

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE:	)	
	)	
PETITION OF TENNESSEE	)	DOCKET NO. 15-00025
WASTEWATER SYSTEMS, INC.	)	
TO AMEND ITS CERTIFICATE	)	
OF CONVENIENCE AND NECESSITY	)	

MOTION TO FILE REPLY AND AFFIDAVITS
AND
REPLY TO CONSUMER ADVOCATE REGARDING PETITION TO INTERVENE

Motion

Tennessee Wastewater Systems, Inc. ("TWSI") requests permission pursuant to TRA Rule 1220-1-2-.06 to file this Reply to the "Consumer Advocate's Response to Opposition of Tennessee Wastewater to Consumer Advocate's Petition to Intervene." The Consumer Advocate's "Response" raises issues not raised in the Petition to Intervene and not addressed in TWSI's earlier filing. Furthermore, TWSI has been contacted by both the seller and the developer of "The Enclave at Dove Lake" who have provided the attached affidavits in support of TWSI's opposition to the Advocate's Petition to Intervene.

TWSI respectfully submits that the filing of this Reply and the attached affidavits will assist the Hearing Officer in ruling on the Advocate's request.

Reply

1. The Consumer Advocate argues that his office has an independent, statutory right under T.C.A. § 65-4-118(b) to intervene in any TRA proceeding. Response at 2-3 and 6-7. The Advocate has raised this same argument in at least three other dockets in the last eighteen

months.¹ Each time, the Advocate's argument has been rejected. As Hearing Officer Smith-Ashford recently wrote, the statutory provision cited by the Advocate, "in no way confers upon the Consumer Advocate an automatic or absolute right to participate in any particular Authority proceeding." Docket 12-00077, "Order Denying Consumer Advocate's Petition to Intervene," February 4, 2015, at 9 (appeal pending). Similarly, the Authority stated in Docket 14-00041 that the agency has consistently held that T.C.A. § 65-4-118 does not confer a general right to intervene on the Consumer Advocate. Docket 14-00041, "Order Denying Petition to Appeal and Affirming the Initial Decision of the Hearing Officer," June 4, 2014, at 4.

In its "Response," the Advocate presses the same, statutory argument but does not mention or attempt to distinguish these prior, adverse rulings. In light of the agency's consistent rulings against the Advocate's interpretation, there is no reason to debate this issue again.

2. The Advocate notes that TWSI's petition is not an application for a new certificate of convenience and necessity but a request to amend TWSI's certificate by adding additional service territory. Response at 3-4. The Advocate is correct but does not explain what difference that makes to the issue of whether the Advocate may intervene. Technically, the Authority treats each new TWSI development as an "amendment" to TWSI's first certificate which was granted nearly twenty years ago. Practically, the Authority handles each new development as if it were an application for a new certificate, addressing each time the issues of TWSI's managerial, technical and financial capability to provide the requested service. The issue before the Hearing Officer is whether the "consumers of public utilities services" (T.C.A. § 65-4-118) whom the

¹ Docket 13-00017 (pre-hearing Order issued Nov. 20, 2013); Docket 14-00041 (pre-hearing Order issued May 1, 2014, affirmed on appeal in Order issued June 4, 2014; Docket 12-00077 (pre-hearing Order issued February 4, 2015, appeal pending).

Advocate represents have a legally protected interest at stake in this docket. Whether TWSI's application is viewed as an amendment to a certificate or an application for a new certificate has no apparent relevance to that issue.

3. The Advocate argues that his office has a right to intervene because this case "involves, by necessity, a setting of rates" in that the order granting a certificate "invariably sets forth the rate at which the service is offered." Response at 2 and 5.

As the Hearing Officer is aware, the addition of new territory or new customers does not change a utility's tariffed rates. TWSI's rates, which have already been approved by the Authority, will automatically apply to any new customers in The Enclave at Dove Lake. No rates will be set as a result of this docket.

4. Although there are presently no "consumers of public utilities services" in the development which TWSI seeks to serve, the Consumer Advocate argues that his office represents "past, present and future consumers" and therefore should be allowed to intervene in order to represent "future" consumers of wastewater service at The Enclave at Dove Lake. Response at 7-8.

To support his claim to represent customers who do not yet exist, the Advocate points to the TRA's rules which require a utility to offer service to customers within the utility's service area and also restrict the utility's ability to deny or discontinue service except as provided in the agency's rules and the utility's tariffs. Response at 8. The Advocate argues that since the agency's rules recognize the rights of "future" and "past" customers who are wrongly denied service, the agency should similarly entertain claims by "future" customers who will someday live in The Enclave at Dove Lake. Id.

The Advocate's argument overlooks the difference between customers who have a legal right to utility service and future residents of The Enclave at Dove Lake. Tennessee courts have long recognized that a person who lives or owns property inside a utility's service area has a legal right to demand service, and that the utility is legally obligated to provide service under reasonable terms and conditions. See T.C.A. § 65-4-114; Peoples Telephone Company v. Tenn. Public Service Commission, 393 S.W.2d 285 (Tenn. 1965). Similarly, a public utility may not terminate service without good cause and without providing the customer notice and a reasonable opportunity to challenge the termination. Memphis Light, Gas and Water v. Craft, 436 U.S. 1 (1978). Those are the "future" and "past" customers whom the TRA's rules protect, customers who have a legally protected right to obtain or to continue to receive utility service. In contrast, future customers who may someday reside in The Enclave at Dove Lake have no legally protected interest in the outcome of this application proceeding. No future customer lives or owns property inside that area. The developer himself does not yet own the property.² These "future customers" whom the Advocate claims to represent do not yet exist and, if the development fails, may never exist. The Advocate's argument is a non sequitur. That he may represent a future customer in some cases does not mean that he represents future customers in all cases.

