Jr., pursuant to the authority vested by T.C.A. §69-3-109(b), have found that an emergency exists imperatively requiring immediate action to protect the

public health, safety, or welfare, or the health of animals, fish, or aquatic life, or a public water supply, or recreational, commercial, industrial, agricultural, or other reasonable uses, do hereby **ORDER that:**

1. The Respondent shall continue to implement measures to (a) prevent the movement of contaminated materials into waters of the state, and (b) where feasible, minimize further downstream migration of contaminated sediments. Respondent shall prevent access by the public to any areas that it owns that pose any health or safety hazard to the public.


2. The Respondent shall immediately establish a means of secondary treatment capable of achieving the limits identified in the current permit. This capability is to be established as an emergency measure to assure appropriate treatment prior to effluent discharge to the lagoon and dispersal by drip irrigation. This lagoon does not currently represent a suitable treatment methodology nor does the construction of the temporary berm insure that there will be no further catastrophic loss of untreated or partially treated wastewater to Millers Creek.

3. The Respondent shall pay all costs associated with the Department's investigation of the release and oversight of the implementation of this Order. These costs shall include, but are not limited to, mileage, lab expense, salary, benefit and administrative costs for the Department's employees and other state employees actively employed in oversight of work under this Order or investigation of the release.

RESERVATION OF RIGHTS

This Order addresses corrective action for the emergency situation that currently exists. The issuance of this Order shall not be deemed an election by the department to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act, or any other law. The department expressly reserves the right to issue further Orders under the Water Quality Control Act or other laws to require further or different corrective action based on changes of conditions or new information, to assess civil penalties for all violations of the law, and to assess all damages allowed by law.

Issued by the Commissioner of the Tennessee Department of Environment and Conservation on this 5th day of February, 2014.


ROBERT J. MARTINEAU, JR.,
Commissioner
Tennessee Department of
Environment and Conservation

NOTICE OF RIGHTS

Tennessee Code Annotated ("T.C.A.") §8 69-3-105(i), 69-3-109, and 69-3-116 allow the Respondent to appeal this Order. To do so, a written petition setting forth the grounds (reasons) for requesting a hearing must be RECEIVED by the Commissioner within THIRTY (30) DAYS of the date the Respondent received this Order or this Order will become final (not subject to review).

If an appeal is filed, an initial hearing will be conducted by an Administrative Law Judge (ALJ) as a contested case hearing pursuant to the provisions of T.C.A. § 69-3-110, T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Rule 1360-04-01 *et seq.* (the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies). Such hearings are legal proceedings in the nature of a trial. Individual Respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. Artificial Respondents (corporations, limited partnerships, limited liability companies, etc.) cannot engage in the practice of law and therefore may only pursue an appeal through an attorney licensed to practice law in Tennessee. Low income individuals may be eligible for representation at reduced or no cost through a local bar association or legal aid organization.

At the conclusion of any initial hearing the ALJ has the authority to affirm, modify, or deny the Order. Furthermore, the ALJ on behalf of the Board has the authority to assess damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of the ALJ and a court reporter.


Any petition for review (appeal) must be directed to the Commissioner of the Department of Environment and Conservation, c/o E. Joseph Sanders, General Counsel, Department of Environment and Conservation, 2nd Floor William R. Snodgrass Bldg., 312 Rosa Parks Avenue, Nashville, Tennessee 37243. Payments of damages shall be made payable to the "Treasurer, State of Tennessee" and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, 10th Floor Snodgrass Bldg., 312 Rosa

Parks Avenue, Nashville, Tennessee 37243. Technical questions and other correspondence involving compliance issues should be sent to Jessica Murphy, State of Tennessee, Division of Water Resources, 11th Floor, William R. Snodgrass Bldg., 312 Rosa Parks Avenue, Nashville, TN 37243. The case number, OGC14-0019, should be written on all correspondence regarding this matter.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the Respondent by sending a true and correct copy of same by U.S. certified mail, return receipt requested, postage prepaid.

This the 5th day of February, 2014.


Devin M. Wells
Environmental Legal Counsel

EXHIBIT

D

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:	)	DIVISION OF WATER POLLUTION
	)	CONTROL
TENNESSEE WASTEWATER	)	AND
SYSTEMS, INC., AND	)	DIVISION OF WATER SUPPLY
ADENUS SOLUTIONS GROUP, LLC,)	
ADENUS OPERATIONS, LLC,)	
CHARLES R. HYATT)	
ROBERT J. PICKNEY)	
AND JAMES STINNETT)	
RESPONDENTS	)	CASE NUMBER OGC11-0078

COMMISSIONER'S ORDER AND ASSESSMENT

NOW COMES Robert J. Martineau, Jr., Commissioner of the Tennessee Department of Environment and Conservation, (hereinafter, the Department") and states:

PARTIES

I.

Robert J. Martineau, Jr. is the duly appointed Commissioner of the Department. The Commissioner is responsible for administering and enforcing the *Water Quality Control Act*, (hereinafter the "Act"), Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*

II.

Tennessee Wastewater Systems, Inc. (hereinafter "Respondent TWS") constructed and owns the Cedar Hill Treatment Facility (hereinafter the "Facility") located in Cedar Hill, Robertson County, Tennessee. Service of process on TWS may be made through its registered agent, Mr. Charles Hyatt, 851 Aviation Parkway, Smyrna, Tennessee 37167.

II.

Adenus Solutions Group, LLC. employs all of the Respondents. Service of process on Adenus may be made through its registered agent, Mr. Charles Hyatt, 849 Aviation Parkway, Smyrna, Tennessee 37167.

III.

Adenus Operations, LLC. is listed on the application as the facility that will operate the system. Service of process on Adenus Operations LLC., may be made through its registered agent, Mr. Charles Pickney, 851 Aviation Parkway, Smyrna, Tennessee 37167.

IV.

Mr. James Stinnett (hereinafter "Respondent Stinnett") is listed as the operator of the Facility, and is employed by Adenus Solutions Group, LLC (hereinafter "Respondent Adenus"). As such Mr. Stinnett had operational control of the facility and the ability to correct the violations. Service of process may be made on Respondent Stinnett through Adenus Solutions group, LLC, 849 Aviation Parkway, Smyrna, Tennessee 37167.

V.

Robert Pickney, P.E. is the founder and President of Tennessee Wastewater Systems and the Chief Technical Officer of Adenus Solutions Group, LLC. Mr. Pickney is the alter ego of Tennessee Wastewater, Inc., Adenus SolutionsGroup LLC. and Adenus Operations, LLC. As the Chief Technical Officer of Adenus and the designer of the facility, Mr. Pickney

either knew or should have known of the ongoing violations. Mr. Pickney in his supervisory capacity had the ability to correct the violations. Service of process on Mr. Pickney may be made at 851 Aviation Parkway, Smyrna, Tennessee 37167.

VI.

Charles Hyatt is the Chief Executive Officer of Adenus Solutions Group LLC., the President of Tennessee Wastewater Systems, Inc and the Registered Agent for both corporations. In his supervisory capacity he either knew or should have known of the ongoing violations at the Cedar Hill treatment facility. Mr. Hyatt also had the ability to correct the violations. Service of process may be made on Mr. Hyatt at 849 Aviation Parkway, Smyrna, Tennessee 37167

JURISDICTION

VII.

Whenever the Commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act, (hereinafter the "Act") has occurred, or is about to occur, the Commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the Commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act.

Under the provisions of T.C.A. 69-3-103(33), "Waters" means any and all water, public or private, on or beneath the surface of the ground, that are contained within, flow through, or border upon Tennessee or any portion thereof, except those bodies of water confined to and

retained within the limits of private property in single ownership that do not combine or effect a junction with natural surface or underground waters. Rules governing the injection of substances into the ground waters of the State of Tennessee are promulgated pursuant to T.C.A. § 69-3-105 and are found at the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapter 1200-4-6 (hereinafter "Rule 1200-4-6-").

VIII.

The Respondents are "persons" as defined by T.C.A. §69-3-103(20) and, as hereinafter stated, the Respondents have violated the Act.

