

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

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

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**RESPONSE TO MOTION OF CONSUMER ADVOCATE**  
**TO FILE SUPPLEMENTAL DISCOVERY REQUESTS**

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Pursuant to TRA Rule 1220-1-2-.06(2), Tennessee Wastewater Systems, Inc. ("TWSI") files this response to the Consumer Advocate's Motion, filed June 3, 2015, requesting permission to ask the following, additional discovery question.

Please identify whether any of your affiliates, including but not limited to Adenus Group, LLC, the Adenus family of companies, and/or entities you propose to provide services at The Enclave have been cited for violating any environmental laws or regulations within the past five years. If any affiliates or entities were so cited, please provide the names of the affiliates or entities that were cited, each of the notifications of violation or other communications from the enforcement entities describing the nature of the violations, and the end result or current status of each of the enforcement actions.

Counsel for the Consumer Advocate did not contact counsel for TWSI prior to filing the Motion. The information requested is a matter of public record. TWSI has no objection to making it available to the Consumer Advocate.

To the knowledge of the company's outside counsel for environmental matters, Mr. William L. Penny at the firm of Burr & Forman, LLP there are three pending matters in which Adenus Solutions Group (an affiliate of TWSI) is a Respondent in Director's Orders by TDEC. Attached are copies of the three Director's Orders. Mr. Penny is not aware of any other pending

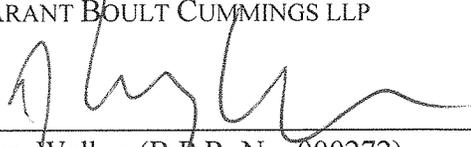
matters filed against a TWSI affiliate, nor is he aware of any other matters filed against TWSI affiliates during the past five years (other than complaints against TWSI itself which have already been disclosed.)

The Water and Wastewater Authority of Wilson County ("WWAWC") owns each of these sites. Adenus Operations operates each site. The three matters are pending and are currently the subject of confidential settlement discussions. At the Clay Estates and Cedar Grove sites, TDEC has alleged that the drip fields did not have suitable soils and were not performing adequately causing ponded effluent.. The City of Lebanon has agreed to allow treated wastewater from these two sites to be tied into Lebanon's discharge point. Adenus Operations is now in the process of developing an application for a point discharge permit from TDEC, according to Mr. Penny. The Couchville Pike Treatment facility was designed and constructed to service more than 200 homes; however, is only serving 12 at the current time. The treatment system consists of a deep cell effluent lagoon which TDEC alleges is not operable at the current time. . Adenus is negotiating a corrective action plan with TDEC that will satisfy TDEC's concerns. Mr. Penny believes this matter will be settled within sixty days.

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS LLP

By: \_\_\_\_\_

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

CERTIFICATE OF SERVICE

I hereby certify that on the 10<sup>th</sup> day of June, 2015, a copy of the foregoing document was served on the parties of record, via hand-delivery, overnight delivery or U.S. Mail, postage prepaid, addressed as follows:

Erin Merrick  
Senior Counsel  
Office of the Attorney General  
Consumer Advocate and Protection Division  
P.O. Box 20207  
Nashville, TN 37202-0270

  
HENRY WALKER



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

May 29, 2014

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**RECEIPT #7005 1820 0001 5797 0710**

Mr. Charles Hyatt, Registered Agent  
Adenus Operations, LLC  
849 Aviation Parkway  
Smyrna, Tennessee 37167

Subject: DIRECTOR'S ORDER NO. WPC14-0049  
CEDAR GROVE WASTEWATER TREATMENT FACILITY  
WILSON COUNTY, TENNESSEE

Dear Mr. Hyatt,

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Sandra K. Dudley, 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-N  
DWR - Compliance File  
OGC

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

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**IN THE MATTER OF:**

**WATER AND WASTEWATER  
AUTHORITY OF WILSON COUNTY and  
ADENUS OPERATIONS, LLC**

**RESPONDENTS**

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**DIVISION OF WATER  
RESOURCES**

**CASE NUMBER WPC14-0049**

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**DIRECTOR'S ORDER AND ASSESSMENT**

NOW COMES Sandra K. Dudley, Director of the Tennessee Division of Water Resources, and states:

**PARTIES**

**I.**

Sandra K. Dudley 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.**

Water and Wastewater Authority of Wilson County (hereinafter "Respondent WWAWC"), is the owner of the Cedar Grove Wastewater Treatment Facility (hereinafter the "site") in Wilson County, Tennessee. Service of process may be made on Respondent WWAWC through Mr. Chris Leuber, Executive Director, at P.O. Box 545, Lebanon, Tennessee 37088.

