

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

IN THE MATTER OF:)	DIVISION OF WATER RESOURCES
)	
)	
HPT TA PROPERTIES TRUST,)	
)	
)	
RESPONDENT.)	CASE NUMBER WPC19-0130

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”). The Commissioner is responsible for administering the Water Quality Control Act, Tenn. Code Ann. §§ 69-3-101 to -148 (“Act”).

II.

HPT TA Properties Trust (“Respondent”) is a foreign for-profit corporation created in the state of Maryland and is properly registered to conduct business in the State of Tennessee. The Respondent operates a travel center and service station located at 608 Lovell Road in Knox County, Tennessee (“Site”). Service of process may be made on the Respondent through its Registered Agent, Corporation Service Company, at 2908 Poston Avenue, Nashville, Tennessee 37203-1312.

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 authorities to Jennifer Dodd.

IV.

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

V.

Turkey Creek constitutes “waters” of the state and a “stream.” Tenn. Code Ann. § 69-3-103. All streams have been classified by the Board for suitable uses. Tenn. Comp. R. & Regs. Chapter 0400-40-04. Turkey Creek is classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife. Tenn. Comp. R. & Regs. Chapter 0400-40-03-.06.

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 and 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 12, 2018, the Division issued National Pollutant Discharge Elimination System (NPDES) permit TN0056073 (“Permit”) to the Respondent, which became effective on August 1, 2018, and expires July 31, 2023. The Permit authorizes the discharge of fuel island washdown water from Outfall 001, and stormwater runoff from Outfall SW1, to Turkey Creek at mile 4.9, in accordance with all effluent limitations, monitoring requirements, and narrative conditions, as set forth in the Permit.

VIII.

The Respondent has appeared on the EPA Quarterly Non-Compliance Report (QNCR) for multiple quarters during the monitoring periods beginning January 1, 2019, and ending June 30,

2020 for effluent limitation exceedances, failing to conduct monitoring, and failing to comply and/or timely comply with the narrative conditions in the permit.

IX.

During the monitoring periods beginning January 1, 2019, and ending June 30, 2020, the Respondent self-reported the effluent limitation exceedances in the table below. In addition, the Respondent failed to conduct monitoring and failed to submit and/or timely submit notice of completion of good management practices, as required by the Permit.

Parameter	Reported Effluent Exceedance 01/01/2019 - 06/30/2020
pH	1
Solids, suspended	2
Oil & Grease	2
Nitrogen, ammonia total [as N]	14
Failed to conduct monitoring	7
Failed to submit required reporting (Schedule violation)	1
Total	27

VIOLATIONS

X.

By exceeding effluent limitations, and violating the terms of its NPDES Permit, the Respondent has violated the Act:

Tenn. Code Ann. § 69-3-108(b)(3) and (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;

and

(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 or of any permits or orders issued pursuant 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 the authority vested by sections 69-3-109, -115, and -116 of the Act, I, Jennifer Dodd, hereby issue the following Order and Assessment (“Order”) to the Respondent. The case number, WPC19-0130, should be written on all correspondence regarding this matter. All documentation relating to corrective action items in this Order shall be received by the Division by the date(s) specified herein. Such documents should be sent electronically to DWRWater.Compliance@tn.gov **OR** in duplicate to both addresses below:

Michael Atchley, Manager
Knoxville Environmental Field Office
Division of Water Resources
3711 Middlebrook Pike
Knoxville, Tennessee 37921

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 \$50,270.00 to be paid to the Division as outlined in Items 2-6 below. All payments 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 \$10,054.00 to the Division on or before the 31st day after receipt of this Order.**
3. The Respondent shall submit a corrective action plan / engineering report (CAP/ER) no later than 90 days after receipt of this Order. The CAP/ER shall specify what steps will be taken to eliminate the violations described herein, including, but not limited to the ammonia nitrogen violations, and shall include a schedule with specific dates to complete each step with a final completion not to exceed 24 months. If the Division requests modifications to the CAP/ER, the Respondent shall submit the revision no later than 30 days after receipt of comments. If the Respondent fails to comply with Item 3, the Respondent shall pay \$335.00 to the Division for each day the CAP/ER is late, not to exceed a total of \$10,050.00.
4. The Respondent shall complete each step of the CAP/ER no later than the date in the Division-approved schedule. The Respondent shall submit progress reports on completion of each step to include a summary and photographs no later than 30 days after scheduled completion date. If the Respondent fails to comply with Item 4, the Respondent shall pay \$335.00 to the Division for each day a progress report is late, not to exceed a total of \$10,050.00.
5. The Respondent shall submit a final report no later than 30 days after completion of the CAP/ER. The final report should include an evaluation of the CAP/ER toward achieving compliance with the permit, including photographs. If the Respondent fails to comply with Item 5, the Respondent shall pay \$335.00 to the Division for each day the final report is late, not to exceed a total of \$10,050.00.

6. The Respondent shall maintain substantial compliance with the permit for a period of two years after completion of the CAP/ER. If the Respondent fails to comply with Item 6, as evidenced by its reporting exceedances of effluent violations, or failure to submit and/or timely submit its discharge monitoring reports, as set forth in the Permit, the Respondent shall pay \$1,006.60 to the Division for each violation, not to exceed a total of \$10,066.00.

This Order and Assessment shall be considered closed no later than two years after completion of the CAP/ER, provided the Respondent has complied with all of the above requirements, all penalties owed have been paid, and the facility is in substantial compliance with the Permit.

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 preventative 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.

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.

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 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, 2nd Floor, Nashville, Tennessee 37243. An appeal may also be filed by sending the petition to the following email address: TDEC.Appeals@tn.gov. Attorneys should contact the undersigned counsel of record. The case number, WPC19-0130, should be written on all correspondence regarding this matter.

Issued by the Director of the Tennessee Department of Environment and Conservation on this 12th day of November, 2020.


Jennifer Dodd (Nov 12, 2020 09:42 CST)

Jennifer Dodd
Director of Water Resources
Tennessee Department of Environment and Conservation

Reviewed by:


Katherine Barnes (BPR No. 032456)
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