

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

IN RE:)	
)	
APPLICATION OF LIMESTONE)	
WATER UTILITY OPERAITNG)	DOCKET NO. 21-00053
COMPANY, LLC FOR AUTHORITY TO)	
SELL OR TRANSFER TITLE TO THE)	
ASSETS, PROPERTY AND REAL)	
ESTATE OF A PUBLIC UTILITY AND)	
FOR A CERTIFICATE OF)	
CONVENIENCE AND NECESSITY)	
)	

**CONSUMER ADVOCATE’S FIRST DISCOVERY REQUEST
TO LIMESTONE WATER UTILITY OPERATING COMPANY, LLC - PUBLIC**

To: Limestone Water Utility Operating Company, LLC
C/O Charles B. Welch, Jr., Esq.
Brittany L. Davis, Esq.
Farris Bobango PLC
414 Union Street, Suite 1105
Nashville, TN 37219
Email: cwelch@farris-law.com
Email: bdavis@farris-law.com

This First Discovery Request is hereby served upon Limestone Water Utility Operating Company, LLC (“Limestone” or the “Company”) and Central States Water, Inc. (CSWR) and pursuant to Rules 26, 33, 34 and 36 of the Tennessee Rules of Civil Procedure and Tenn. Comp. R. & Reg. 1220-1-2-.11. The Consumer Advocate Unit in the Financial Division of the Office of the Attorney General (“Consumer Advocate”) requests that full and complete responses be provided pursuant to the Tennessee Rules of Civil Procedure. The responses are to be produced at the Office of the Tennessee Attorney General and Reporter, Financial Division, Consumer Advocate Unit, John Sevier Building, 500 Dr. Martin L. King Jr. Blvd., Nashville, Tennessee 37243, c/o Karen H. Stachowski, on or before 2:00 p.m. (CDT), July 14, 2021.

PRELIMINARY MATTERS AND DEFINITIONS

1. **Continuing Request.** These discovery requests are to be considered continuing in nature and are to be supplemented from time to time as information is received by the Company and any of its affiliates which would make a prior response inaccurate, incomplete, or incorrect.

2. **Clear References.** To the extent that the data or information requested is incorporated or contained in a document, identify the document including page/line number if applicable.

3. **Format of Responses.** Provide all responses in the format in which they were created or maintained, for example, Microsoft Word or Microsoft Excel format with all cells and formulas intact and in working order. If a document (including without limitation a financial or other spreadsheet or work paper) is not created or maintained in Microsoft Excel format, convert the document to Microsoft Excel format or provide the document in a format that enables or permits functionality like or similar to Microsoft Excel (including without limitation the functionality of working cells and formulas), or provide the software program(s) that will enable the Consumer Advocate to audit and analyze the data and information in the same manner as would be enabled or permitted if the document were provided in Microsoft Excel format.

4. **Objections.** If any objections to this discovery are raised on the basis of privilege or immunity, include in your response a complete explanation concerning the privilege or immunity asserted. If you claim a document is privileged, identify the document and state the basis for the privilege or immunity asserted. If you contend that you are entitled to refuse to fully answer any of this discovery, state the exact legal basis for each such refusal.

5. **Singular/Plural.** The singular shall include the plural, and vice-versa, where appropriate.

6. **Definitions.** As used in this Request:

(a) "You," "Your," "Company," or "Limestone," shall mean Limestone Water Utility Operating Company, LLC and all employees, agents, attorneys, representatives or any other person acting or purporting to act on its behalf.

(b) "Central States Water" shall mean Central States Water Resources, Inc. and all employees, agents, attorneys, representatives or any other person acting or purporting to act on its behalf.

(c) "CSWR" shall mean Central States Water Resources, LLC and all employees, agents, attorneys, representatives or any other person acting or purporting to act on its behalf.

(d) "Cartwright Creek," shall mean Cartwright Creek, LLC and all employees, agents, attorneys, representatives or any other person acting or purporting to act on its behalf.

