



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER RESOURCES
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 11th Floor
Nashville, Tennessee 37243

September 9, 2020

Mr. Freeman Lee Crowder III d/b/a
Byrdstown Investments Inc.
P.O. Box 27
Livingston, TN 38570

**CERTIFIED MAIL
RESTRICTED DELIVERY
RETURN RECEIPT REQUESTED
7010 1870 0003 4359 4949**

RE: **DIRECTOR'S ORDER ASSESSMENT WPC20-0082
BYRDSTOWN INVESTMENTS INC. PROPERTY
915 NORTH CHURCH STREET
LIVINGSTON, TENNESSEE**

Dear Mr. Crowder,

Enclosed is a Director's Order and Assessment (Order) issued by the Tennessee Department of Environment and Conservation, Division of Water Resources, for violations of the Water Quality Control Act including soil disturbance of one or more acres without coverage under the General Permit for Discharges of Stormwater Associated with Construction Activities (CGP) and failure to install erosion prevention and sediment control measures (EPSCs).

These violations have resulted in a **civil penalty assessment of \$5,200.00, due on or before the 31st day after receipt of this Order**. In addition, while investigating the violations listed in this order, the Division incurred **damages in the amount of \$581.76, also due on or before the 31st day after receipt of this Order**. Additional penalties will be assessed for continued non-compliance at the site.

If you have any questions concerning this correspondence, you may contact Ms. Christy Morgan at (615) 532-0685 or Christy.Morgan@tn.gov or Ms. Jessica Murphy at (615) 532-0676 or Jessica.Murphy@tn.gov.

Sincerely,

Jessica Murphy, Manager
Compliance and Enforcement Unit, Division of Water Resources
Tennessee Department of Environment and Conservation

CDM:EJM

cc CKEFO Brad Ulmer, Brad.Ulmer@tn.gov
OGC Stephanie Durman, Stephanie.Durman@tn.gov

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

IN THE MATTER OF:)	DIVISION OF WATER RESOURCES
)	
FREEMAN LEE CROWDER III)	
D/B/A)	
BYRDSTOWN INVESTMENTS INC.,)	CASE NUMBER WPC20-0082
)	
RESPONDENT.)	

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.

Mr. Freeman Lee Crowder III (the “Respondent”) is doing business as Byrdstown Investments Inc., and is conducting land disturbance activities at 915 North Church Street, Livingston, TN (the “Site”), which is owned by Byrdstown Investments Inc., a fictional corporation. Service of process may be made on the Respondent at P.O. Box 27, Livingston, TN 38570. Mr. Freeman Lee Crowder III d/b/a Byrdstown Investments Inc. is conducting land disturbance activities at the Site.

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(27).

V.

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). Coverage under the General Permit for Discharges of Stormwater Associated with Construction Activities (CGP) is required for discharges of stormwater from construction activities that result in soil

disturbances of one or more acres, and may be obtained by submitting a Notice of Intent (NOI), a site-specific Stormwater Pollution Prevention Plan (SWPPP), and the appropriate fee.

VI.

Discharges from the Site reach “waters” of the state. Tenn. Code Ann. § 69-3-103. Specifically, the Site discharges to Dillon Pond which discharges to subsurface waters via underground injection.

FACTS

VII.

On June 26, 2020, Division personnel conducted an inspection at the Site, and observed that more than one acre of soil had been disturbed for construction and that erosion protection and sediment control (EPSC) measures had not been properly installed or maintained. The Respondent had not obtained CGP coverage from the Division for this land disturbance. Approximately 1.5 acres had been disturbed, and a building pad was created on it. On July 7, 2020, Division personnel conducted a follow-up inspection at the Site, and discussed the need to implement appropriate EPSCs and how to apply for CGP coverage with the Respondent.

VIII.

