

IN THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

IN RE:

RULEMAKING TO REVISE TRA  
WASTEWATER RULES, 1220-04-13

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DOCKET NO. 16-00112

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CONSUMER ADVOCATE'S RESPONSE TO COMMENTS

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On November 23, 2016, the Tennessee Regulatory Authority ("Authority") issued a Notice of Rulemaking for Chapter 1220-04-13 Wastewater Regulations and assigned Docket 16-00112. In the *Notice*, the Authority set a deadline of October 28, 2016 for the filing of written comments and scheduled a public hearing for November 21, 2016. Four entities filed written comments: the Consumer Protection and Advocate Division of the Office of the Attorney General ("Advocate"), Integrated Resource Management, Inc. ("IRM"), Tennessee Wastewater Services, Inc. ("TWSI"), and WHN Consulting ("WHN"). The Authority held the scheduled public hearing on November 21, 2016. The Authority announced during the hearing that the "records will be held open until further notice" if anyone would like to submit additional comments.<sup>1</sup>

**Proposed Rule 1220-04-13-.06(2)(c)**

In written comments dated October 28, 2016, TWSI suggests a change in language to the proposed draft rule, subparagraph (c) of 1220-04-13-.06(2). Specifically, TWSI requests the phrase "*to TDEC rules*" at the end of the paragraph be deleted and substitute in its place *'with the requirements provided for in the TDEC issued permit for the wastewater treatment facility'*".<sup>2</sup> TWSI explained

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<sup>1</sup> "In the Matter of: Before the Tennessee Regulatory Authority Rulemaking to Revise TRA Wastewater Rules." TRA Docket No. 16-00112. Transcript p.3, lines 12-14 (November 21, 2015).

<sup>2</sup> Ridsen, Jeff (Tennessee Wastewater, Inc.). Letter to Chairman David Jones (Tennessee Regulatory Authority) October 28, 2016. p. 1 of 5. Comments on *Proposed Changes to Wastewater Regulations*.

The permit issued by TDEC for each wastewater treatment facility (State Operating Permit or NPDES) provides the inspection requirements for each permitted facility. The permit is the operative document wastewater utilities rely on for all operational concerns of the wastewater treatment facility. This rule should properly direct wastewater utilities to their facility operating permit for direction on system inspections.<sup>3</sup>

However, TWSI's proposed language does not take into account that legal actions by the Tennessee Department of Environment and Conservation ("TDEC"), the Environmental Protection Agency ("EPA") or citizens may result in a settlement or order, which contains corrective action differing from the existing permit requirements.<sup>4</sup>

**Proposed Rule 1220-04-13-.07(7)**

In Comments by WHN Consulting ("WHN") and Integrated Resource Management, Inc. ("IRM") regarding paragraph (7) of 1220-4-13-.07, both expressed concern on the pre-approval process for disbursement from escrow accounts in delaying response times in emergency situations.<sup>5</sup> Chuck Welch and Jeffrey Cox with IRM reiterated their concerns about the proposed preapproval process during the public hearing on November 21<sup>st</sup>.<sup>6</sup> In balancing the need to address threats to public health and the environment and the need of the Authority to provide appropriate oversight to disbursement from reserve/escrow accounts, a possible compromise may be found in TDEC's State Operating Permits. In the section regarding "Noncompliance", the permit provides a report of threats to human health and the environment within twenty-four (24) hours of the permittee becoming aware of the event.<sup>7</sup> The permittee is then expected to file a written

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<sup>3</sup> *Id.*

<sup>4</sup> Depending on the duration of such the terms of the corrective action, TDEC may decide to modify the existing permit. Changes like "more frequent monitoring or reporting" are considered minor permit modifications and do not require public notice. Rule 0400-040-01-.06(3)(j)5. However, minor permit modification must still be handled administratively with drafting, signatures and issuance, and will not happened instantaneously.