(e) "Affiliate" shall mean any entity who, directly or indirectly, is in control of, is controlled by, or is under common control with the Company. For greater clarification, "control" is the ownership of 20% or more of the shares of stock entitled to vote for the election of directors in the case of a corporation, or 20% or more of the equity interest in the case of any other type of entity, or status as a director or officer of a corporation or limited liability company, or status as a partner of a partnership, or status as an owner of a sole proprietorship, or any other arrangement whereby a person has the power to choose, direct, or manage the board of directors or equivalent governing body, officers, managers, employees, proxies, or agents of another person. In addition, the term "Affiliate" shall mean any entity that directly or indirectly provides management or operational services to the Company or any affiliate (as defined in the preceding sentence) of the Company, or to which the Company provides management or operational services. Further, the payment of money to the Company or receipt by the Company of money from an entity with which the Company has any relationship, other than such payment or receipt, shall include the payor or recipient of such money as an "Affiliate."

(f) "Communication" shall mean any transmission of information by oral, graphic, written, pictorial or otherwise perceptible means, including but not limited to personal conversations, telephone conversations, letters, memoranda, telegrams, electronic mail, newsletters, recorded or handwritten messages, meetings and personal conversations, or otherwise.

(g) "Document" shall have the broadest possible meaning under applicable law. "Document" shall mean any medium upon which intelligence or information can be recorded or retrieved, such as any written, printed, typed, drawn, filmed, taped, or recorded medium in any manner, however produced or reproduced, including but not limited to any writing, drawing, graph, chart, form, letter, note, report, electronic mail, memorandum (including memoranda, electronic mail, report, or note of a meeting or communication), work paper, spreadsheet, photograph,

videotape, audio tape, computer disk or record, or any other data compilation in any form without limitation, which is in your possession, custody or control. If any such document was, but no longer is, in your possession, custody or control, state what disposition was made of the document and when it was made.

(h) "Person" shall mean any natural person, corporation, firm, company, proprietorship, partnership, business, unincorporated association, or other business or legal entity of any sort whatsoever.

(i) "Identify" with respect to:

- i. Any natural person, means to state the full name, telephone number, email address and the current or last known business address of the person (if no business address or email address is available provide any address known to you) and that person's relationship, whether business, commercial, professional, or personal with you;
- ii. Any legal person, business entity or association, means to state the full name, the name of your contact person with the entity, all trade name(s), doing business as name(s), telephone number(s), email address(es), and current or last known business address of such person or entity (if no business address is available provide any address known to you);
- iii. Any document, means to state the type of document (e.g., letter), the title, identify the author, the subject matter, the date the document bears and the date it was written; and
- iv. Any oral communication, means to state the date when and the place where it was made, identify the person who made it, identify the person or persons who were present or who heard it, and the substance of it.

(j) "And" and "or" shall be construed conjunctively or disjunctively as necessary to make the discovery request inclusive rather than exclusive.

(k) "Including" shall be construed to mean including but not limited to.

FIRST DISCOVERY REQUESTS

- 1-1. Refer to *Limestone's Response to the Consumer Advocate's First Discovery Request*, DR No. 1-1, TPUC Docket No. 19-00062 (February 14, 2019) (Confidential). Limestone

stated that [REDACTED]

- a. Confirm that the above statement is still accurate.
- b. If [REDACTED], identify and state the ownership percentages of the various CSWR owners.

RESPONSE:

1-2. Refer to *Limestone's Response to the Consumer Advocate's First Discovery Request*, DR No. 1-7, TPUC Docket No. 19-00062 (February 14, 2019) (Confidential). [REDACTED]

[REDACTED]. Provide a detailed explanation of the following:

a. [REDACTED]

b. How does [REDACTED]

?¹

RESPONSE:

1-3. Provide a copy of the financial statements of US Water for 2020. If audited financial statements exist, provide the audited financial statements within this response.

