

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

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<b>IN THE MATTER OF:</b>	)	<b>DIVISION OF WATER RESOURCES</b>
	)	
	)	
<b>IMI TENNESSEE, INC.,</b>	)	
	)	
	)	
<b>RESPONDENT.</b>	)	<b>CASE NUMBER WPC18-0112</b>

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**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 by the Commissioner of the Tennessee Department of Environment and Conservation (the "Division" and the "Department," respectively).

**II.**

IMI Tennessee, Inc. (the "Respondent") is an active ready mix concrete company created in the State of Indiana and is properly registered to do business in the State of Tennessee. The Respondent operates facilities in Davidson County and Sumner County, Tennessee (the "sites") and discharges process wastewater and stormwater runoff to Richland Creek and an unnamed tributary to Slaters Creek, respectively. Service of process may be made on the Respondent through its Registered Agent, Ms. Kimberly Rollett at 2001 Antioch Pike, Antioch, TN 37013.

## 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 (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 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. The Commissioner of the Department of Environment and Conservation has delegated such authority to Jennifer Dodd, Director of the Tennessee Division of Water Resources (“Director”).

### IV.

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

### V.

Richland Creek and the unnamed tributary to Slaters Creek, as described herein, constitute “waters” of the state as defined by Tenn. Code Ann. § 69-3-103(44). Pursuant to Tenn. Code Ann. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses, as outlined in Tenn. Comp. R. & Regs. Chapter 0400-40-04. Accordingly, all waters of the state have been classified for the following uses: to support 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.

Pursuant to Tenn. Code Ann. § 69-3-108, a person is required to obtain a permit from the Department prior to discharging into waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the General National Pollutant Discharge Elimination System (“NPDES”) Permit for Discharges of Stormwater Runoff and Process Wastewater Associated with Ready Mixed Concrete Facilities (the “RMCP” or “permit”) may be obtained by submitting a Notice of Intent (“NOI”) and payment of any required fees. Pursuant to Tenn. Code Ann. § 69-3-108(b) and Tenn. Comp. R. & Regs. 0400-40-05-.07(2)(a) & .08(2), it is unlawful for any person to violate the conditions of a NPDES permit issued by the Department.

## VII.

Pursuant to Tenn. Code Ann. § 69-3-108 and Tenn. Comp. R. & Regs. 0400-40-07-.04, a person is required to obtain coverage under an Aquatic Resource Alteration Permit (“ARAP”) prior to altering the physical, chemical, radiological, biological, or bacteriological properties of streams, including wetlands, and/or engaging in any activity that is not governed by a general permit or a Section 401 Water Quality Certification. Tennessee Comp. R. & Regs. 0400-40-07-.04(6)(c) provides that no activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

## **FACTS**

### **WEST NASHVILLE PLANT – TNG110100**

#### **VIII.**

On December 20, 2012, the Division issued coverage under the RMCP to the Respondent for activities at its West Nashville plant in Davidson County (the “West Nashville site” or “West Nashville facility”) under tracking number TNG110100. The permit was reissued to the Respondent on November 7, 2017 and has an expiration date of October 31, 2022. The permit authorizes the Respondent to discharge stormwater runoff and process wastewater to Richland Creek via Outfall 001.

#### **IX.**

On March 21, 2016, the Division received an anonymous complaint alleging a hose had been observed coming over the wall of the West Nashville facility. The complainant believed that the Respondent was using the hose to pump water from the wash pits into the river.

#### **X.**

On March 22, 2016, Division personnel performed a complaint investigation at the West Nashville site and met with Mr. Derick Slayton, Plant Manager, Mr. Scott Eller, Production Manager, and Ms. Heather Scott, Health and Safety Manager at the site. During the investigation, Division personnel observed the following items of concern:

- 1) Washout pits were full of solids to the point that less than six inches of free board remained in all four basins.
- 2) Washout pits were not being used in series as designed, in which wastewater would flow serially from the first basin to the fourth (last) basin, allowing solids to settle out and the water to become clearer in each successive basin. While onsite, Division personnel observed trucks being washed directly adjacent to the final basins, and waste wash water was actively entering basins 3 and 4, short circuiting the treatment system. Moreover,

due to the reduced capacity of the washout pits, waste water was flowing into the stormwater collection pits.

