

# **Fifth Amended and Restated Articles of Incorporation of Effluent Technologies, Inc.**

## **Article I Name**

The name of the corporation is Effluent Technologies, Inc.

## **Article II Duration**

The period of duration of this corporation is perpetual.

## **Article III Purposes**

The Corporation is organized for the following purposes:

- A. To perform directly or contract with an authorized third-party service company to inspect, maintain, monitor and service on an ongoing basis, including annual sampling of effluent and submission for analysis by certified laboratory, all Norweco® wastewater treatment systems installed on properties owned by members of the Corporation in Lemhi County or any county lying south of Idaho County, Idaho.
- B. To engage in any and all activities and pursuits as may be reasonably related to the foregoing and following purposes, and all things necessary to be done by a nonprofit organization under the laws of the State of Idaho, so long as the purpose is to carry out the necessary functions of the Corporation which include the ability to enter into contracts and agreements for the inspection and annual monitoring and sampling of the effluent along with the operation of the Corporation and the maintenance and operation of each member's Norweco® wastewater treatment system. The assessments collected from each member to fund such purposes will be separately maintained and used specifically for the maintenance, monitoring, servicing, and sampling of that member's treatment system.

## **Article IV Members**

1. The Corporation shall have members. There shall be no stock issued and no dividends or pecuniary profits or income declared or distributed to members. Each member shall be issued a certificate of membership in the form of a member services agreement.
2. Membership shall be restricted, but must be granted, to any individual, sole proprietorship, corporation, general or limited partnership, limited liability company or other entity or association wishing to become a member and who meets all of the following requirements:
  - A. Is the legal owner of real property in Lemhi County or any county lying south of Idaho County, Idaho, on which a Norweco® wastewater treatment system has been installed; and
  - B. Signs and records a member services agreement substantially in the form set forth in Attachment A to these articles of incorporation.

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3. The Corporation will provide each new member with a copy of the most current articles of incorporation, bylaws, covenants and contracts.
4. Each member shall have one vote and be entitled to only one membership in the Corporation for each Norweco® wastewater treatment system the member owns, notwithstanding one or more individuals or entities may comprise the ownership of the property on which the Norweco® wastewater treatment system is installed.
5. The phrase "treatment system" whenever used alone in these articles of incorporation means a Norweco ® wastewater treatment system. A treatment system will be considered one singular treatment system for each permit that is required for the particular location in which it is installed notwithstanding the number of modules the system may have.
6. The Corporation shall have the power to assess management, service, and maintenance fees (collectively referred to as "assessment") as needed for the proper operation and carrying out of the lawful purposes of the Corporation. The payment of current and past due assessments shall be a prerequisite to voting at any meetings of the members.
7. No expulsion of members or cancellation of voting rights (except as provided in preceding paragraph 6) is permitted, except in the event the treatment system is disconnected or removed from the member's property.
8. Membership and voting rights in the Corporation shall be appurtenant to the property described in the member's service agreement, and no membership or certificate of membership shall be separated or severed from the land to which it is appurtenant, nor sold or transferred separate and apart from the land. Ownership of the land shall be determinative of the right to exercise the powers of membership in the Corporation.
9. Upon sale or conveyance of a member's property on which a treatment system has been installed, the member shall notify the Corporation of such matter and the name of the new owner to whom the property has been sold or conveyed.
10. Membership and voting rights shall inure to the benefit of any person who shall become the successor owner of any property on which a treatment system has been installed, and such successor owner shall sign a member services agreement when required by the Corporation.
11. Members shall be personally liable for the assessments of the Corporation as may be provided for in the articles of incorporation and the Corporation's bylaws. Unpaid assessments shall be deemed a lien against the member and the real property for which the assessment has not been paid.

## **Article V Dissolution**

1. Dissolution shall be allowed only in the event of all of the members' treatment systems being connected to one or more municipal wastewater treatment facilities or the merger of the Corporation with another Idaho Department of Environmental Quality-approved nonprofit corporation having similar wastewater system management capability. Upon dissolution of the corporation, the board of directors shall, after paying or making provision for all of the liabilities of the corporation, dispose of the assets of the corporation by transferring the same to such organization or organizations organized and qualified as nonprofit organizations for carry out purposes similar to those of the Corporation. Any such assets not so disposed of shall be disposed of by the district court of the county in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization(s) as said court shall determine that are organized and exclusively for such purposes.

2. Members shall not be authorized to vote the corporation out of existence without the approval of the Idaho Department of Environmental Quality.

## **Article VI Initial Registered Office**

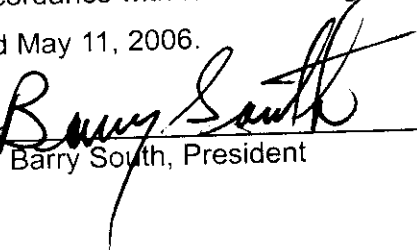
The name and address of the Corporation's initial registered office in Idaho is Barry South, 3007 East 49<sup>th</sup> North, Idaho Falls, Idaho 83401.

## **Article VII Board of Directors**

1. The number of directors constituting the initial Board of Directors is three. The number of directors constituting the Board of Directors may be changed from time to time, but not less than three, as provided for in the Bylaws without requiring any amendment to these articles of incorporation. Directors shall be elected by the members only from among the members of the Corporation.
2. The Corporation's articles of incorporation and bylaws may be altered, amended, restated, or repealed and new articles of incorporation or bylaws may be adopted at any annual meeting of either the board of directors or the members, or at any special meeting of either the board of directors or the members called for that purpose; provided, however, that any material changes that may affect any of the 25 requirements<sup>1</sup> for the Corporation set forth in the Technical Guidance Manual of the Idaho Department of Environmental Quality shall be subject to approval by the Idaho Department of Environmental Quality in order to ensure the proposed changes are not contradictory to the overall goal of providing perpetual operation and maintenance for the treatment systems owned by members of the Corporation.
3. The Corporation will indemnify any director, officer, employee or agent of the Corporation in accordance with Idaho Code §30-3-88, as currently enacted.

Dated May 11, 2006.

By

  
Barry South, President

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<sup>1</sup> Requirement No. 9 in the Technical Guidance Manual requires the Corporation to own the system(s) it intends to maintain. This is both a practical and legal impossibility to require members to convey ownership to the Corporation of that portion of their real property where their treatment systems are located or to transfer ownership of the treatment systems themselves. Accordingly, the Corporation intentionally does not comply with Requirement No. 9.

## Certification

Pursuant to Idaho Code Sections 30-3-91 and 30-3-94, it is hereby certified that the foregoing articles of restatement contain amendments to the articles requiring approval of the members. Pursuant to said Idaho Code provisions and Article VII of the Fourth Amended and Restated Articles of Incorporation of Effluent Technologies, Inc., an Idaho nonprofit corporation, the Board of Directors and the members amended and restated the Corporation's articles of incorporation as set forth above pursuant to a unanimous vote of the Board of Directors at a special meeting of the Board of Directors held for that purpose on April 11, 2006, and pursuant to vote of the members at the annual meeting of the members held on May 11, 2006. The number of members entitled to vote at the annual meeting was 14. The number of members that voted in favor of these amended and restated articles was 11. The number of members that voted against these amended and restated articles was 0. No other approval by other persons was required.

Dated May 11, 2006

By

  
Dan South, Vice President/Secretary