



Tennessee Wastewater Systems, Inc.  
Docket 15-00025  
February 2019 Report Overview

**Systems subject to Notice of Violations and other Corrective Orders:**

**Starr Crest II (NOV)** – Work is complete. Final landscaping is still to be installed. TDEC will inspect upon completion of the entire expansion.

**Smoky Village (NOV)** – Docket 16-00096 – Loan providing funds to expand the drip field has closed. The additional land needed has been purchased. Work is being scheduled.

**Summit View** – Docket 14-00136 – TDEC has reinstated the construction plans for the site.

**Cedar Hill** – Docket 16-00096 – Loan providing funds to build the sand filter has closed. Work has begun and is expected to be completed in the Spring.

**Maple Green (NOV)** – Docket 16-00096 – Loan providing funds to build the sand filter has closed. Work is being scheduled (will start after Cedar Hill is completed).

**River Road\* (NOV)** – TWSI is awaiting a signed easement for the land occupied by the sewer system. This is the final requirement TDEC had for resolution of the NOV.

**Hidden Springs Resort (Commissioner's Order)** – Plans have been submitted to TDEC to expand the system. Discussions with the HOA regarding the land needed to expand the system are ongoing. Plans regarding the temporary measures to handle the excess flows at the site until construction can begin on expanding the system are being finalized and will be submitted to TDEC.

\* River Road is not included in the KPI Report because there is no discharge from the facility and is not monitored.

**Jeff Ridsen**

**From:** HAWKMS Agent <agent@hawkms.com>  
**Sent:** Friday, February 1, 2019 7:50 AM  
**To:** Jeff Ridsen; Brian Carter  
**Cc:** Bob Pickney; Matt Pickney  
**Subject:** TRA KPI Compliance Report for 2/1/2019 7:50:07 AM

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

## TPUC Flow KPI Report for 1/31/2019

| Tracy Nichols   | Permitted | Expected | Actual | % of Expected | AvgFlow | % o |
|-----------------|-----------|----------|--------|---------------|---------|-----|
| Cedar Hill DCP  | 75000     | 30025    | 0      | 0.00          | 0.00    |     |
| Maple Green DCP | 74000     | 50129    | 130    | 0.00          | 97.67   |     |

| Jeramy Stewart     | Permitted | Expected | SP Gal | Actual | % of Expected | AvgFlow |
|--------------------|-----------|----------|--------|--------|---------------|---------|
| Hidden Springs RSF | 30750     | 19600    | 0      | 4463   | 0.23          | 45%     |
| Starr Crest II BC  | 28000     | 23800    | 900    | 14128  | 0.59          | 164%    |
| Summit View RSF    | 8000      | 5775     | 0      | 1903   | 0.33          | 36%     |

| Brandon Dotson    | Permitted | Expected | Actual | % of Expected | AvgFlow | % o |
|-------------------|-----------|----------|--------|---------------|---------|-----|
| Smoky Village RSF | 5600      | 4550     | 1863   | 0.41          | 1755.67 |     |

**BURR • FORMAN**  
*results matter*

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January 11, 2019

**VIA HAND DELIVERY**

Commissioner of Department of Environment  
and Conservation  
C/O Jenny Howard, General Counsel  
Department of Environment and Conservation  
William L. Snodgrass Tower  
312 Rosa L. Parks Avenue, 2nd Floor  
Nashville, TN 37243

**Re: In the matter of Tennessee Wastewater Systems, Inc.  
Case No. WPC18-0028**


Dear Ms. Howard:

Enclosed herewith is an Answer and Request for Hearing filed on behalf of Tennessee Wastewater Systems, Inc. in the above matter.

Please let me know if you have any questions.

Very truly yours,

Burr & Forman LLP

  
William L. Penny  
Member

WLP  
Enclosure

**RECEIVED**

**JAN 11 2019**

**ENVIRONMENT AND CONSERVATION  
COMMISSIONER'S OFFICE**

**BEFORE THE TENNESSEE BOARD OF WATER QUALITY, OIL AND GAS**

**TENNESSEE DEPARTMENT OF  
ENVIRONMENT AND CONSERVATION,** )  
 )  
 )  
 **Complainant,** )  
 )  
 **v.** )  
 )  
 **TENNESSEE WASTEWATER SYSTEMS, INC.,** )  
 )  
 **Respondent.** )