<sup>5</sup> Novak, William H. (WHN Consulting.). Letter to Chairman David Jones (Tennessee Regulatory Authority) 2016 Oct 24. p. 2 of 4. Comments on *TRA Rulemaking Docket for Wastewater Utilities (16-00112)*; and Welch, Charles (Integrated Resource Management, Inc.). *In re: Rulemaking to Revise TRA Wastewater Rules, 1220-04-13, Docket No. 16-00112*. 2016 Oct 31. p. 2 of 4.

<sup>6</sup> Transcript p. 11, line 12-13, 25; p. 12, lines 1-25; p. 13, lines 1-2

<sup>7</sup> An example of the "Noncompliance" section can be found in two permits recently filed with the Authority: SOP-11020 (Part II.C. at pp. 7-8) in Docket 11-00155 and SOP-06035 (Part II.C., p. 8) in Dockets 06-00078 and 14-00136. The permit directs the permittee to contact the field office for a list of names and contact numbers for emergency response personnel available for such emergency contacts.

submission within five (5) days after becoming aware of the event.<sup>8</sup> The Authority may wish to consider a similar process that allows the utility to begin immediately addressing the threat to human health and the environment during non-business hours with a more detailed follow-up exchange with the Authority at the first available business day thereafter.

**Proposed Rule 1220-04-13-.17(2)(b)**

In comments by TWSI and IRM regarding part 4. of 1220-04-13-.17(2)(b), both expressed concern of the impracticability of requiring proof that the utility owns the land or has an easement for the proposed wastewater system at the time of an application for a new or expanded CCN.<sup>9</sup> TWSI mentions in its comments that this proposed rule-making is similar to TDEC requirements. In checking a recently issued permit, the section on “ownership of the treatment facilities” states:

The permittee shall own the treatment facilities (and the land upon which they are constructed) including the land to be utilized for drip or spray irrigation. A perpetual easement (properly recorded) may be accepted in lieu of ownership. Evidence of ownership of the treatment facility land application site(s) and/or copy of the perpetual easement(s) must be furnished to the division for approval prior to construction of the wastewater collection and treatment system.<sup>10</sup>

Although IRM suggests the Authority revise the proposed rule to “proof that the utility has an enforceable, equitable interest in the land for the proposed water system”<sup>11</sup>, such language would differ from TDEC’s permit language set out above. It appears that it would be beneficial for the Authority and TDEC to discuss language and timing that is acceptable to both state agencies to avoid conflicts or inconsistencies to the utilities.

Although Jeffrey Cox, president of IRM, stated during the public hearing that the proposed rules requiring the submittal of TDEC documents to the TRA will require the hiring of additional staff, the Advocate continues to express support of the provisions in the draft rules regarding the submittal

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<sup>8</sup> *Id.* In the written submission required by the permit, the permittee is expected to provide additional details such as the description of the discharge, exact dates and times of non-compliance, how long the non-compliance will continue and steps being taken to address the non-compliance event.


<sup>9</sup> *TWSI Comments* at 4 and *IRM Comments* at 4.

<sup>10</sup> SOP-11020 (Part III.F. at p. 12) in Docket 11-00155 and SOP-06035 (Part III.F., p. 12) in Dockets 06-00078 and 14-00136.

<sup>11</sup> *IRM Comments* at 4.

of updated information from utilities.<sup>12</sup> It is important for the Authority to have current and accurate information to carry out its duties and obligations. Part of being fully informed includes complete and accurate submittals regarding non-compliance with environmental statutes and regulations as alleged by local, state or federal regulatory agency or citizen as the Advocate expressed in its written comments filed on October 28, 2016. The Advocate also requests the TRA's consideration of the response to comments recommended herein.

RESPECTFULLY SUBMITTED,

  
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<sup>12</sup> Transcript at 16 line 15-25; p. 17, lines 1-8.

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail on January 9, 2017.

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Karen H. Stachowski