

**IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE**

IN RE:)	
)	
PETITION OF TENNESSEE)	
WASTEWATER SYSTEMS, INC., FOR)	
APPROVAL TO USE ITS ESCROW &)	Docket No. 20-00108
RESERVE FUNDS FOR CAPITAL)	
IMPROVEMENTS AT THE CROSS)	
PLAINS TREATMENT FACILITY)	

**PETITION OF TENNESSEE WASTEWATER SYSTEMS, INC., FOR
APPROVAL TO USE ITS ESCROW & RESERVE FUNDS FOR
CAPITAL IMPROVEMENTS AT CROSS PLAINS TREATMENT FACILITY**

Tennessee Wastewater Systems, Inc. ("TWSI") petitions the Tennessee Public Utility Commission ("TPUC") pursuant to TPUC Rule 1220-4-13-.07(7) for authorization to use up to \$400,000 of its escrow and CIAC reserve funds for necessary capital improvements at the Cross Plains Treatment Facility in Coopertown, Tennessee.

Background

TWSI was granted a Certificate of Convenience and Necessity ("CCN") in 2006 to provide service to certain properties in the Cross Plains area. The public need for the CCN was established, in part, through requests for service by the City of Cross Plains and a local developer.

Based on the scope of the requests to serve a 74,000 gpd lagoon was constructed. The system was designed, engineered, and constructed by Adenus Capacity, LLC ("Adenus") upon

sixty acres of land provided by Mar-Car, LLC (“Mar-Car” or “Developer”). The lagoon was completed, conveyed to TWSI, and put into operation in 2006. The drip disposal system was not installed at the time the system was constructed due to the low volume of flow received at the lagoon¹. The drip was to be installed once the lagoon achieved enough flow to require utilizing the drip fields for disposal.

Over the years TDEC conducted several inspections of the treatment facility. In 2014 TDEC conducted a desktop review² of the drip areas surrounding the treatment facility and determined that all but a little over an acre of land was no longer suitable for drip (Exhibit A). The disqualification of the soils areas resulted in the system having its capacity reduced from 74,000 gpd to around 10,000 gpd³. TDEC also conducted compliance inspections at the facility in 2014 and 2017⁴ both times noting the absence of the installed drip fields, but also finding the system to be in compliance.

Last year, TWSI filed in Docket 05-00293, a notice of intent to provide service to a parcel contiguous to the treatment facility consisting of nineteen (19) residential lots. This request initiated a new inspection by TDEC that lead to the issuance of a Notice of Violation alleging certain violations of the State Operating Permit. TWSI conducted an investigation into TDEC’s concerns and began making plans to address them, including the installation of drip, development of an alternative treatment solution to the lagoon, and engaging a soil scientist to locate additional drip areas upon which to install drip.

¹ Measured flow into the facility is currently around 4200 gpd. At the time of the TDEC enforcement action, TWSI was already in the planning stages for installing drip in the approved drip area in late 2020.

² A desktop review is based upon the area soil maps, not based upon in-person investigation at the site. There is a question as to whether the disqualified soils are in fact unusable. The soil scientist is re-evaluating these areas.

³ At the time TDEC disqualified the soils, there were approximately nineteen (19) connections to the system – 3 commercial properties and sixteen (16) residential. This accounted for roughly 5700 gpd of design (not actual) flow.

⁴ The 2017 compliance inspection was specifically related to whether to reissue the State Operating Permit; it was reissued.

Before TWSI could complete this work TDEC issued a Commissioner's Order regarding the alleged violations⁵. TWSI appealed the Order as it disagreed with TDEC's assessment of the facility, however in the interest of resolving the matter, TWSI and TDEC entered into a Settlement Agreement and Order (Exhibit B) resolving the issues⁶. The resolution includes a compliance schedule under which TWSI is obligated to make certain short and long-term fixes to the treatment facility. The compliance schedule is as follows:

1. Within 30 days of August 13, 2020 (by September 12) TWSI must submit a corrective action plan (CAP1) for temporary treatment consisting of installing a FAST system that will treat wastewater to permit limits and discharge into the lagoon. Upon approval of CAP1 TWSI has 30 days to install the FAST system.
2. Discharge into the lagoon from the FAST system is permitted for no more than 120 days while drip is installed on the land which TDEC has already approved for drip. The 120 days will run from the date of TPUC's authorization of funds from TWSI's existing escrow/reserve fund. The discharge to the lagoon will last no longer than 6 months from August 13, 2020.
3. 90 days after the FAST system and drip system are online, TWSI will submit a plan (CAP2) for permanent treatment⁷ and installation of drip on additional soils.
4. Construction shall be complete on the permanent treatment within 10 months of the later of TDEC approval of CAP2 or TPUC authorization of funding.

TWSI requests authorization for the use of \$186,216 from its escrow/reserve funds to fund the CAP1 plan. The remaining funds will be allocated to CAP2. The cost of the sand filter to replace the lagoon is \$67,500, however, TWSI will not have complete information for the

⁵ The NOV and Order were provided to the Commission in Docket 15-00025 as part of TWSI's monthly reporting obligations. A copy of the Order is included as an exhibit within Exhibit B.

⁶ The Settlement also resolves TWSI's appeals of TDEC Orders at Summit View and Hidden Springs.

⁷ The current plan is to install a 19,200 gpd sand filter to replace the lagoon. Based on current connections, pending requests for service, and the lack of development in the area, this solution is the most prudent to address the public need as it presently exists and allows for new development to pay for any expansion of the plant that may be required in the future.

cost to install the drip, until the soil work is complete which is anticipated to be later this Fall⁸.

A current estimated budget for the project is attached to this Petition as Exhibit C.

TWSI's Current Escrow Fund:

As of August 31, 2020, TWSI has balances of \$1,162,662.66 in its escrow account and \$164,750.57 in its CIAC reserves (Exhibit D and E). In Docket 19-00085 this Commission authorized the use of escrow and reserve funds in the amount of \$808,000 for the upgrade and expansion of the treatment facility at the Hidden Springs Resort in Sevierville, Tennessee. The Hidden Springs work will be started shortly and done concurrently with the work at Cross Plains. TWSI recently had new rates approved by the Commission which includes a separate rate for escrow resulting in roughly \$37,5000 per month in escrow income, or \$450,000 annually. While these two projects will use the majority of TWSI's current escrow and reserve funds balance, the Company will still generate significant escrow revenue to replenish its funds through the escrow portion of its monthly sewer billing. In fact, by the time the Cross Plains project is complete, the requested amount will be replenished.

Further, there are another twenty-three (23) lots that have requested connection to the facility (a second phase of the Stony Brook subdivision)⁹. These 23 lots will pay a capacity fee of \$4000 per lot and a utility fee of \$800 per lot (\$110,400 total) – the capacity fee will be recorded as CIAC and the utility fee as developer income per the terms of the Order in docket 20-00009. This revenue will be available to go towards the overall cost of constructing the CAP2 items.

Reporting:

⁸ Cost will be in large part dependent upon how much acreage is available to install drip and the proximity of that land to the existing drip area and sand filter location.

⁹ Formal notice to the Commission regarding intent to serve these lots will be filed once the concerns regarding the suitability of the facility to handle any new connections are addressed.

TWSI will submit to any reporting requirements the Commission deems necessary. TWSI proposes a reporting requirement similar to the ones established in dockets 16-00096 and 19-00085. In these dockets, TWSI is required to provide updates to the Commission on a monthly basis on among other things, project expenditures and account balances. The Company's escrow and reserve accounts are also subject to additional annual reporting requirements per the Commission's order in Docket 20-00009. Furthermore, in an effort to keep expenses on the project to a minimum, TWSI will be utilizing certain affiliates to provide services, materials, and supplies. TWSI will abide by the Commission's affiliate rules as stated in TPUC Rule 1220-4-13.16.

Adenus and Mar-Car Agreement To Construct Cross Plains Facility

Commission Staff, in an email exchange with the Company in Docket 05-00293 related to its notice to serve a contiguous property, asked, "who would be responsible for finishing the wastewater system".¹⁰ TWSI responded that Adenus Capacity will be responsible for all the upgrades at the Cross Plains Treatment Facility. This response was based on Adenus having a financial interest in the sale of capacity at the facility by way of capacity tap credits. However, for Adenus to receive payment for the sale of capacity going forward, Adenus would need to complete the facility to comply with the approved plans and TDEC's regulations. Adenus has since informed TWSI it will not complete the facility and will forgo its right to receive any payments for the sale of capacity at the treatment facility. TWSI as the permit holder for the facility is responsible for ensuring the facility complies with the approved plans, State Operating Permit and TDEC rules and regulations, so the upgrades to the plant fall to the Utility. The property provided by Mar-Car is still being utilized for the new treatment plant and drip

¹⁰ <http://share.tn.gov/tra/orders/2005/0500293p.pdf>

areas. It is TWSI's intention to honor the capacity credits allocated to Mar-Car as further detailed below¹¹.

