

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

IN THE MATTER OF:)	
)	DIVISION OF WATER
)	RESOURCES
)	
CITY OF DYERSBURG,)	
)	
)	
RESPONDENT.)	CASE NO. WPC17-0074
)	

CONSENT AGREEMENT AND ASSESSMENT

This CONSENT AGREEMENT AND ASSESSMENT is entered into between the Tennessee Department of Environment and Conservation (the “Department”) and the City of Dyersburg (the “Respondent”) for the purpose of resolving the issues set forth herein. The parties stipulate and agree as follows:

PARTIES

I.

Tisha Calabrese Benton is the duly appointed Director of the Division of Water Resources by the Commissioner of the Tennessee Department of Environment and Conservation (the “Division” and the “Department,” respectively).

II.

The City of Dyersburg (hereinafter, the “Respondent” or the “City”) is a municipality in Dyer County, Tennessee. The Respondent owns and operates the Dyersburg Sewage Treatment Plant (the “STP”) and the associated collection system (the “system”) in Dyersburg, Tennessee. Service of process may be made on the Respondent through the Honorable John Holden, Mayor of the City of Dyersburg, 425 West Court Street, Dyersburg, Tennessee, 38025-1358.

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, or is about to occur, the Commissioner may order corrective action to 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. Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to Tenn. Code Ann. § 69-3-105, and are effective as Tenn. Comp. R. & Regs. Chapters 0400-40-03 and 0400-40-04. Pursuant to Tenn. Code Ann. § 69-3-107(13), the Commissioner may delegate to the Director of the Division any of the powers, duties and responsibility of the Commissioner under the Act. Robert J. Martineau, Jr., Commissioner of the Department of Environment and Conservation, has delegated such authority to Tisha Calabrese Benton.

IV.

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

V.

The North Fork Forked Deer River at mile 2.8, described herein, constitutes “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 Board of Water Quality, Oil and Gas (the “Board”) for suitable uses as set forth in Tenn. Comp. R & Regs. Chapter 0400-

40-04. Accordingly, all waters of the state have been classified for the following uses: 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. In addition, the North Fork Forked Deer River is designated by the Division as impaired due to Total Phosphorus, loss of biological integrity due to siltation, Mercury, and physical substrate habitat alterations.

VI.

Pursuant to Tenn. Code Ann. § 69-3-108, 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 a permit from the Department. Tenn. Comp. R. & Regs. 0400-40-05-.08 states, in part, that a set of effluent limitations will be required in each permit that will indicate adequate operation or performance of treatment units used, and that appropriately limit the those harmful parameters present in the wastewater. Tenn. Comp. R. & Regs. 0400-40-05-.07 and the permit each state, in part, that 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. Furthermore, it is unlawful for any person to increase the volume or strength of any wastes in excess of the permissive discharges specified under any existing permit pursuant to Tenn. Code Ann. § 69-3-108(b)(3). 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 January 1, 2013, the Division issued National Pollutant Discharge Elimination System (“NPDES”) permit number TN0023477 (hereinafter, the “permit”) to the Respondent. The permit became effective February 1, 2013, and will expire on December 31, 2017. The permit authorizes the Respondent to discharge treated municipal wastewater from outfall 001 from the STP to mile 2.8 of the North Fork Forked Deer River in accordance with effluent limitations, monitoring requirements, and other conditions.

VIII.

On May 17, 2016, the Division sent a letter to the Respondent summarizing the findings of a CEI conducted on May 6, 2016. During the CEI it was noted that the collection system had experienced thirteen overflows during the monitoring period of April 1, 2015 through March 31, 2016. It was recommended by the Division that the City dedicate staff resources toward ongoing collection system repairs and maintenance.

IX.

On June 22, 2017, a show-cause meeting was held with the Respondent at the Nashville Central Office (“NCO”), during which the terms of the Consent Agreement were discussed with the Respondent.

X.