- 3) Stormwater collection pits were not being maintained as required. Division personnel observed sediment laden stormwater flowing into the primary stormwater pit, but the second stormwater pit was full of solids to the point that water from the primary pit could not flow into it.
- 4) A pump was suspended in the final stormwater pit, and a discharge hose was observed traveling from the pump over the wall and into Richland Creek.
- 5) A steady flow of solids-laden water was discharging from a location in the wall of the primary stormwater pit. Due to the height of the wall, Division personnel could not determine if the discharge was from a discrete pipe or a crack/ hole in the wall.
- 6) Discharge from the wall caused a discrete color contrast in the receiving stream, deposited solids in the stream, and resulted in foam on the water.
- 7) Discharges from both the hose and hole in the wall had resulted in heavy deposits of solids on the bank of the stream, coated vegetation on the bank, and carried solids into the stream.

## **XI.**

On March 30, 2016, the Division issued a Notice of Violation (“NOV”) for violations observed at the West Nashville site during the March 22, 2016 complaint investigation. The NOV detailed the violations observed during the investigation and required the Respondent to submit a Corrective Action Plan (“CAP”) to the Division within thirty (30) days describing how the violations would be corrected and a timeline for completion.

## **XII.**

On May 6, 2016, the Division received a CAP from Mr. Kirk Reinke, Environmental Manager for the Respondent, as required by the March 30, 2016 NOV. In the letter, Mr. Reinke stated that a new washout pit had been installed for receiving washout water and solids and a new treatment system had been installed consisting of a recirculating pump and flocculating agent in order to clarify wastewater from the yard and washout basins. Additionally, an existing 5,000 gallon storage tank was used to store clear water from the treatment system for dust suppression and truck rinse water, a discharge chute between two pits had been filled with concrete, and an old drain line in the back wall, which had been the source of discharges from

the wall to Richland Creek, had been filled with concrete to prevent future discharges. Mr. Reinke included photographs demonstrating the work that had been done at the site.

### **XIII.**

On June 6, 2017, Division personnel performed a Compliance Evaluation Inspection (“CEI”) at the West Nashville site and met with Ms. Scott and Mr. Slayton. During the CEI, Division personnel noted the following violations:

- 1) A records review prior to the inspection indicated no Discharge Monitoring Reports (“DMRs”) had been submitted to the Division between July – September 2015 and January – June 2016. Signed copies of these DMRs were provided to Division personnel during the CEI.
- 2) The Stormwater Pollution Prevention Plan (“SWPPP”) was written in 2015 but had not been reviewed annually in 2016, as required by the permit.
- 3) No records were provided for annual SWPPP training or routine site inspections.
- 4) Material removed from the first basin was placed in a bay next to the basin to dry; water from this material was flowing through a drain or hole in the wall. This hole was covered with a gravel filter basket, but the water was largely bypassing the filter and flowing directly to Richland Creek as an unpermitted discharge. Heavy staining was observed on the stream bank leading to the creek. During the inspection Mr. Slayton stated he would have the area sealed.

Overall, Division personnel observed that conditions at the site were improved from the March 22, 2016 complaint investigation and noted that the Respondent had made significant improvements to the treatment works at the West Nashville facility.

### **XIV.**

On June 20, 2017, the Division issued a second NOV to the Respondent for violations observed during the June 6, 2017 CEI at the West Nashville site. In the NOV, the Division required the Respondent to immediately stop all discharges from any point other than Outfall 001, review the SWPPP and conduct employee training on an annual basis, and provide a written response to the Division within 30 days addressing the concerns outlined in the NOV.

**XV.**

On July 24, 2017, Mr. Reinke submitted a letter to the Division addressing concerns as required by the NOV. In the letter, Mr. Reinke stated that they had begun eliminating the unpermitted discharge point and anticipated completing the work by August 15, 2017. He also stated that the Respondent had implemented documentation of weekly site inspections and SWPPP training; records would be kept with the SWPPP for future review.