IX.

Tennessee Code Annotated §69-3-108 requires a person to obtain a permit from the Department prior to discharging into waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Rule 1200-4-5.08 states in part that a set of effluent limitations will be required in each permit that will indicate adequate operation or performance of treatment units used and that appropriately limit those harmful parameters present in the wastewater.

Discharges to the groundwater of the state are regulated as a Class V Injection Well. Pursuant to T.C.A. § 69-3-108, Rule 1200-4-6-.07 requires a person to submit an application prior to engaging in any activity that requires an Underground Injection Control (hereinafter "UIC") program Class V Authorization.

FACTS

X.

On January 31, 2006, the Division of Water Pollution Control (hereinafter "WPC") issued State Operation Permit SOP-05039 (hereinafter the "SOP") to Respondent TWS for the Cedar Hill facility. The permit became effective March 1, 2006, and expired on January 31, 2011. Respondent TWS timely applied for permit reissuance. The permit authorized Respondent TWS to operate an effluent collection system with deep cell lagoon effluent treatment and final discharge to a drip irrigation system in accordance with effluent limitations, monitoring requirements and other conditions set forth therein. Respondents completed construction of the effluent collection system and deep cell lagoon, but have yet to construct the drip irrigation system. In addition, Respondents have not installed fencing around the treatment area as required for non-disinfected wastewater. The facility currently serves Jo Byrns High School and Jo Byrns Elementary School.

XI.

On October 17, 2008, the Division of Water Supply (hereinafter "DWS") issued a Notice of Violation (hereinafter "NOV") to Respondent TWS for failing to apply for UIC Class V authorization for the facility. According to Tennessee Rule 1200-4-6-.06, a large capacity (serving more than 20 persons per day) subsurface fluid distribution system, such as the drip irrigation system authorized under the SOP, is a Class V injection well, and subject to permit by rule.

XII.

In a November 13, 2008, dated response to the above mentioned NOV Respondent Hyatt disagreed with the Department's position regarding the requirement for a UIC authorization, and requested the matter be reviewed by the Water Quality Control Board (hereinafter "the Board"). The Board did not review the matter as a formal agenda item, nor make any official ruling.

XIII.

On August 3, 2010, WPC received a renewal application for the SOP. The estimated flow listed on the application is 75,000 gallons per day. Along with the application, Respondents submitted an Engineering Report dated December 19, 2005, and stamped by Respondent Pickney. The Engineering Report states "the drip irrigation disposal system will be installed once the DCEL [deep cell effluent lagoon] reaches approximately 75% capacity." According to calculations in the Report, the lagoon has a capacity of 18,992,187 gallons, which would result in the lagoon reaching 75% capacity in approximately 190 days. To date, Respondents have not constructed the drip irrigation system. The Engineering Report further states "the lagoon will be lined with a minimum of two (2) feet of compacted clay, or will have a 30 mil HPE liner if final geotechnical compaction tests indicate an inability of compacted clay to meet permeability requirements." The application further states that fencing is installed to restrict access to the treatment area. To date, Respondents have not installed fencing around the treatment area as required for non-disinfected wastewater.

XIV.

On December 2, 2010, DWS conducted a site inspection of the facility as part of the Department's review for reissuance of the SOP and UIC authorization. At the time of the inspection, the drip irrigation lines had not been installed. Part I, E of the SOP requires full operational level from the effective date of the permit. The lagoon contained very little water/wastewater, and had abundant vegetative growth in the bottom of the lagoon, including small trees. The DWS inspector noted that the cell did not appear to be holding effluent. Part II, A, 4 of the SOP requires the permittee to properly operate and maintain all facilities and systems at all times. Further, Part II, 3, C of the SOP prohibits the discharge to land or water wastes from any portion of the collection, transmission, or treatment system other than through permitted outfalls. Brian Carter from Adenus Solution Group was present on site during the inspection.

XV.

On December 14, 2010, WPC sent correspondence to Respondent Hyatt acknowledging receipt of the application for renewal for the SOP and notifying him that processing of the application had been suspended until the Department receives payment for the Class V UIC authorization fee.

The UIC fee was subsequently submitted on January 18, 2011.

XVI.

On January 7, 2011, WPC and DWS personnel conducted a follow-up inspection of the facility. At the time of the inspection, Respondents were excavating the southeast portion of the lagoon. A temporary berm had been constructed across the lagoon to retain incoming wastewater

at the northern end of the lagoon. Respondent Pickney indicated he thought they had located the source of the leak in the lagoon. At the time of the inspection, Mr. Carter was asked to provide copies of the monthly monitoring reports. In an email dated January 19, 2011, Mr. Carter stated that several visits to the lagoon had been made but no formal inspection documents were completed. Woody vegetation, including willow trees, was observed mostly along the southeast side of the lagoon near the base of the berm. There was no all-weather access road to the facility. Access was gained only by crossing an agricultural field on private property.

XVII.

On January 14, 2011, Respondent Pickney sent WPC an email stating exploratory work had been completed and that a "small seep was found and excavated." The email briefly described corrective measures that would be undertaken in spring or summer due to "problems with getting proper compaction during the winter months."

XVIII.

A NOV was issued on February 4, 2011, outlining the violations and deficiencies observed during the January 7, 2011, inspection. The NOV requested a corrective action plan (CAP) within 30 days of receipt of the NOV that would describe how the violations and deficiencies would be corrected and a schedule for completion. In addition, the NOV requested an engineering report outlining measures to repair the lagoon leak, removal of woody and deep-rooted vegetation, and a means to determine the effectiveness of repairs and how to detect if any significant loss of flow occurs in the future.

XIX.

On March 3, 2011, WPC received a response to the February 4, 2011, NOV. The response was dated February 28, 2011, and stated Adenus would monitor all parts of the treatment facility as required by the SOP, document all findings on a site visit form, and maintain those records at the Adenus office for a minimum of three years. The response also stated that an engineering report was being worked on for the lagoon, with late spring or summer still being the projected time for repairs to be completed.

XX.

On May 31, 2011, the Department sent correspondence to Charles Hyatt at Tennessee Wastewater Systems, Inc., as a follow-up to the February 4, 2011, NOV requesting a detailed corrective action plan (CAP) for the lagoon, and application for the Class V UIC authorization.

XXI.

On June 22, the Department received a phone message from Respondent Hyatt requesting clarification on the CAP requested in the May 31, 2011, correspondence, and notifying the Department that the UIC fee had indeed been paid back in January.

XXII.

On June 28, the Department sent via email a response to Respondent Hyatt's request for clarification, and confirmed that the UIC fee had been paid.

XXIII.

On July 1, 2011, the Department received a written response dated June 29, 2011, from Respondent Hyatt. The correspondence stated "I believe that the response to the NOV from Brian Carter Dated Feb. 28, 2011 was responsive to the NOV," and that an engineering report had been submitted to WPC on June 29, 2011. The response further stated that, weather permitting, "the work will be completed in 60 to 90 days after TDEC approval."

XXIV.

On July 5, 2011, WPC approved the engineering report remediation plan. The cover letter of the engineering report, prepared by Respondent Pickney, stated that work would begin "sometime in July weather permitting." To date, no work under the remediation plan has been completed.

XXV.

On July 22, 2011 DWS staff met on site with an Adenus representative for a follow-up inspection. At that time, a second sinkhole drop out was observed in the bottom of the lagoon cell.

VIOLATIONS

XXVI.

By failing to comply with the terms and conditions of its SOP and by discharging wastewater from a location other than a permitted outfall, as stated herein, the Respondents have violated T.C.A. §§ 69-3-108(b)(1),(3), and (6), and 69-3-114(b), which state in-part:

T.C.A. § 69-3-108(b)

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
- (3) The increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing permit;
- (6) The discharge of sewage, industrial wastes, or other wastes into water, or a location from which it is likely that the discharged substances will move into waters;

T.C.A. § 69-3-114(b)

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

ORDER AND ASSESSMENT

XXVI.