Part 2.3.3 of the permit defines an overflow as “any release of sewage from any portion of the collection, transmission, or treatment system other than through permitted outfalls,” and provides that “overflows are prohibited.” During the monitoring period of May 2015 through May 2017, the Respondent reported the following overflows:

Location of Overflow	Number of Reported Overflows 5/1/15 - 5/31/17	Total Overflow by Location (in gallons)
1009 Bruce Street	2	720,000
Bell Ave @ Phillips Street	1	450,000
708 East Court	1	75,000
1005 Tucker Street	1	35,250
2300 Amanda Avenue	1	26,250
2250 East Court Street	1	25,875
Phillips & Butterworth	1	22,500
2118 Tatum Road	1	12,600
805 Southview Cv.	1	7,000
305 Sellers Drive	1	4,500
Landfill Lift Station	1	3,000
Wis-Pak Lift Station	1	3,000
430 Reynolds Street	1	2,020
1105 Parks Thurmond	1	1,500
819 Lake Road	1	600
218 Pate	2	510
Bell & Phillips	1	335
600 Country Club Lane	1	325
304 Sellers Drive	3	300
622 Cedar Street	1	300
415 Elm	1	170
1591 Laura Lane	1	150
Field Frank Maynard/Parker Street	1	125
1091 Copper Drive	1	50
East McCaughey and Elm Ave	1	50
TOTALS	29	1,391,410

VIOLATIONS

XI.

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:

§ 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 water, or a location from which it is likely that the discharged substances will move into waters;

§ 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which 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 the provisions of 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.

AGREEMENT AND ASSESSMENT

XII.

WHEREFORE, pursuant to the authority vested by Tenn. Code Ann. §§ 69-3-107, 109, and 115-116, I, Tisha Calabrese Benton order, and the Respondent agrees, as follows:

1. Within 270 days of execution of this Agreement, the Respondent shall submit for approval by the Division a detailed and updated Collection System Corrective Action Plan/Engineering Report (“CS-CAP/ER”), including a project schedule with milestone dates for beginning and completing all activities, and shall identify any locations in the collection system to be repaired. The CS-CAP/ER shall include at a minimum, but not be limited to: a comprehensive plan that accounts for projected population growth; a reliability study of each pump station; identification of any known overflow locations, and shall include the use of geographic information systems (“GIS”) coordinates to fully map the system and prioritize areas within the system that are in need of repair based upon a holistic understanding of the system, repair and/or replacement of equipment, and the

operational procedures and staffing necessary to comply with the NPDES permit. The Respondent shall submit the CS-CAP/ER in duplicate to the manager of the Division of Water Resources' Jackson Environmental Field Office at 1625 Hollywood Drive, Jackson, Tennessee, 38305, and to the manager of the Compliance and Enforcement Unit located at the William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 11th Floor, Nashville, Tennessee, 37243-1534. Alternatively, the documents may be submitted electronically to DWRwater.compliance@tn.gov. **All correspondence regarding this Agreement shall include the Agreement number (WPC17-0074), item number, and county.**

2. The Respondent shall initiate the actions outlined in the approved CS-CAP/ER, including those items required by the Division as comments in the approval of the CS-CAP/ER, within 90 days of receipt of approval by the Division. The CS-CAP/ER, including the project schedule, implementation dates, and completion dates contained therein, shall become enforceable as part of this agreement once approved by the Division. At the time of the initiation of the CS-CAP/ER, the Respondent shall notify the Division in writing of the initiation. This written notification shall be submitted in duplicate to the Division at the addresses listed in item 1, above.
3. All scheduled activities in the approved CS-CAP/ER shall be completed by March 31, 2023, or five years after Division approval of the CS-CAP/ER, whichever is later. A notice of completion shall be submitted in duplicate to the Division at the addresses listed in in item 1, above and shall detail the date of completion of every item required by the approved CS-CAP/ER. The notice of completion will be considered late if not received

by the Division on or before April 30, 2023, or 30 days after completion of all scheduled activities, whichever is later.

