



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 37243-1102

January 11, 2022

CT Corporation System, Registered Agent
Pilot Travel Centers LLC
300 Montvue Road
Knoxville, TN 37919

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT # 9414 7266 9904 2120 5211 70

Subject: **DIRECTOR'S ORDER NO. WPC21-0152**
Pilot Travel Centers LLC
TN0064548
Knox County

To Whom It May Concern:

Enclosed is a Director's Order and Assessment issued by the Tennessee Department of Environment and Conservation, Division of Water Resources for violations of the Water Quality Control Act.

The above violations have resulted in a full penalty assessment of \$50,270.00, with an **upfront civil penalty payment of \$5,027.00** due and payable on or before the 31st day after receipt of this Order and Assessment. The remaining assessment is due only if the order requirements are not timely met.

Please read the Order carefully and pay special attention to the Notice of Rights section. Please note that the required due dates in the Order are based on the date the Respondent receives the Order, and not the date that it was signed by the Director. If you have any further questions, please feel free to contact Mr. Will Ward at (615) 532-0637 or by e-mail at will.ward@tn.gov, or you may contact me at (615) 532-0676 or by e-mail at jessica.murphy@tn.gov.

Sincerely,

Jessica Murphy
Manager, Compliance and Enforcement Unit

EJM:WVW

WPC21-0152 Pilot Travel Centers LLC d/b/a Flying J

January 11, 2022

Page 2 of 2

cc: DWR – Case File WPC22-0152
DWR – Knoxville EFO – Michael Atchley
TDEC – OGC – Sara Page
Pilot – Joey Cupp, joey.cupp@pilottravelcenters.com
Pilot – Keith Karlton, keith.carlton@pilottravelcenters.com
Pilot – Liz Peterson, liz.peterson@pilottravelcenters.com

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

IN THE MATTER OF:)	
)	
)	
PILOT TRAVEL CENTERS LLC)	DIVISION OF WATER RESOURCES
D/B/A FLYING J,)	
)	
)	
RESPONDENT.)	CASE NUMBER WPC21-0152

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 (hereinafter the “Division” and the “Department” respectively).

II.

Pilot Travel Centers LLC doing business as Flying J (the “Respondent”) owns and operates a gasoline service station and convenience store at 7200 Strawberry Plains Pike, Knoxville, TN 37914 (the “site”). Service of process may be made on the Respondent through their Registered Agent, CT Corporation System, at 300 Montvue Road, Knoxville, TN 37919-5546.

JURISDICTION

III.

Whenever the Commissioner has reason to believe that a violation of the Act has occurred, or is about to occur, the Commissioner may order corrective action to 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. The Commissioner has authority to assess damages incurred by the state resulting from the violation. Tenn. Code Ann. § 69-3-116. Rules governing general water quality criteria and use classifications for surface waters have been promulgated by the Board of Water Quality, Oil and Gas. 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). David W. Salyers, P.E., Commissioner of the Department of Environment and Conservation, has delegated such authority to Jennifer Dodd, Director of the Tennessee Division of Water Resources.

IV.

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

V.

Grable Branch and Hickory Creek (the “streams”) constitute “waters” of the state and are “streams.” Tenn. Code Ann. § 69-3-103. All streams have been classified by the Tennessee Board of Water Quality, Oil and Gas for suitable uses. Tenn. Comp. R. & Regs. Chapter 0400-40-04. The streams are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering, and wildlife. It is unlawful for any person to discharge sewage to waters of the state except in accordance with the terms of a valid permit. Tenn. Code Ann. § 69-3-108(b)(6).

FACTS

VI.

On August 1, 2018, the Division reissued National Pollutant Discharge Elimination System (NPDES) permit number TN0064548 (“Permit”) to the Respondent. The Permit became effective on September 1, 2018, and expires on July 31, 2023. The Permit authorizes the discharge of

stormwater runoff and wash water through Internal Monitoring Point 02A at Grable Branch at mile 0.6 and Outfall 002 from Grable Branch to Hickory Creek at mile 1.7., in accordance with effluent limitations, monitoring requirements, and other conditions set forth in the Permit.

VII.

On August 21, 2020, the Division issued a Notice of Violation (NOV) to the Respondent for effluent violations of the Permit. The NOV requested an explanation for the cause of the violations and the corrective action taken to avoid future violations.

VIII.