### III.

Adenus Operations, LLC (hereinafter "Respondent Adenus"), is an active limited liability company licensed to conduct business in the state of Tennessee and is the contracted operator of the Cedar Grove Wastewater Treatment Facility in Wilson County, Tennessee. Service of process may be made on Respondent Adenus through Mr. Charles Pickney, Jr., Registered Agent, at 851 Aviation Parkway, Smyrna, Tennessee 37167.

### JURISDICTION

#### IV.

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.

V.

The Respondents are “persons” as defined by T.C.A. § 69-3-103(26) and, as herein described, have violated the Act.

VI.

Spring Creek and all the tributaries of Spring Creek, described herein, are “waters of the state” as defined by T.C.A. § 69-3-103(44). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 0400-40-04, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Resources Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife.

VII.

Tennessee Code Annotated § 69-3-108(c) requires any person operating a sewerage system to obtain a permit.

FACTS

VIII.

Respondent WWAWC holds a valid State Operation Permit (SOP) (hereinafter the “permit”) for the operation of septic tanks, an effluent collection system, a deep cell facultative pond and fenced drip irrigation with the capacity to serve approximately 249 homes located in the Woodland Ridge Subdivision in Wilson County, TN. The Division issued coverage on

September 1, 2009, with tracking number SOP-04015. The permit expires on September 30, 2014.

#### IX.

On December 11, 2009, Division personnel conducted a compliance evaluation inspection at the site. Division personnel noted that the lagoon had a 75,000 gallon per day (GPD) design capacity but the available drip field area only had a 40,000 GPD capacity resulting in insufficient suitable soils available to accommodate the design flow. On this date, the Respondent held coverage under the Tennessee Construction General Permit (TNCGP) for construction of the lagoon and drip area. Division personnel observed areas of unstable soil along the lagoon berm and slopes as well as in locations where pipes had been installed. EPSC measures were inadequate, the Notice of Coverage (NOC) was not posted, and a Stormwater Pollution Prevention Plan (SWPPP) was not available on site. A file review indicated that inspections were not conducted as required by the TNCGP permit. The TNCGP permit was terminated in 2012 and penalties were not assessed for these violations.

#### X.

On February 4, 2014, Division personnel, accompanied by personnel from Respondent Adenus, conducted a site inspection to assess compliance with the permit. Division personnel noted that there were insufficient suitable soils available to accommodate the design flow. Division personnel also noted violations of Part I.A and Part II.3.B of the permit, specifically, excessive ponding in the drip field and overflow of treated effluent migrating off site. A substance allowed to migrate off site from this location could reach waters of the state by

traveling a short distance to a wetland that drains to an unnamed tributary of Spring Creek. This has occurred in the past and was documented by Respondent Adenus in an overflow report submitted on January 15, 2010. The site is also located in a Source Water Protection Area which was established under the Safe Drinking Water Act Amendments of 1996 to protect drinking water sources.

#### XI.

On April 3, 2014, Division personnel, accompanied by personnel from Respondent Adenus, conducted a follow up site inspection and observed the same violations of the permit noted previously during the February 4, 2014, site inspection.

#### XII.

On April 14, 2014, the Division issued a Notice of Violation (NOV) to both Respondent WWAWC and Respondent Adenus documenting the violations of the permit observed during the February 4, 2014, and April 3, 2014, site inspections. The Division requested that, within 30 days of receipt of the NOV, the Respondents submit to the Division a Corrective Action Plan (CAP) detailing activities to be implemented to attain and maintain compliance with the permit.

#### XIII.

On April 30, 2014, Respondent WWAWC submitted to the Division a response to the NOV dated April 14, 2014 which stated that the Respondent WWAWC was currently seeking additional disposal capacity. The response did not include a CAP as required by the NOV.

XIV.