4. Within 90 days of execution of this Consent Agreement, the Respondent shall submit the written elements of its Fats, Oils, and Grease (“FOG”) management program. Guidance for the FOG management program shall be obtained utilizing the TN Oil and Grease Control Guidance Document on the Water Quality Reports and Publications page at the tn.gov website. The written FOG management program shall be submitted in duplicate to the Division to the addresses listed in item 1, above.
5. No later than 60 days after receipt of Division approval of the FOG management program, the Respondent shall fully implement the FOG program, or within 30 days of the written requirement for modification of the FOG program by the Division, the Respondent shall resubmit the FOG program with the required changes. The Respondent shall submit written notification to the Division when the FOG program has been fully implemented. The notification shall be submitted to the Division at the addresses listed in item 1, above.
6. Within 60 days of execution of this Consent Agreement, the Respondent shall submit for review and comment by the Division, a Sewer Overflow Response Plan (“SORP”). The SORP shall include procedures for minimizing health impacts. The SORP shall also include appropriate measures for notification of affected property owners and stream users, and shall include notification of the news media when necessary to protect public health. The SORP shall include state specific procedures for notifying known downstream users in the event that untreated wastewater is discharged to waters of the state through overflows. These procedures shall include, but shall not be limited to,

provisions for posting warning signs at places where the general public could gain access to the polluted waters. Further, those posted signs shall remain in place until in-stream monitoring reveals that the body of water has returned to normal background conditions. The SORP shall be submitted to the Division at the addresses listed in item 1, above. The Respondent shall resubmit the SORP with any required changes within 60 days of written notification from the Division that revisions are required.

7. No later than 60 days after receipt of Division approval of the SORP, the Respondent shall fully implement the SORP. The Respondent shall submit written notification to the Division when the SORP has been fully implemented. The notification shall be submitted to the Division at the addresses listed in item 1, above.
8. Within 90 days of execution of this Consent Agreement, the Respondent shall prepare a Sanitary Sewer Overflow Evaluation Report (“SSOER”) evaluating each overflow that occurred during the timeframe of May 1, 2015, through May 31, 2017. The SSOER shall include a listing of all overflow locations, including addresses, unit identification numbers, basin, sub-basin, mini-system, date(s) of each overflow, specific cause(s) of each overflow, and estimated volumes for each event. Overflow events which have been placed on the short-term controls list and which have demonstrated occurrences of two or more overflow events from May 2015 through May 2017 must be identified on the long-term planning and remediation list, and may also be placed on the short-term controls list. This would be appropriate if short-term actions are underway or planned to occur within the next 24 months from the date of submittal of the SSOER. Items placed only on the short-term list, and not on the long-term list, must be accompanied by a description of the measure(s) and associated time frames or schedules for conducting activities necessary to

prevent further overflows at each particular location. The SSOER shall be submitted in duplicate to the Division at the addresses listed in item 1, above.

9. The Respondent shall submit five (5) annual reports updating the Division on progress made towards permit compliance, more specifically those items which are detailed in the approved CS-CAP/ER. The annual reports will be due no later than March 31st for the previous calendar year. The first report is due by March 31, 2018, for the 2017 calendar year. The reports are to be submitted in duplicate to the addresses listed in item 1, above.
10. The Respondent shall initiate reporting on an electronic MOR (“eMOR”) form within 30 days of the date that the Division provides the eMOR form to the Respondent, and continue using the eMOR form each month thereafter.
11. The Respondent shall complete all items in the Consent Agreement no later than March 31, 2023, or five years after Division approval of the CS-CAP/ER, whichever is later, and shall submit a final report to the Division evaluating the effectiveness of all of the corrective actions taken in bringing the plant into compliance with the permit. The report shall include an evaluation of additional corrective actions needed to bring the plant into compliance with the permit, if applicable. Additionally, the final report shall contain data showing the amount of I&I taken out of the system, including a comparison of the overflow frequency and volume prior to the corrective actions and after completion of the corrective actions. This report shall be due no later than June 30, 2023, or 30 days after completion of all scheduled activities, whichever is later, and shall be submitted in duplicate to the addresses listed in item 1, above, at which time this Order shall be considered closed so long as the Respondent is in compliance with all Order requirements, all penalties owed have been paid to the Division, and the facility is in

substantial compliance with permit requirements.