**XVI.**

On July 2, 2018, Division personnel returned to the West Nashville facility to perform a follow-up inspection. Division personnel traveled to the site on by boat via Richland Creek to assess the condition of the stream at the West Nashville facility's outfall and determine if previous discharges had been adequately addressed. During the inspection, Division personnel observed two separate hoses/pipes draped over the retaining wall; both hoses showed evidence of recent flow. Additionally, Division personnel observed a steady flow of solids-laden water actively discharging from a seep in the wall which resulted in a discrete color contrast in the receiving stream, deposition of solids within the stream and on the bank, and foam on the water.

**XVII.**

On September 19, 2018, the Division issued a third NOV to the Respondent for violations observed at the West Nashville facility. In the NOV, Division personnel detailed the violations and required the Respondent to submit a CAP to the Division within thirty (30) days of receipt of the letter detailing how the illicit discharges would be stopped. The CAP was required to include specific action items and a timeline for completion which was not to exceed ninety (90) days from receipt of the letter.

### **XVIII.**

On October 25, 2018, the Division received a reply to the NOV from Mr. Reinke on behalf of the Respondent in which he described corrective actions that had been taken, including removing one of the hoses draped over the facility wall and repairing the concrete wall. Mr. Reinke stated that the remaining hose constituted the facility's permitted discharge point. Mr. Reinke also stated that the hole discharging water to the receiving stream at the bottom of the wall, which was an old discharge structure, had been sealed from the top and was no longer used to discharge stormwater or process water. He suggested that the hole may be seeping groundwater.

### **XIX.**

On January 10, 2019, Division personnel returned to the West Nashville site to perform a follow-up inspection. During the visit, Division personnel observed that the washout pits were not being maintained and the pits were full of sediment. Additionally, the final settling pit at the back of the property had significant sediment buildup with very little free board. No discharge was occurring from the outfall at the time of the visit, but the small seep at the base of the wall could be observed from the top of the wall. The water from the seep appeared clear at the time.

## **GOODLETTSVILLE PLANT – TNG110229**

### **XX.**

On November 7, 2017, the Division issued coverage under the RMCP to the Respondent for activities at its facility in Goodlettsville in Sumner County (the "Goodlettsville site" or "Goodlettsville facility") under tracking number TNG110229. The permit authorizes the



Respondent to discharge process wastewater to an unnamed tributary to Slaters Creek via Outfall 001 and has an expiration date of October 31, 2022.

**XXI.**

On July 31, 2018, personnel with the City of Millersville and Sumner County investigated an anonymous complaint alleging that a concrete washout at the Goodlettsville site had been overflowing into a creek. During the investigation, City and County personnel observed that the concrete washout area at the Goodlettsville site had been flowing into the woods and into the stream, covering the stream banks and stream bed for hundreds of feet. On August 6, 2018, Mr. Michael Barr, Development Services Director for the City of Millersville, informed the Division by email of the illicit discharge.

**XXII.**

On September 5, 2018, Division personnel performed a site visit and CEI to investigate the alleged violations and determine compliance with the permit at the Goodlettsville site. While onsite, Division personnel met with Ms. Heather Scott. Division personnel performed a records review for the period from September 2013 to September 2018 and noted that the SWPPP lacked a description of spill prevention and response procedures. Additionally, there were no records of monthly or annual site inspections and the available site map was insufficient. A review of Discharge Monitoring Reports (“DMRs”) revealed that the Goodlettsville facility had reported “no discharge” of process wastewater since September 2016. Ms. Scott indicated that the facility had been inactive for a number of years and had recently gone back into operation.

While onsite, Division personnel also performed a site review during which personnel observed that the existing treatment structure was not adequate for the volume of concrete truck washout. The basins had been filled in with concrete fines which had allowed process

wastewater and stormwater runoff to bypass treatment and enter the unnamed tributary to Slaters Creek. Division personnel observed recent deposits of concrete fines within the stream for approximately 200 feet. Additionally, there were areas of shelving and discretely layered concrete indicating continuous and repeated illicit concrete discharges, and the outfall sign was not posted at the outfall but had been wedged vertically in the center of the stream. During the investigation, a work crew was onsite using hand shovels and buckets to remove concrete fines and sediment from the stream. At that time, however, no temporary check dams were in place to prevent the transport of sediment, and sediment laden water was observed flowing downstream from the work site. Subsequent records review indicated the work being performed within the stream was not covered under an Aquatic Resource Alteration Permit (“ARAP”). Division personnel later advised the Respondent by phone that they must obtain coverage under an ARAP from the Division prior to performing any work within the stream. The Respondent submitted an ARAP application later that same day, which was determined to be incomplete. The ARAP application was assigned tracking number NR1804.237.