5. At bottom, the Advocate's petition to intervene rests on the Advocate's representation of TWSI's "existing" customers who live in other developments but whose "rates or quality of service could be affected by a decision to [allow TWSI to] expand service when TWSI's resources are already over-extended by failures and problems at at least four existing sites." Response at 2. In the same vein, the Advocate writes that "failures and problems at at

² As explained in the attached affidavits, the developer's purchase of the land will not close until the developer is assured of being able to obtain wastewater service.

least four other sites currently run by TWSI are having or will have a financial impact on consumers, a situation that could be exacerbated by expanding into a new territory at this time."

Response at 4.

TWSI addressed this argument in its initial filing in opposition to the Advocate's Petition to Intervene and readily acknowledged that TWSI's technical, managerial and financial capabilities to provide service at this new development are at issue in this proceeding as they are in every certificate application. The question presented, however, is not whether those issues will be raised but whether TWSI's existing customers have "a legal right or interest" in how those issues are decided.

In its earlier filing, TWSI noted that the TRA has ruled on several occasions that a petition to intervene as a matter of right under T.C.A. § 4-5-310(a) must demonstrate that the petitioner has a "legal interest" in the outcome of the proceeding. See "Opposition of Tennessee Wastewater to Consumer Advocate's Petition to Intervene" at 2-4. In addition to the three cases cited there, TWSI also refers the Hearing Officer to her own decision in the "Laurel Hills" docket ("Order Denying Consumer Advocate's Petition to Intervene," Docket 12-00077, issued February 4, 2015). In that proceeding, the Hearing Officer denied a petition to intervene filed by the Consumer Advocate because "the Consumer Advocate has failed to show a factual basis to establish that the legal rights or interests of the customers . . . may be determined in this proceeding." Therefore, the Hearing Officer concluded, "[T]he Consumer Advocate's request to intervene does not satisfy the requirements for mandatory intervention." Order, at 11.³

Neither the rates nor the services of TWSI's other customers will be directly affected by the Authority's decision whether or not to grant TWSI's request to provide service at The Enclave

³ The Advocate has appealed the Hearing Officer's decision to the Authority.

at Dove Lake. The Advocate does not argue otherwise but contends that those customers might be indirectly affected if TWSI's financial, managerial, and technical capabilities become "overextended" by the addition of this new service area. The Advocate does not cite any judicial or administrative precedents to support his argument that such a hypothetical possibility is sufficient to give TWSI's customers a "legal right or interest" in this docket.

To the contrary, the Authority has held in several similar cases that a would-be intervenor who might be indirectly affected by a TRA proceeding but had no direct interest at stake is not entitled to intervene as a matter of right in those proceedings. (See, eg., the discussion of the "Telmate," "King's Chapel Capacity," and "TWSI Show Cause" cases discussed at pp. 2-4 in TWSI's earlier filing and the Hearing Officer's decision, described above, in the "Laurel Hills" docket.) In each of those cases, the petitioner argued that he would be indirectly affected by the TRA's decision.⁴ In every instance, the agency held that the petitioner's interest was insufficient to meet the "legal right or interest" requirement for intervention as a matter of right. This situation is no different. No TWSI customer from another site has standing to intervene as a party in this application proceeding. The possibility that TWSI might become "overextended" by the addition of new territory is hardly sufficient in light of the TRA's prior rulings to meet the "legal right or interest" test.⁵ As the Authority wrote in denying the Advocate's Petition to Intervene in Docket 14-00041, "[T]he assertion that a legal right, duty, privilege, immunity or

⁴ In the Telmate case, the would-be intervenor, a competing utility, made a similar argument to the one the Advocate makes here, contending that Telmate did not meet the statutory criteria required to obtain a certificate and that the applicant's legal problems in other jurisdictions demonstrated that the applicant should not be allowed to operate in Tennessee. The Hearing Officer found these arguments insufficient to give the petitioner a legal right to intervene in the docket.

⁵ The Consumer Advocate made similar arguments when attempting to intervene in TRA enforcement proceedings against TWSI and Laurel Hills, contending that those decisions might indirectly impact the rates or services of current or future customers. In each case, the Hearing Officer held that the Advocate failed to demonstrate that those customers had a "legal right or interest" at stake in the proceeding.

other legal interest held by an actual consumer of public wastewater utility service will be determined in this docket appears tenuous." Order at 16.

Affidavits

In its earlier filing in opposition to the Consumer Advocate's Petition to Intervene, TWSI argued that the Hearing Officer should not permit the Advocate to intervene as a matter of agency discretion under § 4-5-310(b) because the Advocate's participation would delay "the orderly and prompt conduct of the proceedings" resulting in financial harm to the developer. "Opposition of Tennessee Wastewater Systems, Inc. to the Consumer Advocate's Petition to Intervene," footnote 3. Based on the Advocate's experience at the Authority, it is reasonable to assume that the Advocate's participation in this docket would delay the proceeding by several months⁶ and equally reasonable to assume that such delay would cause financial harm to the developer. In further support of this point, TWSI submits the attached affidavits of Alan Kent, the developer of The Enclave at Dove Lake, and Gary R. Sanford, who has contracted to sell the property to the developer for \$5,250,000. As explained in both affidavits, the closing of the sale of the property is contingent upon the developer having obtained, among other things, "the approval of wastewater services that are the subject of this proceeding." Sanford affidavit at 2. A delay "of even a couple of months in this wastewater proceeding" could force the developer to terminate the project, causing the seller to lose the sale and causing the developer to lose over \$100,000 which he has spent on the project up to this point. Kent affidavit at 2.

