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July 30, 2024

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

Re: TDEC v. Town of Tellico Plains
No. DWS23-0190

Dear Samantha,

While my investigation continues, the Director's Order and Assessment dated March 19, 2024 (hereinafter the "**Order**") is premised largely on administrative issues, and at no point was anyone harmed or under any reasonable risk of harm due to the alleged violation of administrative processes. The Order premised on many errors discussed below, and it would be best for all concerned if TDEC would just withdraw the Order and in so doing issue a public statement said Order was issued in error.

Here is a discussion of the alleged violations demonstrating the numerous errors.

1. Violation 1 (par. X), p. 5

1.1. The Allegation. The Town violated Rule 0400-45-01-.41(7)(b) for July 2023 by taking just six (6) bacteriological samples in the distribution system when seven (7) were required.

Response: TDEC is estopped to complain about this. When the Town's certified operator left in July 2023, the Town's Mayor, Marilyn Parker, and staff member Greg Newman contacted Mr. Robert Ramsey with TDEC about what to do. Mr. Ramsey told them just six (6) samples were required. Mayor Parker did as instructed, and she had six (6) samples taken. Mayor Parker acted precisely the way an elected official should by consulting with TDEC about what to do, not expecting for her constituents to suffer \$25,542.40 in fines and damages as a result of her trust in TDEC. By the way, there is no meaningful advantage to skipping a test. I think the cost per test is just \$15.00.

Notice to Cure: A notice to cure would seem to be a pre-requisite to issuing an Order and Assessment. Yet, in looking into this item, I do not see any TDEC notice to cure this alleged deficiency that was sent to the Town. I note with interest that for “significant deficiencies,” Rule 0400-45-01-.40(5)(a) would afford the Town a 120-day notice period (or earlier as directed) to take corrective action. Yet since the missing of just one (1) sample in July (for the reason mentioned), and no one was harmed, would hardly be a “significant deficiency.” As such, can you let me know TDEC’s notice-to-cure protocol for “insignificant” deficiencies?

1.2. The Allegation. The Town violated Rule 0400-45-01-.41(7)(b) for August 2023 by taking just six (6) samples in the distribution system when seven (7) were required.

Response: This allegation is not true. In August 2023, the Town took the required seven (7) samples and TDEC acknowledged seven (7) samples were taken. See enclosed email from TDEC’s Brad Antone to Troy Taubert dated April 12, 2024 provided herewith as Attachment 1.

2. Violation 2 (par. XI), p. 5

2.1. The Allegation. The Town violated Rule 0400-45-01-.36(6)(c)1.(i) for July 2023 by failing to take disinfectant residuals [downstream in the distribution system] at the same point in the distribution system where the bacteriological samples were taken and at the same time.

Response: For July, this allegation is non-actionable due to the estoppel referred in response to violation 1.1 above. In July 2023, the Town did take the disinfectant (chlorine) residuals at the six (6) spots in the distribution system, and at the same time, the six (6) bacteriological samples were taken. As such, the Town fully complied with Rule 0400-45-01-.36(6)(c)1.(i).

Incidentally, the requirement to take a contemporaneous chlorine residual by definition cannot be a stand-alone/independent requirement. The requirement to take a downstream chlorine residual is triggered only on the taking of the bacteriological sample. Thus, while TDEC is estopped for complaining about the 7th sample not having been taken, as discussed above, if a 7th bacteriological sample was not taken, no chlorine residual would be taken, as that sample is only taken at the same spot and at the same time as the bacteriological sample.

2.2. The Allegation. The Town violated Rule 0400-45-01-.36(6)(c)1.(i) for August 2023 by failing to take disinfectant residuals [in the distribution system] at the

same point in the distribution system where the bacteriological samples were taken and at the same time.

Response: This allegation is not true. In August 2023, the Town did take the disinfectant (chlorine) residuals at the seven (7) spots in the distribution system, and at the same time, the seven (7) bacteriological samples were taken. See the confirmation email from Mr. Antone at TDEC provided at Attachment 1.

3. Violation 3 (par. XII), p. 6

3.1. The Allegation. The Town violated Rule 0400-45-01-.40(4)(c)1.(i) for July 2023 by failing to *report* the daily minimum level of chlorine residual leaving the water plant.

Response: This allegation, as stated in the Order, is non-actionable. The rule TDEC cites in the Order for the Town's alleged violation for not reporting does not impose a reporting rule. Said rule imposes a *record keeping* obligation, not a reporting requirement. TDEC misconstrues the rule cited as requiring reporting.

3.2. The Allegation. The Town violated Rule 0400-45-01-.40(4)(c)1.(i) for August 2023 by failing to *report* the daily minimum level of chlorine residual leaving the water plant.

