

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

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<b>IN THE MATTER OF:</b>	)	<b>DIVISION OF MINERAL &amp; GEOLOGIC RESOURCES</b>
<b>KOPPER GLO MINING, LLC</b>	)	
<b>RESPONDENT</b>	)	<b>CASE NO. MGR22-0118</b>

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**DIRECTOR’S ORDER AND ASSESSMENT**

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

**PARTIES**

**I.**

Bryan Epperson is the duly-appointed Director of the Division of Mineral & 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 (“Act”), Tenn. Code Ann. §§ 69-3-101 to -148.

**II.**

Kopper Glo Mining, LLC, (“Respondent”) operates a coal refuse disposal area in Claiborne County at 1197 Rock Creek Ridge Road, Clairfield, Tennessee 37715 (“Site”). Process may be served on the Respondent through its registered agent, Capitol Corporate Services, Inc., at 992 Davidson Dr., Ste B, Nashville, Tennessee 37205-1051.

**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 to Bryan Epperson.

#### **IV.**

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

#### **V.**

Tackett Creek (“Creek”) and the unnamed tributary to Tackett Creek constitute “waters of the state” and are “streams.” Tenn. Code Ann. § 69-3-103 (41) and (45). The Board classifies the unnamed tributary to Tackett Creek for the following uses: fish and aquatic life, livestock watering and wildlife, recreation, and irrigation and is listed on the Division of Water Resource’s 303d list of impaired waters. The listed cause of impairment is unknown, and the source is coal mining discharges. 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. Each permit imposes a set of numeric and narrative effluent limitations to ensure appropriate treatment and protect water quality. 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 that 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 December 22, 2020, the Division issued National Pollutant Discharge Elimination System (NPDES) permit TN0062952 (the “Permit”) to the Respondent, which became effective January 1, 2021, and expires December 31, 2025. The Permit authorizes the discharge of treated mine wastewater and stormwater to an unnamed tributary to Tackett Creek via Outfall 001.

**VIII.**

The Respondent has appeared on the EPA Quarterly Non-Compliance Report (“QNCR”) for effluent limitation exceedances in multiple quarters during the monitoring period of December 1, 2022, to January 1, 2023.

**IX.**

During the monitoring period of January 1, 2022, to January 31, 2023, the Respondent self-reported the following effluent limitation exceedances for selenium on its Discharge Monitoring Reports (DMRs):

<b>Effluent Violations</b>					
<b>Monitoring Period End Date</b>	<b>Limit Set</b>	<b>Parameter</b>	<b>Reported Value/Units</b>	<b>% Exceed.</b>	<b>Limit Value/Units</b>
01/31/2023	001-G	01147 - Selenium, total [as Se]	6.5 ug/l	110%	<=3.1 ug/l
12/31/2022	001-G	01147 - Selenium, total [as Se]	7 ug/l	126%	<=3.1 ug/l
08/31/2022	001-G	01147 - Selenium, total [as Se]	4 ug/l	29%	<=3.1 ug/l

07/31/2022	001-G	01147 - Selenium, total [as Se]	6 ug/l	94%	<=3.1 ug/l
06/30/2022	001-G	01147 - Selenium, total [as Se]	4 ug/l	29%	<=3.1 ug/l
04/30/2022	001-G	01147 - Selenium, total [as Se]	3.5 ug/l	13%	<=3.1 ug/l
01/31/2022	001-G	01147 - Selenium, total [as Se]	4.5 ug/l	45%	<=3.1 ug/l

Additionally, during the monitoring period of February 1, 2023, to March 31, 2023, Respondent failed to submit the following DMRs:

### DMR Non-Receipt Violations

Monitoring Period End Date	DMR Due Date	Limit Set	DMR Val. Rec Date
03/31/2023	04/15/2023	001-G	
02/28/2023	04/15/2023	001-G	

## VIOLATIONS

### X.

By exceeding effluent limitations, failing to submit required reports, and violating the terms of the Permit, the Respondent has violated the Act:

Tenn. Code Ann. § 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;

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 to 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, 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 & Geologic Resources  
3711 Middlebrook Pike  
Knoxville, TN 37921

AND Angela J. Hall, Coordinator  
Compliance and Enforcement Unit  
Division of Mineral & Geologic Resources  
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 Section  
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 **MGR22-0118**.

1. The Respondent is assessed a total civil penalty of \$42,432.00. **The Respondent shall pay \$8,486.40 to the Division as an upfront allocation of this penalty on or before the thirty-first day after receipt of this Order.** The remaining \$33,945.60 is contingent upon compliance with the corrective action items below.
2. The Respondent shall submit a Corrective Action Plan/Engineering Report (CAP/ER) to the Division no later than 30 days after receipt of this Order. The CAP/ER shall describe how the effluent limitation exceedances and the DMR non-receipt violations listed in paragraph IX of this Order will be eliminated. The CAP/ER must be submitted to the

Division for its 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, the Respondent shall implement the CAP, and 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 \$282.88 to the Division for each day this CAP/ER is late, not to exceed a total of \$8,486.40.

3. Upon Division approval of the CAP/ER, each milestone date of the project schedule shall become an enforceable component of this Order. For each calendar quarter ending March 31, June 30, September 30, and December 31, 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 no later than 15 business days of the month following the end of the previous quarter. If the Respondent fails to comply with this requirement, the Respondent shall pay \$2,121.60 for each quarterly report that is late, not to exceed a total of \$8,486.40.
4. Within 30 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 a summary of the study. If the Respondent fails to comply with this Item, the Respondent shall pay \$282.88 for each day that the Final Report is late, not to exceed a total of \$8,486.40

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 the issuance of NOVs, the Respondent shall pay \$2,828.80 per NOV, not to exceed a total of \$8,486.40. This Order shall be considered closed no later than two years after Division receipt of the Final Report 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. 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 Director 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 could lead to further enforcement actions, which may include additional civil penalties, assessment of damages, and recovery 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 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 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. § 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 a 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 Ave., 2<sup>nd</sup> Floor, Nashville, Tennessee 37243. Technical questions involving compliance issues should be sent to Angela J. Hall, State of Tennessee, Division of Mineral and Geologic Resources, Knoxville Environmental Field Office, 3711 Middlebrook Pike, Knoxville, Tennessee 37921. Attorneys should contact the undersigned counsel of record. The case number **MGR22-0118**, should be written on all correspondence concerning this matter.

Issued by the Director of the Division of Mineral and Geologic Resources, Department of Environment and Conservation on this 13th day of July, 2023.

  
Bryan Epperson (Jul 11, 2023 10:31 EDT)

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

Reviewed by:



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