12. The Respondent shall pay a CIVIL PENALTY OF FIFTY-SIX THOUSAND, SIX HUNDRED DOLLARS (\$56,600.00), to be paid as follows:

a. **On or before the 31st day from the execution of this Consent Agreement and Assessment, the Respondent shall pay ELEVEN THOUSAND, THREE HUNDRED AND TWENTY DOLLARS (\$11,320.00).** If the Respondent wishes to propose a supplemental environmental project (“SEP”) in lieu of 75% of the up-front penalty, then the value must be at least SIXTEEN THOUSAND, NINE HUNDRED AND EIGHTY DOLLARS (\$16,980.00). Any proposed SEP(s) must be submitted, in writing, to the Department’s Director of Water Resources (hereinafter, the “Director”) within 31 days of the execution of the Order. The written proposal must include an estimate of the anticipated cost of the project(s), a timetable for completion, and detailed plans, including but not limited to maps, schematics, listing of plant species used for vegetative cover, and any on-going monitoring plans needed. Before implementing the SEP(s), the SEP(s) must be approved, in writing, by the Director. Once approved, the SEP project(s), including the timetable for completion, shall become an enforceable portion of this order. In the event that one or more of the proposed SEP(s) are not approved, the Director may extend the time in which to submit an alternative SEP(s) proposal. **While the final SEP value may exceed 75% of the penalty, it shall not decrease the amount owed beyond the agreed upon 75%. Therefore, the remaining TWO THOUSAND, EIGHT HUNDRED AND THIRTY DOLLARS (\$2,830.00) shall be due on or before the 31st day from the effective date of this Order and Assessment. If no extension of**

time is requested or granted, the Respondent shall pay the above assessed ELEVEN THOUSAND, THREE HUNDRED AND TWENTY DOLLARS (\$11,320.00) CIVIL PENALTY within 31 days of receipt of the Director's letter denying the SEP(s). To receive credit against the CIVIL PENALTY for any approved SEP(s), the Respondent must provide documentation to the Director of the actual costs expended on each SEP(s). The value credited against the civil penalty for any approved SEP(s) will be determined by the Director. In the event that the Respondent fails to propose SEP(s) within 30 days of this Order becoming final, the ELEVEN THOUSAND, THREE HUNDRED AND TWENTY DOLLARS (\$11,320.00) CIVIL PENALTY will become due and payable immediately.

- b. If, and only if, the Respondent fails to comply with item 1, the Respondent shall pay a CIVIL PENALTY in the amount of THREE THOUSAND, SEVEN HUNDRED AND SEVENTY-FOUR DOLLARS (\$3,774.00), payable within 30 days of default.
- c. If, and only if, the Respondent fails to comply with item 2, the Respondent shall pay a CIVIL PENALTY in the amount of THREE THOUSAND, SEVEN HUNDRED AND SEVENTY-FOUR DOLLARS (\$3,774.00), payable within 30 days of default.
- d. If, and only if, the Respondent fails to comply with item 3, the Respondent shall pay a CIVIL PENALTY in the amount of THREE THOUSAND, SEVEN HUNDRED AND SEVENTY-FOUR DOLLARS (\$3,774.00), payable within 30 days of default.
- e. If, and only if, the Respondent fails to comply with item 4, the Respondent shall pay a CIVIL PENALTY in the amount of THREE THOUSAND, SEVEN HUNDRED AND SEVENTY-FOUR DOLLARS (\$3,774.00), payable within 30 days of default.
- f. If, and only if, the Respondent fails to comply with item 5, the Respondent shall pay a