RESPONSE:

1-4. If Consumer Advocate DR No. 1-1a above is confirmed, provide all available information

RESPONSE:

¹ [REDACTED] *Limestone's Response to the Consumer Advocate's First Discovery Request*, DR No. 1-1, TPUC Docket No. 19-00062 (February 14, 2020) (Confidential).

1-5. Refer to the *Petition*, Exhibit 5. Provide a copy of the 2020 Balance Sheet and Income Statement associated with the following affiliates identified in Exhibit 5:

- a. Missouri CSWR
- b. Arkansas CSWR
- c. Tennessee CSWR
- d. Kentucky CSWR
- e. Louisiana CSWR
- f. Texas CSWR
- g. Mississippi CSWR
- h. North Carolina CSWR
- i. Arizona CSWR

RESPONSE:

1-6. Refer to the *Petition*, Exhibit 6. For each Operating Company listed in Exhibit 6, identify the date each system was acquired.

RESPONSE:

1-7. Refer to the *Petition*, p. 6. CSWR and Limestone estimated that more than \$2.3 million will be required to bring the wastewater system at The Grasslands into compliance with operational and environmental standards. Provide the estimated timeline in months when this system may be brought into compliance after closing the transaction.

RESPONSE:

1-8. If the escrow funds currently recorded on the books of Cartwright Creek are to be maintained by Cartwright Creek, provide a comprehensive explanation supporting why such balance should not be recorded as a regulatory liability on the books of Limestone.

RESPONSE:

1-9. Provide the operating margin projections for the acquired systems for the periods 2022 – 2024.

RESPONSE:

- 1-10. Provide the projected accounting entries to be recorded on the books of Limestone to record the Cartwright Creek acquisition based upon applicable Cartwright Creek balances as of December 31, 2020, reconciled with the purchase price.

RESPONSE:

- 1-11. Provide a comprehensive explanation of whether Limestone intends to maintain separate accounting identifiers for its Cartwright Creek properties, distinct from that of its Aqua properties, or does Limestone intend to eliminate any separate identifiers between the two sets of properties for accounting purposes?

RESPONSE:

- 1-12. Refer to the *Petition*, Exhibit 9, Josiah Cox's Direct Testimony at p. 5. Mr. Cox referenced operating systems that satisfy customers, regulators, and investors alike. With respect to this statement, provide all support in the Company's possession supporting the conclusion that customers of CSWR are satisfied with the quality and price of service provided.

RESPONSE:

- 1-13. Provide an analysis of the anticipated rate impacts to (i) current Cartwright Creek customers and (ii) existing Limestone customers, resulting from this transaction. Provide all supporting information underlying this analysis.

RESPONSE:

- 1-14. Refer to the *Petition*, Exhibit 9, Josiah Cox's Direct Testimony at p. 10. Specifically, his reference to the hiring of a local, non-affiliated third-party operations and maintenance firm. With respect to this statement, provide the following:

- a. Provide a copy of the executed contract for such services associated with the Aqua properties.
- b. Does Limestone anticipate executing a contract with the same firm used to perform such services for Aqua, and if so, does it anticipate a cost per customer structure similar to that incorporated within the Aqua agreement?
- c. What plans does the Company have, if any, to attempt to capture economies of scale by utilizing one O&M firm across its entire service territory?

RESPONSE:

1-15. Indicate whether Limestone is seeking a determination in this Docket on whether its revenue requirement should be regulated on a Rate Base rate of return methodology, Operating Ratio methodology or some other methodology? Is this determination, if sought, pre-requisite for closing the transaction?

RESPONSE:

1-16. Refer to the *Petition*, Exhibit 9, Josiah Cox's Direct Testimony at p. 13. Regarding rate consolidation, confirm that Limestone is not seeking approval to consolidate rates within this application.

