

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

IN THE MATTER OF:)	DIVISION OF WATER RESOURCES
)	
)	
THE CITY OF LEWISBURG,)	
)	
)	
RESPONDENT.)	CASE NO. WPC20-0016

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Jennifer Dodd, Director of the Tennessee Division of Water Resources,
and states:

PARTIES

I.

Jennifer Dodd is the duly appointed Director of the Tennessee Division of Water Resources (the "Division") by the Commissioner of the Tennessee Department of Environment and Conservation (the "Department").

II.

The City of Lewisburg (the "Respondent") operates a publicly-owned wastewater treatment plant in Marshall County, Tennessee at 401 Woodside Ave. (the "Site"). The Respondent has appeared on the EPA Quarterly Non-Compliance Report (the "QNCR") in multiple quarters for effluent limitation exceedances. Service of process may be made on the Respondent through the Honorable James Bingham, Mayor, at 131 East Church St., Lewisburg, TN 37091.

JURISDICTION

III.

Whenever the Commissioner has reason to believe that a violation of the Water Quality Control Act, Tenn. Code Ann. §§ 69-3-101 to -148 (the “Act”), has occurred, is occurring, or is about to occur, the Commissioner may issue a complaint to the violator and the Commissioner may order corrective action be taken. Tenn. Code Ann. § 69-3-109(a). Further, the Commissioner has authority to assess civil penalties against any violator of the Act, Tenn. Code Ann. § 69-3-115, and has authority to assess damages incurred by the State resulting from the violation, Tenn. Code Ann. § 69-3-116. The Board of Water Quality, Oil and Gas has promulgated rules governing general water quality criteria and use classifications for surface waters. Tenn. Comp. R. & Regs. Chapters 0400-40-03 and 0400-40-04. The Commissioner may delegate to the Director any of the powers, duties, and responsibilities of the Commissioner under the Act, Tenn. Code Ann. § 69-3-107(13), and has delegated such authorities to Jennifer Dodd.

IV.

The Respondent is a “person” under the Act. Tenn. Code Ann. § 69-3-103.

V.

Big Rock Creek constitutes “waters” of the State and a “stream.” Tenn. Code Ann. § 69-3-103. All streams have been classified by the Tennessee Water Quality, Oil and Gas Board for suitable uses. Tenn. Comp. R. & Regs. Chapter 0400-40-04. Big Rock Creek is classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.

VI.

Any person engaged in or planning to engage in the discharge of sewage, industrial wastes, or other wastes into waters, or to a location from which it is likely that the discharged

substance will move into waters must obtain and comply with a permit from the Department. Tenn. Code Ann. § 69-3-108. Each permit requires a set of effluent limitations to indicate adequate operation of performance of treatment units used and to appropriately limit those harmful parameters present in the wastewater. Tenn. Comp. R. & Regs. 0400-40-05-.08. The permittee shall at all times properly operate and maintain all facilities and systems (and related appurtenances) for collection and treatment which are installed or used by the permittee to achieve compliance with the conditions of the permit. Tenn. Comp. R. & Regs. 0400-40-04-.07. It is unlawful for any person to violate the conditions of a discharge permit issued by the Department. Tenn. Code Ann. §§ 69-3-108(b) and -114(b).

FACTS

VII.

On July 1, 2018, the Division issued National Pollutant Discharge Elimination System (NPDES) permit TN0022888 to the Respondent, effective August 1, 2018 - May 31, 2023, authorizing the discharge of municipal wastewater from Outfall 001 to Big Rock Creek at mile 16.8 in accordance with all effluent limitations and monitoring requirements set forth in the permit.

VIII.

The Respondent has appeared on the QNCR for multiple quarters for the monitoring periods of February 1, 2018 - January 31, 2020 for effluent limitation exceedances.

IX.

During the monitoring period of February 1, 2018-January 31, 2020, the Respondent self-reported the following effluent limitation exceedances on its Discharge Monitoring Reports:

Parameter	Reported Effluent Exceedance 02/01/2018 - 01/31/2020
Chlorine, total residual	1
E. coli	2
Nitrogen, ammonia total [as N]	2
Nitrogen, total [as N]	8
Phosphorus, total [as P]	6
Solids, settleable	1
Total	20

VIOLATIONS

X.

By exceeding effluent limits and violating its NPDES permit, the Respondent has violated the Act:

Tenn. Code Ann. § 69-3-108(b)(3)(6):

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:

- (3) The increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing 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;

Tenn. Code Ann. § 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree that is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the Board of any permits or orders issued pursuant to 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.

ORDER AND ASSESSMENT

XI.

Pursuant to sections 69-3-109, -115, and -116 of the Act, I, Jennifer Dodd, hereby issue the following Order and Assessment to the Respondent. All documentation relating to

corrective action items in this Order and Assessment should be sent electronically to DWRWater.Compliance@tn.gov or in duplicate to both addresses below:

Manager
Columbia Environmental Field Office
Division of Water Resources
1421 Hampshire Pike
Columbia, Tennessee 38401

AND

Jessica Murphy, Manager
Enforcement and Compliance Unit
Division of Water Resources
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Ave., 11th Floor
Nashville, Tennessee 37243

1. The Respondent is assessed a total civil penalty of \$42,700.00 to be paid to the Division as outlined in items 2-6 below. Payment of all monetary penalties and damages should be sent to the following address:

Treasurer, State of Tennessee
Division of Fiscal Services – Consolidated Fees Section
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Ave., 10th Floor
Nashville, Tennessee 37243

