



Tennessee Wastewater Systems, Inc.  
Docket 15-00025  
April 2020 Report Overview

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

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

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

**Hidden Springs Resort (Commissioner's Order)** – Awaiting plans approval from TDEC. TDEC issued a NOV related to overflows at the site and requested a correction action plan to address the issue. As stated in the attached response, the corrective action necessary to address all issues at the site are contained in the plans submitted to and pending approval from TDEC.

**Smoky Cove\*\*** (NOV) – TDEC issued a NOV related to ponding in the drip fields. The inspection was conducted at a time when the Sevier County area was experiencing significant rainfall and flooding. Ponding was noted in areas that were not part of the drip areas. TWSI will inspect the drip fields once the area dries out to determine if there are any issues that need to be addressed.

**Cross Plains\*** (Director's Order) – TDEC issued a Director's Order for the site. TWSI has filed an answer and appeal.

\* Neither system is not included in the KPI Report because there is no discharge from the facility.

\*\* System not included in the KPI Report as it has not been determined whether there is an actual problem with the drip field.

**Jeff Riden**

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**From:** HAWKMS Agent <agent@hawkms.com>  
**Sent:** Wednesday, April 1, 2020 8:00 AM  
**To:** Jeff Riden; Matthew Nicks  
**Cc:** Bob Pickney  
**Subject:** TPUC KPI Compliance Report for 4/1/2020 8:00:14 AM

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

## TPUC Flow KPI Report for 3/31/2020

Jeremy Stewart	Permitted	Expected	Actual	% of Expected	AvgFlow	% of
<b>Hidden Springs RSF</b>	<b>30750</b>	19600	7671	<b>0.39</b>	4952.13	
<b>Summit View RSF</b>	<b>8000</b>	5775	0	<b>0.00</b>	1982.68	



STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
KNOXVILLE ENVIRONMENTAL FIELD OFFICE  
3711 MIDDLEBROOK PIKE  
KNOXVILLE, TENNESSEE 37921-5602  
PHONE (865) 594-6035 STATEWIDE 1-888-891-8332 FAX (865) 594-6105

March 9, 2020

VIA CERTIFIED MAIL: 9489 0090 0027 6129 2753 01  
RETURN RECEIPT REQUESTED

Mr. Jeff Riden, VP  
Adenus Group, LLC.  
Tennessee Wastewater Systems, Inc.  
849 Aviation Parkway  
Smyrna, Tennessee 37167

RE: Notice of Violation  
Smoky Cove Subdivision  
State Operating Permit 03-021  
Sevier County

Dear Mr. Riden:

On February 19, 2020, Michael Caudill from the Tennessee Division of Water Resources conducted a site inspection due to a complaint of ponding on drip fields from Smoky Cove Subdivision operating under State Operating Permit 03-021. Below are the findings.

**Inspection Findings**

During the inspection the day of February 19, 2020, Smoky Cove Subdivision's wastewater treatment plant was observed the effluent is flowing on the surface of the ground in the drip field area and not assimilating into the soil profile. Attached is a copy of the Field Activity Report. Based on these observations the following are violations of the effluent limits established in State Operating Permit 03-0021.

Part II.A.4. of the State Operating Permit states:

*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.*

Part II.C.2.a & 3.b Reporting of Noncompliance & Overflow

*2.a. In the case of any noncompliance which could cause a threat to public drinking supplies, or any other discharge which could constitute a threat to human health or the environment, the required notice of non-compliance shall be provided to the appropriate*

Mr. Jeff Riden  
VP. Tennessee Wastewater Systems, Inc.  
March 9, 2020  
Page 2

*Division environmental field office within 24 hours from the time the permittee becomes aware of the circumstances.*  
*3.b. Overflows are prohibited.*

Tennessee Wastewater Systems, Inc must respond in writing to this Notice of Violation by March 31, 2020 with a plan for correcting the violations documented in this letter. At this time, a Corrective Action Plan (CAP) must be developed and implemented to ensure compliance with current State Operating Permit 03021. The CAP should include, but not be limited to, modifications to operation and maintenance necessary to eliminate violations and a timeline in which the modifications will be put into operation.