During the course of investigation the division incurred DAMAGES in the amount of ONE HUNDRED FIFTY-ONE DOLLARS AND NINETY-FOUR CENTS (\$151.94).

VIOLATIONS

XV.

By failing to comply with the terms and conditions of the SOP, the Respondents have violated T.C.A. §§ 69-3-108(b) and 69-3-114(b), which state in part:

§ 69-3-108(b):

(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(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

### XVI.

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-109, 69-3-115 and 69-3-116, I, Sandra K. Dudley, hereby issue the following ORDER and ASSESSMENT to the Respondents:

- 1) Effective immediately, the Respondents shall make no further connections or allow increased flows to the sewage collection system, except to those currently under construction or to which the Respondents are 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 Respondents 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 Respondents shall, within 15 days of receipt of this ORDER and ASSESSMENT, submit a Corrective Action Plan (CAP), detailing the activities and practices to be implemented to attain and maintain compliance with the permit along with a time schedule for completion. The plan should include the identification and procurement of soil areas supportive of design flow. 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, 11<sup>th</sup> Floor, Nashville, Tennessee, 37243.
- 3) The Respondents shall complete all activities in the approved CAP according to the approved time schedule. All CAP activities shall be completed no later than October 31, 2014. A

notice of completion of the CAP activities should be sent to the manager of the Enforcement and Compliance Section at the address in Item 2. The notice of completion will be considered late if not received by the Division on or before November 28, 2014.

- 4) The Respondents shall pay a CIVIL PENALTY of SIXTEEN THOUSAND DOLLARS (\$16,000.00) to the Division, hereby ASSESSED to be paid as follows:
  - a. The Respondents shall, within 30 days of entry of this ORDER, pay a CIVIL PENALTY in the amount of THREE THOUSAND, TWO HUNDRED DOLLARS (\$3,200.00).
  - b. If the Respondents fail to comply with Part XVI, item 1 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of FOUR THOUSAND, TWO HUNDRED DOLLARS (\$4,200.00), payable within 30 days of default.
  - c. If the Respondents fail to comply with Part XVI, item 2 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount FOUR THOUSAND, THREE HUNDRED DOLLARS (\$4,300.00), payable within 30 days of default.
  - d. If the Respondents fail to comply with Part XVI, item 3 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount FOUR THOUSAND, THREE HUNDRED DOLLARS (\$4,300.00), payable within 30 days of default.
- 5) The Respondent shall, within 30 days of entry of this ORDER, pay DAMAGES to the Division in the amount of ONE HUNDRED FIFTY-ONE DOLLARS AND NINETY-FOUR CENTS (\$151.94).

The Respondents 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 Respondents fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondents are 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 Respondents 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 25<sup>TH</sup> day of MAY 2014.

  
Sandra K. Dudley, Ph.D., P.E.,  
Director of Water Resources  
Tennessee Department of Environment and Conservation

## NOTICE OF RIGHTS

Tennessee Code Annotated ("T.C.A.") §8 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, 2<sup>nd</sup> 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, 10<sup>th</sup> 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, 11<sup>th</sup> Floor, William R. Snodgrass Bldg., 312 Rosa Parks Avenue, Nashville, TN 37243. The case number, WPC-14-0049, should be written on all correspondence regarding this matter.

STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

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IN THE MATTER OF:

WATER AND WASTEWATER  
AUTHORITY OF WILSON COUNTY and  
ADENUS SOLUTIONS GROUP

RESPONDENTS

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DIVISION OF WATER  
RESOURCES

CASE NUMBER WPC13-0238

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DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Sandra K. Dudley, Director of the Tennessee Division of Water Resources, and states:

PARTIES

I.

Sandra K. Dudley 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.

Water and Wastewater Authority of Wilson County (hereinafter "Respondent WWAWC"), is the owner of the Couchville Pike Wastewater Reclamation Facility (hereinafter the "site") in Wilson County, Tennessee. Service of process may be made on the Respondent through Mr. Chris Leauber, Executive Director, at P.O. Box 545, Lebanon, Tennessee 37088.