TWSI also submits the affidavit of Mark P. Lee, the engineer who designed the proposed wastewater treatment system at The Enclave at Dove Lake. As TWSI noted in its earlier filing

⁶ In the Laurel Hills case (Docket 12-00077), the Hearing Officer found that, in light of the opposition to the Advocate's intervention and the nature of the hearing itself, the Hearing Officer "cannot conclude that allowing intervention would not impair the interests of justice or the orderly and prompt conduct of this proceeding." Hearing Officer's Order, *supra*, at 12.

(at 2 and footnote 1), Mr. Lee works for Site Engineering Consultants in Murfreesboro, Tennessee and is not connected with TWSI. Mr. Lee has substantial experience designing stand-alone wastewater treatment systems and, as described in his affidavit, has "never experienced a failure in any of our systems." Lee affidavit, at 1. As he explains, the treatment system he has designed for The Enclave at Dove Lake "is an outstanding system, surpassing all state and municipal requirements concerning the system." Id., at 2.

In the Petition to Intervene, the Consumer Advocate argues that the TRA should consider whether TWSI "should be allowed to use the proposed technology at the new site in light of problems at other sites." Petition to Intervene at 1-2. TWSI did not design the treatment system at this site. Mr. Lee, who was chosen by the developer, designed it. If the Advocate's purpose in intervening is, as he claims, to ask the TRA to review "the adequacy of the design, construction, and maintenance" (Petition to Intervene, at 2) of a treatment systems designed by someone associated with TWSI, the Advocate will have to find another docket.

Conclusion

TWSI asks that the Hearing Officer permit the filing of this Reply and the three attached affidavits. Based on the arguments presented in the Reply and the facts submitted in the affidavits, TWSI asks that the Hearing Officer deny the Consumer Advocate's petition to intervene as a matter of right under T.C.A. § 4-5-310(a) or as a matter of agency discretion under T.C.A. § 4-5-310(b).

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS LLP

By: _____

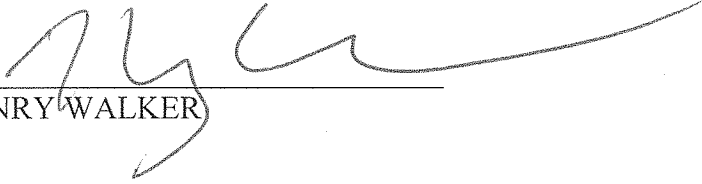


Henry Walker (B.P.R. No. 000272)
Bradley Arant Boult Cummings, LLP
1600 Division Street, Suite 700
Nashville, TN 37203
Phone: 615-252-2363
Email: hwalker@babbc.com

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of May, 2015, a copy of the foregoing document was served on the parties of record, via hand-delivery, overnight delivery or U.S. Mail, postage prepaid, addressed as follows:

Mr. Vance L. Broemel
Senior Counsel
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, TN 37202-0270



HENRY WALKER

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:

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

)
)
)
)
)
)

DOCKET NO. 15-00025

AFFIDAVIT OF ALAN KENT

I, Alan Kent, being duly sworn, do make oath and say on personal knowledge as follows:

1. I am a resident of Harris County, Texas. I am over the age of 18.
2. I am an owner and member of Nolensville 162, LLC, a Tennessee limited liability company.
3. Nolensville 162 (the "Developer") is the developer of a proposed residential community in Williamson County, Tennessee, to be commonly known as Enclave at Dove Lake (the "Subdivision"). One of the conditions of the contract to acquire the real property upon which the Subdivision is to be constructed is that all of the necessary development entitlement approvals sought for the desired community be satisfied. If such approvals are not obtained timely under the entitlement and development phase, the Developer would be forced to terminate the contract with the land owners.

4. Since the effective date of the contract, the Developer has expended significant time, money and other resources in the amount of \$107,757.00 in furtherance of the intended Subdivision project. Immediately below is a breakdown of the costs incurred by Developer to date.

Surveys, Grid Staking, Permits and Applications	\$23,267.00
Soil Mapping	\$13,000.00
Sewer Designs, sketch plans, DDR (report)	\$17,280.00
DSIR (report)	\$10,000.00
Additional Surveys	\$6,000.00
Hydrologic Determinations	\$4,550.00
Preliminary Traffic Shed Study	\$500.00
Master Plan, Slope Analysis, Design work	\$5,495.00
Legal Fees	\$3,300.00
Master Plan, Operating Permits (State and UIC)	\$9,365.00
Earnest Money (no longer refundable)	\$15,000.00

Total Deployed Capital Toward Entitlement	\$107,757.00
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5. The viability of the desired Subdivision and the closing on the real property with the land owners is based upon a carefully crafted entitlement and development plan and schedule. A delay of even a couple of months in this wastewater proceeding would result in the inability to complete timely the remaining entitlement process. In the event of such a delay, the Developer would likely be forced to terminate this project and underlying contract with the land owners.

6. Intervention by the Consumer Advocate and Protection Division of the Attorney General's office (the "CAPD") in this proceeding would necessarily cause significant monetary damage to Developer and result in the waste of extensive time and

effort in pursuit of the development of a beautiful residential community in the Williamson County area.