2. **The Respondent shall pay \$4,270.00 to the Division on or before the 31st day after receipt of this Order and Assessment.**
3. The Respondent shall submit a corrective action plan / engineering report (CAP/ER) to the Division no later than 90 days after receipt of this Order and Assessment. The CAP/ER shall address how the effluent limitation exceedances listed in paragraph IX of this Order and Assessment will be eliminated. The CAP/ER shall include a timeline for the schedule of corrective actions to be completed to bring the facility into compliance. If the Division requests changes or modifications to the CAP/ER, the Respondent shall address those concerns with the appropriate changes and/or modifications and resubmit within 30 days after receipt of Division notice. Upon Division approval of the CAP/ER, all dates delineated therein shall become an enforceable portion of this Order and Assessment. If the Respondent fails to comply with Item 3 by failing to submit a CAP/ER, the Respondent shall pay \$1,200.00 to the Division, payable within 30 days

after receipt of Division notice. The Respondent shall then pay an additional \$500.00 for each additional month that a CAP/ER is not submitted, not to exceed a total of \$1,500.00, due and payable within 30 days after receipt of Division notice.

4. The CAP/ER shall include a detailed study evaluation to be completed after all corrective action measures in the CAP/ER are implemented to evaluate CAP/ER success. The study and analysis shall be completed not later than 180 days after implementation of all CAP/ER measures. If the Respondent fails to comply with Item 4, the Respondent shall pay \$1,730.00 to the Division, payable within 30 days after receipt of Division notice.
5. The Respondent shall initiate and complete the CAP/ER and all scheduled actions delineated therein by the dates established in the Division-approved CAP/ER. Upon completion of each scheduled action, the Respondent shall write a concise summary report describing the task and send that report to the Division not later than the 7th business day after scheduled task completion. If the Respondent fails to comply with Item 5 by failing to complete the CAP/ER in the scheduled time, the Respondent shall pay \$3,000.00 to the Division, payable within 30 days after receipt of Division notice. If the Respondent fails to complete individual corrective actions scheduled in the CAP/ER, as evidence by a late summary submittal, the Respondent shall pay \$1,000.00 per missed deadline or incomplete action, not to exceed a total of \$2,000.00, due and payable within 30 days after receipt of Division notice.
6. The Respondent shall submit a Final Report to the Division not later than 10 business days after completion of the CAP/ER. The Final Report shall detail the date of completion for each item in the CAP/ER and include results of the study evaluating the effectiveness of the CAP/ER. If the Respondent fails to comply with Item 6, the Respondent shall pay \$2,000.00 to the Division, payable within 30 days after receipt of Division notice. The Respondent shall then pay an additional \$500.00 for each week after

this missed compliance deadline that a Final Report is not submitted, not to exceed a total of \$1,500.00, due and payable within 30 days after receipt of Division notice.

7. The Respondent shall achieve substantial compliance with the Permit on or before the 30th day after Division receipt of the Final Report and shall maintain substantial compliance for the subsequent 23-month period. If the Respondent fails to comply with Item 7, as evidenced by self-reporting or effluent violations on its discharge monitoring reports, the Respondent shall pay \$500.00 per effluent limitation exceedance, not to exceed a total of \$25,500.00, payable on or before the 30th day after receipt of Division notice. This Order and Assessment shall be considered closed no later than two years after Division receipt of the Final Report so long as the Respondent has complied with all Order Requirements, all penalties owed have been paid, and the facility is in substantial compliance with the Act.

The Director 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 in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise causes or causes of the delay, and all preventative measures taken to minimize the delay. Any such extension by the Director will be in writing. Should the Respondent fail to meet the requirement by the extended date, any associated civil penalty shall become due 30 days thereafter.

Failure to comply with any of the requirements of this Order and Assessment could lead to further enforcement actions, which may include additional civil penalties, assessment of damages, and/or recovery costs. This Order shall be considered closed no later than two years after Division receipt of the Final Report, provided the Respondent has complied with all

requirements of the Order, has paid all assessed penalties and damages, and is in substantial compliance with the Act.

RESERVATION OF RIGHTS

In issuing this Order and Assessment, the Department does not implicitly or expressly waive any provision of the Act or the regulations promulgated thereunder or the authority to assess costs, civil penalties, and/or damages incurred by the State against the Respondent. The Department expressly reserves all rights it has at law and in equity to order further corrective action, assess civil penalties and/or damages, and to pursue further enforcement action including, but not limited to, monetary and injunctive relief. Compliance with this Order will be considered as a mitigating factor in determining the need for future enforcement action(s).

NOTICE OF RIGHTS

The Respondent may appeal this Order and Assessment. Tenn. Code Ann. §§ 69-3-109, -115, and -116. To do so, a written petition setting forth the reasons for requesting a hearing must be received by the Commissioner within 30 days of the date the Respondent received this Order and Assessment or this Order and Assessment will become final.

If an appeal is filed, an initial hearing of this matter will be conducted by an Administrative Law Judge (ALJ) as a contested case hearing. Tenn. Code Ann. § 69-3-110; Tenn. Code Ann. §§ 4-5-301 to -325 (the Uniform Administrative Procedures Act); Tenn. Comp. R. & Regs. 1360-04-01 (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 a 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. 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 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, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Ave., 2nd Floor, Nashville, Tennessee 37243. Technical questions involving compliance issues should be sent to Jessica Murphy, State of Tennessee, Division of Water Resources, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Ave., 11th Floor, Nashville, Tennessee 37243. Attorneys should contact the undersigned counsel of record. The case number, WPC20-0016, should be written on all correspondence concerning this matter.

Issued by the Director of the Division of Water Resources, Tennessee Department of Environment and Conservation, on this 26th day of February, 2020.



Jennifer Dodd, Director
Division of Water Resources
TN Department of Environment and Conservation

Reviewed by:



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Nashville, Tennessee 37243
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