### **XXIII.**

On September 20, 2018, the Division issued a NOV to the Respondent for violations at the Goodlettsville facility observed during the September 5, 2018 investigation and CEI. The NOV stated that, although the facility had been reporting “no discharge” for numerous years, the presence of recent concrete fines and historic concrete deposits indicated evidence of numerous unreported discharges. The NOV stated that the facility had failed to uphold annual stormwater monitoring requirements and reminded the Respondent that a signed SWPPP must be retained onsite with records of annual review and personnel training, site inspections must be performed at least monthly, and comprehensive site evaluations must be performed annually. The letter

also required the Respondent to remove all concrete fines and sediments from the receiving stream using hand shovels. The NOV required the Respondent to submit a CAP to the Division detailing evidence of corrections at the site or a plan to address the violations on or before October 26, 2018.

#### **XXIV.**

On October 10, 2018, Division personnel returned to the Goodlettsville site to perform a Hydrologic Determination (“HD”) of the impacted water feature and determined it to be a stream.

#### **XXV.**

On October 26, 2018, Mr. Kirk Reinke submitted a CAP to the Division as required by the September 20, 2018 NOV. In the CAP, Mr. Reinke stated that there was no separate stormwater outfall at the Goodlettsville site and, as such, annual stormwater monitoring was not required by the permit. Mr. Reinke also stated that the sedimentation basins at the Goodlettsville site had been cleaned out and reconstructed, truck washout activities had been moved to an area away from the sedimentation basins, and the concrete fines and deposits had been removed from the stream. Included with the CAP were photos documenting the corrective actions. Additionally, Mr. Reinke stated that the Respondent would address the other violations before the end of the year.

#### **XXVI.**

On November 26, 2018, the Division issued a letter to the Respondent in response to the October 26, 2018 CAP. In the letter, the Division stated that, pursuant to Section 5.2. of the permit, “Storm Water Monitoring and Reporting is not applicable if all stormwater discharges associated with other areas requiring stormwater monitoring is routed to and adequately treated

by approved wastewater treatment structures.” However, due to improper operation and maintenance, the sedimentation basins at the Goodlettsville site were not functioning as designed and had resulted in combined process wastewater and stormwater bypassing treatment. The Division stated that, due to the failure of the treatment structures in place to adequately treat combined process wastewater and stormwater streams, annual stormwater monitoring requirements must be upheld.

#### **XXVII.**

During the course of the investigation, the Division incurred DAMAGES in the amount of EIGHT HUNDRED SIX DOLLARS AND TWENTY-SIX CENTS (\$806.26).

#### **VIOLATIONS**

#### **XXVIII.**

By violating the terms and conditions of the Permit, as described herein, the Respondent has violated Tenn. Code Ann. §§ 69-3-108(b) and 69-3-114(b) which state, in relevant part:  
Tenn. Code Ann. § 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:

- (4) 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.

#### **XXIX.**

By reporting “no discharge” on DMRs despite evidence of repeated discharges, the Respondent has violated Tenn. Code Ann. § 69-3-114(b), which states in part:

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 or of any permits or orders issued pursuant to this part; or to 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.

**XXX.**

By discharging concrete to Richland Creek and the unnamed tributary to Slaters Creek, the Respondent has caused a condition of pollution and has violated Tenn. Code Ann. § 69-3-114, which states in relevant part:

- (a) 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 to be a public nuisance.
- (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 or of any permits or orders issued pursuant to this part....