If you have any questions concerning this investigation or if we may be of any further assistance to you in any way, please feel free to contact Michael Caudill by phone at (865) 594-5476 or by email at Michael.caudill@tn.gov.

Sincerely,



**Michael Atchley**  
Environmental Program Manager  
Knoxville Environmental Field Office  
Division of Water Resources  
cc: Enforcement & Compliance Section, Nashville, WPC

**Tennessee Department of Environment and Conservation**

**Field and Activity Report  
Division of Water Resources**

**County:** Sevier

**City:** Sevierville

**Date:** 2/19/2020

**Location:** Smoky Cove SOP 03021

**Individuals Contacted:** Jeremy Stewart Tennessee Waste Water

**Report:**

1. **Purpose of Visit:** Discuss ponding of effluent on the drip field.
2. **Notes:** Meet with Jeremy Stewart on site, we walked over the areas of the drip field and found ponding of effluent over the drip field site. I asked Mr. Stewart if TWS had developed any plans to correct the problem, he said he wasn't aware of any, but would get with the engineering office to see if any were being discussed.



3.



4.





**Michael Caudill**  
**Environmental Program Coordinator**  
**TDEC Division of Water Resources**



851 Aviation Parkway  
Smyrna, TN 37167

March 24, 2020

Michael Caudill  
Tennessee Department of Environment and Conservation  
Division of Water Resources  
Knoxville Environmental Field Office  
3711 Middlebrook Pike  
Knoxville, TN 37921

VIA EMAIL: [michael.caudill@tn.gov](mailto:michael.caudill@tn.gov)

Re: Notice of Violation  
Smoky Cove Subdivision  
SOP-03021

Mr. Caudill:

This letter is in response to the Notice of Violation (NOV) issued to Tennessee Wastewater Systems, Inc. ("TWSI") on March 5, 2020 related to the Smoky Cove Subdivision in Sevier County, Tennessee.

The NOV states that the inspection was conducted in response to a complaint about ponding in the drip fields. At the time of the inspection on February 19, 2020 the entire Sevier County area had been inundated with substantial rainfall leading to significant amounts of flooding – to the point that area schools and several roads had to be closed. Jeremy Stewart, the system operator, was present for the site visit and noted that the ground was generally soggy and there was water ponded throughout the area, including areas that were not part of the treatment facility including areas where drip was not installed.

The weather conditions in East Tennessee have remained very wet since the inspection (as they were prior to the inspection), as such TWSI has not been able to properly evaluate the drip fields to determine whether the ponding is related to weather or operational issues. In the short term, TWSI will rest specific drip areas to allow them to dry out (assuming the weather cooperates). Once the area dries out, TWSI will inspect the drip fields and evaluate what, if any, corrective action needs to be taken to ensure the drip fields are operating properly, and submit any necessary plans accordingly.

If you have any further questions or concerns, please contact Jeremy Stewart at [jeramv.stewart@adenus.com](mailto:jeramv.stewart@adenus.com) or 865-804-5365.

Regards,

Jeff Fisher  
General Counsel



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851 Aviation Parkway  
Bryna, TN 37187

**Co:** **Matthew Nicks** – [matthew.nicks@adenus.com](mailto:matthew.nicks@adenus.com)  
**Marshall Fall** – [marshall.fall@adenus.com](mailto:marshall.fall@adenus.com)  
**Jeremy Stewart** – [jeremy.stewart@adenus.com](mailto:jeremy.stewart@adenus.com)  
**Michael Atchley** – [michael.atchley@tn.gov](mailto:michael.atchley@tn.gov)



STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
KNOXVILLE ENVIRONMENTAL FIELD OFFICE  
3711 MIDDLEBROOK PIKE  
KNOXVILLE, TENNESSEE 37621-6538  
PHONE (865) 594-6035 STATEWIDE 1-865-891-8392 FAX (865) 594-6105

March 5, 2020

Mr. Jeff Riden, VP  
Adenus Group, LLC.  
Tennessee Wastewater Systems, Inc.  
849 Aviation Parkway  
Smyrna, Tennessee 37167

VIA CERTIFIED MAIL: 9489 0090 0027 6129 2751 96  
RETURN RECEIPT REQUESTED

RE: Notice of Violation  
Hidden Springs Resort  
State Operating Permit 00-068  
Sevier County

Dear Mr. Riden:

On February 19, 2020, Michael Caudill from the Tennessee Division of Water Resources conducted a complaint investigation due to the discharge of sewage from failing treatment facilities and drip fields from Hidden Springs Resort operating under State Operating Permit 00-068. Below are the findings.

**Investigation Findings**

During the investigation the day of February 19, 2020, Hidden Springs Resort's wastewater treatment plant was observed overflowing sewage from a pump station and running into drainage leading to Seaton Branch. Also noted in this investigation the effluent is flowing on the surface of the ground in the drip field area and not assimilating into the soil profile. Based on these observations the following are violations of the effluent limits established in State Operating Permit 00-0068.

Part II.A.4. of the State Operating Permit states:

*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.*

Part II.C.2.a & 3.b Reporting of Noncompliance & Overflow

*2.a. In the case of any noncompliance which could cause a threat to public drinking supplies, or any other discharge which could constitute a threat to human health or the environment, the required notice of non-compliance shall be provided to the appropriate Division environmental field office within 24 hours from the time the permittee becomes aware of the circumstances.*

*3.b. Overflows are prohibited.*

**Mr. Jeff Riden  
VP. Tennessee Wastewater Systems, Inc.  
August 9, 2019  
Page 3**



**Tennessee Wastewater Systems, Inc must respond in writing to this Notice of Violation by March 31, 2020 with a plan for correcting the violations documented in this letter. At this time, a Corrective Action Plan (CAP) must be developed and implemented to ensure compliance with current State Operating Permit 00068. The CAP should include, but not be limited to,**

**Mr. Jeff Riden**  
**VP. Tennessee Wastewater Systems, Inc.**  
**August 9, 2019**  
**Page 3**

**modifications to operation and maintenance necessary to eliminate violations and a timeline in which the modifications will be put into operation.**

**If you have any questions concerning this investigation or if we may be of any further assistance to you in any way, please feel free to contact Michael Caudill by phone at (665) 594-5476 or by email at [Michael.caudill@tn.gov](mailto:Michael.caudill@tn.gov).**

**Sincerely,**



**Michael Atchley**  
**Environmental Program Manager**  
**Knoxville Environmental Field Office**  
**Division of Water Resources**  
**cc: Enforcement & Compliance Section, Nashville, WPC**



881 Aviation Parkway  
Smyrna, TN 37167

**March 24, 2020**

**Michael Caudill**  
Tennessee Department of Environment and Conservation  
Division of Water Resources  
Knoxville Environmental Field Office  
3711 Middlebrook Pike  
Knoxville, TN 37921

VIA EMAIL: [michael.caudill@tn.gov](mailto:michael.caudill@tn.gov)

**Re: Notice of Violation**  
**Hidden Springs Resort**  
**SOP-00058**

**Mr. Caudill:**

**This letter is in response to the Notice of Violation (NOV) issued to Tennessee Wastewater Systems, Inc. ("TWSI") on March 5, 2020 related to the Hidden Springs Treatment Facility in Sevier County, Tennessee.**

**The NOV states that the inspection was conducted in response to a complaint about the system, however TWSI is unaware of any such complaint, nor did TDEC attempt to contact TWSI about the matter. TWSI was not provided notice of the inspection and had no personnel present. This is a violation of the SOP which requires TDEC personnel to provide notice and credentials to TWSI personnel prior to entering the treatment facility property. An inspection of a different TWSI facility was planned for that day so, it certainly would not have been unreasonable for TDEC to contact the operator about the complaint and notify him of the inspection at Hidden Springs.**