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-107, 109, 115-16, I, Robert J. Martineau, Jr., hereby issue the following ORDER AND ASSESSMENT to the Respondent:

1. The Respondents shall, within Thirty (30) days of the receipt of this Order and Assessment, complete an amended Corrective Action Plan/Remediation Plan to address any and all crevices, voids, sinks, cavities or other such karst features which result in the loss of wastewater effluent from the lagoon structure, and submit such Plan to the Department for review and approval.

2. Respondents shall, within Ninety (90) days of the approval of the amended Corrective Action Plan, implement all such actions to render the lagoon structure incapable of effluent loss through crevices, voids, cavities or other such karst features in accordance with its designed function, and to the extent that the required drip irrigation system is utilized.
3. The Respondents shall, within ONE HUNDRED FIFTY (150) days of receipt of this ORDER and ASSESSMENT, complete installation of the drip irrigation system and appurtenances, and complete installation of fencing around the perimeter of the drip irrigation field. Failure to install these items per the original permit has resulted in an economic benefit to the Respondents of FORTY FOUR THOUSAND TWO HUNDRED AND THIRTY-FIVE DOLLARS AND NINETY-NINE CENTS (\$44,235.99), which is a component of the civil penalty below.
4. The Respondents shall pay a CIVIL PENALTY of TWO HUNDRED EIGHTY EIGHT THOUSAND TWO HUNDRED AND THIRTY-FIVE DOLLARS (\$288,235.00) to the Division, hereby ASSESSED to be paid as follows:
 - a. The Respondents shall, within 30 days of entry of this ORDER and ASSESSMENT, pay a CIVIL PENALTY in the amount of SEVENTY TWO THOUSAND DOLLARS (\$72,000.00).
 - b. If, and only if, the Respondents fail to comply with item 1 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of SEVENTY TWO THOUSAND DOLLARS (\$72,000.00), payable within 30 days of default.


- c. If, and only if, the Respondents fail to comply with item 2 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of SEVENTY TWO THOUSAND DOLLARS (\$72,000.00), payable within 30 days of default.
- d. If, and only if, the Respondents fail to comply with item 3 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of SEVENTY TWO THOUSAND TWO HUNDRED THIRTY-FIVE DOLLARS (\$72,235.00), payable within 30 days of default.

The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The Department may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondent shall submit a written request to be received a minimum of 30 days in advance of the compliance date. The request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension will be in writing.

Further, the Respondent is advised that the foregoing Order and Assessment is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the Order and Assessment will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the Commissioner of the Tennessee Department of Environment and Conservation on this 26th day of September, 2011.


ROBERT J. MARTINEAU, JR.,
Commissioner
Tennessee Department of
Environment and Conservation

NOTICE OF RIGHTS

Tennessee Code Annotated §§69-3-109, 115, allow the Respondent to secure review (appeal) of this Order and Assessment. To do so, a written petition setting forth the grounds (reasons) for requesting a hearing before the Water Quality Control Board must be RECEIVED by the Department within THIRTY (30) DAYS of the date the Respondent received this Order and Assessment or it will become final (not subject to review).

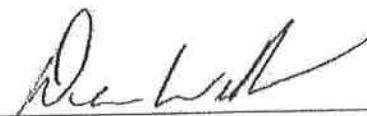
Artificial Respondents (corporations, limited partnerships, limited liability companies, etc.) cannot carry-on the practice of law. They may secure review (appeal) before the Water Quality Control Board only through an attorney licensed to practice law in Tennessee. Natural Respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Any hearing of this case before the Board will be a contested case hearing governed by T.C.A. §4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases before State Administrative

Agencies. Such hearings are in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses to testify.

At the conclusion of a hearing the Board has the authority to affirm, modify, or deny the Order and Assessment. This includes the authority to modify the penalty within the statutory confines (up to \$10,000.00 per day per violation). Furthermore, the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of an administrative law judge and a court reporter.

Any petition to appeal which is filed should be sent to Appeal of an Enforcement Order, Devin M. Wells, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548. Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6th Floor Annex, 401 Church Street, Nashville, TN 37243. The case number should (OGC11-0078) be written on all correspondence regarding this matter.



Devin M. Wells, BPR #021059
Assistant General Counsel

EXHIBIT

E



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 Church Street
L&C Annex 6th Floor
Nashville, TN 37243-1534

August 4, 2009

Larry R. Williams, Registered Agent
329 Union Street
Nashville, Tennessee 37219-0632

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7006 0810 0000 1061 8143**

Subject: DIRECTOR'S ORDER NO. WPC09-0102
SMOKEY VILLAGE SUBDIVISION
TENNESSEE WASTEWATER SYSTEMS, INC.
SEVIER COUNTY, TENNESSEE

Mr. Williams:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

Corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Stephanie Fisher at (615) 532-3634 or by E-mail at Stephanie.Fisher@state.tn.us.

Sincerely,

A handwritten signature in dark ink, appearing to read "Patrick N. Parker", is written over the word "Sincerely,".

Patrick N. Parker, Manager
Enforcement and Compliance Section

PNP:SJF

cc: DWPC - EFO-Knoxville
DWPC - Compliance File
OGC

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:	)	DIVISION OF WATER
	)	POLLUTION CONTROL
TENNESSEE WASTEWATER)	
SYSTEMS, INC.)	
	)	CASE NO. WPC09-0102
RESPONDENT)	
)	
)	
)	

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, Director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed Director of the Tennessee Division of Water Pollution Control (hereinafter the "director" and the "division" respectively) by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "commissioner" and the "department" respectively).

II.

Tennessee Wastewater Systems, Inc. (hereinafter the "Respondent") is an active corporation licensed to do business in the State of Tennessee. The Respondent owns and operates a septic tank effluent collection system, recirculating sand filter and drip irrigation system located at Smoky Village Subdivision in Sevier County (hereinafter the

"Site"). Service of process may be made on the Respondent through Mr. Larry R. Williams, registered agent, at 329 Union Street, Nashville, Tennessee 37219-0632.

JURISDICTION

III.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act, (hereinafter the "Act"), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (hereinafter the "Rule"). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

IV.

The Respondent is a "person" as defined by T.C.A. §69-3-103(20) and, as hereinafter stated, the Respondent has violated the Act.

V.

Tennessee Code Annotated § 69-3-108 requires a person to obtain a permit from the department to operate a sewage system.

FACTS

VI.

The division issued State Operating Permit (SOP) Number SOP-05033 (hereinafter the "Permit") to the Respondent on December 1, 2005, with an expiration date of October 31, 2010.

The permit authorizes the Respondent to collect and treat domestic wastewater through the use of a septic tank effluent collection system, Recirculating Sand Filter (RSF), ultraviolet disinfection, and a drip irrigation field. The system is designed to handle a peak flow rate of 5,600 gallons per day.

VII.

On April 24, 2009, the division received a complaint stating there had been a bypass at the site, and wastewater was ponding downhill of the drip irrigation field.

VIII.

On April 26, 2009, the Respondent submitted a written statement detailing issues at the site from April 9, 2009, through April 25, 2009, and the corrective actions that had been implemented.

The Respondent stated that water had been observed ponding in front of the RSF, the drip field had been saturated, and ruts had been observed within the drip field. On April 2, 2009, the Respondent, along with a consultant, inspected the site and observed that the site was located at or above ground water elevations. Actions to correct the ponding and to repair the damaged drip field were initiated on April 9, 2009. As part of the corrective actions, a French drain was installed to facilitate drainage from the site.

The Respondent conducted an inspection on April 24, 2009, and was informed that the drip field had been mowed with a tractor and bush-hog while the drip field was wet, allowing the tractor to bog down in the drip field and damage the drip lines. Additionally, during the inspection the Respondent observed a leak in the RSF allowing effluent to pond on the sand layer restricting circulation, and allowing effluent to exit the RSF through a pipe inlet cutout. Corrective actions were implemented to repair the RSF and the damaged drip lines.

IX.

