

**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>JEFFERY P. GAMBRELL d/b/a</b>	)	
<b>GAMBRELL HICKORY MILL, LLC</b>	)	
	)	
	)	
<b>RESPONDENT.</b>	)	<b>CASE NO. WPC19-0057</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 (“Division”) by the Commissioner of the Tennessee Department of Environment and Conservation (“Department”).

**II.**

Mr. Jeffery P. Gambrell (“Respondent”) is doing business as Gambrell Hickory Mill, LLC and operates a special products saw mill, located at 180 Feathers Ln. Adamsville, TN 38310 (“Site”) without coverage under the Tennessee Multi-Sector General Permit associated with Industrial Activity (“TMSP”). Service of process can be made on the Respondent at 180 Feathers Ln. Adamsville, TN 38310.

## 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 (“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 authority to Jennifer Dodd.

### IV.

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

### V.

Gattis Creek constitutes “waters” of the state and a “stream.” Tenn. Code Ann. §69-3-103. All streams have been classified by the Tennessee Board of Water Quality, Oil and Gas for suitable uses. See Tenn. Comp. R. & Regs., Chapters 0400-40-04. Tenn. Code Ann. §69-3-105(a)(1). Gattis Creek is classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.

## **VI.**

A person must obtain coverage under a permit from the Department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state, Tenn. Code Ann. §69-3-108(b). Specifically, TMSP coverage is required for the discharge of stormwater runoff associated with industrial activity. Coverage under the TMSP may be obtained by submitting a complete Notice of Intent (NOI), a Stormwater Pollution Prevention Plan (SWPPP), and the appropriate fee.

## **FACTS**

### **VII.**

On November 3, 2015, Division personnel conducted an initial inspection at the Site as a result of a complaint. While on-site, Division personnel determined that the Respondent violated the Act by operating a special products sawmill industrial operation without TMSP coverage. On November 16, 2015, the Division issued a Notice of Violation (NOV) to the Respondent requiring him to apply for TMSP coverage and submit required TMSP annual testing on or before January 22, 2016.

### **VIII.**

On February 26, 2019, Division personnel inspected a complaint alleging pollutants were being discharged into Gattis Creek from the Site. The Respondent was present during the inspection. Division personnel observed black discharge originating from a sawdust and ash pile on the west side of the Site. Division personnel required the Respondent to submit for Division review, a Corrective Action Plan (CAP) to eliminate the unpermitted discharge. Division personnel informed the Respondent that coverage under the TMSP – Sector A was required at the Site, and provided instructions for obtaining coverage.

**IX.**

During a post-inspection file review, Division personnel determined that the Respondent did not have TMSP coverage at the Site, as had been required in the Division's letter from November 16, 2015.

**X.**

On March 1, 2019, the Division issued an NOV to the Respondent for failing to obtain TMSP permit coverage for stormwater discharge of an industrial operation. The NOV required the Respondent to: (1) implement measures to contain the stormwater runoff or eliminate the pollutants in the stormwater coming from the sawdust and ash pile; and (2) apply for TMSP coverage. A compliance review meeting (CRM) was scheduled for the Respondent on April 1, 2019, at the Jackson Environmental Field Office (JEFO).

**XI.**

On March 8, 2019, the Division received a certified mail receipt, signed by the Respondent, documenting the delivery of the NOV to the Respondent.

**XII.**

On April 1, 2019, the Respondent failed to attend the scheduled CRM. The Respondent failed to notify the Division of his absence in advance.

**XIII.**

On April 16, 2019, Division personnel visited the Site for inspection. The Respondent was not present. During the inspection, Division personnel noted the ash and sawdust pile that was previously on site had been removed. However, Division personnel photographed and documented runoff flowing down-gradient from the Site in a wet weather conveyance and

entering Gattis Creek. No best management practices were implemented to eliminate or mitigate runoff from the Site.

#### **XIV.**

To date, the Respondent has not contacted the Division regarding the November 2015 and March 2019 NOVs, nor has the Respondent submitted an NOI with a SWPPP, nor does the Respondent have TMSP coverage.