RESPONSE:

1-17. Is Limestone agreeable to abiding by the terms and requirements of all the Commission orders issued to Cartwright Creek? If not, please identify the specific terms and dockets in which Limestone seeks a waiver of Commission requirements.

RESPONSE:

1-18. Provide a comprehensive explanation supporting how the purchase price was arrived at. Include within this response all the analytical support for the price contained within the Purchase Agreement.

RESPONSE:

1-19. Refer to the *Petition*, Exhibit 11 (Confidential). Respond to the following:

- a. Confirm these projections reflect the legacy operations of Aqua and the new Cartwright Creek properties.
- b. If this is not confirmed, provide a comprehensive explanation of what the Exhibit 11 data represents, including information sources used to prepare the information.
- c. If item 1-19a above is confirmed, provide a split of the two Income Statement forecasts between the legacy Aqua and the prospective Cartwright Creek operations.

RESPONSE:

1-20. Refer to the *Petition*, p. 6. The Company states that the current system fails to achieve standards established by the Tennessee Department of Environment and Conservation (TDEC) for phosphorus.

- a. Provide the support for the statement that the system exceeds phosphorus standards, including any findings by TDEC.
- b. Provide a comprehensive explanation of how Limestone would bring the system into compliance with TDEC standards for phosphorus and the estimated costs to do so.

RESPONSE:

1-21. Refer to the *Petition*, p. 6. Provide a specific list of the regulatory approvals which are conditions precedent to closing the Transaction.

RESPONSE:

1-22. Identify the owners and their respective ownership percentages of US Water Systems, LLC.

RESPONSE:

1-23. Provide a copy of all financial projections prepared by CSWR or any of its affiliates related to the pro-forma operation of Cartwright Creek. Provide all assumptions underlying Operating and Maintenance cost projections.

RESPONSE:

1-24. Refer to the *Petition*, Exhibit 7 (Confidential) [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

On April 29, 2019, the TDEC issued a Director's Order to Cartwright Creek identifying deadlines to comply with various compliance issues. A copy of the TDEC Director's Order is attached as Exhibit CA-1. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

RESPONSE:

1-25. Refer to *Petition of Cartwright Creek, LLC to Increase Tap Fees to Address Environmental Issues Raised by the Tennessee Department of Environment and Conservation*, Exhibit A, TPUC Docket No. 19-00034 (March 13, 2019). Provide a comprehensive explanation indicating whether CSWR is in agreement with the Inflo Design Group Report recommendations, identified as Petition Exhibit A within TPUC Docket No. 19-00034.

RESPONSE:

1-26. Refer to the *Petition*, at p. 6. CSWR and Limestone estimated that an additional \$2.3 million in capital expenditures is necessary to bring the Grassland System into regulatory compliance. With respect to that estimate, provide the following:

- a. Provide the details of the proposed capital expenditure of \$2.3 million, and also the support for such capital expenditures.
- b. Indicate what portion of that estimate is attributable to work that is contemplated by Cartwright Creek to comply with the TDEC Director's Order issued on April 29, 2019, and attached as Exhibit CA-1; and
- c. Notwithstanding the cost estimates provided within part 1-27a above, provide an estimated timeline over which the remaining capital expenditures would be incurred.

RESPONSE:

- 1-27. Provide a discussion of the appropriate analytical approach which CSWR/Limestone believes should be used to establish its revenue requirement such as Operating Ratio, Rate Base Rate of Return, or some other methodology.

RESPONSE:

- 1-28. Refer to the *Petition*, at p. 6. With respect to the \$2.3 million capital expenditure estimate, identify the portion of this expenditure financed by debt and the portion to be financed with equity.

RESPONSE:

- 1-29. Refer to the *Petition*, Exhibit 11 (Confidential). Exhibit 11 provides two years of forecasted information for Limestone. With respect to forecasted Limestone financial statements provide the following:
- a. Provide three years of forecasted operating results;
 - b. Provide the number of forecasted customers, by rate jurisdiction and customer class underlying the forecast;
 - c. Provide forecasted O&M costs by account number; and
 - d. Identify all assumptions used within the forecast.