The division, along with a Tennessee Wastewater Systems representative, conducted a compliance sampling inspection at the site on April 30, 2009. The drip lines had been damaged allowing ponding of wastewater effluent. Only one sign had been posted, and this sign was located on the fence of the RSF. Signs had not been posted at all approaches to the drip irrigation lot, as required by the permit. Effluent samples were obtained to be analyzed for *E. coli*, ammonia, and BOD₅. The ammonia and BOD₅ results were in compliance with the permit. The *E. coli* result was 19180 CFU/100ml which is an exceedance of the effluent limit of 23 CFU/100ml set forth in the permit.

A file review indicated that neither a 24 hour verbal notification of non-compliance nor a 5 day written notification of non-compliance was submitted to the division, as required by the permit.

X.

On June 9, 2009, the division conducted a follow-up inspection at the site. The Respondent had not repaired the damaged drip lines. Ponding of wastewater effluent was observed in the drip fields. Signs were not posted at all approaches to the drip irrigation lot.

XI.

On June 12, 2009, the division issued a Notice of Violation (NOV) to the Respondent for the violations observed during the April 30, 2009, and June 9, 2009, site inspections. The NOV requested the following corrective actions:

- Submittal of a written response detailing the steps that had been taken to correct the issues at the site.
- ~~Preparation and submittal of a~~ Corrective Action Plan (CAP) providing information regarding the repair of the damaged drip lines; the proposed modification of operation and maintenance procedures to eliminate effluent violations, evaluation of fencing and signage, and a timeline in which the modifications would be implemented.

XII.

On June 26, 2009, the division conducted a follow-up inspection at the site. The drip lines had not been repaired, and ponding of wastewater effluent continued at the site. Signs were not posted at all approaches to the drip irrigation lot.

XIII.

During the course of investigation the division incurred DAMAGES in the amount of SEVEN HUNDRED EIGHTY SIX DOLLARS AND TWENTY NINE CENTS (\$786.29).

VIOLATIONS

XIV.

By failing to comply with the terms and conditions of the SOP, the Respondents have violated Respondent has violated T.C.A. §§69-3-108(b) and 114(b), which state in part T.C.A. §§ 69-3-114(b), which states:

§69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (3) The increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing permit;

§69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

ORDER AND ASSESSMENT

XV.

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER and ASSESSMENT to the Respondents.

1. The Respondents shall, within 30 days of receipt of this ORDER and ASSESSMENT, submit a Corrective Action Plan (CAP) for approval to the division, addressing the repair of the damaged drip lines, and how the system will be operated in the future to maintain compliance with the permit requirements, including any changes to equipment or operational procedures. The plan is to be submitted to the manager of the Division of Water Pollution Control located at the Knoxville Environmental Field Office at 3711 Middlebrook Pike, Knoxville, Tennessee 37921.
2. The Respondents shall, within 45 days of receipt of written approval of the CAP from the division, fully implement the actions contained therein and send documentation of completion of the plan to the manager of the Knoxville Environmental Field Office at the address provided in Item 1 above.
3. The Respondent shall, within 7 days of receipt of this ORDER and ASSESSMENT, initiate semi-monthly sampling of E. coli, or install a minimum 4' high chain link or woven wire fence around the perimeter of the drip irrigation field. The sample results are to be submitted monthly to the

manager of the Knoxville Environmental Field Office at the address listed in item 1, within 15 days after the end of each month. After 6 consecutive months of E. coli readings at or below 23 colonies/100ml, the respondent may return to quarterly sampling.

5. The Respondents shall pay a CIVIL PENALTY of TWENTY ONE THOUSAND DOLLARS (\$21,000.00), to the department, hereby ASSESSED to be paid as follows:
 - (a) The Respondents shall, within 30 days of receipt of this ORDER AND ASSESSMENT, pay a CIVIL PENALTY in the amount of FIVE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$5,250.00).
 - (b) If the Respondents fail to comply with Part XV item 1 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of FIVE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$5,250.00), payable within 30 days of default.
 - (c) If the Respondents fail to comply with Part XV item 2 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of FIVE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$5,250.00), payable within 30 days of default.
 - (d) If the Respondents fail to comply with Part XV item 3 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of

FIVE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$5,250.00),
payable within 30 days of default.

6. The Respondent shall, within 30 days of receipt of this ORDER and ASSESSMENT pay DAMAGES to the division in the amount of SEVEN HUNDRED EIGHTY SIX DOLLARS AND TWENTY NINE CENTS (\$786.29).

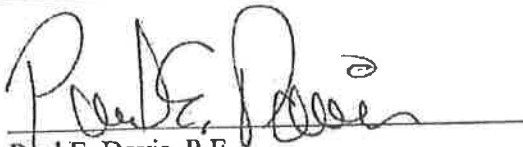
The Respondents shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this ORDER and ASSESSMENT. In order to be eligible for this time extension, the Respondents shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondents fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondents are advised that the foregoing ORDER and ASSESSMENT is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the ORDER and

ASSESSMENT will be one factor considered in any decision whether to take enforcement action against the Respondents in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 4th day of August, 2009.


Paul E. Davis, P.E.
Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§ 69-3-109, 115, allow the Respondent to secure review (appeal) of this ORDER and ASSESSMENT. To do so, a written petition setting forth the grounds (reasons) for requesting a hearing before the Water Quality Control Board must be RECEIVED by the Department within THIRTY (30) DAYS of the date the Respondent received this ORDER and ASSESSMENT or it will become final (not subject to review).

Artificial Respondents (corporations, limited partnerships, limited liability companies, etc.) cannot carry-on the practice of law. They may secure review (appeal) before the Water Quality Control Board only through an attorney licensed to practice law in Tennessee. Natural Respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. Low-income individuals may be eligible

for representation at no cost or reduced cost through a local bar association or legal aid organization.

Any hearing of this case before the Board will be a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. Such hearings are in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses to testify.

At the conclusion of a hearing the Board has the authority to affirm, modify, or deny the ORDER AND ASSESSMENT. This includes the authority to modify the penalty within the statutory confines (up to \$10,000.00 per day per violation). Furthermore, the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of an administrative law judge and a court reporter.

Any petition to appeal which is filed should be sent to: Appeal of an Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548. Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6th Floor Annex, 401

Church Street, Nashville, TN 37243. The case number should be written on all correspondence regarding this matter.

EXHIBIT

E-1



851 Aviation Parkway
Smyrna, TN 37167

August 31, 2009

Paul Estell Davis P.E.
Tennessee Department of Environment & Conservation
401 Church Street
6th Floor, L&C Annex
Nashville TN 37243

Re: Director's Order No WPC09-0102
Smoky Village Subdivision
Tennessee Wastewater Systems, Inc.
Sevier County, Tennessee

Mr. Davis:

Pursuant to TCA 69-3-109, 115, Tennessee Wastewater Systems, Inc. appeals the above referenced Director's Order and requests that it be reviewed at a hearing by the Tennessee Water Quality Board. The facts alleged in the Order are incorrect, the fines and penalties are arbitrary and capricious, and the remedies required are contrary to an existing Agreed Order between Tennessee Wastewater and TDEC.

Sincerely,

Charles R. Hyatt
President

Cc: Michael Hines, M.S., P.E.
Southeast Environmental Engineering, LLC
1920 Breezy Ridge Trail
Concord, TN 37922

U.S. Postal Service	
CERTIFIED MAIL[®] RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Sent To: PAUL DAVIS	
Street, Apt. No., or PO Box No. 401 Church St. 6th Floor	
City, State, ZIP+4 [®] NASHVILLE, TN 37243	
PS Form 3800, Aug. 2005 See Reverse for Instructions	

7008 3230 0002 6431 4753

USPS 29
Postmark
Hwy
A-2



[Home](#) | [Help](#) | [Sign In](#)

[Track & Confirm](#)

[FAQs](#)

Track & Confirm

Search Results

Label/Receipt Number: 7008 3230 0002 6431 4763

Service(s): Certified Mail™

Status: Delivered

Your item was delivered at 9:47 AM on September 2, 2008 in
NASHVILLE, TN 37243.

Track & Confirm

Enter Label/Receipt Number.