To build the treatment facility Adenus, and Mar-Car entered into an agreement by which Adenus agreed to design, engineer, and construct the treatment facility and Mar-Car provided the sixty (60) acres of land upon which the treatment system was built. In exchange for their contributions to the project, Adenus and Mar-Car received capacity credits entitling them to receive payment based on the sale of capacity at the treatment facility.¹² These credits allow for Adenus and Mar-Car to be reimbursed and receive a return for their respective investments in the plant. Under the terms of the arrangement, Adenus was granted 1000 tap credits and Mar-Car 450. The first 200 credits are to be sold by Adenus. Once those credits are sold, either party is entitled to utilize their remaining credits. To date, there are nineteen (19) customers connected to the system with another forty-two (42) lots pending¹³. Mar-Car has not utilized any of its taps for its own use or for use by others. It is believed that the original 150 lots requested to be served by developer B&P Investments are part of the 450 capacity credits allocated to Mar-Car, however B&P has not moved forward with any plans to develop their property and no agreement exists between TWSI and B&P to provide service to the property.

Conclusion

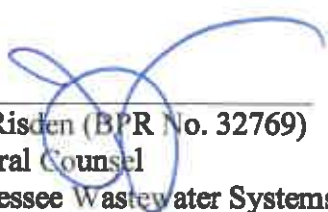
Based on the short time frames involved with complying with the corrective action stated above, time is of the essence. TWSI respectfully requests the Commission to set a hearing on this petition for the next scheduled Commission meeting and grant this petition.

¹¹ This agreement was apparently made in 2005. An executed copy of the agreement has not been located. Given that the facility was constructed, and the land conveyed to TWSI by deed, it is TWSI's belief and understanding based on the actions of the parties that the agreement was executed.

¹² TWSI owns the capacity at the treatment facility and is responsible for sales of capacity.

¹³ TWSI provided notice in Docket 05-00293 of its intent to serve a contiguous parcel consisting of 19 lots. The developer has since requested TWSI to serve an additional 23 lots. As stated in footnote 9, notice to serve these additional 23 lots will be provided once the current issues with the plant are resolved.

RESPECTFULLY SUBMITTED,



Jeff Riden (BPR No. 32769)
General Counsel
Tennessee Wastewater Systems, Inc.
851 Aviation Parkway
Smyrna, TN 37167
(615) 220-7171
jeff.riden@adenus.com

EXHIBIT A



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER RESOURCES

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

October 13, 2014

Mr. Charles Hyatt, CEO
Adenus Group, LLC
849 Aviation Pkwy.
Smyrna, TN 37167

Subject: **County: Robertson**
Project: Cross Plains Treatment Facility SOP-05057

Mr. Hyatt:

The Division of Water Resources recently conducted a file review of the Cross Plains Treatment Facility to determine dispersal capacity in order to accommodate a proposed Dollar General Store in Cross Plains. The file included a soils map delineating approximately 4.6 acres. Of the area submitted for review, approximately 3.45 acres is considered unsuitable due to being designated as "not mapped due to dense vegetation or rock outcrop". The map only provides approximately 1.15 acres of suitable soils area to support the project. This amount of soils area is supportive of approximately 10,060 gpd flow. Based on water use figures provided by the White House Utility District current flow to the facility is approximately 1700 GPD. The site is currently permitted for 74,000 gpd flow.

Based on this review of the file we are unable to demonstrate enough suitable soil area supportive of the current permitted capacity of 74,000 GPD for the facility. If you are wanting to maintain the current permitted daily flow please demonstrate available suitable soils areas sufficient to support the design flow. If you wish to reduce the permitted flow an application for a permit modification should be submitted. Current soils information is supportive of a daily flow of 10,600GPD.

To expedite matters, please reference the assigned State Operations Permit number SOP-05057 on any future correspondence. If we may be of any assistance, please feel free to contact me at (615) 532-5367 or by E-mail at Brad.Harris@tn.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Brad Harris", written over a horizontal line.

Brad Harris
Manager, Land-Based Systems

cc: Land-Based Systems File
Ms. Ann M. Morbitt, Unit Manager, TDEC Division of Water Resources, Ann.Morbitt@tn.gov

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

IN THE MATTER OF: TENNESSEE WASTEWATER SYSTEMS, INC., RESPONDENT.))))))	DIVISION OF WATER RESOURCES CASE NUMBERS: WPC 14-0092 WPC 18-0028 WPC 20-0012
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SETTLEMENT AGREEMENT AND ORDER

Orders WPC 14-0092, WPC 18-0028, and WPC 20-0012 were issued to Tennessee Wastewater Systems, Inc. (hereinafter "Respondent"). The Respondent filed timely appeals to the Orders. Pursuant to sections 4-5-105 and 69-3-109 of the Tennessee Code Annotated, the Commissioner and the Respondent have reached a settlement. To implement this settlement: (1) the Commissioner has agreed and by entering into this Settlement Agreement and Order does hereby also dismiss the Orders; and (2) the Respondent has agreed and by entering into this Settlement Agreement and Order does also hereby waive its right to a contested case hearing before the Board in this matter and withdraws its appeal of the Orders. This Settlement Agreement and Order resolves and supersedes the Orders. The Parties stipulate and agree to the following:

PARTIES

I.

David W. Salyers, P.E., is the duly appointed Commissioner of the Department. The Commissioner is responsible for administering the Water Quality Control Act, Tenn. Code Ann. §§ 69-3-101 to -148 (hereinafter the "Act").

II.

Tennessee Wastewater Systems, Inc. ("Respondent") is a Tennessee corporation duly authorized to do business in the state. Service of process may be made on the Respondent through its registered agent, Jeff Ridsen, at 851 Aviation Parkway, Smyrna, TN 37167-2582.

JURISDICTION

III.

When provisions of the Act are not being complied with, the Commissioner or his representative is authorized to issue orders for correction to the responsible party. Tenn. Code Ann. §§ 69-3-101. Further, the Commissioner or his authorized representative has the authority to assess damages and civil penalties against any person who violates any provision of the Act or any rule, regulation, or standard adopted pursuant to said Act. Tenn. Code Ann. §§ 69-3-109. David W. Salyers, Commissioner of the Department of Environment and Conservation, has delegated such authority to Jennifer Dodd, Director of the Tennessee Division of Water Resources.

IV.

The Respondent is a "person" under the Act. Tenn. Code Ann. § 69-3-103

V.

Any person engaged in, or planning to engage in, the construction, installation, modification, or operation of any treatment works, the discharge of wastes to surface waters or to a location where it may reach surface waters, or the discharge of sewage, industrial wastes, or other wastes to a well or a location where it is likely that the discharged substance will move into a well, or the underground placement of fluids or other substances that do or may affect the waters of the state must first obtain a permit from the Department. Tenn. Code Ann. § 69-3-108. It is unlawful for any person to violate the conditions of a permit issued by the Department. Tenn. Code Ann. §§ 69-3-108(b) and -114(b) and (c).

FACTS

VI.

WPC 14-0092

The facts set out in Exhibit A paragraphs VI. – XI are incorporated herein by reference.

VII.

WPC 18-0028

The facts set out in Exhibit B paragraphs VII – XXV are incorporated herein by reference.

VIII.

WPC 20-0012

The facts as set in Exhibit C paragraphs VII – XVI are incorporated herein by reference.

VIOLATIONS

IX.

WPC 14-0092

The violations as set out in Exhibit A paragraph XII. are hereby incorporated by reference.

WPC 18-0028

The violations as set out in Exhibit B paragraphs XXVI – XXVIII are hereby incorporated by reference.

WPC 20-0012

The violations as set out in Exhibit C paragraph XVII are hereby incorporated by reference.

ORDER AND ASSESSMENT

X.