**ORDER AND ASSESSMENT**

**XXXI.**

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

1. On or before the thirty-first (31<sup>st</sup>) day after receipt of this Order and Assessment, the Respondent shall submit to the Division the updated SWPPP for the Goodlettsville facility (TNG110229) and documentation that the outfall sign has been replaced. The

SWPPP shall include an updated site map for the facility. These items shall be submitted in duplicate to:

Manager, Division of Water Resources  
Nashville Environmental Field Office  
711 R.S. Gass Boulevard, Nashville, TN 37216

AND

Manager of Compliance and Enforcement, Division of Water Resources  
Jessica.Murphy@tn.gov  
William R. Snodgrass Tennessee Tower,  
312 Rosa L. Parks Avenue, 11<sup>th</sup> Floor  
Nashville, Tennessee 37243

**This case number, WPC18-0112, should be written on all correspondence concerning this matter.**

2. The Respondent shall perform monthly site inspections at the Goodlettsville facility (TNG110229) and submit inspection reports to the Division on or before the 15<sup>th</sup> day of each following month. Inspection reports shall include date-stamped photographs of the treatment structures, the outfall, and the receiving stream; any illicit discharge or evidence of concrete within the stream must be reported to the Division. Inspections shall begin the first month following receipt of this Order and Assessment, with the first report due to the Division by the 15<sup>th</sup> day of the subsequent month, and shall continue for twelve (12) months. Reports shall be submitted in duplicate to the addresses in item 1.
3. The Respondent shall, within three (3) months after receipt of this Order and Assessment, hire an engineer to evaluate the treatment structures at the Goodlettsville facility (TNG110229) and submit an engineering report to the Division. The engineering report should evaluate the capacity of the treatment structures and their ability to adequately contain and treat all process water and stormwater produced at the site. The report should

also identify if any additional structures or modifications must be implemented to handle the facility's combined process waste water and stormwater in order to maintain compliance with the permit and prevent future illicit discharges. This report shall be submitted in duplicate to the addresses in item 1 on or before three (3) months after receipt of the Order and Assessment.

4. If, and only if, the engineering report required in item 3 above identifies any additional treatment structures or modifications that must be implemented at the Goodlettsville facility, such modifications must be approved by the Division and be completed within three (3) months after receipt of written approval. A report detailing the completed improvements, including photographs and written documentation, shall be submitted to the Division on or before four (4) months after receipt of Division approval to the addresses in item 1.
5. Within thirty (30) days after receipt of this Order and Assessment, the Respondent shall clean out the four washout settling basins at the West Nashville facility (TNG110100) and the final basin at the rear of the facility. Written and photographic documentation of these actions shall be submitted to the Division on or before the thirty-first (31<sup>st</sup>) day after receipt of this Order and Assessment to the addresses in item 1.
6. The Respondent shall, within three (3) months, hire an engineer to evaluate and investigate the source of the seep discharging from the wall into the receiving stream at the West Nashville facility (TNG110100) and submit an engineering report to the Division. The investigation shall include sampling and analyzing the water discharging from the wall for the presence of concrete fines or other industrial waste. The engineering report shall describe the results of the investigation and identify the source of

the seep. If sample data of the seep water indicates the presence of concrete fines or other industrial waste, the report must include a CAP for stopping the seep flow. The report shall be submitted to the Division at the addresses in item 1 on or before three (3) months after receipt of the Order and Assessment.

7. If, and only if, the engineering report required in item 6 above indicates the seep at the West Nashville facility (TNG110100) contains concrete fines or other industrial waste, the CAP included in the engineering report must be approved by the Division and completed within three months after receipt of written approval. A final report detailing the completed improvements and evaluating their success, including photographs and written documentation, shall be submitted to the Division on or before four (4) months after receipt of Division approval to the addresses in item 1.
8. The Respondent shall maintain compliance with all the provisions of the Act; the rules promulgated thereunder, and the RMCP at both sites for a period of two years from the date of receipt of this Order. At such time, this Order will be considered closed, provided the Respondent is in compliance with all the terms of the Order and has paid all outstanding penalties and damages.
9. The Respondent shall pay a CIVIL PENALTY of SEVENTY-ONE THOUSAND, FIVE HUNDRED DOLLARS (\$71,500.00) to the Division, hereby ASSESSED to be paid as follows:
  - a. **On or before the thirty-first (31<sup>st</sup>) day after receipt of this ORDER and ASSESSMENT, the Respondent shall pay a CIVIL PENALTY in the amount of FOURTEEN THOUSAND, THREE HUNDRED DOLLARS (\$14,300.00).**



