

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

IN THE MATTER OF:)	DIVISION OF WATER RESOURCES
)	
)	
THE TOWN OF OAKLAND,)	
)	
)	
RESPONDENT.)	CASE NO. WPC20-0015

CONSENT ORDER AND ASSESSMENT

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

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”).

II.

The Town of Oakland (“Respondent”) operates a publicly-owned wastewater treatment facility in Fayette County, Tennessee (“Site”). Service of process may be made on the Respondent through the Honorable Chris Goodman, Mayor, at 170 Doss Circle, P.O. Box 56, Oakland, TN 38060.

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 further 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 (“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 Jennifer Dodd.

IV.

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

V.

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 requires a set of effluent limitations to indicate adequate operation of performance of treatment units used and to appropriately limit those harmful parameters present in the wastewater. 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 which are installed or used by the permittee to

achieve compliance with the conditions of the permit. Tenn. Comp. R. & Regs. 0400-40-05-.07. It is unlawful for any person to violate the conditions of a discharge permit used by the Department. Tenn. Code Ann. §§ 69-3-108(b) and -114(b).

VI.

The Loosahatchie River constitutes “waters” of the state and a “stream.” Tenn. Code Ann. § 69-3-103(44). All streams have been classified by the Board for suitable uses. Tenn. Comp. R. & Regs. 0400-40-04. The Loosahatchie River is classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.

FACTS

VII.

On April 1, 2018, the Division issued National Pollutant Discharge Elimination System (NPDES) Permit TN0077836 (“Permit”) to the Respondent, which became effective on May 1, 2018, and expires on April 30, 2022, authorizing the discharge of municipal wastewater from Outfall 001 to the Loosahatchie River at mile 40.5 in accordance with all effluent limitations and monitoring requirements set forth in the Permit.

VIII.

On June 1, 2018, the Division amended Part I of the Permit to correct for typographic errors regarding the Daily Maximum and Monthly Average flow parameters. In so doing, the Division also amended the effective date of the Permit, extending the expiration date to December 31, 2022.

IX.

The Respondent has appeared on the QNCR for multiple quarters in the 24-month period of February 1, 2018, to January 31, 2020, for effluent limitation exceedances. During this period, the Respondent self-reported the following violations on its Discharge Monitoring Reports:

Parameter	Effluent Exceedances from February 1, 2018 - January 31, 2020
E. coli	7
IC25 Biomonitoring	1
Nitrogen, ammonia total [as N]	14
Oxygen, dissolved	1
Total	23

VIOLATIONS

X.

By exceeding effluent limitations and violating the terms of the Permit, the Respondent has violated the Act:

Tenn. Code Ann. § 69-3-108(b)(3) and (6):

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;

and

- (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 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 Commissioner under this part.

CONSENT ORDER AND ASSESSMENT

XI.

Pursuant to sections § 69-3-109, -115, and -116, of the Act, I, Jennifer Dodd, hereby issue the following Consent Order and Assessment (“Order”) to the Respondent. All documentation relating to corrective action items in this Order should be submitted electronically to DWRWater.Compliance@tn.gov **OR** in duplicate to both addresses listed below:

Joellyn Brazile, Manager
Memphis Environmental Field Office
Division of Water Resources
8383 Wolf Lake Drive
Bartlett, Tennessee 38133

AND

Jessica Murphy, 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 Respondent is assessed a total civil penalty of \$37,000.00 to be paid to the Division as outlined in Items 2-7 below. All payments should be sent 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

2. The Respondent shall pay \$7,400.00 to the Division on or before the 31st day of execution of this Order.
3. The Respondent shall submit a corrective action plan / engineering report (CAP/ER) not later than 180 days after execution of this Order. The CAP/ER shall specify what steps will be taken to eliminate the violations described in this Order and shall include a schedule with specific dates to complete each step with final completion not to exceed 24 months. If the Division requests modifications to the CAP/ER, the Respondent shall

submit the revision to the Division no later than 30 days after receipt of request. If the Respondent fails to comply with Item 3, the Respondent shall pay \$250.00 to the Division for each day the CAP/ER is late, not to exceed a total of \$7,500.00.

4. The Respondent shall complete each step of the CAP/ER no later than the date in the Division-approved schedule. The Respondent shall submit progress reports to the Division on the completion of each step in the schedule, to include a summary and photographs of work done no later than 30 days after the scheduled completion date. If the Respondent fails to comply with Item 4, the Respondent shall pay \$160.00 to the Division each day a progress report is late, not to exceed a total of \$4,800.00.
5. The Respondent shall submit a Final Report not later than 30 days after completion of the CAP/ER. The Final Report shall include an evaluation of the CAP/ER toward achieving compliance with the Permit, including photographs of corrective actions completed. If the Respondent fails to comply with Item 5, the Respondent shall pay \$200.00 to the Division each day the Final Report is late, not to exceed \$6,000.00.
6. The Respondent shall maintain substantial compliance with the Permit for a period of two years after completion of the CAP/ER. If the Respondent fails to comply with Item 6, as evidenced by its reporting exceedances of effluent limitations set forth in the Permit, the Respondent shall pay \$565.00 to the Division for each violation (effluent limitation exceedance), not to exceed \$11,300.00.

This Order shall be considered closed no later than two years after completion of the CAP/ER, provided the Respondent has complied with all the above requirements, all penalties owed have been paid, and the facility is in substantial compliance with the Permit.

The Division 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 preventative 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.

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 costs.

DEPARTMENTS 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 in 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).

WAIVER OF RIGHT TO APPEAL

The Respondent understands that it has the right to appeal this Order pursuant to sections 69-3-109, -115, and -116 of the Act. By signing below, the Respondent knowingly and voluntarily waives any right it may have to appeal this Order.

AUTHORITY TO SIGN

The undersigned representatives of the Department and the Respondent hereby represent and warrant that they are fully authorized and competent to execute this Consent Order and Agreement on behalf of the entity for which they are signing.

RESPONDENT’S RESERVATION OF RIGHTS

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

Issued by the Director of the Division of Water Resources, Tennessee Department of Environment and Conservation on this 13 day of April , 2020.

Chris Goodman

Honorable Christopher Goodman
Mayor
Town of Oakland

Jennifer Dodd

[Jennifer Dodd \(Apr 15, 2020\)](#)

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

Reviewed by:

Grant LeMaster Ruhl

Grant LeMaster Ruhl
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Assistant General Counsel
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