

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

In the Matter of: Tennessee Department of Environment and Conservation.)	
)	
Petitioner,)	
)	APD Case no. 04.02-244954A
vs.)	
)	
Town of Tellico Plains, Tennessee)	SDWA no. DWS23-0190
)	
Respondent.)	

**THE TOWN OF TELLICO PLAINS'
RESPONSE BRIEF**

Comes now before this tribunal, The Town of Tellico Plains (“**The Town**”), and herewith files its Brief in Response to TDEC’s opening Appeal Brief filed January 9, 2026.

1. Background

TDEC appealed that portion of the Initial Order vacating 80% of the Order and Assessment (the contingent portion with mandated corrective actions). In the Initial Order, Administrative Judge Garland vacated the contingent portion with mandated corrective actions for two reasons. The first reason was based on logic. As set forth in TDEC’s brief, “because the Town has already taken remedial action and corrected the violations at issue, the contingent penalty of \$18,264 cannot now be triggered.”¹ The second reason was based on due process. As also set forth in TDEC’s brief, Judge Garland held that “the pre-determined civil penalties for future violations set forth at paragraph XVI, sections (3) through (7), of the [Order] are void and of no effect.”²

¹ TDEC’s Opening App. Br., p. 2; citing the Initial Order, Tech. R. p. 1476.

² TDEC’s Opening App. Br., pp. 2-3; citing the Initial Order, Tech. R. p. 1476.

To be sure, not enough can be said about the reason based on logic. To break it down further, the Order and Assessment had two separate and distinct parts that must stand, if at all, on their own. The first distinct part is the up-front penalty of \$5,106.00. That is simply a dollar amount. While The Town objects to it, as argued in The Town's opening Appeal Brief, it is an item that stands alone; That is, "Town, this is what you owe now. Period." The second distinct part is the mandated corrective actions which is also a standalone item; That is, "Town, because there are violations you need to correct, you are ordered to correct the violations, and if you correct them you will not owe \$20,424.00" Thus, one of the conditions precedent to trigger owing \$20,424.00 was that there were, at the time of the Order and Assessment, SDWA violations in need of correction. Accordingly, since the SDWA violations present in the Order and Assessment had all been corrected at the time the Assessment was issued, there was nothing to correct and as a result the contingent penalty of \$20,424.00 would never be triggered.

2. TDEC's Requested Relief

One would think that having been told in the Initial Order that 80% of what TDEC is doing with these assessment orders statewide violates due process, TDEC would be concerned about that and provide facts, law, and argument that TDEC was in fact not violating due process. Interestingly, TDEC does not do this. In its opening Appeal Brief, TDEC mentions it disagrees it was violating due process, but does not argue the point with any facts or law. In fact, as seen from the relief TDEC seeks on page 3 of its brief, TDEC no longer cares about all the corrective actions. TDEC now only cares about one of the corrective actions and getting maximum money from The Town.

3. TDEC’s Argument is Not Supported by the Order and Assessment as it was Written

As mentioned, except for the one item, TDEC is content to have all the corrective actions remain voided. TDEC argues that if the corrective items are voided, the contingent penalties are now due. However, as the Order and Assessment was written, the opposite is the better view as found by Judge Garland. That is, the contingent penalties are only due if the corrective actions are not done. Yet if the corrective actions are no longer required, there is nothing that will ever trigger the contingent penalties being owed. As the Order and Assessment was written, the contingent penalties exist only if the requirement of corrective actions exist.

In summary, because the Order and Assessment as written does not support the relief TDEC seeks, this Board will need to re-write the Order and Assessment so that TDEC may get the money it seeks.

4. Until January 9, 2026, Orders and Assessments were Not About the Money as TDEC Claimed to Have a Greater Mission

Prior to the filing of TDEC’s Appeal Brief in this matter on January 9, 2026, TDEC’s prominent reason for issuing an Order and Assessment was not to collect money for violations. TDEC’s mission was to make water systems have a focused subservience to TDEC by forcing water systems to give up very important rights, as pointed out by the Administrative Judge in the Initial Order. By wielding the “stick” of contingent penalties, TDEC then had the water systems “under its thumb,” so to speak, so that TDEC could be feared. As TDEC’s head of Compliance and Enforcement, Jessica Murphy, explained at the contested hearing, the whole purpose of the contingent portion and mandated corrective actions was as follows:

The purpose of a contingent penalty is to provide an incentive for the respondent to correct the violations or take remedial cations within the specified timelines. If the

respondent misses the compliance dates specified in the order, the contingent penalties become due.³

As further explained by TDEC counsel in closing argument at the contested hearing, an additional purpose of the corrective action requirement is to make an example of water systems having violations for the whole state to see and fear that TDEC’s wrath could fall on them:

Ms. Murphy testified not only to the need for the Division to bring the Town back into compliance, but also to the need for a deterrence and that applies not just to the Town, Your Honor, but to the public water systems in this state. There’s specific deterrence and there’s general deterrence rules here.⁴