**The NOV requests that TWSI file a corrective action plan to address the issues observed during the site inspection<sup>1</sup>. In July of 2019, TWSI submitted plans in response to a Commissioner's Order to construct a new treatment facility at Hidden Springs, including the installation of additional drip areas. These plans address all issues past and present at the Hidden Springs facility. To date, the plans have not been approved. At the TOWA Conference in January it was represented by George Garden to TWSI's engineer, Marshall Fall, that the plans review was complete and the approval letter would be issued. To date TWSI has not received approval of the construction plans nor any additional communication from the Department with regard to the status despite repeated attempts for such information. On March 9<sup>th</sup> the Tennessee Public Utility Commission approved the funding for the work at**

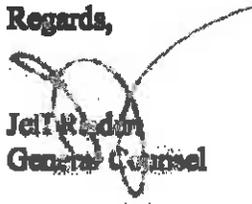


851 Aviation Parkway  
Smyrna, TN 37167

**Hidden Springs.** As soon as the plans are approved, TWSI can begin the work to construct the new system.

If you have any further questions or concerns, please contact Jeremy Stewart at [jeramy.stewart@adenus.com](mailto:jeramy.stewart@adenus.com) or 865-804-5365.

Regards,



Jeff Radon  
General Counsel

Cc: Matthew Nicks – [matthew.nicks@adenus.com](mailto:matthew.nicks@adenus.com)  
Marshall Fall – [marshall.fall@adenus.com](mailto:marshall.fall@adenus.com)  
Jeremy Stewart – [jeramy.stewart@adenus.com](mailto:jeramy.stewart@adenus.com)  
Michael Atchley – [michael.atchley@tn.gov](mailto:michael.atchley@tn.gov)  
George Garden – [george.garden@tn.gov](mailto:george.garden@tn.gov)  
Patrick Parker, Esq. – [patrick.parker@tn.gov](mailto:patrick.parker@tn.gov)  
Bill Penny, Esq. – [bpenny@burr.com](mailto:bpenny@burr.com)



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 Ridsen  
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. Ridsen,

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 31<sup>st</sup> 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 31<sup>st</sup> 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](mailto:Britton.Dotson@tn.gov), or you may contact me at (615) 532-0676 or [Jessica.Murphy@tn.gov](mailto:Jessica.Murphy@tn.gov).

Sincerely,

A handwritten signature in black ink that reads "Jessica Murphy".

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

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

NOTICE OF HEARING EX. A

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<b>IN THE MATTER OF:</b>	)	<b>DIVISION OF WATER RESOURCES</b>
	)	
<b>TENNESSEE WASTEWATER SYSTEMS, INC. (CROSS PLAINS FACILITY),</b>	)	<b>CASE NO. WPC26-0012</b>
	)	
<b>RESPONDENT.</b>	)	

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**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 Ridsen, 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., 10<sup>th</sup> Floor, Nashville, Tennessee 37243.

2. The Respondent shall pay \$18,431.00 to the Division on or before the 31<sup>st</sup> 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, 11<sup>th</sup> 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, 11<sup>th</sup> 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 15<sup>th</sup> 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 31<sup>st</sup> 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

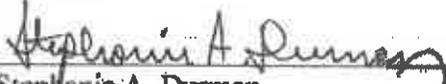
NOTICE OF HEARING EX. A

Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Ave., 2<sup>nd</sup> 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, 11<sup>th</sup> 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 5<sup>th</sup> 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  
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**BEFORE THE TENNESSEE BOARD OF WATER QUALITY, OIL AND GAS**

