

**BEFORE THE TENNESSEE
BOARD OF WATER QUALITY, OIL, AND GAS**

In the Matter of: Tennessee Department of
Environment and Conservation.

Petitioner,

vs.

Town of Tellico Plains, Tennessee

Respondent.

APD Case no. 04.02-244954J

**THE TOWN OF TELlico PLAINS' MOTION TO DISMISS TDEC'S
ASSESSMENT AS VOID or IN THE ALTERNATIVE FOR DISMISSAL OF THE
MONETARY PORTIONS OF THE ASSESSMENT DUE TO THE COURT LACKING
SUBJECT MATTER JURISDICTION TO GRANT SUCH RELIEF**

Comes now into Court Respondent, The Town of Tellico Plains ("**The Town**"), and moves this Court for the entry of an order dismissing TDEC's Assessment as void or, in the alternative, for dismissal of the monetary portions of the Assessment due to the Court lacking subject matter jurisdiction to grant such relief. The issues raised by this Motion are more fully discussed in the supporting Memorandum filed contemporaneously herewith.

1. Introduction - Background

This case concerns an assessment issued March 19, 2024 (the "**Assessment**"), by the Tennessee Department of Environment and Conservation ("**TDEC**") that reflects TDEC had already determined, past tense, that The Town owed it \$25,542.40 because of alleged Safe Drinking Water Act ("**SDWA**") violations by The Town as the operator (an "**Operator**") of a water system subject to the SDWA. While the SDWA allows TDEC to proceed in an open, mostly constitutional, fashion in enforcing the SDWA against Operators by affording the

Operators with notice of violations and an opportunity to be heard and to defend allegations before a separate judiciary (see T. C. A. § 68-221-713(c)) TDEC did not do that. Instead, the SDWA at T. C. A. § 68-221-713(b)(1) allows TDEC to pre-determine, as it did in this case, an Operator's liability in secret and impose monetary liabilities on an Operator without statutory constraint other than the \$5,000.00 per day cap at T. C. A. § 68-221-713(a)(1). The supposed criteria at T. C. A. § 68-221-713(d) are non-binding suggestions. The assessment procedure chosen by TDEC in this case afforded no prior notice to The Town, no opportunity for The Town to be heard, and no opportunity for The Town to defend.

The Assessment issued March 19, 2024, is now the *status quo* and has a force on The Town. That is, presently the *status quo* is that The Town owes TDEC money subject only to The Town prevailing in a "review" of the Assessment.

1. TDEC's Assessment is Void as being the Result of an Unconstitutional Process

In this case, the unilateral process by which TDEC decided in secret that The Town violated a statute and now owes it \$25,542.40 violates The Town's substantive and procedural due process rights under the federal and Tennessee constitutions. Said process also violates the doctrine of separation of powers present in both our state and federal constitutions. Specifically, T. C. A. § 68-221-713(b)(1) allows TDEC, a part of the state's executive branch, to decide to assert The Town violated the SDWA (i. e. act as a plaintiff/prosecutor) and then decide, in secret and without the opportunity for The Town to defend itself, that The Town is liable to it for money (i.e. act as jury) and the amount of that money (i.e. act as judge pursuant to undisclosed

“sentencing guidelines”).¹ That The Town has a right to have the award of money against it “reviewed” by the Board of Water Quality, Oil, and Gas (the “**Board**”), also part of the Executive Branch and thereafter a severely limited review by the courts, does not mitigate the fact that as a result of the secret process, the *status quo* is presently that The Town owes TDEC \$ 25,542.40.

As recently affirmed by the United States Supreme Court in SEC v. Jarkesy, 144 S. Ct. 2117 (2024), because T. C. A. § 68-221-713(b)(1) permits TDEC to award itself money that could become the basis for a judgment (see T. C. A. § 68-221-713(b)(3)(A)) this statute violates principles of separation of powers under Tennessee’s Constitution, Article II Section 1, and the U. S. Constitution as well as violating The Town’s substantive and procedural due process rights, as an Operator, under the 5th and 14th Amendments to the U. S. Constitution as well as Article I, Sections 8 and 17, of Tennessee’s Constitution. Accordingly, T. C. A. § 68-221-713(b)(1) is unconstitutional, and because the statute on which the Assessment was based is unconstitutional, the Assessment as a whole must be dismissed as void.