5. As of January 9, 2026, Apparently Orders and Assessments are Now Just About TDEC Collecting Money.

There is every indication that TDEC has now abandoned the contingent-penalty-tied-to-corrective-action business model. Otherwise, why concede all the corrective actions except one can be vacated? As such, under this new world order, apparently TDEC’s mission will be to issue civil penalties which water systems are required to pay in full and be done with it. This turnaround in TDEC’s mission shocking. TDEC has heretofore always maintained just paying the full assessment and being done with it (i) cannot be done, (ii) it is not what TDEC wants, and (iii) doing so does not accomplish the mission of TDEC’s Uniform Guidance for the Calculation of Civil Penalties dated May 2016 (hereinafter the “**Uniform Guide.**”) which is considered TDEC policy⁵ and sets forth the altruistic justifications for Orders and Assessments. The Uniform Guide was contested hearing exhibit 35 (Tech. R. p. 1321) and provides the following purposes for assessments:

The goal of TDEC’s compliance assurance and enforcement programs is to attain and maintain a high rate of compliance within the regulated community. This goal is accomplished through comprehensive monitoring and inspection programs and

³ Cont. H. Transcript, J. Murphy testimony, p. 365; Tech R. p. 1023.

⁴ Cont. H. Transcript, S. Buller-Young argument, pp. 609 – 610; Tech. R. pp. 1124 – 1125.

⁵ Cont. H. Transcript, T. Moss testimony, p. 335; Tech. R. p. 1015.

by addressing **the more serious violators** with timely, visible, and effective enforcement actions. A timely and appropriate enforcement action should return the violator to compliance as expeditiously as possible, as well as deterring future or potential non-compliance (emphasis added).

Uniform Guide, p.1, Cont. H. Ex. 35, Tech. R. p. 1321. As for the upfront and contingent portions of the civil penalties contained in the Assessment, the Uniform Guide states the purposes of these penalties are to:

remove any known economic benefit which the facility may have enjoyed during the period of non-compliance and **encourage compliance** by having non-compliance cost more than compliance. The purpose of the contingent penalty is to provide an incentive for the respondent to **correct the violations** or take remedial actions within specified timelines (emphasis added).

Id. Thus, prior to January 9, 2026, the authorized purpose of civil penalties are to “encourage compliance” when compliance is needed, because compliance has not already happened, and to “correct violations” because violations are in needed of being corrected because the violations have not already been corrected.

Incidentally, The Town has always had an interest in not waiving any of its rights under the SDWA, not being on the hook for more money should The Town fail in performing the ordered corrective actions, and just writing a check for the full assessment and being done with it as an option. Heretofore, TDEC would have none of that. At the contested hearing, The Town raised these issues with TDEC’s Jessica Murphy. The exchange went like this.

Q: Looking at this order and assessment, Ms. Murphy, there on Page 8 paragraph (2) at the bottom of page 8, it says the Respondent is assessed a total civil penalty of \$25,530. Period. Right?

A: The Respondent [is] assessed a total civil penalty of \$25,530.

Q: Right. And if the Town wanted to, they could just write you a check for that amount. Right?

A: No.

Q: Be done with it?

A: No.

Q: Interesting. They just can't write a check for it?

A: No. They still have to do the corrective actions. We don't want them to write a check for the whole amount.

Q: Why not?

A: We want them to stay in compliance. We want the up-front portion. We're not here to collect the entire penalty.⁶

In summary, it is most peculiar that TDEC now wants to do what Ms. Murphy said could not be done just so TDEC can feel like it has won this case. Never mind the justifications, reasons, and purposes for Orders and Assessments that once were. Those things, to which Ms. Murphy testified as recently as June of 2025 as being important to TDEC, are now no longer important. TDEC flip-flopping on this topic just to create the appearance it has "won" this contested case seems terribly disingenuous, and indicates TDEC to be lacking in moral purpose.

6. Conclusion

The Order and Assessment as written, and as heretofore interpreted by TDEC, gave The Town no choice as to either paying the full amount and being done with it or saving some money up front, waiving various rights, succumbing to heightened scrutiny, and risking owing more money than originally assessed. TDEC would like this Board to re-write the Order and Assessment and have it say, "Town, you owe \$22,830.00. Period." While re-writing the Order in such a way is up to the Board, doing so makes the Order and Assessment even more inconsistent with the only existing justification for assessments, which is the altruistic mission of the Uniform Guide's goals of bringing rogue water systems into compliance for the benefit of Tennesseans

⁶ Cont. H. Transcript, J. Murphy testimony, pp. 414 – 415; Tech R. p. 1035.

and not just to collect money. Re-writing the Order and Assessment will make TDEC's mission just about TDEC collecting money, and so to do that, the Uniform Guide will need to be re-written first.

Respectfully submitted this ___30th_____ day of January, 2026.

/s/ Brian C. Quist

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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 30th day of January 2026.

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