On September 15, 2020, the Division received a response from the Respondent explaining potential causes of the violations and corrective action taken to resolve the violations.

IX.

On January 5, 2021, the Division issued a NOV to the Respondent for effluent violations of the Permit. The NOV requested an explanation for the cause of the violations and the corrective action taken to avoid future violations.

X.

On February 25, 2021, the Division received a response from the Respondent explaining potential causes of the violations and corrective action taken to resolve the violations.

XI.

On November 5, 2021, the Division issued a NOV to the Respondent for effluent violations of the Permit. The NOV requested an explanation for the cause of the violations and the corrective action taken to avoid future violations.

XII.

On December 3, 2021, the Division received a response from the Respondent explaining potential causes of the violations and corrective action taken to resolve the violations.

XIII.

The Respondent has appeared on the EPA Quarterly Non-Compliance Report (“QNCR”) for multiple quarters during the monitoring period of June 1, 2020, through November 30, 2021, for effluent limitation exceedances.

XIV.

The Respondent reported the following NPDES permit effluent violations on its discharge monitoring reports during the monitoring periods from June 2020 to November 2021:

Parameter	Reported Effluent Limit Violations 6/2020 – 11/2021
<i>E. Coli</i>	7
Solids, Total Suspended	17

VIOLATIONS

XV.

By failing to comply with the terms and conditions of the Permit, the Respondent has violated sections 69-3-108(b) and -114(b) of the Act, 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:

(3) 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;

§ 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 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.

ORDER AND ASSESSMENT

XVI.

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

Manager
Knoxville Environmental Field Office
Division of Water Resources
3711 Middlebrook Pike
Knoxville, TN 37921

AND

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 Respondents shall pay an upfront civil penalty of \$5,027.00 to the Division on or before the thirty-first day after receipt of this Order.**
- 2) The Respondents shall pay contingent penalties of \$45,243.00 as outlined in Items 3 through 6 below. All payments should include reference to the case number, **WPC21-0152**, and 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

- 3) The Respondent shall submit to the Division a corrective action plan / engineering report (CAP/ER) not later than 90 days after receipt of this Order. The CAP/ER shall address how the effluent limitation exceedances listed in paragraph XIV of this Order will be eliminated. The CAP/ER shall include a schedule with a specific date of completion for each corrective action necessary to bring the facility into compliance. Any changes or modifications to the CAP/ER requested by the Division shall be submitted within 30 days following receipt of Division notice. If the Respondent fails to comply with this Item, the Respondent shall pay \$377.00 to the Division for each day this CAP/ER is late, not to exceed a total of \$11,310.00.
- 4) Upon Division approval of the CAP/ER, each milestone date of the project schedule shall become an enforceable component of this Order to be implemented by the Respondent. Upon completion of each scheduled action, the Respondent shall write a concise progress report detailing the corrective actions taken to that point. The Respondent shall submit each report to the Division not later than the seventh business day following the respective milestone date. If the Respondent fails to comply with this Item, the Respondent shall pay \$377.00 for each day that a progress report is late, not to exceed a total of \$11,310.00.
- 5) Within 180 days following completion of all measures in the CAP/ER, the Respondent shall submit a Final Report to the Division for approval. The Final Report shall include descriptions of each scheduled action from initiation to completion, a detailed study evaluating the success of the CAP/ER in achieving substantial compliance with the Permit, and an analysis of the study. If the Respondent fails to comply with this Item, the Respondent shall pay \$419.00 for each day that the Final Report is late, not to exceed a total of \$11,313.00.
- 6) For one year following completion of the CAP/ER, the Respondent shall maintain substantial compliance with the Permit. If the Respondent fails to comply with this Item, as evidenced by

effluent violations on the DMRs, the Respondent shall pay \$377.00 per effluent violation, not to exceed a total of \$11,310.00.

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.

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.

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 and Assessment 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(s) 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. 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, 10th 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, 11th Floor, Nashville, Tennessee 37243. Attorneys should contact the undersigned counsel of record. **The case number, WPC21-0152, should be written on all correspondence regarding this matter.**

Issued by the Director of the Division of Water Resources on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 7 day of January, 2022.


Jennifer Dodd (Jan 7, 2022 22:35 CST)

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

Reviewed by:


Sara Page (Jan 5, 2022 15:53 CST)

Sara Page
BPR #: 034381
Tennessee Department of Environment & Conservation
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 532-0121
sara.page@tn.gov