RESPONSE:

1-30. Provide the proposed depreciation rates by account that Limestone proposed to apply to the acquired assets.

RESPONSE:


1-31. Provide a complete copy of the proposed tariff to be in place associated with the service to be provided to Cartwright Creek.

RESPONSE:

1-32. Provide the financial statements of Limestone as of March 31, 2021, and May 31, 2021.

RESPONSE:

RESPECTFULLY SUBMITTED,


KAREN H. STACHOWSKI (BPR No. 019607)
Assistant Attorney General
SARAH A. Hiestand (BPR No. 014217)
Senior Assistant Attorney General
Office of the Tennessee Attorney General
Financial Division, Consumer Advocate Unit
P.O. Box 20207
Nashville, Tennessee 37202-0207
Phone: (615) 741-8733
Fax: (615) 741-1026
Email: karen.stachowski@ag.tn.gov
Email: sarah.hiestand@ag.tn.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail upon:

Limestone Water Utility Operating Company, LLC
C/O Charles B. Welch, Jr., Esq.
Brittany L. Davis, Esq.
Farris Bobango PLC
414 Union Street, Suite 1105
Nashville, TN 37219
Email: cwelch@farris-law.com
Email: bdavis@farris-law.com

This the 29th day of June, 2019.



KAREN H. STACHOWSKI



Exhibit CA-1

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

April 29, 2019

Mr. Bruce E. Meyer
Registered Agent
Cartwright Creek, LLC
6545 Cox Road
College Grove, TN 37046

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT # 9414 7266 9904 2120 5184 08

Subject: **DIRECTOR'S ORDER NO.WPC18-0100**
CARTWRIGHT CREEK, LLC
WILLIAMSON COUNTY, TENNESSEE

Dear Mr. Meyer:

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 failure to adhere to conditions of the permit.

The above violations have resulted in a full penalty assessment of \$37,950.00, with an upfront payment of \$7,590.00, due and payable on or before the 31st day after receipt of this Order and Assessment. The remaining assessment is due only if the order requirements are not timely met. Please read the Order carefully and pay special attention to the Notice of Rights section.

If you have questions concerning this correspondence, please contact Rebecca Rush at (615) 532-5984 or by email at Rebecca.Rush@tn.gov, or Jessica Murphy at (615) 532-0676 or by email at Jessica.Murphy@tn.gov.

Sincerely,

Jessica Murphy
Manager, Compliance and Enforcement Unit

JRRu:EJM

Cc: DWR- Mr. Tim Jennette, Nashville EFO- Tim.Jennette@tn.gov
DWR- Ms. Virginia Lawrence, Nashville EFO- Virginia.Lawrence@tn.gov
DWR- Ms. Stephanie Durman, TDEC OGC- Stephanie.Durman@tn.gov
DWR- Enforcement File WPC18-0100

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

IN THE MATTER OF:)	DIVISION OF WATER RESOURCES
)	
)	
CARTWRIGHT CREEK, LLC,)	
)	
)	
RESPONDENT.)	CASE NUMBER WPC18-0100

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 by the Commissioner of the Tennessee Department of Environment and Conservation (Division).

II.

Cartwright Creek, LLC (Respondent) is a wastewater utility in Williamson County, Tennessee, which operates Grasslands sewage treatment plant (STP) and the associated collection system. The Respondent is authorized to discharge treated domestic wastewater to the Harpeth River. Service of process may be made on the Respondent through its Registered Agent, Mr. Bruce E. Meyer at 6545 Cox Road, College Grove, Tennessee 37046.

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 Board of Water Quality, Oil and Gas has promulgated rules governing general water quality criteria and use classifications for surface waters. Tenn. Comp. R. & Regs. Chapters 0400-40-03 and 0400-40-04. 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" as defined by the Act. Tenn. Code Ann. § 69-3-103.

