

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

IN THE MATTER OF:)	DIVISION OF WATER RESOURCES
)	
CITY OF BLUFF CITY,)	
)	
RESPONDENT.)	CASE NUMBER WPC16-0037

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Tisha Calabrese Benton, Director of the Tennessee Division of Water Resources, and states:

PARTIES

I.

Tisha Calabrese Benton 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.

The City of Bluff City is a municipality located in Sullivan County, Tennessee (hereinafter "Respondent"). The Respondent operates a sewage collection system in Bluff City, Tennessee. Service of Process may be made on the Respondent through its municipal agent, the Honorable Irene Welles, Mayor of Bluff City, at P.O. Box 70, 4391 Bluff City Highway, Bluff City, TN 37618.

JURISDICTION

III.

Whenever the Commissioner has reason to believe that a violation of Tennessee Code Annotated (“Tenn. Code Ann.”) § 69-3-101 *et seq.*, the Water Quality Control Act (hereinafter 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 Tenn. Code Ann. § 69-3-109(a). Further, the Commissioner has authority to assess civil penalties against any violator of the Act, pursuant to Tenn. Code Ann. § 69-3-115; and has authority to assess damages incurred by the state resulting from the violation, pursuant to Tenn. Code Ann. § 69-3-116. Pursuant to Tenn. Code Ann. § 69-3-107(13), the Commissioner may delegate to the Director any of the powers, duties, and responsibilities of the Commissioner under the Act. Robert J. Martineau, Jr., Commissioner of the Department of Environment and Conservation, has delegated such authority to Tisha Calabrese Benton, Director of the Tennessee Division of Water Resources.

IV.

The Respondent is a “person” as defined by Tenn. Code Ann. § 69-3-103(26) and, as herein described, has violated the Act.

V.

The South Fork Holston River and its unnamed tributaries described herein constitute “waters of the state” as defined by Tenn. Code Ann. § 69-3-103(44) and “streams” as defined by Tenn. Code Ann. 69-3-103(40). Pursuant to Tenn. Code Ann. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Board of Water Quality, Oil, and Gas for suitable uses. Tenn. Comp. R. & Regs. Chapter 0400-40-04. Accordingly, all waters of the state have been classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock

watering and wildlife, and may additionally be classified for use as industrial water supply, domestic water supply, and navigation.

VI.

Tennessee Code Annotated § 69-3-108(c) requires a person to obtain coverage under a permit prior to operating a sewerage system within the state. Coverage under an individual State Operating Permit (hereinafter, an “SOP” or “permit”) may be obtained, as applicable, by filing an application for permit coverage with the Division. Furthermore, it is unlawful for any person to violate the conditions of a permit issued by the Department. Tenn. Code Ann. § 69-3-108(b)(6) & Tenn. Comp. R. & Regs. 0400-40-05-.07(2)(a) & -.08(2).

FACTS

VII.

On April 30, 2009, the Department renewed permit number SOP-98042. The permit authorized the Respondent to operate a wastewater collection system in Bluff City, in accordance with effluent limitations, monitoring requirements, and other conditions set forth therein the permit. Section C(3)b of the permit prohibited overflows. In addition, permit section C(3)a. states that “the permittee shall operate the collection system so as to avoid overflows. No new or additional flows shall be added upstream of any point in the collection system which experiences chronic overflows (greater than 5 events per year) or would otherwise overload any portion of the system.” Between the effective date of the permit and its expiration date on April 30, 2014, the Respondent reported five (5) overflows to the Division.

VIII.

On April 30, 2014, the permit was reissued to the Respondent. The permit became effective on May 1, 2014, and is set to expire on March 31, 2019. The 2014 permit has the same overflow provisions as the 2009 permit.

IX.

On December 30, 2015, Division personnel from the Johnson City Field Office, (hereinafter, "the Field Office"), performed a complaint investigation at the Igloo pump station in response to overflows from the collection system during the period of December 27-30, 2016. The Respondent reported that overflows totaling approximately 7,200 gallons had occurred at the manhole at 4434 Bluff City Highway, and included an overflow of 1,600 gallons that reached Boone Lake on December 29, 2015. At the time of the investigation, the Respondent had installed a temporary bypass around the pump station and had properly cleaned the area affected by the overflow according to industry standards.

X.

On January 8, 2016, the Division issued a Notice of Violation (hereinafter, a "Notice") to the Respondent for the following violation of the permit observed during the investigation on December 30, 2015, and during a follow-up investigation on January 7, 2016:

- Permit section A(4): Failure to properly operate and maintain all facilities and systems for collection and treatment.

