

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

<b>IN THE MATTER OF:</b>	)	
	)	
	)	
<b>JAMES DEREK BLACK D/B/A ROPE'M AND SOAP'EM CAR WASH</b>	)	<b>DIVISION OF WATER RESOURCES</b>
	)	
	)	
<b>RESPONDENT</b>	)	<b>CASE NUMBER WPC17-0103</b>
	)	
	)	

**CONSENT ORDER AND ASSESSMENT**

This CONSENT ORDER AND ASSESSMENT is entered into between the Tennessee Department of Environment and Conservation (the "Department") and James Derek Black d/b/a Rope'm and Soap'em Car Wash (the "Respondent") for the purpose of resolving the issues set forth herein. The parties hereby stipulate and agree as follows:

**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 (the "Division" and the "Department," respectively).

**II.**

James Derek Black doing business as Rope'm and Soap'em Car Wash (the "Respondent") owns the property and car wash ("site") located at 12475 Minor Hill Highway, Minor Hill, TN 38473 (the "site"). Service of process may be made on the Respondent at the aforementioned address.

## 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, is occurring, 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 the 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 any of the powers, duties, and responsibilities of the Commissioner under the Act.

### IV.

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

### V.

In addition, Tenn. Code Ann. § 69-3-108(g)(1) requires all such permits to include the most stringent effluent limitations required to implement applicable water quality standards and to impose monitoring and reporting requirements. Furthermore, 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)(6) & Tenn. Comp. R. & Regs. 0400-40-05-.07(2)(a) & -.08(2). Tenn. Code Ann. § 69-3-108(g) requires that a person obtain coverage under a permit from the Department prior to land application of wastewater. Pursuant to Tenn. Code Ann. § 69-3-108, Tenn. Comp. R. & Regs.

Chapter 0400-40-05 requires a person to submit a complete application prior to engaging in any activity that requires a Standard Operating Permit ("SOP") that is not governed by a general permit or a §401 Water Quality Certification.

#### **FACTS**

##### **VI.**

On February 8, 2010, the Respondent mailed a SOP application for Rope'm and Soap'em Car Wash to renew SOP-99017 (the "permit"). The application stated that wastewater generated during operations of the three bay car wash would be collected by a wastewater system ("the system") comprised of three 1,500 gallon filtered, septic holding tanks. The grey water would then be land applied to pasture and hay ground through a sprinkler irrigation system.

##### **VII.**

On April 30, 2010, the Division reissued SOP-99017 for a five year period. The permit required the permittee to record the date(s) of sprinkler plot alternation and submit a copy to the Columbia Environmental Field Office upon request.

##### **VIII.**

On March 12, 2015, Division staff conducted a CEI at the site. The Respondent was not present for the CEI. The Division mailed a letter summarizing the findings of the CEI on March 24, 2015. The Division observed the site was operating in compliance with the permit. However, the Division determined a permit renewal application had not been submitted within 180 days of expiration as required by the permit.

##### **IX.**

On April 30, 2015, the permit expired.

**X.**

On February 9, 2016, the Division emailed the Respondent with a reminder of the expiration date and the requirement to submit an application for reissuance of the permit.

**XI.**

On February 10, 2016, Ms. Dana Stafford, Manager of Rope'm and Soap'em Car Wash, called Division staff in response to the February 9, 2016, email. Ms. Stafford requested to be added as the official contact person for this facility, stated the Respondent was not the right contact person, and requested a copy of the application. Division staff emailed a blank SOP application and a previously completed application to Ms. Stafford. The Division did not receive a response from the Respondent or Manager.

**XII.**

On February 1, 2017, Division staff conducted a CEI at the site. The Respondent was not present for the CEI. The Division mailed a letter summarizing the CEI on February 15, 2017. The Division reminded the Respondent of the permit expiration date of April 29, 2015, and notified the permittee of the violation of Part II A.1 of the SOP permit: "Permittee is not authorized to discharge after the expiration date of this permit." The Division also noted that the spray irrigation system was not functioning properly, resulting in ponded water. A possible back-up in the collection system was also noted as a potential reason for the floor drains not draining properly. The Division requested a complete application be submitted within fifteen (15) days. US Postal Service records show that the certified letter was received and signed for by Derek Black on March 8, 2017. The Division did not receive a response from the Respondent or Manager.