V.

The Harpeth River, as described herein, constitutes "waters" of the state and a "stream." Tenn. Code Ann. § 69-3-103. All streams have been classified by the Tennessee Water Quality Control Board for suitable uses. Tenn. Comp. R. & Regs. Chapter 0400-40-04. The Harpeth River has been classified for the following uses: domestic water supply, industrial water supply, fish and aquatic life, recreation, irrigation, and livestock watering and wildlife. The Harpeth River in Williamson County is included on the 2018 303(d) list of impaired streams due to Dissolved Oxygen and Total Phosphorus.

VI.

A person must obtain coverage under a permit from the Department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Tenn. Code Ann. § 69-3-108(b). Tennessee rules require that a set of effluent limitations will be required in each permit that will indicate adequate operation or performance of treatment units used, and that appropriately limit those harmful parameters present in the wastewater. Tenn. Comp. R. & Regs. 0400-40-05-.08. 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 conditions of the permit. Tennessee Comp. R. & Regs. 0400-40-05-.07. Furthermore, it is unlawful for any person to increase the volume or strength of any wastes in excess of the permissive discharges specified under any existing permit. Tenn. Code Ann. § 69-3-108(b)(3). It is unlawful for any person to violate the conditions of a discharge permit issued by the Department. Tenn. Code Ann. §§ 69-3-108(b) and -114(b).

FACTS

VII.

On November 1, 2010, the Division issued National Pollutant Discharge Elimination System (NPDES) permit TN0027278 (Permit) to the Respondent. The Permit had an expiration date of November 30, 2011, and is currently administratively continued. The Permit authorizes the permittee to discharge treated municipal wastewater to the Harpeth River at mile 68.8 from Outfall 001. Part 1.1 of the Permit establishes a suite of numeric effluent limitations. Permit limits for ammonia, CBOD₅, and total nitrogen are derived from wasteload allocations established in the 2004 total maximum daily load document for dissolved oxygen.

VIII.

Exhibit CA-1

On August 21, 2014, the Division entered into Settlement Agreement and Consent Order WPC14-0021 with the Respondent to address violations of the Permit including effluent violations, overflows, and failing to timely submit Discharge Monitoring Reports (DMRs). The Respondent met all requirements set forth in the Order and the case was closed on December 31, 2015.

IX.

The Respondent appeared on the Environmental Protection Agency's Quarterly Noncompliance Report for Total Nitrogen and Carbonaceous Biochemical Oxygen Demand (CBOD) effluent violations between April and July 2018.

X.

During the monitoring period of September 2017 to February 2019, the Respondent self-reported the following effluent violations on its DMRs:

Parameter	Reported Effluent Violations 9/1/17 - 2/28/19
Solids, total suspended	3
Nitrogen, total (as N)	8
Nitrogen, ammonia total (as N)	1
CBOD, 5 day 20 C	39
Suspended solids % removal	7
Carbonaceous Oxygen Demand, % removal	10
Total Violations	68

XI.

On January 17, 2019, representatives of the Respondent participated in a show cause meeting with representatives of the Division. The Respondent explained that approximately one third of its total exceedances were the result of excessive inflow and infiltration (I/I), and

indicated that it had conducted a three-year I/I study, identified the primary source of I/I, and developed a plan to address this problem subject to funding availability.

VIOLATIONS

XII.

By violating the terms and conditions of the Permit, as described herein, the Respondent has violated sections 69-3-108(a) and 69-3-114(b) of the Act, which state in relevant part:

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;
- ...
- (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(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

XIII.