**No. \_\_\_\_\_**  
**Case No. WPC18-0028**

**Answer and Request for Hearing**

NOW COMES Tennessee Wastewater Systems, Inc. ("TWSI" or "Respondent") and pursuant to Tenn. Code Ann. § 69-3-110 hereby provides this Answer to the Commissioner's Order and Assessment ("COA") Number WPC18-0028 and requests a hearing. For good cause TWSI would show:

1. The Respondent admits the allegations in Paragraph I of the COA to the extent the Commissioner has those powers authorized by Tenn. Code Ann. § 69-3-101 to 148, but would show that the Commissioner does not have authority expressly given to the Board of Water Quality, Oil and Gas under Tenn. Code Ann. §§ 69-3-105, 110, 111 and 131 nor does the Commissioner have that authority expressly given to local pretreatment agencies pursuant to Tenn. Code Ann. §§ 69-3-122 – 129.
2. The Respondent admits the allegations of Paragraph II of the COA.
3. The Respondent would show that the statutory references in Paragraph III of the COA speak for themselves and would deny any language not expressly stated therein.

4. In response to the allegations in Paragraph IV of the COA the Respondent admits that it is a "person" within the meaning of Tenn. Code Ann. § 69-3-103(26) only to the extent it is a private corporation and no other reason. Respondent denies it has violated the Act.

5. The Respondent does not have sufficient information to either admit or deny the allegations in Paragraph V of the COA and, therefore, denies the allegations. Respondent would further show that Seaton Branch is not listed in the current use classifications in Tenn. Comp. R & Regs. Ch 0400-40-04. In addition, the Board has not designated all of the uses or potential uses listed therein for unnamed tributaries.

6. The allegations in Paragraph VI are paraphrases of the statute and do not require a response. However, Respondent expressly denies any allegations that are not specifically set out in said statute.

7. In response to the allegations in Paragraph VII, the Respondent admits it operates Summitt View Resort waste treatment system and that the Division issued Director's Order WPC14-0092, but would show that said Director's Order was appealed and said appeal is outstanding. Respondent further admits that it operates wastewater treatment systems at Star Crest II Resorts and Jackson Bend and that a Notice of Violation was issued by the Division on April 4, 2017. Respondent denies the allegations in the NOV's.

8. The Respondent admits the allegations in Paragraph VIII.

9. The Respondent admits the first sentence in Paragraph IX. Respondent does not have sufficient information to admit or deny the Division's observations but admits the AdvanTex units were not installed. Further, Respondent denies the representations made by Bob Pickney as stated, but admits that he discussed relocation and expansion of the treatment capability and disposal fields and the possible use of the FAST units until the relocation and expansion was

completed. Further Respondent admits that Mr. Garden supported the installation of the FAST units but denies other comments attributed to Mr. Garden. Respondent admits the language in the Permit to the extent that such document speaks for itself.

10. With regard to the allegations in Paragraph X, Respondent lacks sufficient information to admit or deny whether a complaint was received, but would show that any such complaint was not received by Respondent.

11. Respondent generally admits the allegations in Paragraph XI regarding the installation of AdvanTex units, but as stated in response to the allegations in Paragraph IX, Respondent notified George Garden in writing by email on May 10, 2016 concerning the installation of the FAST units. Respondent understood that Mr. Garden's authorization for the FAST units was sufficient. Further, Respondent denies that the any sewage flow was to an unnamed tributary of Seaton Branch. Respondent also admits that the 3rd quarter monthly operations report did not report any surface saturation, ponding , or pooling, but denies that any ponding or pooling occurred as such terms are not defined by either state law or regulation. Respondent would show the language of the permit speaks for itself but lacks sufficient information to either admit or deny what TDEC observed with regard to the fencing.

12. Respondent admits the allegations in Paragraph XII to the extent the NOV speaks for itself, but denies violations contained therein.

13. In response to the allegations in Paragraph XIII, the Respondent admits that its President replied to the NOV referenced in Paragraph XII. Respondent relied upon approval from Mr. George Garden before installing and operating the FAST systems. Division staff was well aware of the changes to the treatment system and had access to the actual systems themselves.

Respondent admits the remainder of the Paragraph. Plans were formally submitted on August 14, 2018.

14. In response to the allegations in Paragraph XIV, Respondent would show that TDEC was well aware that the recirculating sand filter ("RSF") at Hidden Springs was not operating properly as previously discussed, and the AdvanTex units had not been installed, since its representatives had authorized use of the FAST systems as a short term solution. Respondent had also made TDEC aware of its plans to use a new drip field subject to ownership or easements from the home owners' association. Respondent lacks sufficient information to either admit or deny allegations pertaining to ponding or pooling, evidence of overland flow or the exact condition of the fencing. Respondent would further show that the requirements of the SOP speak for themselves and would deny any language not expressly contained therein.