- b. If, and only if, the Respondent fails to comply with item 1 above, the Respondent shall pay a CIVIL PENALTY in the amount of SEVEN THOUSAND, ONE HUNDRED FIFTY DOLLARS (\$7,150.00), payable on or before the thirty-first (31<sup>st</sup>) day after default.
- c. If, and only if, the Respondent fails to comply with item 2 above, the Respondent shall pay a CIVIL PENALTY in the amount of SEVEN THOUSAND, ONE HUNDRED FIFTY DOLLARS (\$7,150.00), payable on or before the thirty-first (31<sup>st</sup>) day after default.
- d. If, and only if, the Respondent fails to comply with item 3 above, the Respondent shall pay a CIVIL PENALTY in the amount of SEVEN THOUSAND, ONE HUNDRED FIFTY DOLLARS (\$7,150.00), payable on or before the thirty-first (31<sup>st</sup>) day after default.
- e. If, and only if, the Respondent fails to comply with item 4 above, the Respondent shall pay a CIVIL PENALTY in the amount of SEVEN THOUSAND, ONE HUNDRED FIFTY DOLLARS (\$7,150.00), payable on or before the thirty-first (31<sup>st</sup>) day after default.
- f. If, and only if, the Respondent fails to comply with item 5 above, the Respondent shall pay a CIVIL PENALTY in the amount of SEVEN THOUSAND, ONE HUNDRED FIFTY DOLLARS (\$7,150.00), payable on or before the thirty-first (31<sup>st</sup>) day after default.
- g. If, and only if, the Respondent fails to comply with item 6 above, the Respondent shall pay a CIVIL PENALTY in the amount of SEVEN THOUSAND, ONE

HUNDRED FIFTY DOLLARS (\$7,150.00), payable on or before the thirty-first (31<sup>st</sup>) day after default.

- h. If, and only if, the Respondent fails to comply with item 7 above, the Respondent shall pay a CIVIL PENALTY in the amount of SEVEN THOUSAND, ONE HUNDRED FIFTY DOLLARS (\$7,150.00), payable on or before the thirty-first (31<sup>st</sup>) day after default.
- i. If, and only if, the Respondent fails to comply with item 8 above as evidenced by receipt of a NOV from the Division at either site, the Respondent shall pay a CIVIL PENALTY in the amount of ONE THOUSAND, FOUR HUNDRED THIRTY DOLLARS (\$1,430.00) per NOV, not to exceed SEVEN THOUSAND, ONE HUNDRED FIFTY DOLLARS (\$7,150.00), payable on or before the thirty-first (31<sup>st</sup>) day after default.

**10. On or before the thirty-first day after receipt of this ORDER and ASSESSMENT, the Respondent shall pay DAMAGES to the Division in the amount of EIGHT HUNDRED SIX DOLLARS AND TWENTY-SIX CENTS (\$806.26).**

The Director of the Division 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 cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the Division 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.

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 and Assessment 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 §§ 69-3-115, 69-3-109, 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 matter 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.

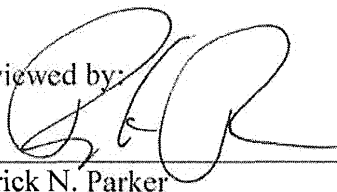
At the conclusion of any initial hearing the ALJ has the authority to affirm, modify, or deny the Order and Assessment. This includes the authority to modify (decrease or increase) the penalty within the statutory limits of Tenn. Code Ann. § 69-3-115 (up to \$10,000 per day per violation). Furthermore, 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, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 2nd Floor, 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, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 10<sup>th</sup> Floor, Nashville, Tennessee 37243. Technical questions and other correspondence 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 Avenue, 11<sup>th</sup> Floor, Nashville, Tennessee 37243. Attorneys should contact the undersigned counsel of record. **The case number, WPC18-0112, 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 22<sup>nd</sup> day of January, 2019.

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

Reviewed by:

  
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Patrick N. Parker  
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