Pursuant to the authority vested by sections 69-3-109 of the Act, the Director orders, and the Respondent agrees, as follows:

1. For the Summit View Treatment Facility (WPC 14-0092) will install a 10,000 gallon equalization or surge tank as approved by the Division within ten (10) months of execution of this Settlement Agreement and Order and upon reaching 80% of current system's treatment capacity (8,000 gpd) as calculated by monthly average flow, Respondent will install the approved second sand filter and additional drip field within six (6) months.. Upon completion, the Respondent shall submit written and photographic documentation to the Division.
2. For the Hidden Springs Treatment Facility (WPC 18-0028), the Respondent shall complete the construction of the new treatment facility and drip field within ten (10) months of receiving written approval of the submitted modification plans from the Division. Upon completion, the Respondent shall submit written and photographic documentation to the Division.
3. Beginning 15 days after execution of this Settlement Agreement and Order the Respondent shall conduct bi-weekly inspections at Hidden Springs to determine the compliance status of the facility until completion of the new treatment facility and drip field. Reports of these inspections shall be submitted to the Division monthly.
4. For the Cross Plains Treatment Facility (WPC 20-0012), within 30 days after execution of this Settlement Agreement and Order, the Respondent shall submit a corrective action plan ("CAP1") for temporary treatment consisting of installing a

FAST system which would treat the wastewater to permit limits and discharge into the lagoon. Upon approval of the CAP1 Respondent will have 30 days in which to establish the temporary treatment system. Such discharge would be permitted for no more than 120 days while the Respondent installs drip on the +/- acre of land presently approved by the Department. The 120 days will run from the funding authorization of Tennessee Public Utilities Commission ("TPUC") from existing escrow. Respondent must use best efforts to expedite the TPUC approval. The discharge shall in no case continue later than 6 months from execution of this Settlement Agreement and Order. At the conclusion of the 120 days or 6 months maximum, the treated effluent would be discharged from FAST system to the drip system. The Respondent shall submit a plan (CAP2) for approval to construct and complete a sand filter (or other treatment option) and additional drip fields within ninety (90) days after the drip system receives discharge from the FAST system. The Respondent will complete the construction of the sand filter (or other treatment option) and additional drip fields within ten (10) months of the latter of either TDEC approval of plans or TPUC authorization of funding. Upon completion, the Respondent shall submit written and photographic documentation to the Division.

5. The Respondent shall pay a Civil Penalty in the amount \$30,000 within 31 days after execution of this Settlement Agreement and Order.
6. Respondent shall be liable for stipulated penalties to the Department for violations of the corrective action requirements herein, unless excused under Force Majeure or other approved extension. A violation includes failing to perform any obligation required by the terms of this Settlement Agreement and Order, including any work

plan or schedule approved under this Settlement Agreement and Order, according to all applicable requirements of this Settlement Agreement and Order and within the specified time schedules established by or approved under this Decree in accordance with the following:

7. The Respondent agrees to the following as stipulated penalties when notified by the Division:

\$ 100 per Day or portion thereof 1st through 14th Day

\$ 500 per Day or portion thereof 15th through 30th Day

\$ 1,000 per Day or portion thereof 31st Day and beyond for a maximum of \$15,000 per violation of each corrective action item except for paragraph 4 as it relates to temporary discharge exceeding 6 months which is a maximum of \$50,000.00.

8. The Respondent Agrees to pay Damages to the Division in the amount of \$10,205.91.

All deliverables in the above requirements shall be submitted to:

Chief Engineer, Division of Water Resources
George.Garden@tn.gov, or
William R. Snodgrass Tennessee Tower,
312 Rosa L. Parks Avenue, 11th Floor
Nashville, Tennessee 37243

AND

Manager of Compliance and Enforcement, Division of Water Resources
Jessica.Murphy@tn.gov, or
William R. Snodgrass Tennessee Tower,
312 Rosa L. Parks Avenue, 11th Floor

XI.

The Parties agree the foregoing Settlement Agreement and Order is a fair and reasonable resolution of this case.

All payments 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.

"Force majeure," for purposes of this Settlement Agreement and Order, is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors that delays or prevents the performance of any obligation under this Settlement Agreement and Order despite Respondent's best efforts to fulfill the obligation. The requirement that Respondent exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event: (a) as it is occurring; and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. "Force Majeure" does not include Respondent's financial inability to perform any obligation under this Settlement Agreement and Order but the parties understand that the improvements can involve required funding approval by the TPUC. Notwithstanding the foregoing, any failure by any overseas contractor or supplier to design or install the equipment necessary to meet any required timeframe to accomplish a defined task set forth herein may constitute "Force Majeure" to the extent that any such failure to meet a timeframe is caused by the COVID-19 public health crisis,

even though COVID-19 is already under way, provided, that Respondents otherwise meet the requirements for force majeure under this Settlement Agreement and Order.

If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement and Order, whether or not caused by a force majeure event, Respondent shall provide notice orally or by electronic or facsimile transmission to the Division in accordance within seventy-two (72) hours of when Respondent first knew that the event might cause a delay. Within seven (7) Days thereafter, Respondent shall provide in writing to the Division an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Respondent shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure for that event for the period of such failure to comply, and

For any additional delay caused by such failure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known.

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 for Force majeure or otherwise, 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 for Force majeure or otherwise. Should the Respondent fail to meet the requirement by the extended date, any associated Stipulated Penalty shall become due 30 days thereafter.

Failure to comply with any of the requirements of this Settlement Agreement and Order could lead to further enforcement actions which may include additional civil penalties, assessment of damages and/or recovery of costs.

DEPARTMENT'S RESERVATION OF RIGHTS

In entering this Settlement Agreement and Order, the Department does not implicitly or expressly waive any provision of the Act or the regulations promulgated thereunder or the authority to assess costs, civil penalties, and/or damages incurred by the State against the Respondent. The Department expressly reserves all rights it has at law and in equity to order further corrective action, assess civil penalties and/or damages, and to pursue further enforcement action including, but not limited to, monetary and injunctive relief. Compliance with this order will be considered as a mitigating factor in determining the need for future enforcement action(s).

AUTHORITY TO SIGN

The undersigned representatives of the Department and the Respondent hereby represent and warrant that they are fully authorized and competent to execute this Consent Order and Agreement on behalf of the entity for which they are signing.

RESPONDENT'S RESERVATION OF RIGHTS

The Respondent does not admit or deny the factual allegations, or the alleged violations of law contained in this Consent Order and Assessment. The Respondent reserves its rights to contest the factual allegations and alleged violations contained in this Settlement Agreement and Order in any proceeding other than a proceeding brought by the Department to enforce the terms of this Settlement Agreement and Order.

Issued by the Director of the Division of Water Resources and agreed to by the Tennessee Wastewater Systems, Inc. on this 13 day of August, 2020.


Electronic Signatures (eSign) 1.0, 2020.13.13 CDT

Jennifer Dodd
Director, Division of Water Resources
Tennessee Department of Environment and Conservation



Jeff Riden
CEO
Tennessee Wastewater Systems, Inc.

Reviewed by:

Q/A

.. (Aug 13, 2020 12:14 CDT)

Patrick N. Parker

BPR Number 014981

Office of General Counsel

William R. Snodgrass TN Tower, 2nd Floor

312 Rosa L. Parks Avenue

Nashville, Tennessee 37243-1548

Telephone: (615) 532-0129

E-Mailpatrick.parker@tn.gov

/s/William L. Penny

William L. Penny

BPR # 09606

Burr & Forman, LLP

222 2nd Avenue South, Suite 2000

Nashville, Tennessee 37201

Telephone: (615) 724-3213

E-Mail: bpenny@burr.com

*Counsel for Tennessee Wastewater Systems,
Inc.*



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER RESOURCES
William R. Snodgrass - Tennessee Tower
312 Rosa L. Parks Avenue, 12th Floor
Nashville, Tennessee 37243-1102

September 17, 2014

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7009 2820 0003 6036 5573

Mr. Charles Hyatt, Registered Agent
Tennessee Wastewater Systems, Inc.
851 Aviation Parkway
Smyrna, Tennessee 37167

Subject: DIRECTOR'S ORDER NO. WPC14-0092
SUMMIT VIEW RESORT WASTEWATER TREATMENT FACILITY
SEVIER COUNTY, TENNESSEE

Dear Mr. Hyatt,

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Tisha Calabrese Benton, Director of the Division of Water Resources, under the delegation of Commissioner Robert J. Martineau, Jr. 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, please contact Dana Waits at (615) 532-1171 or you may contact Jessica Murphy at (615) 532-0676.

Sincerely,


Jessica Murphy, Manager
Compliance and Enforcement Unit

EJM:DBW

cc: DWR - EFO-K
DWR - Compliance File
OGC

Exhibit A

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

IN THE MATTER OF:)	
)	
TENNESSEE WASTEWATER SYSTEMS, INC.)	DIVISION OF WATER RESOURCES
)	
RESPONDENT)	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(i), 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.

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

IN THE MATTER OF:)	DIVISION OF WATER RESOURCES
)	
)	
TENNESSEE WASTEWATER SYSTEMS, INC.,)	
)	
)	
RESPONDENT.)	CASE NUMBER WPC18-0028

COMMISSIONER'S ORDER AND ASSESSMENT

NOW COMES Shari Meghreblian, PhD, Commissioner of the Tennessee Department of Environment and Conservation, (hereinafter the "Department") and states:

PARTIES

I.

Shari Meghreblian, PhD, is the duly appointed Commissioner of the Department. The Commissioner is responsible for administering and enforcing the Water Quality Control Act (the "Act"). Tenn. Code Ann. §§ 69-3-101 to -148.

II.

Tennessee Wastewater Systems, Inc. (the "Respondent") is an active corporation properly registered to do business in the state of Tennessee. The Respondent operates a wastewater treatment facility at the Hidden Springs Resort in Sevier County, Tennessee (the "site"). Service of process may be made on the Respondent through its Registered Agent, Mr. Jeff Riden at 851 Aviation Parkway, Smyrna, Tennessee 37167.

