



STATE OF TENNESSEE  
**DEPARTMENT OF ENVIRONMENT AND CONSERVATION**  
**DIVISION OF MINERAL AND GEOLOGIC RESOURCES**  
Knoxville Environmental Field Office  
3711 Middlebrook Pike  
Knoxville, Tennessee 37921

February 27, 2024

Walnut Creek Timber, LLC  
c/o Toby Hammock  
280 Sawmill Lane  
Livingston, TN 38570

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
9489 0090 0027 6129 2576 97

Subject: **DIRECTOR'S ORDER MGR24-0001**  
WALNUT CREEK TIMBER, LLC  
575 Conaster Lane, Livingston  
Overton County, Tennessee

Dear Mr. Hammock,

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

The violations have resulted in a **full penalty assessment of \$56,160.00. An upfront civil penalty payment of \$11,232.00 and damages of \$583.96 are due on or before the thirty-first day after receipt of this Order.** The upfront fee is an allocated portion of the total penalty. The damages are expenses incurred by the Division while investigating the violations contained herein. The remaining penalties are contingent upon timely completion of the requirements of this Order. Additional penalties may be assessed if the requirements of this Order are not timely met, or if the Site does not stay in compliance with the Act.

Please read the Order carefully and pay special attention to the Notice of Rights section. The required due dates in the Order are based on the date the Respondent receives the Order, and not the date that the Order was signed by the Director. The Division appreciates your cooperation in this matter. Should you have any questions, please contact me at (615) 306-3045 (email [Angela.J.Hall@tn.gov](mailto:Angela.J.Hall@tn.gov)).

Sincerely,

Angela J. Hall, Coordinator  
Compliance and Enforcement Unit

cc: MGR – Case File MGR24-0001  
Toby Hammock, Walnut Creek Timber - [walnutcreektimber@gmail](mailto:walnutcreektimber@gmail.com)  
Daniel Lawrence, DMGR Manager - [Daniel.Lawrence@tn.gov](mailto:Daniel.Lawrence@tn.gov)  
Bryan Epperson, DMGR Director – [Bryan.Epperson@tn.gov](mailto:Bryan.Epperson@tn.gov)  
James Marr, TDEC Associate Counsel – [James.Marr@tn.gov](mailto:James.Marr@tn.gov)

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

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<b>IN THE MATTER OF:</b>	)	<b>DIVISION OF MINERAL AND</b>
	)	<b>GEOLOGIC RESOURCES</b>
<b>WALNUT CREEK TIMBER, LLC,</b>	)	
	)	
<b>RESPONDENT.</b>	)	<b>CASE NO. MGR24-0001</b>

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**DIRECTOR’S ORDER AND ASSESSMENT**

NOW COMES Bryan Epperson, Director of the Division of Mineral and Geologic Resources, and states:

**PARTIES**

**I.**

Bryan Epperson is the duly appointed Director (Director) of the Division of Mineral and Geologic Resources (Division) by the Commissioner of the 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.**

Walnut Creek Timber, LLC, (Respondent) is a corporation actively registered with the Tennessee Secretary of State. The Respondent operates a dimension stone rock harvesting quarry at the Walnut Creek Timber quarry located at 575 Conaster Lane, Livingston, TN 38570 (Site). Process may be served on the Respondent through its registered agent, Toby Hammock, at 280 Sawmill Lane, Livingston, TN 38570.

## **JURISDICTION**

### **III.**

Whenever the Commissioner has reason to believe that a violation of the Act has occurred, is occurring, or is about to occur, the Commissioner may issue a complaint to the violator and order that the violator take corrective action. 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 (Board) 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 regarding mineral and geologic resources to Bryan Epperson.

### **IV.**

The Respondent is a “person” under the Act. Tenn. Code Ann. § 69-3-103(27).

### **V.**

The unnamed tributary to Means Creek (Stream) constitutes “waters” of the state and a “stream.” Tenn. Code Ann. § 69-3-103 (41) and (45). The Board has not classified Means Creek and its tributaries for uses or impairments. Tenn. Comp. R. & Regs. Chapters 0400-40-03 and 0400-40-04.