### III.

Adenus Solutions Group (hereinafter "Respondent Adenus"), is an active corporation licensed to conduct business in the state of Tennessee and is the contracted operator of the Couchville Pike Wastewater Reclamation Facility in Wilson County, Tennessee. Service of process may be made on the Respondent through Mr. Charles Hyatt, Registered Agent, at 849 Aviation Parkway, Smyrna, Tennessee 37167.

### JURISDICTION

#### IV.

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.

#### V.

The Respondents are "persons" as defined by T.C.A. § 69-3-103(20) and, as herein described, have violated the Act.

## VI.

Corinth Branch, described herein, is “waters of the state” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 0400-40-04, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Resources Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife.

## VII.

Tennessee Code Annotated § 69-3-108(c) requires any person operating a sewerage system to obtain a State Operating Permit (SOP).

## FACTS

### VIII.

Respondent WWAWC holds a valid SOP with tracking number SOP-99037 (hereinafter the “permit”) for the operation of septic tanks, an effluent collection system, a deep cell lagoon and fenced drip irrigation which serves approximately 249 homes located in Wilson County, TN.

### IX.

On March 8, 2013, Division personnel along with personnel from Respondent Adenus, conducted a site visit to assess the performance of the lagoon. Division personnel observed that the lagoon had been constructed in a drainage area that supports the drainage of greater than 30 acres. Drainage swales had been constructed along each side of the lagoon to divert surface flow

around the lagoon, but had been breached, allowing surface flow from the drainage area to enter the lagoon. Division personnel noted during this inspection that the lagoon contained only a few inches of water in its base. Additionally, carbonate bedrock was noted at the surface in a portion of the basal area of the lagoon.

Of concern with the observations made during this site visit was the fact that a relatively large area was draining directly into the lagoon but there was very little water in the lagoon. If the impoundment was of the integrity commonly associated with wastewater lagoons or typical farm ponds, the height of water should have been at or close to the height of the overflow pipe.

#### X.

On August 7, 2013, Division personnel conducted a site visit along with personnel from Respondent Adenus and documented the same observations made previously during the March 8, 2013, site visit.

#### XI.

On August 12, 2013, Division personnel met with personnel from Respondent Adenus and Respondent WWAWC to discuss concerns the Division had regarding the performance of the lagoon. Respondent Adenus stated that the drainage swales were breached intentionally at the time of construction in 2007 and that a valve was present that could be opened to prevent the lagoon from filling as a result of the collection of surface water.

## XII.

On October 24, 2013, Division personnel conducted a site visit along with personnel from Respondent Adenus and observed that 2 stand pipes were installed at the lagoon. The first pipe was approximately two feet (ft.) in diameter and extended up to the height of the planned operating level of the lagoon. The second pipe was approximately six inches in diameter and extended up approximately four ft. from the base of the lagoon. The second pipe was operated by a valve near the pump house and was open at the time of the site visit. Division personnel noted that, during the site visits of 2013, water levels within the lagoon had not reached the level necessary to overflow through the second pipe and had, in fact, not been observed to reach the base of the pipe.

## XIII.

On November 6, 2013, the Division sent correspondence to Respondent WWAWC summarizing the problems observed during the March 8, August 7, and October 24, 2013, site visits. The Division noted that, based on observed water levels over time and the likely existence of a bedrock layer at the base of the lagoon, the lagoon is failing to retain water in a manner suitable for wastewater treatment.

The Division requested that the Respondents make no further connections to the system until data could be obtained documenting that the lagoon was retaining water as required by the permit.

XIV.

During the course of investigation the division incurred DAMAGES in the amount of ONE HUNDRED THIRTY SIX DOLLARS AND THREE CENTS (\$136.03).

VIOLATIONS

XV.

By failing to comply with the terms and conditions of the SOP, the Respondents have violated T.C.A. §§ 69-3- 114(b), which state in part:

§ 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

XVI.