[Go >](#)

Detailed Results:

- Delivered, September 02, 2008, 9:47 am, NASHVILLE, TN 37243
- Arrival at Unit, September 01, 2008, 8:14 am, NASHVILLE, TN 37203

Notification Options

Track & Confirm by email

Get current event information or updates for your item sent to you or others by email.

[Go >](#)

[Site Map](#)

[Customer Service](#)

[Errors](#)

[Gov't Services](#)

[Careers](#)

[Privacy Policy](#)

[Terms of Use](#)

[Business Customer Gateway](#)

Copyright © 2009 USPS. All Rights Reserved.

No FEAR Act/EEO Data

FOIA



THE MAIL IS OUR BUSINESS
Your Service. Our Passion.



Here's how we serve you
1. Service of the people

0150000

BEFORE THE TENNESSEE WATER QUALITY CONTROL BOARD

RECEIVED
2010 AUG 17 PM 2:20

IN THE MATTER OF:	)	DIVISION OF WATER
	)	POLLUTION CONTROL
TENNESSEE WASTEWATER	)	SECRETARY OF STATE
SYSTEMS, INC.	)	CASE # WPC09-0102
)	
)	
RESPONDENT	)	DOCKET # 04.30-104980A

AGREED ORDER

This matter came to be heard before the Tennessee Water Quality Control Board upon the Director's Order and Assessment of Civil Penalty and the Respondent's Petition for Appeal. The Board, a quorum present, hereby adopts the following Findings of Fact, Conclusions of Law, Order and Assessments to which the parties have agreed subject to the Reservation of Rights contained herein, as evidenced by their signatures below.

PARTIES

I.

Paul E. Davis is the duly appointed Director of the Tennessee Division of Water Pollution Control (hereinafter the "director" and the "division" respectively) by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "commissioner" and the "department" respectively).

II.

Tennessee Wastewater Systems, Inc. (hereinafter the "Respondent") is an active corporation licensed to do business in the State of Tennessee. The Respondent owns and operates a septic tank effluent collection system, recirculating sand filter and drip irrigation system located at Smoky Village Subdivision in Sevier County (hereinafter the "Site"). Service

of process may be made on the Respondent through Mr. Larry R. Williams, registered agent, at 329 Union Street, Nashville, Tennessee 37219-0632.

JURISDICTION

III.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act, (hereinafter the "Act"), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (hereinafter the "Rule"). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

IV.

The Respondent is a "person" as defined by T.C.A. §69-3-103(20) and, as hereinafter stated, the Respondent has violated the Act.

V.

Tennessee Code Annotated § 69-3-108 requires a person to obtain a permit from the department to operate a sewage system.

FINDINGS OF FACT

VI.

The division issued State Operating Permit (SOP) Number SOP-05033 (hereinafter the "Permit") to the Respondent on December 1, 2005, with an expiration date of October 31, 2010.

The permit authorizes the Respondent to collect and treat domestic wastewater through the use of a septic tank effluent collection system, Recirculating Sand Filter (RSF), ultraviolet disinfection, and a drip irrigation field. The system is designed to handle a peak flow rate of 5,600 gallons per day.

Respondent submitted a Permit modification request application under date of March 18, 2009 to apply the drip field classification category of Attractive Access as defined in the November 20, 2007 Agreed Order related to Docket No. 04.30-095289A.

The Respondent resubmitted the modification request application under date of May 6, 2009. Respondent received a Notice of Complete Application from the Department effective May 29, 2009. The Department issued a Draft of Modifications to the State Operating Permit under date of June 9, 2009 and placed the draft permit on public notice. Director's Order WPC09-0102, which this Agreed Order resolves, was issued August 4, 2009.

On or about November 16, 2009, the Department notified Respondent that the State Operating Permit issued on October 31, 2005 would expire on October 31, 2010. Respondent requested in a letter dated January 21, 2010 as advised by Department staff to allow its permit modification requests in March and May be accepted as the required permit renewal application as well. Respondent's January 21, 2010 letter also provided comments on the draft permit. To date the permit has not been issued.

VII.

On April 24, 2009, the division received a complaint stating there had been a bypass at the site, and that wastewater was standing downhill of the drip irrigation field. Respondent inspected the site and discovered a high water level within the sand filter that resulted in water leaving the filter through pump line entry points through the upper part of the filter wall and liner. Subsequent investigation found ground water elevations to be at or near the surface of the ground following periods of rainfall. Telephonic notification was made by the Knoxville Field Office (KEFO) of the findings on April 24 and both a telephonic and a written notification of the corrective action was made to KFO on April 26, 2009.

VIII.

On April 26, 2009, the Respondent submitted a written statement detailing issues at the site from April 9, 2009, through April 25, 2009, and the corrective actions that had been implemented.

The Respondent stated that standing water had been observed in front of the RSF, the drip field had been saturated, and ruts had been observed within the drip field. On April 2, 2009, the Respondent, along with a consultant, inspected the site and observed that the site was located at or above ground water elevations. Actions to correct the standing water and to repair the damaged drip field were initiated on April 9, 2009. As part of the corrective actions, a French drain was installed to facilitate drainage from the site.

The Respondent conducted an inspection on April 24, 2009, and was informed by neighbors that the drip field had been mowed with a tractor and bush-hog while the drip field was wet, allowing the tractor to bog down in the drip field and damage the drip lines. Additionally, during the inspection, the Respondent observed a leak in the RSF allowing effluent to pond on the sand layer restricting circulation, and allowing effluent to exit the RSF through a pipe inlet cutout. Corrective actions were implemented to repair the RSF and the damaged drip lines.

IX.

The division, along with a Tennessee Wastewater Systems representative, conducted a compliance sampling inspection at the site on April 30, 2009. The drip lines had been damaged allowing standing water on the drip field, but no effluent flow was observed leaving the site. While examining drip field conditions, Division personnel noticed no disturbances that would indicate drip line replacement. Only one sign had been posted, and this sign was located on the fence of the RSF. Signs had not been posted at all approaches to the drip irrigation lot, as required by the permit. Effluent samples were obtained to be analyzed for *E. coli*, ammonia, and BOD₅. The ammonia and BOD₅ results were in compliance with the permit. The *E. coli* result was 19,180 CFU/100ml, which is an exceedance of the effluent limit of 23 CFU/100ml set forth in the permit. The samples were collected from the sampling monitoring locations required in the permit: effluent to drip irrigation plots.

X.

On June 9, 2009, the division conducted a follow-up inspection at the site. The Respondent had not repaired the damaged drip lines. Standing water was observed in the drip fields, but no effluent flow was observed leaving the site. Signs were not posted at all approaches to the drip irrigation lot.

XI.

On June 12, 2009, the division issued a Notice of Violation (NOV) to the Respondent for the violations observed during the April 30, 2009, and June 9, 2009, site inspections. The NOV requested the following corrective actions:

- Submittal of a written response detailing the steps that had been taken to correct the issues at the site.
- Preparation and submittal of a Corrective Action Plan (CAP) providing information regarding the repair of the damaged drip lines, the proposed modification of operation and maintenance procedures to eliminate effluent violations, evaluation of fencing and signage, and a timeline in which the modifications would be implemented.

Respondent submitted its response to the June 12 NOV on or about June 26, 2009. The response described the corrective actions taken to date including excavating numerous drip lines to check for damage and installation of check valves in many of the lines to prevent drain-back to lower lines. The response described future corrective actions to attempt to determine the cause of the soggy surface soils in the drip field, addition of fencing, and placement of additional signage.

XII.

On June 30, 2009, the division conducted a follow-up inspection at the site. Respondent staff was present for the inspection. The drip lines had not been repaired. Signs were not posted at all of the approaches to the drip irrigation lot.

KEFO staff was shown actual locations throughout the drip field where drip lines had been excavated to check for damage and/or to install check valves.

XIII.

On August 4, 2009, the division issued Director's Order WPC09-0102 to the Respondent. The Order assessed a civil penalty of \$21,000--\$5,250 of which was upfront; required the submission and implementation of an approved Corrective Action Plan; and required either semi-monthly monitoring of *E.coli* or the installation of a prescribed fence around the drip irrigation field. The Respondent filed a timely appeal on August 31, 2009.