**DEPARTMENT OF ENVIRONMENT AND  
CONSERVATION, DIVISION OF WATER  
RESOURCES** )

**Complainant,** )

**v.** )

**TENNESSEE WASTEWATER SYSTEMS, INC. )  
(CROSS PLAINS FACILITY)** )

**Case No. WPC20-0012**

**Respondent.**

**ANSWER AND PETITION FOR APPEAL**

Comes now Tennessee Wastewater Systems, Inc. ("TWSI" or "Respondent") in response to the Directors Order and Assessment (the "Order") issued against it, hereby provides this Answer and Petition for Appeal of the Order and requests a hearing pursuant to Tenn. Code Ann. § 69-3-110 and for good cause would show as follows:

1. The Respondent admits the allegations in Paragraph I of the Order.
2. The Respondent admits the allegations in Paragraph II of the Order.
3. Paragraph III of the Order is a summary of various statutory citations which do not require an answer. To the extent necessary the Respondent admits the allegations to the extent such references speak for themselves and would deny any language not expressly contained therein.
4. The Respondent admits the allegations in Paragraph IV of the Order.
5. The Respondent admits that groundwater at or near the site constitutes "waters" of the state to the extent such is defined by Tenn. Comp. R & Regs. 0400-40-03-.04(8), "Water

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1. The Respondent admits the allegations in Paragraph I of the Order.
2. The Respondent admits the allegations in Paragraph II of the Order.
3. Paragraph III of the Order is a summary of various statutory citations which do not require an answer. To the extent necessary the Respondent admits the allegations to the extent such references speak for themselves and would deny any language not expressly contained therein.
4. The Respondent admits the allegations in Paragraph IV of the Order.
5. The Respondent admits that groundwater at or near the site constitutes "waters" of the state to the extent such is defined by Tenn. Comp. R & Regs. 0400-40-03-.04(8), "Water

beneath the surface of the ground within the zone of saturation, whether or not flowing through known and definite channels.”

6. Paragraph VI of the Order is a summary of various statutory citations which do not require an answer. To the extent necessary the Respondent admits the allegations to the extent such references speak for themselves and would deny any language not expressly contained therein.

7. The Respondent admits the allegations in Paragraph VII to the extent the state operating permit number SOP-05057 speaks for itself; however, denies any representation or allegations not expressly contained therein. Respondent would further show that while the system was designed for 10,600 gallons per day, actual operation has not resulted in reaching the design capacity. The system was designed to utilize the drip field when the effluent in the wastewater lagoon reached a defined level which had not occurred. Respondent plans to install the drip field in the near future as wastewater discharges are expected to increase. Further Respondent would show the facility was properly constructed in accordance with design criteria and operated.

8. The Respondent admits the allegations in Paragraph VIII of the Order.

9. In response to the allegations in Paragraph IX the Respondent admits the facility was first permitted in September 2006 for some 70,000 gallons per day, but its first and only customer was not connected until February 2010, and then was only 300 gallons per day. As a result some of the lagoon area was not used to accept effluent. Levels of effluent at the time did not justify installation of the drip field lines at that time. Further, inspections in 2014 and 2017 by the Division expressly stated that the lagoon appeared to be holding effluent with no limiting karst features; however, the effluent level was not sufficient to begin drip irrigation. The treatment facility is surrounded by a fence with a gate. It also contains signage.

10. In Response to Paragraph X Respondent admits the Division conducted a site visit on November 8, 2019, and took photographs of the Site and that the lagoon contained about 0.25 acres of wastewater, but would deny that such photographs are documentation that the lagoon was not constructed according to approved plans or not holding effluent as designed. Respondent further admits the drip field had not been installed at that time because the volume of effluent did not require use of drip irrigation.

11. In response to the allegations in Paragraph XI, Respondent admits that the Division returned to the site on November 20, 2019, but disputes the veracity of the allegations that the lagoon was not holding the effluent. Respondent admits the science behind creation of voids creating soil collapses, but would show the Division's own staff documented on two previous occasions that the lagoon was holding effluent and did not have karst features that would cause problems. Studies by Respondent demonstrate that the lagoon is lined with two feet of clay.