JURISDICTION

III.

Whenever the Commissioner has reason to believe that a violation of the Act, has occurred, is occurring, or is about to occur, the Commissioner may issue a complaint to the violator and the Commissioner may order corrective action be taken. Tenn. Code Ann. § 69-3-109(a). Further, the Commissioner has authority to assess civil penalties against any violator of the Act, pursuant to section 69-3-115 of the Tennessee Code Annotated, and has authority to assess damages incurred by the state resulting from the violation, pursuant to section 69-3-116.

IV.

The Respondent is a "person" and, as herein described, has violated the Act. Tenn. Code Ann. § 69-3-103(26).

V.

Seaton Branch and the unnamed tributary to Seaton Branch constitute "waters" of the state. Tenn. Code Ann. § 69-3-103(44). Pursuant to section 69-3-105(a)(1) of the Tennessee Code Annotated, all waters of the state have been classified by the Tennessee Water Quality Control Board for the following uses: to support fish and aquatic life, recreation, irrigation, and livestock watering and wildlife, and may additionally be classified for use as industrial water supply, domestic water supply, and navigation. Tenn. Comp. R. & Regs. Chapter 0400-40-04.

VI.

Any person operating a sewerage system is required to obtain a permit. Tenn. Code. Ann. § 69-3-108(c).

FACTS

VII.

The Respondent operates numerous wastewater treatment systems throughout the State of Tennessee including at the Summit View Resort and the Starr Crest II Resorts in Sevier County, and the Jackson Bend Facility in Blount County. On September 16, 2014, the Division issued Director's Order WPC14-0092 to the Respondent for violations of State Operating Permit ("SOP") SOP-06035 and the Act at the Summit View Resort, including ponding and overflow of wastewater at the site. On September 17, 2015, the Division issued a Notice of Violation ("NOV") to the Respondent for violations of SOP-01033 at the Starr Crest II treatment facility including effluent overflowing from the pump and recirculation tanks, broken and exposed drip lines in the drip field, and treated wastewater entering waters of the state. On April 4, 2017, the Division issued a NOV to the Respondent for violations of SOP-01009 at the Jackson Bend Facility including pooled water within the drip field.

VIII.

The Respondent holds a valid SOP ("SOP-00068" or the "permit") for the operation of septic tanks, an effluent collection system, a recirculating sand filter ("RSF"), three AdvanTex recirculating packed-bed media filters, and a fenced drip irrigation system with the capacity to serve approximately 145 units at the site. The design capacity of the system is 0.03075 million gallons per day ("MGD"), or 30,750 gallons per day ("GPD"). The Division of Water Resources (the "Division") previously issued coverage under SOP-00068 to the Respondent on September 1, 2012. The Respondent submitted an application for renewal of permit coverage on May 1, 2017. The permit was reissued on January 4, 2018, and has an expiration date of August 31, 2022.

IX.

On or about July 25, 2017, George Garden, Chief Engineer with the Division, visited the site in response to a complaint from the President of the Homeowner's Association ("HOA") for Hidden Springs Resort and met with Mr. Bob Pickney, representing the Respondent. While onsite, Division personnel noted an existing sewage odor, evidence that the treatment system had experienced overflows and bypasses, and poorly installed above-ground drip lines. Division personnel did not observe any AdvanTex units installed at the site. Mr. Pickney acknowledged that the facility was overloaded and the original installation was unable to handle existing flows, especially during vacation periods, and stated that the ultimate solution was to relocate and expand the treatment capability and disposal fields. Mr. Pickney indicated that the Respondent had access to surplus Fixed Activated Sludge Treatment ("FAST") units that could be used as a short-term solution. Due to the immediate potential hazard to human health and the environment, Mr. Garden supported doing what they could to address the situation, including utilizing FAST units to forestall potential hazards. This conversation in response to a hazardous situation did not excuse the Respondent from the requirement to submit system modifications to the Division for written approval and in no way allowed for the Respondent to operate the treatment system permanently in non-compliance with the permit. According to Part II, Section A (4) of SOP-00068, "[t]he permittee shall at all times properly operate and maintain all facilities and systems (and related appurtenances) for collection and treatment which are installed or used by the permittee to achieve compliance with the terms and conditions of this permit." Moreover, the permit states in Part II, Section B (1) "[t]he permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility."

X.

On or before August 1, 2017, the Division received a complaint alleging that there were issues with the Respondent's wastewater treatment system at the site, including odors and sludge running onto the ground.

XI.

On August 1, 2017, Division personnel performed a complaint investigation at the site and met with Mr. Jeremy Stewart, a representative for the Respondent. During the investigation, Division personnel observed that the RSF was not operational, treatment operations had been modified to allow the use of two FAST units in place of AdvanTex units, and significant odor was coming from the RSF. Despite Mr. Garden supporting the Respondent implementing stop-gap measures on or about July 25, 2017, these changes to the treatment system had not been reviewed or approved by the Division and did not reflect the application materials submitted by the Respondent three months earlier on May 1, 2017.

Moreover, a subsequent records review indicated that the Respondent never installed AdvanTex as first required by the permit in 2006. Additionally, Division personnel observed that the fence was down in some places and effluent from the treatment system was flowing from the drip field into a ditch beside the access road. The flow continued through the lower portion of the development and into a tributary of Seaton Branch. As stated in Part I, Section A of the permit, "[i]nstances of surface saturation, ponding or pooling within the land application area as a result of system operation are not authorized by this permit. Instances of surface saturation, ponding or pooling shall be promptly investigated and noted on the Monthly Operations Report." The Respondent did not report any surface saturation, ponding, or pooling in its 3rd Quarter 2017

Monthly Operations Report ("MOR") for the months of July, August, and September. Moreover, according to Part I, Section A of SOP-00068, "[a]ll drip fields shall be fenced sufficiently to prevent or impede unauthorized entry. Fencing shall be a minimum of four feet in height. Gates shall be designed and constructed in a manner to prevent unauthorized entry."

XII.

On August 7, 2017, the Division issued a NOV to the Respondent for violations observed during the August 1, 2017, complaint investigation. The NOV detailed that by modifying the treatment system without written approval from the Division, the Respondent had violated Tenn. Comp. R. & Regs. Chapter 0400-40-02-.05. The Division requested the Respondent submit a written response to the Division describing corrective action within thirty (30) days of receipt of the NOV.

XIII.

On September 5, 2017, the Division received a reply from Mr. Charles Hyatt, President for the Respondent. In the letter, Mr. Hyatt stated that the FAST units had been utilized to replace the clogged sand filter and that a vapor barrier was covering the sand filter to minimize the odor, which was caused by raw influent flowing through the sand filter. Additionally, Mr. Hyatt claimed that the Respondent was unaware of any overland flows from the drip field and was investigating the issue. Mr. Hyatt also stated that the Division had been notified of the need for the Respondent to change the system and that the work had been coordinated with and approved by Mr. George Garden. While Mr. Garden had granted verbal approval during the July 2017 site visit due to an emergency situation, the Division never received any modifications, proposed system treatment capacities, or updated plans detailing changes to the treatment system and did not grant written approval for the changes to the system.

In the letter, Mr. Hyatt stated that the Respondent had been working with the Hidden Springs HOA and the owners of the majority of the available land in the resort to develop future plans to relocate the existing treatment plant and expand the treatment and disposal system. As part of these plans, Mr. Grant Dunn was preparing final soils maps to expand the existing drip irrigation fields. Mr. Hyatt hoped to have a plan ready for submittal to the Division within six months.

XIV.

On November 29, 2017, Division personnel performed an inspection at Summit View, a treatment facility in Sevier County also operated by the Respondent, and were accompanied by the following representatives for the Respondent: Mr. Bob Pickney, Mr. Fred Pickney, Mr. Marshall Fall, and Mr. Jeremy Stewart. After conducting the inspection at Summit View, Division personnel requested to visit the Hidden Springs treatment facility. The representatives for the Respondent agreed, and Mr. Bob Pickney brought Division personnel first to the proposed location of a new drip field. Division personnel then visited the current treatment facility and observed the following:

- The RSF was still not functional and was being used as an equalization basin. The RSF was covered with black plastic to reduce odor.
- The two FAST units onsite were still serving as the treatment component in lieu of the RSF. It was unclear to Division personnel where the flush from the FAST units was going or how the system was configured.
- The drip field was overloaded; the representatives for the Respondent agreed. Mr. Bob Pickney stated that daily flow at the site ranged from 5,000 to 30,000 GPD. Water was observed seeping out of the bank along the slope below the drip field, and a large portion of the trees in the drip field were dead, possibly from the amount of wastewater in the drip field. In addition, the entire area below the drip field behind the FAST units had ponded partially treated wastewater.
- While the RSF was not overflowing at the time of the visit, there was evidence of past overflow from the RSF.
- The fence surrounding the treatment system was down in many places and could not adequately restrict access to the site. The Respondent was required to fence the treatment area since the wastewater effluent was not tested for *Escherichia coli* ("E. coli").