XIV.

On November 19, 2009, the division received a proposed Corrective Action Plan (CAP) from the Respondent. Testing and repairs of the "entire collection system to identify entry points of excess flow or infiltration" were intended to be completed by February 15, 2010. Work on surface drainage around the drip field, if necessary, would be completed by March 15, 2010. If the Respondent determined they would "have to install a culvert through the drip field, that work would be completed by July 30, 2010," allowing time for the drip field to dry.

XV.

On February 25, 2010, the division conducted another follow-up inspection at the site. Standing water continued at the site but no effluent flow was observed leaving the site; signs were not posted at all of the approaches to the drip irrigation lot; the drip field was overgrown. Work had not begun as proposed in the Respondent's Corrective Action Plan (CAP)

XVI.

On March 5, 2010, the division confirmed with the Respondent that the Director's Order under appeal contained no factual allegations that standing water discharged to any surface or subsurface waters of the state in violation of their permit. The division deleted the three such allegations and their corresponding penalties from the Director's Order.

XVII.

On March 25, 2010, the division conducted a further follow-up inspection at the site. The Respondent had not repaired the damaged drip lines; signs were not posted at all approaches to the drip irrigation lot; standing water was observed in the drip fields; the public health hazard

and/or nuisance continued to exist. Based on the inspection, it was evident that little work had been done to repair the failing drip irrigation system at this site since the first division inspection on April 30, 2009. No portion of the drip field had been disturbed to allow for repair of dispersal lines, header lines, air release valves, or any other components of the drip irrigation system. *E coli* was sampled at 141 colonies/100 ml which is a violation of the effluent limit of 23 colonies/100 ml set forth in the permit.

The on-going failure by the Respondent to meet their *E coli* limits in a residential subdivision—across the street and adjacent to a school/day care center—led the division to conclude that the facility was unnecessarily exposing local residents to multiple health hazards associated with fecal-based pathogens in violation of their permit.

Respondent states that they have excavated and inspected the drip lines, and installed check valves in the drip lines in the presence of Division staff. During the inspection, Respondent staff explained to the Division staff the Corrective Action Plan items that had been completed to date. These included: pressure testing of the collection system; inspection and pressure testing of the individual septic tanks and service connections; repair of two severed sewer mains found as a result of the pressure testing; installation of an inlet flow meter at the sand filter with a determination of no excessive sewer inflows; and the identification of periodic high ground water elevations adjacent to the sand filter with resulting inflow through the top of the filter wall. There was no observed discharge of any effluent or surface water from the site.

The Respondent states their Corrective Action Plan investigations to date have shown that the effluent drip dispersal system has not failed. As a result of the entrance of high volumes of ground water through the top of the filter wall, the drip dispersal system has been dispersing significantly more effluent than it was designed to handle.

The Department has not provided or referenced any sample results showing e-coli form concentrations in any of the surface water on the site nor in any discharge from the site.

XVIII.

On April 16, 2010, the division conducted a further follow-up inspection at the site in response to complaints from neighbors and calls from the local health department concerning activity at the site. The weather was dry and it had not rained significantly since Thursday, April 8, 2010. The drip field looked drier. It had not rained for eight days, but there was standing

water at the base of the drip field. Division personnel met Adam Smith of Tennessee Wastewater Systems, who stated the activities at the site were intended to alleviate some of the problems there. These activities were what generated recent calls from the public.

A gravel French drain had been dug between the sand filter and the road, on the side of the filter opposite the drip field. The Division understood that TWS hoped to lower the ground water level around the sand filter, which they believe has been at times near the surface elevation of the filter, and which may be infiltrating into the sand filter and thus overloading it. Division personnel suggested that if water is capable of infiltrating into the sand filter, then with the groundwater surrounding it lowered, it may infiltrate wastewater out of it as well. Mr. Smith stated that TWS would monitor water levels in the filter to prevent that from happening.

XIX.

During the course of investigation the division incurred DAMAGES in the amount of SEVEN HUNDRED EIGHTY SIX DOLLARS AND TWENTY NINE CENTS (\$786.29).

CONCLUSIONS OF LAW

XX.

By failing to comply with the terms and conditions of the SOP, and by creating a public health hazard or public/private nuisance, the Respondent has violated T.C.A. §§69-3-108(b); 114(b); and 115(a)(1) which state in part:

§69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (3) The increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing permit;

§69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued

pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

§69-3-115(a)(1):

Any person who does any of the following acts or omissions is subject to a civil penalty of up to ten thousand dollars (\$10,000) per day for each day during which the act or omission continues or occurs:

- (A) Violates an effluent standard or limitation or a water quality standard established under this part;
- (B) Violates the terms or conditions of a permit;

ORDER AND ASSESSMENT

XXI.

WHEREFORE, PREMISES CONSIDERED, the Board hereby ORDERS and the parties AGREE that:

1. The Respondent shall, within thirty (30) days of receipt of this ORDER and ASSESSMENT, submit a revised Corrective Action Plan (CAP) for approval to the division, showing how the system will be operated in the future to maintain compliance with the permit requirements, including any changes and repairs to equipment or operational procedures; and an expedited timeline by which such work will be completed. The plan is to be submitted to the manager of the Division of Water Pollution Control located at the Knoxville Environmental Field Office at 3711 Middlebrook Pike, Knoxville, Tennessee 37921.
2. The Respondent shall, within forty-five (45) days of receipt of this ORDER and ASSESSMENT, complete the installation of a minimum 4' high barbed wire, chain link, wooden, or woven wire fence around the perimeter of the drip irrigation field; and complete the installation of signs along each side of the drip irrigation field, both tasks to the satisfaction of the Division, such satisfaction not to be unreasonably withheld.

3. The Respondent shall, within forty-five (45) days of receipt of written approval of the revised CAP from the division, fully implement the remainder of the actions contained therein and send documentation of completion of the plan to the manager of the Knoxville Environmental Field Office at the address provided in Item 1 above. Documentation shall include, at a minimum, photographic evidence of repairs, as well as a narrative description of the work done.
4. The Division agrees to act upon the submitted permit modification as soon as reasonably possible. Until such permit is issued, the terms, effluent limits and monitoring requirements of the existing permit remain in effect. Once the fence is installed as required in item (2) above, no disinfection is required; therefore no limit or monitoring conditions will apply for *E-coli* or fecal coliform.
5. The Respondent shall pay a reduced CIVIL PENALTY of TWELVE THOUSAND DOLLARS (\$12,000.00), to the department, hereby ASSESSED to be paid as follows:
 - (a) The Respondent shall, within 30 days of receipt of this AGREED ORDER, pay a CIVIL PENALTY in the amount of THREE THOUSAND DOLLARS (\$3,000).
 - (b) If the Respondent fails to comply with Part XXI item 1 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of THREE THOUSAND DOLLARS (\$3000.00) payable within 30 days of default.
 - (c) If the Respondent fails to comply with Part XXI item 2 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of THREE THOUSAND DOLLARS (\$3,000.00) payable within 30 days of default.
 - (d) If the Respondent fails to comply with Part XXI item 3 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of THREE THOUSAND DOLLARS (\$3,000.00) payable within 30 days of default.

6. The Respondent shall, within 30 days of receipt of this AGREED ORDER pay DAMAGES to the division in the amount of SEVEN HUNDRED EIGHTY SIX DOLLARS AND TWENTY NINE CENTS (\$786.29).
7. Payment of the CIVIL PENALTY AND DAMAGES shall be sent to the Division of Fiscal Service, Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor, L&C Tower, Nashville, TN 37243. Case number WPC09-0102 should be written on the payment.
8. The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

REASONS FOR DECISION

The above Findings of Facts, Conclusions of Law, and Orders were made in an effort to provide a coordinated system of control and management under the Tennessee Water Quality Control Act; to enforce and protect the goals and provisions of State Operating Permits; and to prevent to creation of public health hazards or public/private nuisances during the operation of drip irrigation systems. The Board encourages settling cases in the interest of avoiding the time and expense of prolonged litigation.