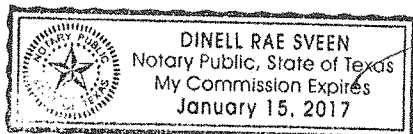
FURTHER AFFIANT SAITH NOT.


Alan Kent

STATE OF Texas)
COUNTY OF Harris)

Before me, the undersigned authority, a Notary Public in and for the State and County aforesaid, personally appeared **Alan Kent** with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged that all facts set forth in the foregoing Affidavit are true and correct to the best of his knowledge, information, and belief.

Witness my hand and official seal at office in J. Alan Kent on this the 06 day of May, 2015.




NOTARY PUBLIC

My Commission Expires: 01/15/17

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:	)	
	)	
PETITION OF TENNESSEE	)	DOCKET NO. 15-00025
WASTEWATER SYSTEMS, INC. TO	)	
AMEND ITS CERTIFICATE OF	)	
CONVENIENCE AND NECESSITY	)	

AFFIDAVIT OF GARY R. SANFORD

I, Gary R. Sanford, being duly sworn, do make oath and say on personal knowledge as follows:

1. I am a resident of Williamson County, Tennessee. I am over the age of 18.
2. I and my two brothers, G.T. Sanford, III and Phillip T. Sanford, are co-owners of approximately 222 acres (the "Sanford Property") in Williamson County, Tennessee, commonly known as 7624 Nolensville Road, Nolensville, TN 37135.
3. My brothers and I entered into a Land Purchase and Sale Agreement with a developer (the "Buyer") for the sale of the Sanford Property for a purchase price of \$5,250,000.00. All of the proceeds from the sale of the Sanford Property are to be divided among me and my brothers.
4. The closing on the sale of the Sanford Property is contingent upon the Buyer's ability to obtain approval of all necessary entitlement contingencies for the

construction of the proposed residential development upon the Sanford Property (to be called the "Enclave at Dove Lake"), including the approval of wastewater services that are the subject of this proceeding.

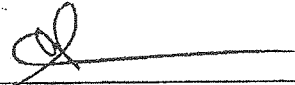
5. The due diligence, planning, engineering and other efforts related to the necessary entitlements for the Enclave at Dove Lake began in the fall of 2013 following the execution of the contract with Buyer.

6. The Buyer has invested over \$100,000.00 in Buyer's due diligence, planning, engineering and other efforts to properly entitle the Sanford Property.

7. I am advised that should the Consumer Advocate and Protection Division of the Attorney General's office (the "CAPD") be permitted to intervene in this proceeding, this intervention will result in several months, if not more significant, delays in the outcome of this matter.

8. The Buyer's entitlement and development schedule and intended delivery of subdivided lots to Buyer's builder customers is not able to accommodate such delays. If the CAPD is allowed to intervene and delay this proceeding, Buyer will not be able to perform timely with Buyer's builder customers, and as such, Buyer will be forced to terminate the \$5,250,000.00 contract for the Sanford Property. It would be a tremendous loss for my brothers and me to have our contract with Buyer terminated due to delays in the otherwise timely and proper review and approval of this proceeding as a result of some unnecessary intervention by the CAPD.

FURTHER AFFIANT SAITH NOT.

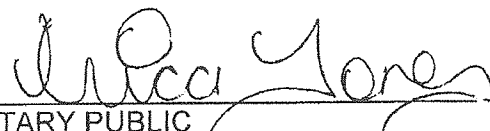


Gary R. Sanford

STATE OF TN)
COUNTY OF Williamson)

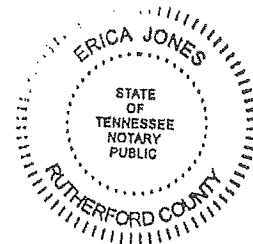
Before me, the undersigned authority, a Notary Public in and for the State and County aforesaid, personally appeared **Gary R. Sanford** with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who: (1) upon oath, acknowledged that all facts set forth in the foregoing Affidavit are true and correct to the best of his knowledge, information, and belief.

Witness my hand and official seal at office in First TN Bank on this
the 10 day of May, 2015.



NOTARY PUBLIC

My Commission Expires: 10/24/2017



BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:	)	
	)	
PETITION OF TENNESSEE	)	DOCKET NO. 15-00025
WASTEWATER SYSTEMS, INC. TO	)	
AMEND ITS CERTIFICATE OF	)	
CONVENIENCE AND NECESSITY	)	

AFFIDAVIT OF MARK P. LEE

I, Mark P. Lee, being duly sworn, do make oath and say on personal knowledge as follows:

1. I am a resident of Rutherford County, Tennessee. I am over the age of 18.
2. I have been a registered professional engineer for twenty-eight years, and I am a principal of the engineering firm, SEC, Inc. ("SEC"). A copy of my *curriculum vitae* is attached as **Exhibit A**. In 2007 I served on a TDEC Technical Advisory Committee, charged with rewriting two chapters of Tennessee's wastewater treatment regulations.
3. I have been designing wastewater treatment STEP systems since 1997. My services furnished in connection with these STEP systems include design, planning, and project management. Our firm has designed STEP systems for over 5,000 residential lots.
4. Our STEP systems design flows are approximately 150% of actual flows, and these systems surpass state and municipal requirements regarding effluents. To date, we have never experienced a failure on any of our systems.