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-109, 69-3-115 and 69-3-116, I, Sandra K. Dudley, hereby issue the following ORDER and ASSESSMENT to the Respondents:

- 1) Effective immediately, the Respondents shall make no further connections or allow increased flows to the sewage collection system, except to those currently under construction or to

which the Respondents are 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 Respondents 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 Respondents shall, within 30 days of receipt of this ORDER and ASSESSMENT, submit a Corrective Action Plan (CAP), detailing the activities and practices to be implemented to attain and maintain compliance with the permit along with a time schedule for completion. The plan should also include the identification and procurement of soil areas supportive of future drip irrigation needs as well as a detailed engineering report stating corrective measures necessary to ensure that the lagoon cell will hold effluent or detailed engineering plans supportive of an adequate treatment alternative. 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, 11<sup>th</sup> Floor, Nashville, Tennessee, 37243 and a copy to the field office manager of the Division of Water Resources located at the NEFO at 711 R.S. Gass Boulevard, Nashville, Tennessee 37402.
- 3) The Respondents shall complete all activities in the approved CAP according to the approved time schedule. All CAP activities shall be completed no later than August 31, 2014. A notice of completion of the CAP activities should be sent to the Division's manager at the NEFO and a copy sent to the manager of the Enforcement and Compliance Section at the

respective addresses in Item 2. The notice of completion will be considered late if not received by the Division on or before September 2, 2014.

4) The Respondents shall pay a CIVIL PENALTY of SIXTEEN THOUSAND, FIVE HUNDRED DOLLARS (\$16,500.00) to the Division, hereby ASSESSED to be paid as follows:

a. The Respondents shall, within 30 days of entry of this ORDER, pay a CIVIL PENALTY in the amount of THREE THOUSAND, TWO HUNDRED DOLLARS (\$3,300.00).

b. If the Respondents fail to comply with Part XVI, item 1 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of FOUR THOUSAND, FOUR HUNDRED DOLLARS (\$4,400.00), payable within 30 days of default.

c. If the Respondents fail to comply with Part XVI, item 2 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount FOUR THOUSAND, FOUR HUNDRED DOLLARS (\$4,400.00), payable within 30 days of default.

d. If the Respondents fail to comply with Part XVI, item 3 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount FOUR THOUSAND, FOUR HUNDRED DOLLARS (\$4,400.00), payable within 30 days of default.

5) The Respondent shall, within 30 days of entry of this ORDER, pay DAMAGES to the Division in the amount of ONE HUNDRED THIRTY SIX DOLLARS AND THREE CENTS (\$136.03).

The Respondents 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 Respondents fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondents are 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 Respondents 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 11<sup>th</sup> day of March 2014.

  
Sandra K. Dudley, Ph.D., P.E.,  
Director of Water Resources  
Tennessee Department of Environment and Conservation

## NOTICE OF RIGHTS

Tennessee Code Annotated ("T.C.A.") §8 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, 2<sup>nd</sup> 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, 10<sup>th</sup> 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, 11<sup>th</sup> Floor, William R. Snodgrass Bldg., 312 Rosa Parks Avenue, Nashville, TN 37243. The case number, WPC-13-0238, should be written on all correspondence regarding this matter.

STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

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IN THE MATTER OF:

WATER AND WASTEWATER  
AUTHORITY OF WILSON COUNTY and  
ADENUS SOLUTIONS GROUP

RESPONDENTS

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)

DIVISION OF WATER  
RESOURCES

CASE NUMBER WPC13-0213

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DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Sandra K. Dudley, Director of the Tennessee Division of Water Resources, and states:

PARTIES

I.

Sandra K. Dudley 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.

Water and Wastewater Authority of Wilson County (hereinafter "Respondent WWAWC"), is the owner and operator of a sewage treatment and dispersal system which serves residents of Clay Estates (hereinafter the "site"), in Wilson County, Tennessee. Service of process may be made on the Respondent through Mr. Randall Hutto, Mayor, Wilson County, at 228 E. Main Street, Room 104, Lebanon, Tennessee 37087.

### III.

Adenus Solutions Group (hereinafter "Respondent Adenus"), is an active corporation licensed to conduct business in the state of Tennessee and is the contracted operator of a sewage treatment and dispersal system which serves residents of Clay Estates, in Wilson County, Tennessee. Service of process may be made on the Respondent through Mr. Charles Hyatt, Registered Agent, at 849 Aviation Parkway, Smyrna, Tennessee 37167.

### JURISDICTION

#### IV.

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.

#### V.

The Respondents are "persons" as defined by T.C.A. § 69-3-103(20) and, as herein described, have violated the Act.

VI.

Bartons Creek, described herein, is "waters of the state" as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 0400-40-04, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Resources Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife.