**XIII.**

On March 3, 2017, the Division mailed a NOV to the Respondent requesting a completed application for the reissuance of SOP-99017. The Division again reminded the Respondent that discharge is not authorized without a valid permit.

**XIV.**

On May 10, 2017, the Division mailed a second NOV to the Respondent via certified mail requesting a completed application for the reissuance of SOP-99017. US Postal Service records show the Respondent received the NOV on May 17, 2017. To date, the Division has not received the requested information.

**XV.**

On January 25, 2018, the Division visited the site. Only two bays at the car wash were operational. The treatment system still appeared to have operational issues, and ponding was observed around the tank areas.

**XVI.**

During the course of investigating this matter the Division incurred damages in the amount of FOUR HUNDRED, EIGHTY-SEVEN DOLLARS AND EIGHTY CENTS (\$487.80).

**VIOLATIONS****XVII.**

By failing to timely apply for the renewal of SOP Permit No. SOP-99017, and subsequently discharging without a permit after permit expiration, as described herein, the Respondent has violated Tenn. Code Ann. §§ 69-3-108(b), §§ 69-3-108(g), §§ 69-3-114(b), and Tenn. Comp. R. & Regs. 0400-40-05-.05(4) which state in 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;

**§§ 69-3-108(g):**

The commissioner may grant permits authorizing the discharges or activities described in subsection (b), including, but not limited to, land application of wastewater, but in granting such permits shall impose such conditions, including effluent standards and conditions and terms of periodic review, as are necessary to accomplish the purposes of this part, and as are not inconsistent with the regulations promulgated by the board. Under no circumstances shall the commissioner issue a permit for an activity that would cause a condition of pollution either by itself or in combination with others.

**§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.

**Tenn. Comp. R. & Regs 0400-40-05-.05(4)**

All permittees with currently effective permits shall submit a new application 180 days before the existing permit expires, except that the Commissioner may grant permission to submit an application later than the deadline for submission otherwise applicable, but no later than the permit expiration date.

**ORDER AND ASSESSMENT****XVIII.**

WHEREFORE, pursuant to the authority vested by the Tenn. Code Ann. §§ 69-3-109(a), 69-3-115, and 69-3-116, I, Tisha Calabrese Benton, hereby issue the following ORDER and ASSESSMENT to the Respondent:

1. The Respondent shall pay a CIVIL PENALTY of FIVE HUNDRED FIFTEEN DOLLARS (\$515.00) to the Division, hereby ASSESSED to be paid as follows:
  - a. The Respondent shall, on or before the thirty-first (31<sup>st</sup>) day after receipt of this ORDER and ASSESSMENT, pay a CIVIL PENALTY in the amount of FIVE HUNDRED FIFTEEN DOLLARS (\$515.00).
2. The Respondent shall, on or before the 31<sup>st</sup> day after receipt of this ORDER and ASSESSMENT, pay DAMAGES to the Department in the amount of FOUR HUNDRED, EIGHTY-SEVEN DOLLARS AND EIGHTY CENTS (\$487.80).

The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act. 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 Director will be in writing. Should the Respondent fail to meet the requirement by the extended date, any associated civil penalty shall become due thirty (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 Respondents in the future. 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.

**WAIVER OF RIGHT TO APPEAL**

The Respondent understands that it has the right to appeal this Consent Order 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 Order and Assessment.

**RESERVATION OF RIGHTS**

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.

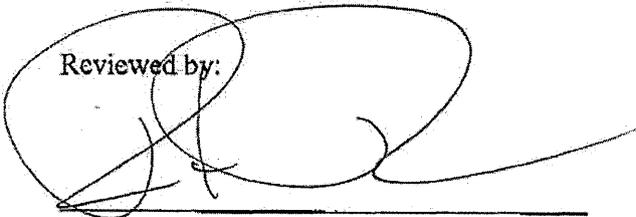
**AUTHORITY TO SIGN**

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 ASSESSMENT on behalf of the entity for which they are signing.

Issued by the Director of the Division of Water Resources, Tennessee Department of Environment and Conservation, on this 16<sup>th</sup> day of January, 2019.

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

  
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James Derek Black  
Rope'm and Soap'em Car Wash

Reviewed by:  


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