5. Nolensville 162, LLC, a developer, retained our engineering firm to design the STEP system proposed for the Enclave at Dove Lake subdivision located in Nolensville, Williamson County, Tennessee. The system being proposed for this subdivision is an outstanding system, surpassing all state and municipal requirements concerning the system.

6. By letter dated March 15, 2010, Robert G. Odette, M.S., P.E., the then Assistant Manager of Municipal Facilities of Tennessee's Department of Environment and Conservation, Division of Water Pollution Control, opined about the superior and growing preferred use of decentralized wastewater treatment systems, such as the one proposed for the Enclave at Dove Lake. A copy of this March 15, 2010 opinion is attached as **Exhibit B**.

FURTHER AFFIANT SAITH NOT.

[Notarized Signature on Next Page]

AFFIANT:

Mark P. Lee
Mark P. Lee

STATE OF Tennessee)
COUNTY OF Rutherford)

Before me, the undersigned authority, a Notary Public in and for the State and County aforesaid, personally appeared **Mark P. Lee** with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged that all facts set forth in the foregoing Affidavit are true and correct to the best of his knowledge, information, and belief.

Witness my hand and official seal at office in Murfreesboro, TN on this the 6th day of May, 2015.

Christie Lynn Taylor
NOTARY PUBLIC

My Commission Expires: 10 / 24 / 2017

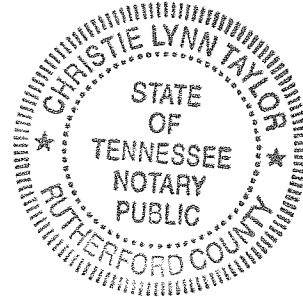
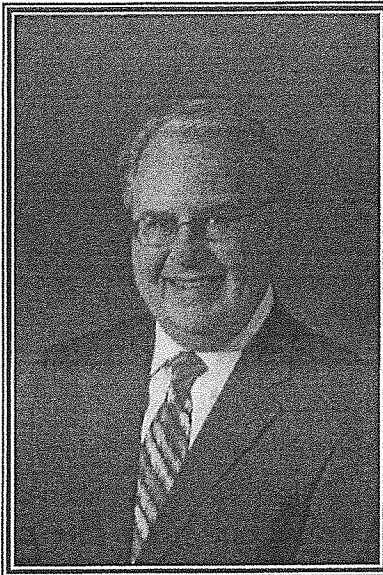


EXHIBIT A

Civil Engineer
Expert Witness
Curriculum Vitae



Mark P. Lee, P.E.
SEC, Inc.
850 Middle Tennessee Blvd.
Murfreesboro, TN 37129
Office 615-890-7901

SEC, Inc.

SITE ENGINEERING CONSULTANTS

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LANDSCAPE ARCHITECTURE

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Mark P. Lee, P.E.

New Business & Engineering Development, Principal

SEC, Inc.

850 Middle Tennessee Blvd.

Murfreesboro, TN 37129

EDUCATION

Bachelor of Science in Civil Engineering
Tennessee Technological University - 1983

REGISTRATION

Registered Professional Engineer in:
Tennessee (No. 19,186), Alabama (32668), Kentucky (15,162), Illinois (062-046793, inactive), Mississippi (13292), and Texas (76937).
National Association of Sewer Service Companies, Inc. (NASSCO) Certified for Pipeline, Manhole and Lateral Assessment (U-1212-16846)

PROFESSIONAL MEMBERSHIPS

American Society of Civil Engineers (ASCE), Member
Transportation and Development Institute of ASCE, Member
Tennessee Wastewater Industry Group, Treasurer

TEACHING / SPEAKING EXPERIENCE

High Water Too Close to Home – 2002, Rutherford County Television
Site Engineering and Stormwater Management – one to two times each year,
1999 - Present, Middle Tennessee State University, Construction
Management program
MTSU Video Presentation for Construction and Materials I – *Surveying and Civil
Engineering Involvement in Single-Family Residential Developments* – 2003

EXPERIENCE

1989 - Present Site Engineering Consultants, Inc., Murfreesboro, TN
Engineers, Surveyors & Land Planners
New Business & Engineering Development, Principal

Mr. Lee provides project management, planning, design and coordination of various types of projects. Specific civil engineering experience exists in the areas of site planning, site grading and drainage designs, hydrology and hydraulic analysis and design for stormwater, floodplain modeling for bridge replacement designs, detention/retention pond designs, water and sewer utility design, land planning, residential subdivisions, and roadway construction plans and specifications. Site design projects cover aviation, commercial/retail, correctional, distribution/logistics, educational, financial, healthcare, hotel/motel, industrial, mental healthcare, municipal, office, and residential multi- and single-family sites. Mr. Lee is responsible for reviewing work of 4 other engineers; their designs and calculations, assuring quality control, constructability and compliance with local, state and federal standards.

SEC, Inc.

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1984-1989 Great Western Coal of Kentucky
Engineer Responsible for Core Drilling and Mine Reclamation

Mr. Lee was responsible for core drilling and mine reclamation operations at the Bell County, KY operation. He also designed mining plans for both Bell and Harlan County surface and underground coal mining operations, which included hollow fills, mountain top and auger removal. The design of those operations included haul roads, hydrology and hydraulic calculations for the design of detention/sediment ponds, and reclamation of mining activities. Mr. Lee also surveyed both surface and underground operations.

1983-1984 Miller-Wihry-Lee, Inc., Nashville, TN
Landscape Architects, Engineers & Surveyors
Design Engineer

Mr. Lee designed residential subdivisions and multi-family residential developments. He was responsible for site, grading and drainage, and water and sewer utility designs. He assisted in land surveying for the design and construction portions of the project.