### **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. Specifically, persons who seek to engage in rock harvesting activities must first obtain coverage under a general permit. Tenn. Code Ann. § 69-3-145; Tenn. Comp. R. & Regs. 0400-40-18-.02. Coverage under the General Tennessee Multi-Sector Permit for Stormwater Discharges Associated with Industrial Activity (TMSP) is required for stormwater runoff associated with industrial activity—including rock harvesting—and may be obtained by submitting a Notice of Intent (NOI), a site-specific Stormwater Pollution Prevention Plan (SWPPP), and all other requirements in accordance with the rock harvesting rules found at 0400-40-18-.02.

## **VII.**

Pursuant to Tenn. Code Ann. § 69-3-108 and Tenn. Comp. R. & Regs. 0400-40-07-.04, a person is required to obtain coverage under an Aquatic Resource Alteration Permit (ARAP) prior to altering the physical, chemical, radiological, biological, or bacteriological properties of streams, including wetlands, or engaging in any activity that is not governed by a general permit or a § 401 Water Quality Certification. Tenn. Comp. R. & Regs. 0400-40-07-.04(6)(c) provides that no activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

## **FACTS**

## **VIII.**

On November 9, 2020, the Department issued a Notice of Violation (NOV) to the Respondent for conducting mining activities at the Site without a permit, and for failing to obtain an ARAP. The NOV required Respondent to stabilize the Site by November 26, 2020 and to apply

for a TMSP for rock harvesting activity by December 31, 2020, and provided that failure to do so would result in enforcement action.

**IX.**

On April 1, 2021, the Department received a TMSP NOI from the Respondent. The NOI requested the discharge of treated industrial stormwater from all point sources associated with rock harvesting and related facilities to unnamed tributaries to Means Creek through undefined outfalls. The Department deemed the NOI to be incomplete on April 5, 2021.

**X.**

On January 19, 2023, Division personnel visited the Site to conduct an inspection and observed rock harvesting activity occurring without TMSP coverage.

**XI.**

On January 23, 2023, the Division issued a Notice of Violation (NOV) to the Respondent notifying them of the violations observed during the January 19, 2023 inspection. The Respondent was directed to either cease operations and stabilize the Site or obtain TMSP coverage.

**XII.**

On September 18, 2023, the Division returned to the Site to conduct an inspection. Division personnel observed four segments of the Stream had been damaged due to vehicles crossing, in addition to continued rock harvesting activity without TMSP coverage.

**XIII.**

On September 26, 2023, the Division issued a second NOV to the Respondent citing the violations observed during the September 18, 2023 inspection. The NOV requested the Respondent to submit a complete TMSP NOI by October 26, 2023, and to install Best Management

Practices (BMPs) by October 10, 2023. Further, the NOV required the Respondent to attend a Compliance Review Meeting (CRM) on October 26, 2023.

**XIV.**

On October 26, 2023, the Respondent failed to attend the CRM, to submit a complete TMSP NOI, or to provide proof of BMP installation, as requested by the September 26, 2023 NOV.

**XV.**

The Division incurred damages in the amount of \$583.96 in the course of investigating the violations contained in this Order.

**VIOLATIONS**

**XVI.**

By (1) conducting rock harvesting activities without coverage under the TMSP and (2) altering a stream without an ARAP, the Respondent has violated Tenn. Code Ann. §§ 69-3-108(b), -114(b), and -145(a) 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:

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

.....

- (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.

§ 69-3-145(a):

No operator shall engage in rock harvesting without having first obtained from the commissioner a permit or notice of coverage under a general permit as required in § 69-3-108 and the regulations promulgated pursuant thereto.

### **ORDER AND ASSESSMENT**

#### **XVII.**

Pursuant to the authority vested by sections 69-3-109, -115, and -116 of the Act, I, Bryan Epperson, hereby issue the following Order and Assessment (Order) to the Respondent. All documentation relating to compliance schedule items in this Order should be submitted electronically to TDEC.Mining@tn.gov or in duplicate to the addresses listed below:

Bryan Epperson, Director  
Division of Mineral and Geologic  
Resources  
Knoxville Environmental Field Office  
3711 Middlebrook Pike  
Knoxville, TN 37921

AND

Angela J. Hall, Compliance and  
Enforcement Coordinator  
Division of Mineral and Geologic  
Resources  
Knoxville Environmental Field Office  
3711 Middlebrook Pike  
Knoxville, TN 37921

Payment of all penalties and damages 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

For all payments submitted, please include reference to case number **MGR24-0001**.