RESERVATION OF RIGHTS

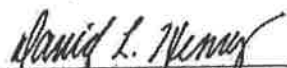
Respondent does not admit or deny the factual allegations or the alleged violations of law contained in this Agreed Order. Respondent agrees to comply with this Agreed Order to avoid the cost of protracted litigation. Respondent reserves the right to contest the factual allegations and alleged violations contained in this Agreed Order in any proceeding other than any proceeding brought by the Commissioner. The Board makes its Findings of Fact and Conclusions of Law based upon the Commissioner's Order and representations of Counsel at the Boards meeting.

Adopted and approved by a majority of the Board, a quorum being present, on August 17, 2010.

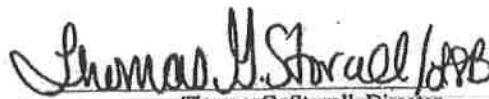
**APPROVED FOR ENTRY
FOR THE TENNESSEE WATER QUALITY CONTROL BOARD:**


Chairperson


William L. Penny, No. 009606
Stites & Harbison, PLLC
401 Commerce Street, Suite 800
Nashville, TN 37219-2376
Attorney for the Respondent


David L. Henry BPR#022840
Assistant General Counsel
Tennessee Department of Environment and Conservation

Entered in the Office of the Secretary of State, Administrative Procedures Division on the
17th day of August, 2010.


Thomas G. Stovall, Director
Administrative Procedures Division

RIGHTS OF APPEAL

RIGHTS OF APPEAL

The Respondent is hereby notified and advised of the right to administrative and judicial review of this AGREED ORDER pursuant to the Tennessee Uniform Administrative Procedures Act, T.C.A. §§ 4-5-316, 4-5-317 and 4-5-322 and the Water Quality Control Act, T.C.A. §§ 69-3-111 and 69-3-115.

T.C.A. § 4-5-316 gives a party the right to submit to the Board a Petition for Stay of Effectiveness of a Final Order within seven (7) days after its entry. T.C.A. § 4-5-317 gives any party the right to file a Petition for Reconsideration within ten (10) days after the entry of a Final Order, stating specific grounds upon which relief is requested.

T.C.A. § 4-5-322 and 69-3-111 provide the right of judicial review by filing a Petition in the Chancery Court of Davidson County within sixty (60) days of entry of this Order.

By entering into this Agreed Order, the Respondent knowingly and voluntarily waives its right to appeal, as described in this RIGHTS OF APPEAL section.

EXHIBIT

F

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

September 3, 2014

IN RE:

**PETITION OF TENNESSEE WASTEWATER
SYSTEMS, INC. TO AMEND ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY TO SERVICE A
PORTION OF WILLIAMSON COUNTY IN
TENNESSEE, CURRENTLY KNOWN AS THE
SCALES PROJECT**

**DOCKET NO.
14-00006**

**ORDER APPROVING PETITION TO AMEND
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

This matter came before Chairman Herbert H. Hilliard, Vice Chairman David F. Jones, and Director James M. Allison of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, during a Hearing held on August 11, 2014, to consider the *Petition of Tennessee Wastewater Systems, Inc. to Amend its Certificate of Convenience and Necessity* ("Petition") requesting the Authority's approval for an expansion of its service area to include a portion of Williamson County, Tennessee, known as The Scales Project.

On April 6, 1994, Tennessee Wastewater Systems, Inc. ("TWSI" or the "Utility")¹ obtained a Certificate of Public Convenience and Necessity ("CCN") to provide wastewater service to the Oakwood Subdivision in Maury County, Tennessee, from the TRA's predecessor

¹ Tennessee Wastewater Systems, Inc. was formerly known as On-Site Systems, Inc. This name change was effected by the TRA's order of February 19, 2004, in Docket No. 03-00518.

agency, the Tennessee Public Service Commission.² Since that time, through various other dockets, TWSI has been granted approval to expand its service territory to include other designated areas in Tennessee. The Utility's principal office is located in Smyrna, Tennessee. On January 22, 2014, TWSI filed in this docket its *Petition* and Pre-filed Direct Testimony of Matt Pickney requesting further expansion of its CCN to include The Scales Project in Williamson County, Tennessee.

LEGAL STANDARD FOR GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

No public utility is permitted to begin construction or operation of a new utility facility or service without first obtaining a CCN from the Authority, as set forth in Tenn. Code Ann. § 65-4-201(a), which states:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate. . . .³

The Authority's permanent rules for public wastewater utilities became effective on June 12, 2006. In order to obtain a CCN to provide wastewater service, TRA Rule 1220-4-13-.04(1)(b) requires that a public wastewater utility satisfy the following requirements:

(b) Any public wastewater utility requesting a Certificate of Public Convenience and Necessity (CCN) authorizing such public utility to construct and/or operate a wastewater system or to expand the area in

² See *In re: [Petition of Tennessee Wastewater Systems Inc.] to Operate as a Public Utility Providing Sewage Collection, Treatment, and Disposal for a Proposed Development in Maury County*, TRA Docket No. 93-09040. (TWSI was formerly known as On-Site Systems, Inc., as shown on the TDEC permit filed in the docket file.)

³ Tenn. Code Ann. § 65-4-201(a) (Supp. 2013).

which such a system is operated, shall file an application in compliance with Rule 1220-1-1-.03 and this rule. All applicants shall demonstrate to the Authority that they are registered with the Secretary of State, have obtained the financial security required under 1220-4-13-.07, and possess sufficient managerial, financial, and technical abilities to provide the wastewater services for which they have applied. Each application shall justify existing public need and include the required financial security consistent with Tenn. Code Ann. § 65-4-201 and these rules.⁴

THE PETITION AND SUPPORTING DOCUMENTATION

In its *Petition*, TWSI seeks to provide wastewater service to approximately 80 residential lots situated on a parcel of land encompassing approximately 171 acres.⁵ TWSI describes the proposed wastewater system, which will take approximately 60 days to construct, as being composed of a watertight effluent collection, fixed film treatment, and subsurface drip dispersal system with an estimated 24,000 gallon capacity.⁶ TWSI asserts that while no contracts have yet been executed, it is the intention of the developer, Turnberry Homes, to transfer ownership of the wastewater collection, treatment, and dispersal system, along with a permanent easement to the property that the system occupies, to TWSI.⁷ In support, TWSI filed a sample draft contract with exhibits showing the terms and conditions that would be contained in any contract executed between it and a developer, such as Turnberry Homes.⁸

As evidence of the public need for wastewater service in the requested service area, TWSI included with its *Petition* a letter from Nicky Wells, President of Land Development for Turnberry Homes, LLC, which requests that TWSI provide service to The Scales Project, identified as Map 059, parcel 092.00, in the Williamson County Tax Maps.⁹ TWSI also attached letters from other area wastewater service providers, Charles Strasser, General Manager of the

⁴ TRA Rule 1220-4-13-.04(1)(b).

⁵ *Petition*, p. 1 (January 22, 2014); *see also* Transcript of Proceedings, p. 6 (August 11, 2014).

⁶ *Id.*

⁷ *Petition*, p. 1 (January 22, 2014); *and see* *TWSI Response to Data Request*, Response No. 8 (April 21, 2014).

⁸ *TWSI Response to Data Request*, Response No. 7 and Attachment "B" (April 21, 2014).

⁹ *Petition* (unnumbered attachments), Undated Letter of Nicky Wells to Charles Hyatt, President TWSI (January 22, 2014).