Response: See response at alleged violation 3.1. The rule TDEC cites for the Town's alleged violation does not impose a reporting obligation.

3.3. The Allegation. The Town violated Rule 0400-45-01-.40(4)(c)1.(i) on September 15, 2023, by failing to *report* the daily minimum level of chlorine residual leaving the water plant.

Response: See response at alleged violation 3.1. The rule TDEC cites for the Town's alleged violation does not impose a reporting obligation.

4. Violation 4 (par. XIII), p. 6

4.1. The Allegation. The Town violated Rule 0400-45-.40(4)(c) for July 2023 by failing to perform grab samples when the CCA was malfunctioning.

Response: This allegation is false. Grab samples were not required in July 2023. The rule cited only requires that "The ground water system must maintain the Department-determined residual disinfectant concentration every day." The CCA at the Town's Rural Vale plant did that. It ensured that the Department-determined residual chlorine was present ... otherwise the CCA would have shut down the plant. One does

grab samples only when there is a “failure in the continuous monitoring equipment” which there was no failure in monitoring. The CCA was monitoring. The issue with this CCA was a software problem in transmitting the data from the field to the office. Incidentally, the Rule does not use the term “malfunction” as TDEC has set forth in wording the alleged violation.

4.2. The Allegation. The Town violated Rule 0400-45-.40(4)(c) for August 2023 by failing to perform grab samples when the CCA was malfunctioning.

Response: This allegation is false. Grab samples were not required in August 2023. This is apparently the same issue as alleged violation 4.1. See the Response to the alleged violation at 4.1.

4.3. The Allegation. The Town violated Rule 0400-45-.40(4)(c) on September 15, 2023, by failing to perform grab samples when the CCA was malfunctioning.

Response: The allegation is false. Grab samples were not required on September 15, 2023. On September 15, 2023, the CCA at the Rural Vale plant was working in all respects. With the events of September 15, 2023, while when bypassing the CCA for a bit of time, less than 2 hours, the requirement to perform grab samples was not triggered. The requirement to perform grab samples is only applicable for a failure of, or bypassing, the CCA for 4 hours or more.

5. Violation 5 (par. XIV), p. 7

The Allegation. The Town violated Rule 0400-45-01.40(6) for failing to notify the Division that the CCA was inoperable

Response: The Rule cited, and allegedly violated, is not equipment specific. It only requires that the Town report an instance where operation of the “water system fails to meet any Department-specified requirements” if operation in accordance with the requirements is not restored within four (4) hours. At no time did the Town operate the water system below the Department-specified minimum requirements for residual chlorine leaving the plant for longer than four (4) hours. As explained, the issue with the CCA at the Rural Vale plant was not that it was inoperable or not monitoring. It was monitoring and the automatic cutoff feature of the CCA was working. As such, the water going into the Town’s distribution system at all times met the Department-specified [minimum] requirements including on September 15, 2023, because the event was less than 2 hours, and a four (4) hour lapse is the threshold for notification.

6. **Violation 6 (par. XV), p. 7**

The Allegation. The Town violated Rule 0400-45-09-.04 and 0400-45-01-.17(1)(d) by failing to have certified operators for water treatment and distribution.

Response: The first rule cited by TDEC allegedly violated by the Town, Rule 0400-45-09-.04, has nothing to do with operators, so the Town did not violate that rule. The quoted passage purporting to be the Rule is not said Rule. Further, the second rule cited, Rule 0400-45-01-.17(1)(d), does not speak directly to operators.

Incidentally, T. C. A. § 68 – 221 – 901 is the Water and Wastewater Operator Certification Act. Part 912 addresses Replacement of Certified operators. Subsection (c) says the Town had thirty (30) days to notify the board of the loss of the operator. So, you can rock along without a certified operator, no worries, for at least 30 days. Subsection (a) allows the board to allow a period of up to six (6) months for a system to get a replacement operator, and extend that time period additional thirty (30) day periods as needed. In TDEC's letter to Mayor Parker dated July 17, 2023, copy enclosed as **Attachment 2**, she was informed of none of these rights under the statute.

Note that where a statute grants TDEC discretion to allow six (6) months to get a replacement operator (and longer), TDEC must have a rational basis for imposing a shorter time period. Additionally, I do not see where TDEC issued a notice-to-cure letter to the Town for allegedly not getting certified operators according to some arbitrary schedule. Also, the statute is silent as to a minimum time period by which a replacement operator must be found, and so imposing fines premised on failing to meet a non-existent "minimum," in this case thirty (30) days, would be unconstitutional legislating by the state executive branch.

By the way, at this time, there was a state-wide shortage of operators, and this TDEC knew. Further, in getting certified operators under this hardship, the Town acted reasonably and diligently.

Very Truly Yours



Brian C. Quist