- 1) **The Respondent is assessed \$583.96 in damages, payable to the Division on or before the thirty-first day of receipt of this Order.**
- 2) **The Respondent is assessed a total civil penalty of \$56,160.00. The Respondent shall pay \$11,232.00 to the Division as an upfront allocation of this penalty on or before the thirty-first day after receipt of this Order.**
- 3) On or before the thirty-first day following receipt of this Order, the Respondent shall submit a complete NOI for TMSP coverage to conduct rock harvesting operations under sector J, including a complete Stormwater Pollution Prevention Plan (SWPPP), and a complete reclamation/stabilization plan to the Division. If the Division requires revisions to the NOI, SWPPP or reclamation/stabilization plan, the Respondent shall submit the revisions no later than 15 days after receipt of comments. If the Respondent fails to comply with this item, the Respondent shall pay \$348.28 for each day that the complete NOI is late, or for each day that a required revision is late, not to exceed \$10,796.65.
- 4) Within 31 days following the Division's approval of a SWPPP, the Respondent shall submit to the Division an Implementation Report, including photographs with date stamps, documenting the full implementation of the Division-approved SWPPP. If the Respondent fails to comply with this item, the Respondent shall pay \$348.28 for each day that the final report is late or is not submitted, or for each failure to document completion of required corrective actions, not to exceed a total of \$10,796.65.
- 5) On or before the thirty-first day following receipt of this Order, the Respondent shall submit a Corrective Action Plan (CAP) detailing all steps necessary to mitigate damage caused to the Stream from vehicle crossings. The CAP must be submitted to the Division for approval and

shall include a schedule with specific dates to complete each phase of work described. The final completion date shall not exceed six months following Division approval. If the Division requires modifications to the CAP, the Respondent shall submit the revisions no later than 15 days after receipt of comments. Upon Division approval, all dates of the schedule shall become enforceable components of this Order. If the Respondent fails to comply with this item, the Respondent shall pay \$348.28 for each day that the proposed CAP is late, or for each day that a schedule item is late, not to exceed \$10,796.65.

- 6) Within 31 days following completion of the CAP, the Respondent shall submit to the Division a Final Report, including photographs with date stamps, documenting completion of the Division-approved CAP. If the Respondent fails to comply with this item, the Respondent shall pay \$348.28 for each day that the final report is late or is not submitted, or for each failure to document completion of required corrective actions, not to exceed a total of \$10,796.65.
- 7) For two years following Division approval of the CAP Final Report, the Respondent shall maintain substantial compliance with the Act. If the Respondent fails to comply with this item, as evidenced by its receipt of an NOV, the Respondent shall pay \$348.28 for each NOV received, not to exceed a total of \$1,741.40.

This Order shall be considered closed three years from receipt, provided all requirements of the Order have been met, any outstanding penalties have been paid, and the Respondent is in substantial compliance with the Act.

The Director may, for good cause shown, extend the compliance dates contained within this Order. 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 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, 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. Tenn. Code Ann. §§ 69-3-109, -115, and -116. To do so, the Respondent must ensure that the Commissioner receives, within 30 days of the date the Respondent received this Order, a written petition setting forth the reasons for requesting a hearing, or this Order will become final.

If the Respondent appeals, an Administrative Judge will conduct an initial hearing of this matter as a contested case hearing. Tenn. Code Ann. § 68-3-110; 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. 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 Administrative Judge has the authority to affirm, modify, or deny the Order. Furthermore, the Administrative Judge 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 Administrative Judge 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, 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](mailto:TDEC.Appeals@tn.gov). Attorneys should contact the undersigned counsel of record. The case number, **MGR24-0001**, should be written on all correspondence regarding this matter.

Issued by the Director of the Division of Mineral and Geologic Resources on the date of their signature below.

  
Bryan Epperson (Feb 27, 2024 13:35 EST)

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Bryan Epperson  
Director, Division of Mineral and Geologic Resources  
Department of Environment and Conservation

Reviewed by:

*James Marr*

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James Marr  
BPR # 034936  
Associate Counsel  
Department of Environment and Conservation  
3711 Middlebrook Pike  
Knoxville, Tennessee 37921  
865-393-6018  
james.marr@tn.gov