MAJOR PROJECTS:

Amazon Fulfillment Center, Murfreesboro, TN
Berkshire Subdivision, Murfreesboro, TN
Bowie Commons (Publix), Fairview, TN
Embassy Suites Hotel & Conference Center,
Murfreesboro, TN
Federal Bureau of Prisons High, Medium & Low
Security Compounds, Beaumont, TX
Gateway Village, Murfreesboro, TN
(Live-Work, LEED)
Itawamba Community College (6 Sites), Fulton
& Tupelo, MS
MidSouth Bank (3 Sites), Murfreesboro &
Smyrna, TN
Mississippi Psychiatric Hospital (3 Sites),
Meridian, Tupelo & Oxford, MS
Murfreesboro Medical Clinic PH. 1 & 2,
Murfreesboro, TN
Rutherford County Chamber of Commerce,
Murfreesboro, TN
Stone Gate Corporate Center Buildings 1, 2 & 4,
Murfreesboro, TN
The Village sorority housing, University of
Southern Mississippi, Hattiesburg, MS
Water Stone Executive Buildings 8 & 9,
Murfreesboro, TN
Clean Water Nashville - Cowan/Riverside Area 1
PACP & QA/QC
Nashville, TN
Middle Tennessee Blvd. Ph. 1 & 3 Designs
Set horizontal and Vertical alignments
Murfreesboro, TN

Fortress & Manson Pike Roadway & Intersection
Designs, set horizontal and vertical
alignments
Murfreesboro, TN

ACTIVITIES

Leadership Rutherford, Class of 1996
Leadership Rutherford Board of Directors,
1997-2000, Secretary/Treasurer 1998-2000
Rutherford County Strategic Plan, 1995-1996
Rutherford County Infrastructure Committee,
2001
Rutherford County Subdivision Regulation
Review Committee, 1996 - 1997 & 2007
Rutherford County Zoning Resolution Review
Committee, 1998 - 1999
Blackman Land Use Study Committee, 2000
MTSU - Construction Management Advisory
Committee, 2000 - Present
TDEC Technical Advisory Committee Chapters
15 & 17 for Wastewater Treatment - 2007
Rutherford County Comprehensive Plan
Steering Committee, 2009 - 2012
Rutherford County Habitat for Humanity
Board of Directors, 2009 - Present, 2011 VP
Leadership Middle Tennessee, Class of 2012

C.V. of Mark P. Lee, P.E.

February 27, 2015
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PREVIOUS EXPERT TESTIMONY

- *Dr. Ray Miller, DVM (plaintiff, client) v. United States of America Stones River National Battlefield.*
August 11, 1998 The US Government filed eminent domain and claimed the property's value was lessened since it had flood plain issues.
 - Mr. Lee provided testimony and evidence that the property had good development potential. Mr. Lee provided engineering study, exhibits, deposition, and in-court testimony for Client. The jury verdict was in favor of the plaintiff.
- *Vannatta Construction Company (plaintiff, Atty. Jody Lambert) v. Mark A. Pirtle (defendant, client, Atty. B. Timothy Pirtle)* Tried before Judge J.B. Cox, Bedford County Circuit Court, October 4, 2000, Shelbyville, TN. Vannatta Construction claimed they were under paid. Pirtle claimed Vannatta abandoned the construction project.
 - Mr. Lee provided expert in-court testimony supporting Pirtle's claim. Pirtle was awarded the verdict.
 - Tim Pirtle Law Office, 309 Post Road, McMinnville, TN 37110-2411

PREVIOUS EXPERT OPINION

- *Thomas & Associates, Inc. (plaintiff, client) v. R and M Contractors, Inc. and RW Armstrong, Inc. Defendants, and R and M Contractors, Inc. Third Party Plaintiff, v. Retaining Walls of Tennessee, Inc., Third-Party Defendant/Fourth-Party Plaintiff, v. RW Armstrong & Associates, Inc., Redi Engineering, Inc., Qore, Inc. d/b/a Qore Sciences, K.S. Ware & Associates, L.L.C., Thomas & Associates, Inc., S&ME, Inc. and Martinez Masonry, Inc., Fourth-Party Defendants.* Chancery Court for Davidson County (TN) No.: 09-2217-II. May 2011
 - Metro Nashville Airport Authority, BNA Airport Murfreesboro Road Employee Parking Lot, The project plans prepared by RW Armstrong & Associates (engineers) contained errors regarding the location of the modular block retaining wall. The wall was built according to the plans, after Thomas & Assoc. pointed out the error. The General Contractor directed them to construct it as shown, and then had them rebuild it correctly without additional compensation.
 - Provided professional assistance to Vic L. McConnell, Esq., reviewing design documents, shop drawings and photographs, and provided case exhibits. The case was dismissed against our client in Spring 2012.