12. In response to the allegations in Paragraph XII, Respondent admits White House Utility District provided the Division with raw water usage for the three commercial facilities, but denies the allegations that effluent was not properly retained in the lagoon in accordance with design criteria.

13. In response to the allegations in Paragraph XIII, Respondent admits a notice of violation was issued but denies any allegation of violations of the permit. The drip dispersal system was not installed because the effluent was not at a level to utilize drip disposal. The lagoon was properly constructed and was retaining effluent as agreed to by Division staff on two separate occasions. Respondent denies effluent was discharged to groundwater in violation of the UIC permit or does not comply with the SOP. Based on actual conditions, neither the rules of the Board or the SOP require installation of a flow meter, updated designs, list of connections, a water use

survey or dye trace. Respondent did engage an expert to evaluate the lagoon which concluded that the lagoon is lined by a 2 foot layer of clay, and that no dye trace was necessary. Respondent admits it did not cease discharges to the lagoon since it is permitted to do so.

14. The Respondent admits the allegations in Paragraph XIV, as it had a permit to continue to discharge wastewater to the lagoon, did not need to begin drip irrigation because of lagoon levels, and did not need a dye trace or a lagoon repair plan because the lagoon is lined and not leaking.

15. The Respondent admits the allegations in Paragraph XV that it met with representatives of Respondent on January 21, 2020 and that there had been recent precipitation. Respondent denies any allegations that the lagoon experienced rapid draining or that the lagoon did not retain effluent.

16. In response to the allegations in Paragraph XVI, the Respondent does not have sufficient information to either admit or deny the amount of damages and therefore denies the allegations.

17. The Respondent denies the allegations in Paragraph XVII of the Order.

18. The Respondent objects to the assessment of civil penalties in Paragraph XVIII of the Order as excessive, arbitrary and capricious, and not based upon actual violations of the Act. Respondent further objects to the requirement to install a flow meter as stated, to submit an inventory of connections, to discontinue discharge of wastewater to the lagoon, submission of a corrective action plan/engineering report (CAP/ER) that would prevent discharge to the lagoon, submission of flow data, conduct a water use survey, further reporting from the CAP/ER and the requirement to pay damages. Further Respondent objects to a two year time period for keeping the Order open.

19. For any allegation for which Respondent has not expressly responded with an admission or denial, such allegations are hereby denied.

WHEREFORE, PREMISES CONSIDERED, the Respondent hereby appeals the Order and requests a hearing as provided by Tenn. Code Ann. § 69-3-110 and § 4-5-301 to -325 and at such hearing the Administrative Judge and/or the Board of Water Quality, Oil and Gas Deny the Order and Assessment. Respondent further requests such other, further and general relief as it may be entitled to by law including an award of Respondent's attorney's fees and expenses.

Respectfully submitted,

/s/ William L. Penny

William L. Penny TN Bar #9606  
BURR & FORMAN LLP  
222 Second Avenue South  
Suite 2000  
Nashville, TN 37201  
Telephone: (615) 724-3200  
Facsimile: (615) 724-3290

*Attorneys for Respondent, Tennessee Wastewater  
Systems, Inc.*

#### **Certificate of Service**

I hereby certify that a true and exact copy of the foregoing Answer and Petition for Appeal was served via email delivery to [TDEC.Appeals@tn.gov](mailto:TDEC.Appeals@tn.gov); Commissioner of the Department of Environment and Conservation, c/o Jenny L. Howard, General Counsel, Department of Environment and Conservation to [Jenny.Howard@tn.gov](mailto:Jenny.Howard@tn.gov); Jenny Dodd at [Jenny.Dodd@tn.gov](mailto:Jenny.Dodd@tn.gov) and Stephanie Durman at [Stephanie.Durman@tn.gov](mailto:Stephanie.Durman@tn.gov) this 27th day of March, 2020.

/s/ William L. Penny