- CIVIL PENALTY in the amount of THREE THOUSAND, SEVEN HUNDRED AND SEVENTY-THREE DOLLARS (\$3,773.00) payable within 30 days of default.
- g. If, and only if, the Respondent fails to comply with item 6, the Respondent shall pay a CIVIL PENALTY in the amount of THREE THOUSAND, SEVEN HUNDRED AND SEVENTY-THREE DOLLARS (\$3,773.00) payable within 30 days of default.
- h. If, and only if, the Respondent fails to comply with item 7, the Respondent shall pay a CIVIL PENALTY in the amount of THREE THOUSAND, SEVEN HUNDRED AND SEVENTY-THREE DOLLARS (\$3,773.00) payable within 30 days of default.
- i. If, and only if, the Respondent fails to comply with item 8, the Respondent shall pay a CIVIL PENALTY in the amount of THREE THOUSAND, SEVEN HUNDRED AND SEVENTY-THREE DOLLARS (\$3,773.00) payable within 30 days of default.
- j. If, and only if, the Respondent fails to comply with item 9, the Respondent shall pay a CIVIL PENALTY in the amount of THREE THOUSAND, SEVEN HUNDRED AND SEVENTY-THREE DOLLARS (\$3,773.00) payable within 30 days of default.
- k. If, and only if, the Respondent fails to comply with item 10, the Respondent shall pay a CIVIL PENALTY in the amount of THREE THOUSAND, SEVEN HUNDRED AND SEVENTY-THREE DOLLARS (\$3,773.00) payable within 30 days of default.
- l. If, and only if, the Respondent fails to submit the final evaluation report required by item 11, the Respondent shall pay a CIVIL PENALTY in the amount of THREE THOUSAND, SEVEN HUNDRED AND SEVENTY-THREE DOLLARS (\$3,773.00), payable within 30 days of default.
- m. If, and only if, the Respondent fails to comply with item 11 by completing all items in the Consent Agreement by December 31, 2022, the Respondent shall pay a CIVIL

penalty in the amount of THREE THOUSAND, SEVEN HUNDRED AND SEVENTY-THREE DOLLARS (\$3,773.00), payable within 30 days of default.

The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The Director of the Division of Water Resources may, for good cause shown, extend the compliance dates contained within this Consent Agreement 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 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 on the 31st day thereafter.

Further, the Respondent is advised that the foregoing Consent Agreement 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 Consent Order and Assessment will be one factor considered in any decision whether to take further enforcement action against the Respondent in the future. Failure to comply with any of the requirements of this order could lead to further enforcement actions which may include civil penalties, assessment of damages and /or recovery of costs.

Payments of the civil penalty 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 Parks Avenue, 10th Floor, Nashville, Tennessee 37243.

XIII.

The Respondent understands that it has the right to appeal this Consent Agreement and Assessment pursuant to Tenn. Code Ann. §§ 69-3-109, 69-3-115, and 69-3-116. By signing below, the Respondent knowingly and voluntarily waives any right it may have to appeal this Consent Agreement and Assessment.

XIV.

The Respondent does not admit or deny the factual allegations or the alleged violations of law contained in this Consent Order and Assessment. The Respondent reserves its rights to contest the factual allegations and alleged violations contained in this Consent Order and Assessment in any proceeding other than a proceeding brought by the Department to enforce the terms of this Consent Order and Assessment.

Issued by the Director of the Division of Water Resources of the Tennessee Department of Environment and Conservation on this 9 day of October, 2017.

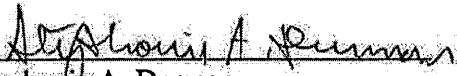



Tisha Calabrese Benton
Director, Division of Water Resources
Department of Environment and Conservation



Hon. John Holden
Mayor, City of Dyersburg

Reviewed by:


Stephanie A. Durman
BPR Number 027783
Office of General Counsel
William R. Snodgrass TN Tower, 2nd Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243-1548
Telephone: 615-532-3020


John Lannom
BPR Number 006115
City Attorney, City of Dyersburg
Law Offices of Lannom Coronado PLLC
P. O. Box 1729
Dyersburg, Tennessee 38025
Telephone: 731-285-0374