VII.

Tennessee Code Annotated § 69-3-108(c) requires any person operating a sewerage system to obtain a State Operating Permit (SOP).

FACTS

VIII.

Respondent WWAWC holds a valid SOP with tracking number SOP-02051 (hereinafter the "permit") for the operation of septic tanks, effluent collection system, recirculating sand filter and fenced drip irrigation which serves residents of Clay Estates subdivision located in Wilson County, TN.

IX.

On August 19, 2009, division personnel from the Nashville Environmental Field Office (N-EFO), along with personnel from Respondent Adenus, conducted a complaint investigation at the site and noted that construction activities were underway to repair the drip field and install new drip zones and there were no erosion prevention and sediment control (EPSC) measures in

place. Engineering plans had not been submitted for approval by the Division as required by the Act, and portions of the new drip zones had been installed within 25 feet of the stream channel. Design criteria require that a 25 foot buffer zone be maintained between the stream channel and the drip field. Additionally, a gutter drain-line that appeared to originate from a residence was observed entering one of the excavated trenches, and fencing around the drip field and treatment system was inadequate. These items were discussed with Respondent WWAWC during a telephone conversation on August 21, 2009, and with Respondent Adenus during a telephone conversation on August 24, 2009.

#### X.

On September 9, 2009, the Division issued a Notice of Violation (NOV) to the Respondents summarizing the violations observed during the August 19, 2009, complaint investigation. The Respondents were instructed to correct all violations as well as prepare an engineering report and engineering plans for the new drip lines. Additionally, the Respondents were required to submit a written response to the N-EFO within 30 days of receipt of the NOV stating actions to be taken to correct violations as well as completion dates for each corrective action item.

#### XI.

On October 14, 2009, the Division received a response from Respondent Adenus as required by the September 9, 2009, NOV. Respondent Adenus summarized actions that had been taken to correct violations at the site.

## XII.

On April 7, 2010, Division personnel from the N-EFO, along with personnel from Respondent Adenus, conducted a second complaint investigation at the site and noted numerous areas of ponded effluent, exposed drip lines and drip lines installed within 25 feet of the stream channel. These items of noncompliance were discussed with Respondent Adenus during the complaint investigation and Respondent Adenus agreed to begin corrective action to correct violations.

## XIII.

On September 6, 2012, personnel from the Division conducted a site inspection and noted ponding due to heavy rains prior to the inspection and lack of slope. Division personnel recommended a follow-up inspection during dry weather to determine performance of the system.

## XIV.

On October 31, 2012, Division personnel conducted a follow-up inspection and observed ponded effluent throughout the site. Additionally, due to the lack of suitable area to make necessary repairs, it was noted that additional area with suitable soils should be secured to allow for necessary repairs to the system.

## XV.

On March 8, 2013, Division personnel conducted a site inspection and noted numerous compliance issues. Ponded effluent was present throughout the drip field and was observed to be

leaving the site via sheet flow and entering adjacent waterways. Ditches had been constructed across the drip field to facilitate flow to a larger ditch that eventually discharged effluent from the site into a neighboring resident's backyard. Additionally, it was noted that there was no additional area suitable for use as a drip field.

#### XVI.

On April 18, 2013, the Division issued a NOV to Respondent WWAWC summarizing the violations observed during the March 8, 2013, site inspection. Respondent WWAWC was instructed to submit a written response to the Division within 30 days of receipt of the NOV that included a Corrective Action Plan (CAP) detailing measures to be taken to correct violations and a time schedule for implementing those measures.

#### XVII.

On May 18, 2013, the Division received a response from Respondent WWAWC as required by the April 18, 2013, NOV. Respondent WWAWC expressed a desire to work with the Division to develop a CAP but did not submit the CAP as required by the April 18, 2013, NOV.

#### XVIII.

On August 7, 2013, Division personnel conducted a site visit along with personnel from Respondent Adenus and observed that the compliance issues observed previously during the March 8, 2013, site investigation had not been corrected. Pounded effluent was present

throughout the drip field and was observed to be leaving the site and entering adjacent waterways.

XIX.