Nolensville/College Grove Utility District, and Rogers Anderson, Mayor of Williamson County, Tennessee, in which those entities decline to serve and do not intend in the foreseeable future to provide wastewater/sewer service to The Scales Project development.¹⁰

On April 21, 2014, TWSI filed a copy of its Tennessee Department of Environment and Conservation (“TDEC”) Application for State Operation Permit (“SOP”) dated April 11, 2014.¹¹ With that filing, TWSI indicated that TDEC will issue a SOP only after all of its conditions have been satisfied and, among those conditions, the Utility must first obtain a CCN from the TRA for the service territory.¹² TWSI further asserted that until it received TRA approval and obtained a CCN for The Scales Project, binding contracts between the developer, Turnberry Homes, and TWSI and any company that would be retained to construct the wastewater system would not be finalized or executed.¹³ Further, until the contracts are executed, making TWSI the designated sewer utility for the subdivision, a plat would not be recorded or approved by Williamson County, Tennessee.¹⁴ In addition, TWSI noted that its estimated value of the wastewater system materials, components, and related property easement for The Scales Project is \$450,000, but that finalization of the design plan is needed before a detailed cost breakdown of the contribution in aid of construction could be provided.¹⁵

PUBLIC HEARING

A hearing on the *Petition* was held during the regularly scheduled Authority Conference on August 11, 2014, for which public notice had been issued on August 1, 2014. No person sought intervention in these proceedings either before or during the hearing. Mr. Matt Pickney,

¹⁰ *Petition* (unnumbered attachments), Letter of Charles Strasser, Nolensville/College Grove Utility District dated January 15, 2014 and Letter of Rogers Anderson dated January 8, 2014.

¹¹ *TWSI Response to Data Request*, Response No. 1 and Attachment “A” (April 21, 2014).

¹² *TWSI Response to Data Request*, Response No. 1 (April 21, 2014).

¹³ *Petition*, p. 1 (January 22, 2014); and see *TWSI Response to Data Request*, Response No. 10 (April 21, 2014).

¹⁴ *Id.*

¹⁵ *TWSI Response to Data Request*, Response Nos. 5 and 6 (April 21, 2014).

Operations Manager of TWSI, testified and was subject to examination by the panel, and his Pre-filed Direct Testimony was entered into the record without objection. During his testimony, Mr. Pickney stated that TDEC had scheduled a public hearing on August 18, 2014, to consider the status of TWSI's SOP Application.¹⁶ Mr. Pickney's testimony, along with the Utility's supplemental filings made in response to the Authority's requests for information, asserted and was provided to show that TWSI possesses the managerial, technical and financial ability to provide wastewater services to The Scales Project.

FINDINGS AND CONCLUSIONS

Upon completion of the hearing and after due consideration, the panel found that, contingent upon TWSI filing of certain supplemental documents, TWSI has sufficiently demonstrated that it possesses the managerial, financial, and technical abilities necessary to operate and provide wastewater service, and that a public need exists for such service in the designated area, as required under Tenn. Code Ann. § 65-4-201(a) and TRA Rule 1220-4-13-.04(1)(b). In order to satisfy the contingent approval given, TWSI must file the following supplemental documents: the deed and/or easement to the wastewater system and the land upon which it sits; the final copy of the SOP issued by TDEC; all final and properly executed contracts between TWSI, the builder of the wastewater system, and Turnberry Homes; a copy of the final plat recorded and approved by Williamson County; and, a detailed cost itemization of the wastewater system, land, and property, transferred to TWSI as Contribution in Aid of Construction.

Further, while TWSI appears qualified to provide service at The Scales Project, in light of the TDEC enforcement actions instituted against TWSI as a result of deficient conditions, maintenance problems, and major repairs required at its Maple Green and Cedar Hill wastewater

¹⁶ Transcript of Proceedings, p. 6 (August 11, 2014).

facilities located in Robertson County, Tennessee, the panel noted its concern in further expanding TWSI's CCN at this time.¹⁷ As such, the panel directed TRA Staff to continue working with TWSI and TDEC to closely monitor these situations and any others that might arise. In addition, the panel further found it appropriate that TWSI file detailed monthly reports that describe and explain all repairs and improvements made at its Maple Green and Cedar Hill wastewater facilities, the monetary amounts expended, and the manner in which those repairs are to be funded. Further, in the event other compliance issues arise concerning these or any other TWSI facilities, the panel further determined that the Utility should timely notify the Authority and provide similar information concerning all repairs and improvements to those facilities. In conclusion, the panel strongly encouraged TWSI to prioritize its available resources to repair these troubled systems as quickly and efficiently as possible.

Therefore, consistent with its findings noted above, the panel voted unanimously to grant the *Petition*, contingent upon satisfactory receipt of the documents described, and further to require TWSI to file detailed monthly reports concerning its Maple Green and Cedar Hill facilities and any other facilities found by TDEC to be in violation of or non-compliance with its standards and requirements.

IT IS THEREFORE ORDERED THAT:

1. The *Petition of Tennessee Wastewater Systems, Inc. to Amend its Certificate of Convenience and Necessity* to expand its service area to include The Scales Project in Williamson County, Tennessee, as shown in the maps filed with the *Petition*, is approved contingent upon the satisfactory filing of the following documents by Tennessee Wastewater Systems, Inc.:

¹⁷ See *TWSI Responses to Data Requests* (April 29, 2014, July 31, 2014, and August 1, 2014).

- a) Deed and/or easements for the wastewater system and all of the land occupied by the wastewater system;
- b) Final copy of the State Operating Permit issued by the Tennessee Department of Environment and Conservation to Tennessee Wastewater Systems, Inc. for The Scales Project;
- c) All final and properly executed contract(s) between Tennessee Wastewater Systems, Inc., the builder of the wastewater system, and Turnberry Homes;
- d) Copy of the final signed plat recorded and approved by Williamson County; and,
- e) A detailed cost itemization of the complete wastewater system, materials, components, and associated land and easements, transferred from the builder and Turnberry Homes to Tennessee Wastewater Systems, Inc.

2. Beginning September 1, 2014, Tennessee Wastewater Systems, Inc. shall file on the 1st of each month until completion and full compliance have been achieved, detailed monthly reports that describe and explain all repairs and improvements that are (1) planned, (2) in progress, and (3) completed at its Maple Green and Cedar Hill wastewater facilities, the monetary amounts expended, and the manner in which those repairs are to be funded.

- a) For repairs that are planned or in progress, Tennessee Wastewater Systems, Inc. shall include a projected completion date and an estimated cost to complete the repairs.

- b) For repairs and improvements that have been completed, Tennessee Wastewater Systems, Inc. shall include the completion date and actual cost of the project.
- c) In the event that other compliance issues arise, whether cited by the Tennessee Department of Environment and Conservation or any other regulatory entity or agency, concerning any of its wastewater systems, Tennessee Wastewater Systems, Inc. shall provide the Authority, on a timely basis, similar information concerning its plans for repairing those systems.

3) The rates for wastewater service shall be as listed in the Tariff and rate schedules filed in this docket on January 22, 2014.

4) Any party aggrieved by the decision of the Authority may file a petition for reconsideration with the Authority within fifteen (15) days from the date of this Order.

5) Any party aggrieved by the decision of the Authority may file a petition for review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from the date of this Order.

Chairman Herbert H. Hilliard, Vice Chairman David F. Jones, and Director James M. Allison concur.

ATTEST:



Earl R. Taylor, Executive Director

EXHIBIT
G

Monthly Update
31-Jan-15

Wastewater Location	Date Complaint /Repair Needed	Complaint	Date added to Report	Explain Repairs/Improvements Planned	Explain Repairs/Improvements in Progress	Money Expended	Manmar to be funded	Estimated Complete Date	Date Completed	Final Costs
Cedar Hill			9/29/2014	see Docket 14-00136						
Maple Green			9/29/2014	see Docket 14-00136						
Summit View				see Docket 14-00136						
Smokey Village				see Docket 14-00136						
Star Crest	11/17/2014	E Coll limits not met	11/30/2014	Fencing Required	Currently evaluating cost and timeline			1200	3/15/2015	
Star Crest H	11/17/2014	E Coll limits not met	11/30/2014	Fencing Required	Currently evaluating cost and timeline			1800	2/21/2015	
Townsend Town Sq	11/17/2014	E Coll limits not met	11/30/2014	Fencing Required	Currently evaluating cost and timeline			15000	3/1/2015	14277
Legacy Mtn East	10/1/2014	E Coll limits not met	10/30/2014	Fencing Required	Fence Installed				10/30/2014	1770

RECEIVED
2015 FEB 23 AM 10:55
T.R.A. DOCKET ROOM