According to SOP-00068, the Respondent was authorized to operate a “[RSF], three AdvanTex recirculating packed-bed media filters, and fenced drip irrigation system” at the site. At the time of the site visit, there was a strong sewage odor, the RSF was being used for storage, no AdvanTex units were present, and the drip field was inadequately fenced and unable to process the amount of wastewater being dosed by the system.

XV.

On December 22, 2017, the Division was copied on a correspondence from Mr. Kevin A. Dean, an attorney with Frantz, McConnel, & Seymour, LLP., to Mr. Hyatt on behalf of his client, Hidden Springs Resort. In the letter, Mr. Dean stated that the Respondent had misrepresented that it was doing business as Hidden Springs Resort as evidenced by the permit, which had been issued to “Tennessee Wastewater Systems, Inc. d/b/a Hidden Springs Resort”. Mr. Dean requested that the Respondent remove all references alleging that it was doing business as Hidden Springs Resort.

XVI.

On January 4, 2018, the Division issued an updated SOP-00068 to address Mr. Dean’s concerns and clarify the identity of the permit holder. The permit had been modified to remove the d/b/a notation from the title page and accurately represent the Respondent as the permit holder.

XVII.

On January 25, 2018, Division personnel returned to the site to examine a proposed area for an additional drip field. While onsite, Division personnel met with Mr. Grant Dunn who had evaluated soil pits and provided pit profile descriptions to the Division. After evaluating the proposed drip field location, Division personnel visited the treatment area and existing drip field.

The violations observed during the November 29, 2017, inspection remained. Division personnel observed gravel backfill at the bottom of the slope behind the FAST units where a pipe had been installed to allow drainage of the area directly to a roadside conveyance. Additionally, personnel observed multiple areas where wastewater from the drip field was running off the slope and noted a strong sewage odor and dark color inconsistent with secondary treated effluent.

That same day, Division personnel collected samples of the pooled wastewater effluent above the RSF for analysis. The Division of Laboratory Services with the Tennessee Department of Health analyzed the samples for various analytes. The biochemical oxygen demand ("BOD") concentration was 45.7 milligrams per liter ("mg/L") which was above the 45 mg/L limit for BOD established by Part I, Section A of the permit.

XVIII.

On April 2, 2018, the Respondent submitted the 1st Quarter 2018 MOR for the months of January, February, and March. Although Division personnel observed wastewater within the drip field during the January 25, 2018 site visit, the Respondent did not report any surface saturation, ponding, or pooling in the report. The report indicated a BOD concentration of 107 mg/L, which exceeds the 45 mg/L limit for BOD established by the permit by approximately 138%.

XIX.

On April 4, 2018, the Division received a complaint by email from the president of the Hidden Springs Resort HOA requesting an update on whether or not the Respondent had made any changes to the sewer system to address previous concerns. The complainant alleged that the Resort continued to experience problems with odor and, at times, sludge running from their

system. The complainant wrote again on April 17, 2018, stating that Hidden Springs Resort continued to experience sewer odor throughout the Resort.

XX.

On July 20, 2018, the Division was copied on an email from the president of the Hidden Springs HOA to Mr. Bob Pickney. In the email, the president stated that there was a leaking sewer line at the site and sewage was flowing down the gravel road from the drip field. In response to the alleged leaking sewer line, Division personnel emailed Mr. Pickney on July 23, 2018, asking for an update on the status of the plant and disposal area and informing him that Division personnel planned to perform an inspection of the facility on July 25, 2018. Division personnel requested that Mr. Pickney or another representative for the Respondent attend the inspection and bring with them the latest approved plans for the treatment and disposal system and plant performance data for the previous two months.

XXI.

On July 25, 2018, Division personnel conducted an inspection at the site as planned and met with Mr. Allen Overholt, an employee of the Hidden Springs Resort, and Mr. Jeremy Stewart, a representative for the Respondent. While onsite, Division personnel were told by Mr. Stewart that the system had sustained lightning damage sometime during the evening of July 19 or the morning of July 20, 2018, which had caused a failure of the effluent pumps but did not affect influent pumps. As a result, the plant filled up and partially treated wastewater overflowed the filter berm and effluent pump station. According to the Respondent, repairs to the system were conducted by July 23, 2018, and the system was returned to operational status.

During the inspection, Division personnel observed that FAST units were still in operation in violation of the permit. Personnel also observed evidence of previous bypassing including characteristic black biomat growth and evidence of a previous significant flow on the disposal slopes of black wastewater effluent. Additionally, personnel observed exposed and damaged disposal lines on the surface of the disposal field slope and effluent freely flowing down the slope and into conveyance ditches to the creek. The fence at the site was not sufficient to prevent entry to the drip field and there was a strong sewage odor at the site despite attempts by the Respondent to control the odor emanating from the FAST units. High levels of ammonia were evident in samples taken in standing water around the FAST units, in the effluent flowing down the disposal drip field slopes, and in the ditches conveying the effluent to the streams downgradient. High levels of ammonia indicated at least incomplete treatment.

XXII.

On August 14, 2018, the Division received from the Respondent an application for a permit modification of SOP-00068. The modification application was submitted to allow future modifications of the facility, including new drip fields and relocating the facility, but did not address the current modifications to the facility, including the use of FAST units. The Division issued an Incomplete Application Letter to the Respondent on August 21, 2018, stating that the application would be considered incomplete until the Respondent submitted a certified soils map of the proposed drip field and proof of ownership of the property intended for the drip field.

XXIII.

On September 4, 2018, Division personnel returned to the site to assess current conditions and observed untreated or partially treated effluent flowing on the ground and entering an unnamed tributary to Scaton Branch. The FAST units were still in operation in

violation of the SOP, effluent was ponding within the drip field and flowing via a wet weather conveyance to the tributary, and the fence at the site was still insufficient to prevent entry to the drip field. Division personnel took water samples of the discharge, which was gray, cloudy, and had an extremely strong sewage odor, at three locations: below the drip field, below the FAST units, and at the culvert leading offsite and toward the unnamed tributary. The samples were analyzed by the State's Division of Laboratory Services the following day, and results indicated elevated *E. coli* bacteria in all three samples. The Laboratory also indicated that the "true bacterial concentration [was] assumed to be greater than the reported value."

XXIV.

The Division has calculated that the Respondent has had an economic benefit by expenses avoided or delayed in the amount of FORTY-SIX THOUSAND AND ELEVEN DOLLARS (\$46,011.00) by failing to submit plans for modifications to the treatment system to the Division for an engineering report review and delaying the installation of three AdvanTex units as required by the permit since 2006.

XXV.

During the course of the investigation, the Division incurred DAMAGES in the amount of THREE THOUSAND, TWO HUNDRED FORTY-SIX DOLLARS AND SIXTY-SEVEN CENTS (\$3,246.67).

VIOLATIONS

XXVI.

By failing to comply with the terms and conditions of the SOP, as described herein, the Respondent has violated sections 69-3-108(a) and (b) and -114 of the Tennessee Code Annotated which state, in relevant part:

Tenn. Code Ann. § 69-3-108(a):

Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (1), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

Tenn. Code Ann. § 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;
- (5) The construction or use of any new outlet for the discharge of any wastes into the waters of the state; and
- (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.

Tenn. Code Ann. § 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.

Tenn. Code Ann. § 69-3-114 (b):

In addition, it is unlawful for any person to act in a manner or degree that 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 this part; or to 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.

XXVII.

By operating FAST systems and modifying the treatment system without written approval from the Division, the Respondent has violated Chapter 0400-40-02-.05(1) of the Tennessee Compilation of Rules and Regulations which states, in relevant part:

Construction work shall not be commenced on any new construction or major change of existing facilities ... until complete and final plans and specifications for such activities have been submitted to and approved in writing by an authorized representative of the Commissioner.

XXVIII.

By discharging untreated or partially treated wastewater to an unnamed tributary of Seaton Branch, resulting in elevated *E. coli* concentrations, the Respondent has caused a condition of pollution and has violated section 69-3-114 of the Tennessee Code Annotated. Tenn. Code Ann. § 69-3-114, which states in relevant part:

- (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.
- (b) In addition, it is unlawful for any person to act in a manner or degree that 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 this part...

ORDER AND ASSESSMENT

XXIX.