2. This Tribunal Lacks Subject Matter Jurisdiction to Award TDEC Money

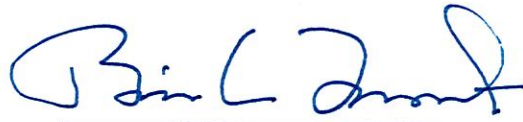
That portion of TDEC’s claims against The Town for money is a cause of action to collect money and, while premised on a modern Tennessee statute and labeled as penalties, is nonetheless a common law cause of action. As recently affirmed in Jarkesy, a cause of action that is not equity or admiralty is a common law cause of action. As such, pursuant to principles of separation of powers, substantive due process, and procedural due process as affirmed in Jarkesy, The Town, as an Operator, like every other citizen, is entitled to have common law

¹ The suggestions at T. C. A. § 68-221-713(d) really do look like sentencing guidelines.

claims for money against it decided by a separate judiciary. Respectfully, this tribunal is not a part of the state's separate judiciary. The SWDA at T. C. A. § 68-221-714(a) – (d) wrongfully permits the executive branch of this state to both prosecute and decide The Town's liability to TDEC for money. Further, T. C. A. § 68-221-714(e) and T. C. A. § 4-5-322 wrongfully constrain the rights The Town would otherwise have in a separate judiciary. Specifically, as it pertains to the application of T. C. A. § 68-221-714(a) – (d) for determining The Town's liability for money (which liability is then made into an enforceable judgment), said statutes are unconstitutional. These statutory provisions violate The Town's right, as an Operator, to a separation of powers under Articles I, II, and III of the U. S. Constitution, generally, and Article II, Section 1, of Tennessee's Constitution. These statutory provisions also violate The Town's right, as an Operator, to substantive and procedural due process pursuant to the 5th and 14th Amendments of the U. S. Constitution and Article I Sections 8 and 17 of Tennessee's Constitution. T. C. A. § 68-221-714(e) and T. C. A. § 4-5-322 are unconstitutional, and as such, this Court lacks subject matter jurisdiction to decide monetary relief to be awarded against The Town. Accordingly, this Court must dismiss all claims for monetary relief contained in the Assessment.

The second issue of this Motion is intentionally limited in scope to asserting this tribunal lacks subject matter jurisdiction to adjudicate monetary liability of The Town to TDEC under the SDWA. The Town reserves the right to later assert, and by this Motion does not waive, the right to challenge the subject matter jurisdiction of this tribunal as to any and all claims for relief, equitable or otherwise, which TDEC may assert against it since this tribunal is not part of the Tennessee's separate judiciary. Without conceding the issue, it is possible that this tribunal may have jurisdiction to decide certain equitable claims under the SDWA.

Respectfully submitted this 17th day of January, 2025.



Brian C. Quist BPR # 012762
Peter P. Amoruso, BPR # 040982
QUIST, FITZPATRICK & JARRARD, PLLC
800 South Gay Street, Suite 2121
Knoxville, Tennessee 37929-2121
(865) 524-1873 Ext. 207
bcquist@QFJlaw.com
Attorneys for Respondent
Town of Tellico Plains

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been served upon the following persons or entities in the manner indicated on this 17th day of January, 2025.

Via Email Samantha.Buller-Young@tn.gov

Samantha Buller-Young
Assistant Counsel
Department of Environment and Conservation
Knoxville Field Office
3711 Middlebrook Pike
Knoxville, TN 37921

Via email Emily.vann@tn.gov

Emily B. Vann
Senior Associate Counsel
Office of the General Counsel
Davy Crockett Tower, 5th floor
500 James Robertson Parkway
Nashville, TN 37243



Brian Quist, BPR # 012762

TN SOS-APD Fri, Jan 17, 2025 09:15 AM : 5 of 5 pages filed