On July 15, 2020, the Division issued a Notice of Violation (NOV) to the Respondent. The NOV notified the Respondent that he had unlawfully disturbed more than one acre of soil at the Site and gave the Respondent until August 20, 2020, to submit an NOI, SWPPP, and application fee and obtain coverage under the CGP. The NOV included a reference to web-based material to assist the Respondent with completing an application for CGP coverage.

IX.

On August 12, 2020, the Respondent submitted an NOI, SWPPP, and application fee. Upon review, Division personnel determined that the SWPPP was insufficient because it only discussed the placement of seed and straw matting around an approximately 10-foot perimeter around the building pad, and did not include the EPSCs required by the CGP. The Respondent had not followed instructions given to him by the Division either during the July 7, 2020 on-site discussion or the NOV.

X.

On August 25, 2020, the Division conducted a follow-up inspection at the Site and observed that an approximate 10-foot perimeter of seed and straw matting was placed on two sides of the building pad. No other EPSC measures were present.

XI.

The Division incurred damages in the amount of \$581.76 while investigating these violations.

VIOLATIONS

XII.

By discharging pollutants to waters of the state without a permit, the Respondents have violated Tenn. Code Ann. §§ 69-3-108(b) and 114(b), which state in 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 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.

ORDER AND ASSESSMENT

XIII.

Pursuant to the Act, Tenn. Code Ann. § 69-3-109, -115, and -116, the Respondent is issued the following Order and Assessment. All documentation relating to compliance schedule items in this Order and Assessment should be submitted electronically to DWRWater.Compliance@tn.gov or in duplicate to the addresses listed below:

Manager
Cookeville Environmental Field Office
Division of Water Resources
1121 South Willow Avenue
Cookeville, TN 38506

AND

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

- 1) The Respondent shall pay an upfront civil penalty of \$5,200.00 to the Division on or before the 31st day after receipt of this Order.
- 2) The Respondent is hereby assessed \$581.76 in damages, payable to the Division on or before the 31st day of receipt of this Order.
- 3) The Respondent shall pay contingent penalties of \$5,200.00 as outlined in items 4 through 5 below. All payments shall be submitted to the following address:

Treasurer, State of Tennessee
Division of Fiscal Services, Consolidated Fees
TN Department of Environment and Conservation
William R. Snodgrass Tennessee Tower,
312 Rosa L. Parks Ave., 10th Floor
Nashville, Tennessee 37243

- 4) The Respondent shall, on or before the 31st day after receipt of this Order, submit a revised NOI, and SWPPP, to the Division that includes all EPSCs required by the CGP. If the Division requires any revisions to the SWPPP, the Respondent shall submit any such revisions within seven days of receiving notice from the Division. If the Respondent fails to comply with this item, the Respondent shall pay \$2,600.00 to the Division within 30 days of noncompliance.
- 5) The Respondent shall as soon as possible, but not later than 31 days after receipt of this Order, install EPSC measures in accordance with the SWPPP for the Site and the Tennessee Erosion and Sediment Control Handbook. If the Respondent fails to comply with this item, the Respondent shall pay \$2,600.00 to the Division within 30 days of noncompliance.

This Order and Assessment shall be considered closed 180 days from receipt, provided all requirements of the Order and Assessment have been met, any outstanding penalties have been paid, and Respondents are 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 cause or causes of the delay, and all preventive 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, an 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. §§ 68-221-712 and 68-221-713. 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. § 68-221-714; 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. No one may represent another person in a

contested case proceeding unless they are an attorney licensed to practice law in Tennessee. Governments and artificial persons (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, **WPC20-0082**, should be written on all correspondence regarding this matter.

Issued by the Director of the Tennessee Department of Environment and Conservation on this
8 day of September, 2020.


Jennifer Dodd (Sep 8, 2020 15:39 CDT)

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

Reviewed by:


Stephanie A. Durman (Sep 3, 2020 12:11 CDT)

Stephanie A. Durman
BPR # 027783
Senior Associate Counsel
Department of Environment & Conservation
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Nashville, Tennessee 37243
(615) 532-3020
Stephanie.durman@tn.gov