In the Notice, the Division also notified the Respondent that the manhole at 4434 Bluff City Highway would be classified as a chronic overflow point based on reports of more than

five overflows at that location over a rolling 12-month period, and that the Respondent could not add any new connections to the portion of the collection system serviced by the Igloo pump station. In addition, the Division requested that the Respondent draft and submit a Corrective Action Plan (hereinafter, a "CAP") to address the issues at the Igloo pump station, according to noncompliance reporting and public notification procedures outlined in section C(2) and section F of the permit.

XI.

On January 15, 2016, the engineering firm Mattern & Craig, as an agent for the Respondent, submitted to the Division four sets of plans and specifications, design calculations, and appropriate fees to eliminate overflows from the collection system by repairing the existing pumps and replacing the Igloo and SR390 pump station.

XII.

On February 4, 2016, the Division received the CAP from the Respondent with a timeline to address the elimination of overflows from the Igloo pump station and ensure proper system operation and maintenance. The timeline included dates for seeking USDA Rural Development funding, having plans reviewed by the Division, and project advertising and bidding, with a tentative project completion date of August 1, 2016.

XIII.

On February 10, 2016, the Division sent a letter to the Respondent, approving the timeline in the CAP and requesting monthly progress reports for the duration of the project. The

letter also notified the Respondent not to add any additional flows that had not already been approved to the portion of the collection system serviced by the Igloo pump station, as required by permit section C(3)a.

XIV.

On February 19, 2016, the Division notified Mattern & Craig, an agent for the Respondent, that site plans and specifications had been approved, and that such approval would expire one year from that date if no action had been taken to start construction. In addition, the Division specified that the notification itself was not to be construed as a permit for any activities relating to the project that might otherwise need a permit under the Tennessee Water Quality Control Act, Tenn. Code Ann. § 69-3-101 *et seq.* The approval stated that the Field Office should be contacted for determination regarding whether construction activities would mandate a modification of the SOP or an application for an Aquatic Resource Alteration Permit (“ARAP”).

XV.

To date, no application for either a modification of Respondent’s SOP or an application for an ARAP has been received by the Division.

XVI.

On May 20, 2016, Mattern & Craig, on behalf of the Respondent, submitted to the Division a revised set of construction plans with design calculations and appropriate fees for the rehabilitation of the collection system. The Division approved the revised plans on June 9, 2016.

XVII.

Between February 18, 2015, and August 21, 2016, the Respondent reported eighteen (18) overflows to the Division. Ten (10) of the eighteen (18) overflows occurred because of issues at the Igloo pump station, including an overflow of approximately 15,000 gallons that reached Boone Lake on and February 3, 2016.

XVIII.

On February 17, March 11, April 26, June 15, and July 19, 2016, the Respondent submitted monthly progress reports to the Division that showed the progress and completion of proposed project deadlines. As of July 19, 2016, the CAP maintains that work was expected to begin on pump station #1 by August 1 and pump station #2 by July 23, with a substantial project completion date of November 10, 2016, and a project close out date of December 10, 2016.

VIOLATIONS

XIX.

Because the wastewater system operated by the Respondent overflowed in violation of the terms of the permit, as described herein, the Respondent has violated Tenn. Code Ann. § 69-3-108(b) and 114(b), which state in relevant 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.

(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.

XX.

By allowing the wastewater system to overflow to waters of the state, the Respondent has caused a condition of pollution, as described herein, and has violated Tenn. Code Ann. § 69-3-114(a), which states in relevant part:

It is unlawful for any person to discharge any substance into the 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, unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared a public nuisance.

ORDER AND ASSESSMENT

XXI.

WHEREFORE, pursuant to the authority vested by Tenn. Code Ann. §§ 69-3-109, 69-3-115, and 69-3-116, I, Tisha Calabrese Benton, hereby issue the following ORDER and ASSESSMENT to the Respondent:

1. Respondent shall cause the Division-approved CAP to be fully implemented and operational on or before the CAP's current anticipated date of completion, January 16, 2017. The Respondent shall send notice of such implementation to the Manager of the

Water-Based Systems Unit, State of Tennessee, Division of Water Resources, 11th Floor, William R. Snodgrass Bldg., 312 Rosa Parks Avenue, Nashville, TN 37243 and a copy of such notice to the Water Resources Manager of the Johnson City Environmental Field Office, Division of Water Resources, 2305 Silverdale Road, Johnson City, TN 37601.