- Vic L. McConnell, Esq., Smith Cashion & Orr, PLC, 231 Third Avenue North, Nashville, Tennessee 37201-1603
- *Robert and Courtney Thompson (plaintiffs, client) v. Kevin Mosley, individually and d/b/a K&K Construction, et al.; Kathryn Mosley; K&K Construction Enterprises, Inc. Civil Site Design Group, PLLC, Crawford And Cummings, P.C.; The Estate of Alfred Hodges; Pamela Hodges, individually; and US Bancorp, defendants. Kevin Mosley, individually and d/b/a K&K Construction; Kathryn Mosley; K&K Construction Enterprises, Inc., Third-Party Plaintiffs, v. Kenneth House and Wilson County, Tennessee. Wilson County (TN) Circuit Court Case No.: 2010-cv-584. July 2011*
 - House built in Quad Oak residential subdivision subjected to flooding from inadequate subdivision drainage infrastructure.
 - Provided reviews of engineering plans, depositions (contractor, civil engineers), regulations, ordinances, specifications, historic photographs, correspondence and contracts. Provided site visit and written expert report to John O. Belcher, Esq. Client received out-of-court settlement their favor.
 - John O. Belcher, Esq., Lassiter, Tidwell & Davis, PLLC, 150 Fourth Avenue North, Suite 1850, Nashville, TN 37219
- *Metro Police Department Credit Union 2711 Old Lebanon Rd Nashville, TN 37214 (client, William Helou, atty.) design-build oversight by the civil engineer, James + Associates, and the contractor, Wellspring Builders, Inc. This oversight caused the building to flood frequently after heavy rains. Additionally, the building's sewage would back up into the building frequently. June 2010.*
 - Mr. Lee provided site and sewer remediation design services with a written report. The contractor resolved these issues by following Mr. Lee's recommendations.
 - Mr. William N. Helou, Esq., MGLAW, PLLC, 2525 West End Avenue, Suite 1475, Nashville, Tennessee 37203
- Mr. Lee has provided attorneys with assistance, research and review for their cases.
- Mr. Lee has other ongoing cases he is involved in.

EXHIBIT B



TENNESSEE DEPARTMENT OF ENVIRONMENT & CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 CHURCH STREET
6th FLOOR L & C ANNEX
NASHVILLE, TENNESSEE 37243

March 15, 2010

Jamie Reed, P.E., R.L.S.
Vice President
SEC, Inc.
850 Middle Tennessee Blvd.
Murfreesboro, TN 37129

RE: Decentralized Wastewater Treatment Systems versus "Big Pipe" Centralized Wastewater Treatment Systems.

Dear Mr. Reed:

Thank you for your letter dated March 10, 2010, with regard to the topic of decentralized wastewater treatment systems (WWTS) versus "Big Pipe" centralized WWTS. As you may know, I have almost 40 years of experience with WWTS and could not agree more that decentralized WWTS offer significant advantages across the board as compared to the centralized/regionalized WWTS.

We are seeing a shift in the old way of thinking, a paradigm shift, if you will, by developers and public and private utilities relative to the use of conventional septic tank and tile field systems to decentralized wastewater treatment systems. This has definitely been "thinking out of the box" and it now needs to be expanded to municipal wastewater treatment and land use planning. How many times have we witnessed a municipality extending a sewer line five or ten miles to pick up an industry and end up with development ten miles long and one house deep? This scenario is all too common place and is counter productive to good land use planning that calls for cluster housing and plenty of green space. On the other hand, utilizing decentralized WWTS plays right into the principles of good land use planning.

Over the past several years, "decentralization" has gotten a lot of press. It is a key concept in the ongoing quest to increase supplies of clean energy and water. Basically, it is a strategy to downsize infrastructure, thus reducing the cost of maintaining a grid, whether an electric power grid or the subsurface pipes delivering water and removing wastewater. Obviously, our discussions are focused upon wastewater, but nevertheless, decentralization offers a sound counter argument to the bigger-is-better idea. There is no doubt in my mind that the rebuilding

of the country's water/wastewater infrastructure, an identified national priority, presents an opportunity to decentralize operations.

A remedy to ineffectual concentration, decentralization occurs at different scales. Some systems are located onsite, treating relatively small volumes of wastewater and serving individual or groups of dwellings and businesses located relatively close to each other. At a much different scale, decentralization also can serve relatively large communities and subdivisions.

Decentralized wastewater treatment systems promotes and facilitates rapid growth without the extension of expensive conventional sewer lines and service lateral connections associated with neighborhoods that rapidly deteriorate resulting in the generation of significant infiltration and inflow (I/I) problems. From a systemic view, experts feel we've seen more I/I reduction occur when a thorough sealing job is done in the neighborhoods (including services and manholes) - the system approach. Decentralized WWTS are not plagued by these types of I/I problems because of the configuration of the collection system which does not include the traditional service laterals, but rather a short, water tight connection to a water tight septic tank.

You may be interested to know that I started working for the State of Tennessee in July 1972, the same year (November 1972) that the Clean Water Act (CWA) became law. Please keep in mind that part of the declaration of goals and policy in Section 101 of the CWA is for the elimination of the discharge of pollutants into waters of the United States, commonly called "The Zero Discharge Goal". Additionally, Section 101-CWA called for a major research and demonstration effort to be made to develop technology necessary to eliminate the discharge of pollutants. In the nearly four decades since the passage of the CWA we are achieving some of those goals on a limited basis through the use of decentralized WWTS.

In your March 10th letter you stated your belief that decentralized WWTS may offer numerous options for community preservation and watershed management. I believe you are absolutely correct, because decentralized WWTS have solved significant surface (NPDES) discharge problems in Tennessee. For example, some new permit applications have been denied increased pollutant loadings because the receiving water was impaired and/or had no remaining waste load capacity. These dilemmas have forced direct dischargers to seek other options and in Tennessee decentralized WWTS have emerged as a solution in a growing number of situations.