Pursuant to the authority vested by sections 69-3-109, 69-3-115 and 69-3-116 of the Act, I, Jennifer Dodd, hereby issue the following ORDER and ASSESSMENT:

Exhibit CA-1

1. 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 review and approval. The CAP/ER shall include plans to address effluent violations, including plans to reduce I/I, and a project timeline for beginning and completing all activities relating to the plan. The CAP/ER shall evaluate alternative compliance options, including alternatives to direct discharge as a stand-alone facility. Once approved, these dates will become an enforceable part of the Order and subject to contingent penalties. If the Division requires changes to the submitted plans, the Respondent shall have 30 days from the date of notification to submit updated plans. This case number, **WPC18-0100**, should be written on all correspondence regarding this matter. The CAP/ER shall be submitted in duplicate to the following addresses:

Manager, Division of Water Resources
Tim.Jennette@tn.gov
Nashville Environmental Field Office
711 R.S. Gass Blvd.
Nashville, TN 37216

AND

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

2. All scheduled activities in the approved CAP/ER shall be completed within one year of the date of approval by the Division and a notice of completion shall be submitted in duplicate to the Division at the addresses listed in Item One above.
3. The Respondent shall submit a Final Report to the Division six months after the completion of the CAP/ER. The Report shall detail the date of completion of each action

item in the CAP/ER and shall evaluate the effectiveness of all corrective actions taken in bringing the facility into compliance with the Permit. The Report shall also include an evaluation of additional corrective actions needed to bring the plant into compliance with the Permit, if necessary. The Report shall be submitted in duplicate to the Division at the addresses listed in Item One above.

4. The Respondent shall achieve substantial compliance with the Permit on or before December 31, 2021, at which time this Order shall be considered closed so long as the Respondent is in compliance with all Order requirements, all penalties owed have been paid to the Division, and the facility is in substantial compliance with requirements of the Permit.
5. The Respondent shall pay a civil penalty of \$37,950.00 to the Division, hereby ASSESSED to be paid as follows:
 - a. **On or before the 31st day after receipt of this Order and Assessment, the Respondent shall pay a civil penalty in the amount of \$7,590.00.**
 - 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 \$9,680, payable on or before the 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 \$9,680.00, payable on or before the 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 \$1,000.00, payable on or before the 31st day after default.

- e. If, and only if, the Respondent fails to comply with item 4 by achieving substantial compliance with the Permit by December 31, 2021, the Respondent shall pay a CIVIL PENALTY in the amount of \$500.00, per effluent violation, up to a maximum of \$10,000.00, payable within 30 days of submission of the DMR reporting the effluent violation. Assessment of contingent penalties for effluent violations will begin on January 1, 2022, and will end on December 31, 2022.

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

The Director of the Division may, for good cause shown, extend the compliance dates contained within this Consent 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 30 days thereafter.

Failure to comply with any of the requirements of this Consent Order and Assessment could lead to further enforcement actions, which may include additional civil penalties, assessment of damages, and/or recovery of costs. 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 Parks Avenue, 10th Floor, Nashville, Tennessee 37243.

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.

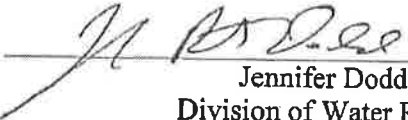
If an appeal is filed, an initial hearing of this matter will be conducted by an Administrative Law Judge (ALJ) as a contested case hearing. Tenn. Code Ann. § 69-3-110; Tenn. Code Ann. § 4-5-301 to -325 (the Uniform Administrative Procedures Act); Tenn. Comp. R. & Regs. 1360-04-01 (the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies). Such 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. 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 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, WPC18-0100, should be written on all correspondence regarding this matter.**

Issued by the Director of the Division of Water Resources of the Tennessee Department of Environment and Conservation on this 29th day of April, 2019.


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

Reviewed by:



Stephanie A. Durman

BPR #027783

Assistant General Counsel

Department of Environment & Conservation

312 Rosa L. Parks Avenue, 2nd Floor

Nashville, Tennessee 37243

615-532-3020

stephanie.durman@tn.gov


Bill Hays
w/permission