WHEREFORE, pursuant to the authority vested by sections 69-3-109, -115, and -116 of the Tennessee Code Annotated, I, Shari Meghreblian, PhD, hereby issue the following ORDER and ASSESSMENT to the Respondent:

1. Immediately after receipt of this Order and Assessment, the Respondent shall pump and haul all waste to a nearby sewage treatment plant ("STP"). The Respondent shall submit to the Division on or before the 31st day after receipt of this Order documentation of an agreement with a STP to accept the waste and receipts or other documentation showing daily volume pumped and hauled from the Respondent's facility. The Respondent shall continue to pump and haul all waste until the Respondent's new proposed treatment facility and drip field are fully operational and the Respondent has received written authorization from the Division. All documentation shall be submitted in duplicate to:

Chief Engineer, Division of Water Resources
George.Garden@tn.gov, or
William R. Snodgrass Tennessee Tower,
312 Rosa L. Parks Avenue, 11th Floor
Nashville, Tennessee 37243

AND

Manager of Compliance and Enforcement, Division of Water Resources
Jessica.Murphy@tn.gov, or
William R. Snodgrass Tennessee Tower,
312 Rosa L. Parks Avenue, 11th Floor
Nashville, Tennessee, 37243

2. On or before the 31st day after receipt of this Order and Assessment, the Respondent shall submit the certified soils map of the proposed drip field and proof of ownership or land use agreement for the drip field as required to process the permit modification application. These documents shall be submitted in duplicate to the addresses listed in Item 1.
3. The Respondent shall complete the construction of the new treatment facility and drip field within six months of receiving written approval of the submitted modification plans from the Division. Upon completion, the Respondent shall submit written and photographic documentation to the Division to the addresses in Item 1. The Respondent shall not begin using the new facility until receiving written authorization from the Division.
4. The Respondent shall maintain compliance with all the provisions of the Act and the SOP at the site for a period of two years from the date of receipt of this Order. At such time, this Order will be considered closed, provided the Respondent is in compliance with all the terms of the Order and has paid all outstanding penalties and damages.
5. The Respondent shall pay a CIVIL PENALTY of ONE HUNDRED SEVENTY-THREE THOUSAND, SIX HUNDRED SIXTY-ONE DOLLARS (\$173,661.00) to the Division, hereby ASSESSED to be paid as follows:
 - a. On or before the thirty-first (31st) day after receipt of this ORDER and ASSESSMENT, the Respondent shall pay a CIVIL PENALTY in the amount of FIFTY-TWO THOUSAND NINETY-EIGHT DOLLARS AND THIRTY CENTS (\$52,098.30).

- b. If, and only if, the Respondent fails to comply with item 1 above, the Respondent shall pay a CIVIL PENALTY in the amount of THIRTY THOUSAND, FIVE HUNDRED TWENTY DOLLARS AND SEVENTY CENTS (\$30,520.70), payable on or before the thirty-first (31st) day after default.
 - c. If, and only if, the Respondent fails to comply with item 2 above, the Respondent shall pay a CIVIL PENALTY in the amount of THIRTY THOUSAND, FIVE HUNDRED TWENTY-ONE DOLLARS (\$30,521.00), payable on or before the thirty-first (31st) day after default.
 - d. If, and only if, the Respondent fails to comply with item 3 above, the Respondent shall pay a CIVIL PENALTY in the amount of THIRTY THOUSAND, FIVE HUNDRED TWENTY-ONE DOLLARS (\$30,521.00), payable on or before the thirty-first (31st) day after default.
 - e. If, and only if, the Respondent fails to comply with item 4 above as evidenced by receipt of a NOV from the Division, the Respondent shall pay a CIVIL PENALTY in the amount of SIX THOUSAND DOLLARS (\$6,000.00) per NOV, not to exceed a total of THIRTY THOUSAND DOLLARS (\$30,000.00), payable on or before the thirty-first (31st) day after default.
6. On or before the thirty-first day after receipt of this ORDER and ASSESSMENT, the Respondent shall pay DAMAGES to the Division in the amount of THREE THOUSAND, TWO HUNDRED FORTY-SIX DOLLARS AND SIXTY-SEVEN CENTS (\$3,246.67).

The Director of the Division 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 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 on the 31st day 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. Failure to comply with any of the requirements of this ORDER and ASSESSMENT could lead to further enforcement actions, which may include additional civil penalties, assessment of damages, and/or recovery of costs.

NOTICE OF RIGHTS

Tennessee Code Annotated §§ 69-3-115, 69-3-109, and 69-3-116 allow 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 will become final (not subject to review).


If an appeal is filed, an initial hearing of this matter will be conducted by an Administrative Law Judge ("ALJ") as a contested case hearing pursuant to the provisions of Tenn. Code Ann. § 69-3-110, Tenn. Code Ann. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Tenn. Comp. R. & Regs. 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.

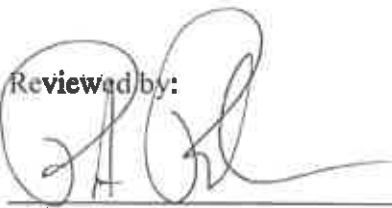
At the conclusion of any initial hearing the ALJ has the authority to affirm, modify, or deny the Order and Assessment. This includes the authority to modify (decrease or increase) the penalty within the statutory limits of Tenn. Code Ann. § 69-3-115 (up to \$10,000 per day per violation). Furthermore, 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 Jenny L. Howard, General Counsel, Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 2nd Floor, 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, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 10th Floor, Nashville, Tennessee 37243. Technical questions and other correspondence involving compliance issues should be sent to Jessica Murphy, State of Tennessee, Division of Water Resources, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 11th Floor, Nashville, Tennessee 37243. Attorneys should contact the undersigned counsel of record. The case number, WPC18-0028, should be written on all correspondence regarding this matter.

Issued by the Commissioner of the Tennessee Department of Environment and Conservation, on this 17th day of December, 2018.


Shari Meghreblian, PhD, Commissioner
Tennessee Department of Environment and Conservation

Reviewed by: 
Patrick N. Parker
BPR # 014981
Assistant General Counsel
Department of Environment & Conservation
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER RESOURCES
William R. Snodgrass - Tennessee Tower
312 Rosa L. Parks Avenue, 11th Floor
Nashville, Tennessee 37243-1102

March 5, 2020

Jeff Riden
851 Aviation Parkway
Smyrna, TN 37167-2582

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT # 9414 7266 9904 2096 0166 49

Subject: **DIRECTOR'S ORDER WPC20-0012**
Tennessee Wastewater Systems, Inc.
Robertson County, TN

Dear Mr. Riden,

Enclosed is a Director's Order and Assessment issued by the Tennessee Department of Environment and Conservation, Division of Water Resources for violations of the Water Quality Control Act, including discharging wastewater without the proper permit, violating the approved provisions in the State Operating Permit, and discharging sewage into a well or a location increasing the likelihood the discharged substance will move into a well.

The violations listed above have resulted in a full penalty of \$92,155.00, with an upfront payment of \$18,431.00, to be paid on or before the 31st day after receipt of this Order and Assessment. The remaining assessment is due only if the contingent compliance schedule listed herein is not timely completed.

During the course of investigating the violations listed in this Order and Assessment, the Division incurred \$6,215.99 in damages, due and payable on or before the 31st day after receipt of this Order and Assessment. Please read the Order carefully and pay special attention to the Notice of Rights section.

If you have any questions concerning this correspondence please contact Britton Dotson at (615) 532-0774 or Britton.Dotson@tn.gov, or you may contact me at (615) 532-0676 or Jessica.Murphy@tn.gov.

Sincerely,

Jessica Murphy, Manager
Compliance and Enforcement Unit

EJM:RWRu

cc: NCO – Britton Dotson; Brian Ham; April Grippo; Jessica Murphy; Brad Harris
Nashville EFO – Michael Murphy; Tim Jenette; Jordan Fey
OGC – Stephanie Durman; Patrick Parker
Case File – WPC20-0012

Exhibit C

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

IN THE MATTER OF:)	DIVISION OF WATER RESOURCES
)	
TENNESSEE WASTEWATER)	CASE NO. WPC20-0012
SYSTEMS, INC. (CROSS PLAINS)	
FACILITY),)	
)	
RESPONDENT.)	

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Jennifer Dodd, Director of the Tennessee Division of Water Resources,
and states:

PARTIES

I.

Jennifer Dodd is the duly appointed Director of the Tennessee Division of Water Resources ("Division") by the Commissioner of the Tennessee Department of Environment and Conservation ("Department").

II.

Tennessee Wastewater Systems, Inc. ("Respondent") is a Tennessee corporation duly authorized to do business in the state. The Respondent owns and operates septic tanks, an effluent collection system, and a deep cell lagoon system located at latitude 36.53233 and longitude -86.6611 in Cross Plains, Robertson County, Tennessee. Service of process may be made on the Respondent through its registered agent, Jeff Riden, at 851 Aviation Parkway, Smyrna, TN 37167-2582.

JURISDICTION

III.