I am convinced that we will see more and more utilization of decentralized WWTS as time passes. I am also convinced that we will begin to see Tennessee municipalities utilize decentralized WWTS as part of their short term and long term planning. This will definitely be a paradigm shift from some of the poor choices many have, and continue to pursue. By poor choices, I mean exploring options such as hydraulic controlled release. Making plans and decisions on flow variabilities expected during certain times of the year, in my opinion is unwise. As we all know, Mother Nature is not always predictable. In any event, even under the best case scenario when such NPDES permitting options can be utilized, there is still an upper limitation on what and how much can be discharged. On the other hand, decentralized WWTS have the proven capability of taking stress off of centralized WWTS and allowing growth that otherwise would not have been possible.

Furthermore, decentralized WWTS have also helped indirect dischargers (industries who discharge into publicly owned municipal wastewater treatment plants and are subject to pretreatment requirements per 40 CFR Part 403). In several situations, indirect dischargers have been directly impacted via increased sewer rate surcharges and have found relief by installing, or threatening to install, their own decentralized WWTS.

Additionally, we are seeing more and more direct discharges, especially schools switching from being impacted by NPDES direct discharge requirements to decentralized WWTS. The primary reason for switching is the considerable monetary savings in terms of operational and monitoring costs.

The topic of decentralized wastewater treatment raises some important questions: How can the strategy be adapted to areas already served by large centralized treatment facilities? Can such areas be retrofitted for decentralized wastewater treatment and to what extent? What is involved in adapting and installing such systems in areas being planned and developed?

Many cities in the United States, like Phoenix and Atlanta, with large centralized wastewater treatment systems have achieved to some degree decentralized operations by "water scalping" or "sewer mining." These cities have started operating small-scale plants, called scalping plants, which are located in strategic locations in the community to better treat and/or distribute and use reclaimed water. The terms "sewer mining," or "scalping" have been used to describe the addition of WWTS to treat and reuse and/or discharge wastewater streams into regions within larger municipal wastewater systems.

Some advantages of sewer mining in large municipal WWTS are alternative technologies such as staged Membrane Bioreactor (MBR) WWTS. MBRs are beneficially used to intercept portions of the existing sewerage systems, provide longevity, and postpone, or avoid major capital expenditures to centralized wastewater treatment plants. Evaluating staged MBR placement is crucial in determining scalping plant locations. The resultant project(s) from such a determination would provide for collection, treatment, reuse, and discharge at or near the point of source that could reduce or eliminate costly interceptor lines, pump stations, and force mains. In most cities, the existing sewer lines run through older, fully developed portions of the city; therefore requiring major capital outlays and disruption when upsizing is required. Scalping plants such as MBRs also provide significant advantages in reducing I/I problems.

There are numerous benefits associated with the practical implementation of sewer mining. Recycled water produced from sewer mining operations is commonly used to irrigate sports fields, parks and golf courses. It can also be used in some commercial buildings and industrial sites. Sewer mining reduces the stress on waterways by capturing some of the nutrients that would otherwise be discharged from wastewater treatment plants. The demand for drinking water can be significantly reduced, by replacing it with recycled water made available through sewer mining processes.

Because of recent technological advances with such treatment options as MBRs, decentralized solutions to energy and water supply are better than ever. MBRs produce extremely high quality reuse water. As you know, an MBR is the combination of a membrane process like microfiltration or ultrafiltration with a suspended growth bioreactor, and is now widely used for municipal and industrial wastewater treatment. I highly encourage and recommend their use whenever and wherever possible, especially with decentralized schemes.

In addition to the above discussion, the following benefits are also associated with using an MBR:

- Small land areas (footprints),
- No large and unreliable clarifiers,
- Appearance or cosmetics of the facility,
- No odor,
- Ease of operation,
- Easily expanded to meet future growth,
- Can operate treatment plant from remote location by SCADA,
- Minimal operator requirements (average operator works 3-4 hours per day),
- Effluent meets stringent discharge limits, including California's Title 22 reuse standards.

In summary, there are many reasons why municipalities should be using decentralized WWTs which include, but are not limited to the following:

- Consistent with good land use planning.
- Costs per connection are several thousands of dollars less than conventional systems.
- Significantly reduces, if not eliminates, I/I problems.
- Allows for community growth without dependency on direct discharge NPDES permitting constraints such as limitations on additional discharge volumes and waste load allocations.
- Significant monetary savings with regard to operational and monitoring costs.
- Reduces or eliminates liabilities from penalties associated with violations of NPDES permits.

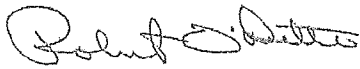
In 2005, Ben Grumbles, former United States Environmental Protection Agency (EPA) Assistant Administrator for Water, said the vision for the agency was: "Decentralized wastewater systems that are appropriately managed, perform effectively, and are widely acknowledged as components of our nation's wastewater infrastructure." I believe that is true across the country

Mr. Jamie Reed
March 15, 2010

with regulators and water professionals, especially here in Tennessee. I do not know of anyone in our department who does not support the vision statement of EPA and thus, the use of decentralized WWTS. However, the caveat is that these systems must be "appropriately managed". Where we have had problems, it has not been with the technology or the concept, but it has been with the lack of appropriate management.

Hopefully, I have satisfactorily responded to your letter. However, if you have other questions or need clarification on anything I've written herein, please contact me personally at (615) 253-5319 or Email: Robert.Odette@TN.GOV.

Sincerely yours,



Robert G. O'Dette, M.S., P.E.
Assistant Manager
Municipal Facilities