On November 5, 2013, Division personnel conducted a site visit along with personnel from Respondent Adenus, Respondent WWAWC, and a private soil consultant to assist in soil classification. Five soils pits were excavated within the disposal field during the site visit. Three pits were located in areas that were originally mapped as having suitable properties for drip irrigation. Those three pits confirmed original mapping. The remaining two pits were located in areas that were originally mapped as having unsuitable properties for drip irrigation. Those two pits confirmed original mapping as well.

During the site visit, large areas of the drip field were observed to be saturated with standing water on the surface. Additionally, division personnel observed that a new drip line had been recently installed in an area that was originally mapped as having unsuitable properties for drip irrigation.

XX.

During the course of investigation the division incurred DAMAGES in the amount of SIX HUNDRED AND TWO DOLLARS AND EIGHTY-EIGHT CENTS (\$602.88).

## VIOLATIONS

### XXI.

By failing to comply with the terms and conditions of the SOP, the Respondents have violated T.C.A. §§ 69-3-108(b), and 114(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:

(4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;

(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(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.

### XXII.

By discharging wastewater effluent in violation of the terms and conditions of the permit, the Respondents have violated T.C.A. §§ 69-3-114(a), which state in part:

§ 69-3-114(a):

It is unlawful for any person to discharge any substance into 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(22), 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.

### ORDER AND ASSESSMENT

#### XXIII.

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-109, 69-3-115 and 69-3-116, I, Sandra K. Dudley, hereby issue the following ORDER and ASSESSMENT to the Respondents:

- 1) Effective immediately, the Respondents shall make no further connections or allow increased flows to the sewage collection system, except to those currently under construction or to which the Respondents are 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 Respondents 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 Respondents shall, within 30 days of receipt of this ORDER and ASSESSMENT, submit a CAP detailing the activities and practices to be implemented to attain and maintain compliance with the SOP along with a time schedule for completion. The plan should also include intermediate measures to protect waters of the state while the CAP is being

implemented. 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, 11<sup>th</sup> Floor, Nashville, Tennessee, 37243 and a copy to the field office manager of the Division of Water Resources located at the NEFO at 711 R.S. Gass Boulevard, Nashville, Tennessee 37402.

- 3) The Respondents shall complete all activities in the approved CAP according to the approved time schedule. All CAP activities shall be completed no later than October 31, 2014. A notice of completion of the CAP activities should be sent to the Division's manager at the NEFO and a copy sent to the manager of the Enforcement and Compliance Section at the respective addresses in Item 2. The notice of completion will be considered late if not received by the Division on or before November 15, 2014.
  
- 4) The Respondents shall pay a CIVIL PENALTY of THIRTY-EIGHT THOUSAND, FOUR HUNDRED DOLLARS (\$38,400.00) to the Division, hereby ASSESSED to be paid as follows:
  - a. The Respondents shall, within 30 days of entry of this ORDER, pay a CIVIL PENALTY in the amount of EIGHT THOUSAND, FOUR HUNDRED DOLLARS (\$8,400.00).
  - b. If the Respondents fail to comply with Part XXIII, item 1 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of TEN THOUSAND DOLLARS (\$10,000.00), payable within 30 days of default.

- c. If the Respondents fail to comply with Part XXIII, 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 Respondents fail to comply with Part XXIII, item 3 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.
- 5) The Respondent shall, within 30 days of entry of this ORDER, pay DAMAGES to the Division in the amount of SIX HUNDRED AND TWO DOLLARS AND EIGHTY-EIGHT CENTS (\$602.88).

The Respondents 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 Respondents fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondents are 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 Respondents 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 21<sup>st</sup> day of JANUARY 2014.



Sandra K. Dudley, Ph.D., P.E.,  
Director of Water Resources  
Tennessee Department of Environment and Conservation

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

March 11, 2014

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
RECEIPT #7005 1820 0001 5797 0802

Mr. Charles Hyatt, Registered Agent  
Adenus Solutions Group  
849 Aviation Parkway  
Smyrna, Tennessee 37167

Subject: DIRECTOR'S ORDER NO. WPC13-0238  
COUCHVILLE PIKE WASTEWATER RECLAMATION FACILITY  
WILSON COUNTY, TENNESSEE

Dear Mr. Hyatt,

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Sandra K. Dudley, 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-N  
DWR - Compliance File  
OGC