15. Respondent generally admits the allegations in Paragraph XV but would show the letter from Mr. Dean speaks for itself, but denies Respondent misrepresented its business interests since the permit was issued in that manner by TDEC and not at Respondent's request. Further such allegations are irrelevant to this proceeding.

16. In response to the allegations in Paragraph XVI, Respondent admits that the permit was modified to remove the "d/b/a notation from the title page" but would deny the remainder of the paragraph.

17. In response to the allegations in Paragraph XVII, TDEC personnel were requested to evaluate the proposed area for an additional or new drip field since TDEC knew Respondent was planning to replace the drip field and treatment system. TDEC instead turned the visit into another inspection. Respondent denies any flow in the drip field was running off the slope, and lacks sufficient information to admit or deny what TDEC officials actually observed. Respondent

was not aware that samples were taken, and, if so, were taken without permission of Respondent and demands strict proof of the accuracy of any sample results.

18. In response to the allegations in Paragraph XVII, Respondent admits the allegations to the extent the MORs speak for themselves, but would show that surface saturation, ponding or pooling is not defined and it could not report what it could not define or, to the extent such conditions existed, was not observed at the time of inspection. In addition, the sampling was expected to be repeated.

19. In response to the allegations in Paragraph XIX, Respondent lacks sufficient information to admit or deny that the Division received a complaint from the president of the Hidden Springs Resort HOA, since it did not receive it; however, generally understands the Division received emails regarding the issue and would deny allegations contained therein.

20. The Respondent admits the allegations in Paragraph XX but would deny any allegations not expressly stated in the referenced email correspondence.

21. The Respondent admits the first paragraph of Paragraph XXI. The Respondent admits that the FAST units were in operation but deny the operation was in violation of the permit, and further than Mr. Garden's previous authorization was still in place. Respondent does not have sufficient information to admit or deny the exact nature of what the TDEC personnel observed and would deny same.

22. Respondent admits the allegations in Paragraph XXII and would show that until the HOA transfers ownership or permanent easement rights to Respondent it cannot show proof of ownership of the property intended for the drip field.



23. In response to the allegations in Paragraph XXIII, Respondents would show that it had no representatives present on the day of the site inspection, and, therefore, lacks sufficient information to admit or deny the allegations, including any samples taken and sample results.

24. The Respondent denies the allegations in Paragraph XXIV.

25. The Respondent denies the allegations in Paragraph XXV.

26. The Respondent denies the allegations in paragraph XXVI.

27. The Respondent denies the allegations in Paragraph XXVII.

28. The Respondent denies the allegations in Paragraph XXVIII.

29. The Respondent objects to the injunctive requirements imposed in Paragraph XXIX but will make reasonable attempts to comply with the order contained therein or other agreeable solutions, recognizing that ownership or easements, funding and construction will be required and may take more time than anticipated by TDEC.

30. The Respondent objects to a two year probation period because it cannot reasonably comply with the terms of this Order as stated.

31. The Respondent objects to the stated civil penalty and would show that the penalty calculation does not fairly consider the factors in Tenn. Code Ann. § 69-3-115(a)(3).

32. For any allegation for which Respondent has not expressly admitted or denied herein, Respondent hereby DENIES such allegations.

#### **AFFIRMATIVE DEFENSES**

1. The Respondent relies on the doctrine of estoppel to the extent it can be applied to the state since it relied upon representations from TDEC officials that the FAST systems could be installed and operated.

2. The Respondent believes that all alleged violations are attributable to acts of third parties since the developer of the treatment plant failed to construct the AvenTex systems and the owners of the proposed land for drip lines has not conveyed the property necessary to do so.

Respectfully submitted,



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Nashville, TN 37201  
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Facsimile: (615) 724-3290

*Attorney for Respondents*

**Certificate of Service**

I hereby certify that a true and exact copy of the foregoing Answer and Request for Hearing was served by hand delivery upon the Commissioner of the Department of Environment and Conservation, c/o Jenny L. Howard, General Counsel, Department of Environment and Conservation, William R. Snodgrass Tower, 312 Rosa L. Parks Avenue, 2nd Floor, Nashville, TN 37243 this 11<sup>th</sup> day of January, 2019.



William L. Penny