Whenever the Commissioner has reason to believe that a violation of the Water Quality Control Act, Tenn. Code Ann. §§ 69-3-101 to -148 ("Act"), has occurred, is occurring, or is about to occur, the Commissioner may issue a complaint to the violator and the Commissioner may order corrective action be taken. Tenn. Code Ann. § 69-3-109(a). Further, the Commissioner has authority to assess civil penalties against any violator of the Act, Tenn. Code Ann. § 69-3-115, and has authority to assess damages incurred by the state resulting from the violation, Tenn. Code Ann. § 69-3-116. The Commissioner may delegate to the Director any of the powers, duties, and responsibilities of the Commissioner under the Act, Tenn. Code Ann. § 69-3-107(13), and has delegated such authorities to Jennifer Dodd.

IV.

The Respondent is a "person" under the Act. Tenn. Code Ann. § 69-3-103.

V.

Groundwater at and near the site constitute "waters" of the state as defined by Tenn. Code Ann. § 69-3-103.

VI.

Any person engaged in, or planning to engage in, the construction, installation, modification, or operation of any treatment works, the discharge of wastes to surface waters or to a location where it may reach surface waters, or the discharge of sewage, industrial wastes, or other wastes to a well or a location where it is likely that the discharged substance will move into a well, or the underground placement of fluids or other substances that do or may affect the waters of the state must first obtain a permit from the Department. Tenn. Code Ann. § 69-3-108. It is unlawful for any person to violate the conditions of a permit issued by the Department. Tenn. Code Ann. §§ 69-3-108(b) and -114(b).

FACTS

VII.

The Respondent owns and operates the Cross Plains Treatment facility pursuant to state operating permit number SOP-05057 (the "SOP"). The SOP was most recently reissued on May 31, 2017, with an effective date of August 31, 2017. The SOP authorizes the operation of "septic tanks, effluent collection system, deep cell lagoon and drip irrigation (fenced) system" with a design capacity of 10,600 gallons per day. Properly designed, installed, and operated, the deep cell lagoon should provide partial treatment of the wastewater through microbiological processes to secondary treatment levels with some nitrification and denitrification. However, this process requires sufficient depth and volume and detention time of wastewater. The drip irrigation system, which was to include a fenced drip field, would have completed the treatment of the effluent in the soil profile before reaching groundwater. The first page of the SOP provides that work must be done "in conformity with approved plans, specifications, and other data submitted to the Department." The Division has approved design plans for both the deep cell lagoon and the drip irrigation system. Part I.A. of the SOP authorizes wastewater collection, treatment, storage, and disposal of treated wastewater through the approved land application area. Part I.A. of the SOP further requires "[c]omplete hydraulic infiltration within the soil profile" and provides that "[s]ystem compliance is reliant on the utilization and performance of the soil profile." Part II.B.4. of the SOP provides, "The permittee shall at all times properly operate and maintain all facilities and systems (and related appurtenances) for collection and treatment which are installed or used by the permittee to achieve compliance with the terms and conditions of this permit."

VIII.

The Department issued underground injection control authorization, file number ROB 0000023 (the "UIC Authorization"), to the Respondent on March 9, 2017. The UIC Authorization allows discharges to groundwater through the drip dispersal system, but does not authorize discharges to groundwater from the lagoon.

IX.

The facility was first permitted in September 2006. The first customer was connected to the lagoon in February 2010. A compliance inspection was conducted on July 6, 2011, which documented concerns about the poor condition of the lagoon and the failure to install the drip field. Inspections conducted in February 2014 and March 2017 confirmed that the drip field had not been installed and public access to the treatment area had not been excluded. Tracks of four-wheelers were observed around the treatment area during both of these inspections.

X.

On November 8, 2019, Division staff conducted a site visit, documenting that the lagoon had not been constructed according to approved plans, the drip field had not been installed, the wastewater treatment area had not been fenced, and ATV tracks were observed in the lagoon area. There was only about 0.25 acres of wastewater inundation in the lagoon.

XI.

On November 20, 2019, Division staff returned to the site. Approaching the property from the southwest, public access to the treatment area was not excluded, and no posted signs identified the site as a wastewater treatment facility. Wastewater was observed flowing into the lagoon and approximately 0.25 acres of inundation were observed in the lagoon. Numerous rock outcroppings were observed in the lagoon, and two soil dropouts were documented in the lagoon in close proximity to the area of inundation. Soil dropouts occur when an area is underlain by bedrock with sufficient, inter-connected voids that are large enough to allow the passage of the

overlying material (soil). With the passage of this material voids in the soil profile are created. When the void in the soil profile becomes too large to support the overlying soil, the overlying soil collapses into the void. When this process extends to the surface of the ground the resulting feature is identified as a soil dropout. These features, which are common in karst areas, are indicative of the loss of material to the subsurface and are reflective of underlying preferential pathways for the transfer of material and effluent to groundwater.

XII.

On November 26, 2019, the Division received water use records for three non-residential facilities served by the Cross Plains Treatment facility (a store, a gas station, and a church). Daily average flows totaled about 3,600 gallons. In addition, the facility serves 19 homes, with an estimated daily flow of 2,850 gallons per day, for a total of approximately 6,450 gallons per day of effluent. However, the estimated amount of water in the lagoon represents only a small fraction of the wastewater and precipitation contributed to the lagoon in the approximately 10 years since it has been operating. The lagoon should have been constructed as permitted to retain effluent for secondary treatment. Annual averages for evaporation are lower than precipitation rates in Tennessee such that a net gain in water is anticipated. As such, evaporation would not account for a reduction of effluent volume over this timeframe. Accordingly, partially treated wastewater is being discharged from the lagoon to groundwater.

XIII.

On November 26, 2019, the Division issued a Notice of Violation (NOV) to the Respondent via email, citing the following violations:

- The drip dispersal area was never constructed.
- The lagoon was not constructed as designed, has limestone rock outcrops, and is not retaining wastewater for treatment in a deep cell environment.
- Effluent is being discharged to groundwater without a UIC authorization.

- As constructed and operated, the system does not treat, store, or land apply wastes as required by the SOP.

The NOV requested a number of corrective actions, including installation of a flow meter, compilation of a list of connections to the wastewater system, submission of an updated design for wastewater treatment, conducting a water use survey within a two-mile radius to identify any residences using groundwater as a domestic water source, and conducting a dye trace. The NOV also required the Respondent to immediately cease discharges to the lagoon until an approved treatment design had been installed.

XIV.

On December 23, 2019, the Division received a response to the NOV from the Respondent contesting the allegations of the NOV. The Respondent continues to discharge wastewater to the lagoon, has not constructed a drip field, has not conducted a dye trace, and has not presented a design plan to repair the lagoon.

XV.

On January 21, 2020, Division staff returned to the site and met with representatives of the Respondent. Prior to this visit, there had been precipitation in the area from January 13 to 20, 2020. Division staff observed approximately one acre of inundation in the lagoon. They also observed a debris line outside of the inundated area, indicating a higher water level that had retreated over a period of days. Similarly, Division staff observed shelves of ice in several areas that were suspended inches above ponded effluent, indicating rapid draining over a period of one day. For reference, the nearest National Oceanic Atmospheric Administration weather station (Springfield, TN – Station ID: USC00408562) recorded an air temperature maximum of 56 degrees Fahrenheit on the day prior to the site visit. These January 21, 2020 observations further confirm that the lagoon does not retain effluent.

XVI.

The Division has incurred \$6,215.99 in damages.

VIOLATIONS

XVII.

The Respondent has violated sections 69-3-108(b) and -114(b) of the Act.

Tenn. Code Ann. § 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:

...

(2) The construction, installation, modification, or operation of any treatment works, or part thereof, or any extension or addition thereto;

...

(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;

...

(8) The discharge of sewage, industrial wastes, or other wastes into a well or a location where it is likely that the discharged substance will move into a well, or the underground placement of fluids and other substances that do or may affect the waters of the state;

Tenn. Code Ann. § 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree that 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 this part; or to 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

XVIII.

Pursuant to the Act, Tenn. Code Ann. §§ 69-3-109, -115, and -116, the Respondent is issued the following Order and Assessment:

1. The Respondent is assessed a civil penalty of \$92,155.05 to be paid to the Division as outlined in Items 2 – 9 below. 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, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Ave., 10th Floor, Nashville, Tennessee 37243.

2. The Respondent shall pay \$18,431.00 to the Division on or before the 31st day after receipt of this Order and Assessment.

3. Within 30 days of receipt of this Order and Assessment, the Respondent shall install a flowmeter to determine the volume of wastewater received on a continuous basis and submit documentation of installation to the Division at the following addresses:

Brian Ham
brian.ham@tn.gov
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 11th Floor
Nashville, TN 37243

AND to:

Manager of the Compliance and Enforcement Unit, Division of Water Resources
Jessica.Murphy@tn.gov
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 11th Floor
Nashville, TN 37243

This case number, WPC20-0012, should be written on all correspondence concerning this matter. *Electronic submissions are encouraged and accepted by the Division.*

If the Respondent fails to comply with this Item 3, the Respondent shall pay \$3,000.05 to the Division within 30 days of default.