#### **XV.**

During the course of this investigation, the Division incurred \$621.64 in damages. Additionally, the Division determined the economic benefit the Respondent gained by failing to obtain TMSP coverage and conduct the required TMSP sampling to be \$2,260.00

### **VIOLATIONS**

#### **XVI.**

By failing to obtain TMSP coverage for discharges of stormwater associated with an industrial activity, by discharging into waters of the state without a permit, by causing a condition of pollution, and by violating water quality standards, the Respondent has violated the Act:

Tenn. Code Ann. § 69-3-108(a):

Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (I), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

Tenn. Code Ann. § 69-3-108(b)(1)(4):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is 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:

(1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;

(4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state in any manner not already lawfully authorized;

Tenn. Code Ann. § 69-3-114(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

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 to fail to 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**

#### **XVII.**

Pursuant to the authority vested by sections 69-3-109, 69-3-115, and 69-3-116 of the Act,

I, Jennifer Dodd, hereby issue the following Order and Assessment to the Respondent:

1. The Respondent shall, on or before the 31<sup>st</sup> day after receipt of this Order, submit an NOI, permit application fee, and a complete, site-specific SWPPP to the following addresses:

Manager, Jackson Environmental Field Office, Division of Water Resources  
Conner.Franklin@tn.gov  
1625 Hollywood Dr., Jackson, Tennessee 38305

AND a copy to:

Manager of the Enforcement and Compliance Unit, 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, WPC19-0057, should be written on all correspondence concerning this matter.

2. No later than 60 days from receipt of this Order, the Respondent must conduct all chemical monitoring required by the TMSP and submit the results to the Division at the addresses listed in item 1. If a qualifying rain event, *see* TMSP Sector “A” 5.1.2 (providing guidance on a qualifying rain event), does not occur within the prescribed 60-day requirement, a written request for extension must be submitted to and received by the Division in advance of the compliance date. The written request must include sufficient detail to justify such an extension. Failure to submit a request for extension in advance of the compliance date shall result in a contingent penalty assessment. Additional guidance for a qualifying rain event may also be found at:

[https://www.tn.gov/content/dam/tn/environment/water/documents/permit\\_water\\_tmosp\\_sector-a.pdf](https://www.tn.gov/content/dam/tn/environment/water/documents/permit_water_tmosp_sector-a.pdf).

3. If any additional items or amendments to the NOI or SWPPP are required upon Division review, the Respondent must submit them within 15 days of written notification.
4. The Respondent shall, within 30 days of written approval of the NOI and SWPPP, submit photographic documentation to the addresses listed in item 1 demonstrating that the Site is in compliance with the SWPPP.
5. The Respondent must comply with all provisions of the Act for a period of two years from the receipt of this Order.

6. The Respondent shall pay a civil penalty of \$10,940.00 to the Division, to be paid as follows:

- a. The Respondent shall pay \$2,735.00, on or before the 31<sup>st</sup> day after receipt of this Order and Assessment.
- b. If the Respondent fails to comply with item 1, the Respondent shall pay \$2,000.00 within 30 days of receipt of notice of default from the Division.
- c. If the Respondent fails to comply with item 2, the Respondent shall pay \$1,000.00 within 30 days of receipt of notice of default from the Division.
- d. If the Respondent fails to comply with item 3, the Respondent shall pay \$1,000.00 within 30 days of receipt of notice of default from the Division.
- e. If the Respondent fails to comply with item 4, the Respondent shall pay \$1,205.00 within 30 days of receipt of notice of default from the Division.
- f. If the Respondent fails to comply with item 5, as evidenced by the receipt of an NOV, the Respondent shall pay \$1,000.00 per NOV, not to exceed a total of \$3,000.00, payable within 30 days of receipt of the NOV.

7. The Respondent shall pay damages to the Division in the amount of \$621.64 on or before the 31<sup>st</sup> day after receipt of this Order.

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 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. This Order shall be considered closed no later than two years from the date of receipt of this Order and Assessment, provided the Respondent has complied with all the requirements of the Order, has paid all assessed penalties and damages, and is in substantial compliance with the Act.

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.

#### **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 actions 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 Avenue, 2<sup>nd</sup> 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, WPC19-0057, 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 21<sup>st</sup> day of August, 2019.

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

Reviewed by:

  
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