2. The Respondent shall submit to the Division, within 90 (ninety) days of the receipt of this Order and Assessment, a written Capacity, Management, Operation, and Maintenance Plan (“CMOM Plan”), along with an anticipated implementation deadline not to exceed one (1) year which shall ensure the Respondent’s compliance with its SOP and Tenn. Code Ann. §§ 69-3-108(b) and 114(a)-(b). The CMOM Plan must be approved by the Division. The CMOM Plan shall be submitted in duplicate to Division at the addresses listed in item 1. The Respondent shall implement the CMOM for a period of two years from Division approval and send annual reports evaluating the effectiveness of the CMOM Plan for three years from its implementation.

3. Respondent shall submit to the Division for approval, within 90 (ninety) days of the receipt of this Order and Assessment, a written Sewer Overflow Response Plan (“SORP”). The SORP shall be submitted in duplicate to the Division to the addresses identified in item 1. In the event that the Division requires changes to the SORP, changes shall be incorporated into the SORP, and the revised SORP shall be submitted for approval within 30 days of Division notification.

4. Respondent shall submit an annual summary report of all overflows and corrective actions taken to prevent and remediate overflows during the previous calendar year. The first annual report shall be due by January 31, 2018, and continue for three years or until completion of the rehabilitation on the collection system.

5. The Respondent shall complete all requirements of the order and achieve compliance with the permit no later than January 31, 2020, at which point the order shall be considered closed so long as the Respondent has met and is in compliance with all requirements set forth in this Order and Assessment.

6. The Respondent is hereby assessed a CIVIL PENALTY of TWENTY-FIVE THOUSAND, SEVEN HUNDRED SIXTY DOLLARS (\$25,760.00) to be paid to the Division of Water Resources as follows:
 - a. **The Respondent shall pay THREE THOUSAND, EIGHT HUNDRED SIXTY-FOUR DOLLARS (\$3,864.00) to the Division on or before the THIRTY FIRST (31) day after the receipt of this Order and Assessment.**

 - b. The Respondent shall pay FIVE THOUSAND, FOUR HUNDRED SEVENTY-FOUR DOLLARS (\$5,474.00) to the Division if, and only if, the Respondent fails to comply with item 1 above.

 - c. The Respondent shall pay FIVE THOUSAND, FOUR HUNDRED SEVENTY-FOUR DOLLARS (\$5,474.00) to the Division if, and only if, the Respondent fails to comply with item 2 above.

d. The Respondent shall pay FIVE THOUSAND, FOUR HUNDRED SEVENTY-FOUR DOLLARS (\$5,474.00) to the Division if, and only if, the Respondent fails to comply with item 3 above.

e. The Respondent shall pay TWO THOUSAND DOLLARS (\$2,000.00) per late or missing report, not to exceed a total of FIVE THOUSAND, FOUR HUNDRED SEVENTY-FOUR DOLLARS (\$5,474.00) to the Division if, and only if, the Respondent fails to comply with item 4 above.

The Director of the Division of Water Resources may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondent shall submit a written request to be received a minimum of 30 days in advance of the compliance date. The 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 will be in writing.

Further, the Respondent is 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 Respondent in the future. Failure to comply with any of the requirements of this order could lead to further enforcement actions which may include additional civil penalties, assessment of damages and/or recovery of costs.

NOTICE OF RIGHTS

Tennessee Code Annotated (“Tenn. Code Ann.”) §§ 69-3-109, 69-3-115, and 69-3-116 allow 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 will become final (not subject to review).

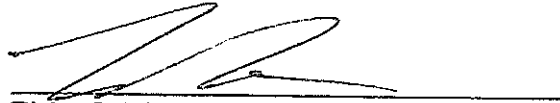
If an appeal is filed, an initial hearing of this will be conducted by an Administrative Law Judge (“ALJ”) as a contested case hearing pursuant to the provisions of Tenn. Code Ann. § 69-3-110, Tenn. Code Ann. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Tenn. Comp. R. & Regs. 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 Tenn. Code Ann. § 69-3-115 (up to \$10,000 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 Jenny L. Howard, General Counsel, Department of


Environment and Conservation, 2nd 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, 10th 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, 11th Floor, William R. Snodgrass Bldg., 312 Rosa L. Parks Avenue, Nashville, TN 37243. **The case number, WPC16-0037, should be written on all correspondence regarding this matter.**

Issued by the Director of the Division of Water Resources, Tennessee Department of Environment and Conservation, on this 23 day of September, 2016.



Tisha Calabrese Benton
Director, Division of Water Resources
TN Department of Environment and Conservation

Reviewed by:



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