4. Within 30 days of receipt of this Order and Assessment, the Respondent shall compile an inventory of connections contributing wastewater to the system including specific addresses for each individual contributor and submit this inventory to the Division at the addresses listed in Item 3. If the Respondent fails to comply with this Item 4, the Respondent shall pay \$3,000.00 to the Division within 30 days of default.

5. Within 30 days of receipt of this Order and Assessment, the Respondent shall discontinue the discharge of wastewater to the lagoon. No wastewater may be discharged to the

lagoon until a Division-approved treatment design for the lagoon and the drip dispersal area has been constructed. If the Respondent fails to comply with this Item 5, the Respondent shall pay \$1,000.00 to the Division for each week of discharge, not to exceed a total of \$28,000.00, payable within 30 days of default.

6. Within 60 days of receipt of this Order and Assessment, the Respondent shall submit a corrective action plan/engineering report (CAP/ER) to the Division for approval. The CAP/ER shall propose wastewater treatment to achieve compliance with the SOP and the Act, and permanently prevent the discharge of partially treated effluent to groundwater from the lagoon. The CAP/ER shall include design for both secondary treatment and drip dispersal. If the Respondent fails to comply with this Item 6, the Respondent shall pay \$15,724.00 to the Division within 30 days of default.

7. Beginning not later than 75 days after receipt of this Order and Assessment, the Respondent shall submit all flow data from the meter installed pursuant to Item 3 on a monthly basis to the Division at the addresses listed in Item 3 or submit the data electronically to the email listed in Item 3, not later than the 15th day of each calendar month. If the Respondent fails to comply with this Item 7, the Respondent shall pay \$1,000.00 to the Division for each missed or late submittal, not to exceed a total of \$6,000.00, payable within 30 days of default.

8. Within 90 days of receipt of this Order and Assessment, conduct a water use survey in the two-mile radius surrounding the lagoon to identify any residences using groundwater as a water source, and submit the information to the Division. This shall include a door-to-door survey of residences and businesses. If the Respondent fails to comply with this Item 8, the Respondent shall pay \$3,000.00 to the Division within 30 days of default.

9. Within 180 days of receipt of Division approval of the CAP/ER, the Respondent shall complete all work required by the CAP/ER and submit a final report to the Division

documenting completion at the addresses listed in Item 3. If the Respondent fails to comply with this Item 9, the Respondent shall pay \$15,000 to the Division within 30 days of default.

10. The Respondent shall pay damages in the amount of \$6,215.99 on or before the 31st day after receipt of this Order and Assessment.

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 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 as extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventative measures taken to minimize the delay. Any such extension by the Director 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.

This Order shall be considered closed no later than two years from the date of receipt of this Order and Assessment, provided the Respondent has complied with all the requirements of the Order, has paid all assessed penalties and damages, and is in substantial compliance with the NPDES permit and the Act. Failure to comply with any of the requirements of this Order and Assessment could lead to further enforcement actions, which may include additional civil penalties, assessment of damages, and/or recovery costs.

RESERVATION OF RIGHTS

In issuing this Order and Assessment, the Department does not implicitly or expressly waive any provision of the Act or the regulations promulgated thereunder or the authority to assess costs, civil penalties, and/or damages incurred by the State against the Respondent(s). The Department expressly reserves all rights it has at law and in equity to order further corrective action, assess civil penalties and/or damages, and to pursue further enforcement action including,

but not limited to, monetary and injunctive relief. Compliance with this Order will be considered as a mitigating factor in determining the need for future enforcement action(s).

NOTICE OF RIGHTS

The Respondent(s) may appeal this Order and Assessment. Tenn. Code Ann. § 69-3-109, -115, and -116. To do so, a written petition setting forth the reasons for requesting a hearing must be received by the Commissioner within 30 days of the date the Respondent(s) received this Order and Assessment or this Order and Assessment will become final.

If an appeal is filed, an initial hearing of this matter will be conducted by and Administrative Law Judge (ALJ) as a contested case hearing. Tenn. Code Ann. § 69-3-110; Tenn. Code Ann. § 4-5-301 to -325 (the Uniform Administrative Procedures Act); Tenn. Comp. R. & Regs. 1360-04-01 (the Department of State's Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies). Such hearing 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 partnership, 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 a 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. Furthermore, the ALJ on behalf of the Board has 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.

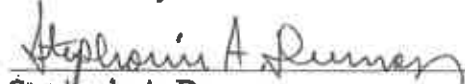
Any petition for review must be directed to the Commissioner of the Department of Environment and Conservation, c/o Jenny L. Howard, General Counsel, Department of

Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Ave., 2nd Floor, Nashville, Tennessee 37243. Technical questions and other correspondence involving compliance issues should be sent to Jessica Murphy, State of Tennessee, Division of Water Resources, William R. Snodgrass Tennessee Tower, 11th Floor, 312 Rosa L. Parks Ave., Nashville, Tennessee 37243. Attorneys should contact the undersigned counsel of record. The case number, WPC20-0012, should be written on all correspondence regarding this matter.

Issued by the Director of the Division of Water Resources, Tennessee Department of Environment and Conservation, on this 5th day of March, 2020.


Jennifer Dodd, Director
Division of Water Resources
TN Department of Environment and Conservation

Reviewed by:


Stephanie A. Durman
BPR Number 027783
Office of General Counsel
William R. Snodgrass TN Tower, 2nd Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243-1548
Telephone: (615) 532-3020
stephanie.durman@tn.gov

Cross Plains Treatment Facility
55x70 Recirculating Sand Filter
19,250 GPD

Item	Cost	TOTAL COST
FAST Unit connection to Influent line discharge to Lagoon		
Mobilization	\$ 7,500.00	
Access Road	\$ 5,600.00	
Clearing	\$ 5,200.00	
Transportation	\$ 3,800.00	
Site Electric	\$ 4,700.00	
Plumbing Connections	\$ 3,600.00	
Fence	\$ 12,600.00	
Survey	\$ 3,500.00	
TOTAL COST	\$	46,500.00

Completion of the Control Building

Arkal/Plumbing	\$ 13,900.00	
Electric	\$ 7,966.00	
Building	\$ 8,950.00	
Low voltage/conduit	\$ 6,150.00	
Controls	\$ 39,000.00	
TOTAL COST	\$	75,966.00

Installation of the land Application Area - 1.5 acres only

Drip	\$ 9,800.00	
Manifolds/zones	\$ 20,250.00	
2" pipe	\$ 2,500.00	
3" pipe	\$ 3,800.00	
2" r/s pipe	\$ 4,400.00	
Ditch	\$ 8,700.00	
Finish grade	\$ 3,700.00	
Seed/straw	\$ 2,500.00	
Drip dozer	\$ 1,500.00	
Mnl	\$ 1,800.00	
Skid loader	\$ 1,800.00	
Dozer	\$ 1,200.00	
Forklift	\$ 1,800.00	
TOTAL COST	\$	63,750.00

Construction of Recirculating Sand Filter

Pad	\$ 2,100.00
Dust	\$ 3,000.00

Walls	\$	3,800.00	
Liner	\$	1,700.00	
Chambers	\$	2,050.00	
Risers/pipe	\$	650.00	
1.5 rock	\$	3,500.00	
.75 rock	\$	9,800.00	
Sand media	\$	9,200.00	
Laterals	\$	1,000.00	
Solenoids/ck.valves	\$	1,200.00	
5000 gal rec.	\$	9,000.00	
2000 gal final	\$	4,000.00	
Pumps	\$	8,900.00	
Crane	\$	4,000.00	
Control panel	\$	12,500.00	
TOTAL COST	\$		67,500.00

EXHIBIT D



Back to Account List

Account: Tenn Escrow

Account Transactions Refresh

Account Type: Checking Available Balance: \$1,162,662.66 Current Balance: \$1,162,662.66 Collected Balance: \$1,162,662.66

Account Name: Tenn Escrow

Transaction Dates:

Month-To-Date

Search

Advanced Transaction Search

Date	Check/Ref #	Description	Debit	Credit	Balance
08/10/2020		Account Analysis Charge	\$37.11		\$1,162,662.66
08/03/2020		Transfer from DDA Transfer CH x3284 to, CH x4464 TMID:T0000000449797		\$37,468.76	\$1,162,699.77
Viewing 1 - 2 of 2 transactions				100	\$37,468.76

EXHIBIT E



Back to Account List

Account: Tenn CIAC

Account Transactions Refresh

Account Type: Checking Available Balance: \$164,750.57 Current Balance: \$164,750.57 Collected Balance: \$164,750.57
Account Name: Tenn CIAC

Transaction Dates:

Month-To-Date

Search

Advanced Transaction Search

Date	Check/Ref #	Description	Debit	Credit	Balance
08/03/2020		Transfer from DDA Transfer CH x3284 to, CH x3326 TMID:T0000000449827		\$21,520.57	\$164,750.57
Viewing 1 - 1 of 1 transactions			100	\$21,520.57	