

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

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<b>IN THE MATTER OF:</b>	)	<b>DIVISION OF WATER RESOURCES</b>
	)	
	)	
<b>GUY HOMMEL, JR. d/b/a</b>	)	
<b>HOMMEL CONSTRUCTION</b>	)	
<b>COMPANY</b>	)	
	)	
<b>RESPONDENT.</b>	)	<b>CASE NUMBER WPC18-0116</b>

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

**II.**

Guy Hommel, Jr. (the "Respondent") is doing business as Hommel Construction Company. The Respondent owns and operates the Oneil Road Sand & Gravel Borrow Pit in Cocke County, Tennessee (the "site" or "Oneil Road site"). The Respondent is currently not authorized to discharge treated mine wastewater and stormwater to the Pigeon River. Service of process may be made on the Respondent at 252 Highway 25E, Newport, Tennessee 37821.

## 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 (hereinafter the “Act”), has occurred, or is about to occur, the Commissioner may issue a complaint to the violator and the Commissioner may order corrective action be taken pursuant to Tenn. Code Ann. § 69-3-109(a). Further, the Commissioner has 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. 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. The 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 Tenn. Code Ann. § 69-3-103(26) and, as herein described, has violated the Act.

### V.

The Pigeon River, as described herein, constitutes “waters” of the state as defined by Tennessee Code Annotated § 69-3-103(44). Pursuant to Tennessee Code Annotated § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses as outlined in Tenn. Comp. R. & Regs. Chapter 0400-40-04. Accordingly, all waters of the state have been classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife, and may additionally be classified for use as industrial water supply, domestic water supply, and navigation.

## **VI.**

Pursuant to Tenn. Code Ann. § 69-3-108, a person is required to obtain a permit from the Department prior to discharging into waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Furthermore, it is unlawful for any person to increase, in volume or strength, any wastes in excess of the permissive discharges specified under any existing permit. Moreover, a person with currently effective permits shall submit a new application 180 days before the existing permit expires, as outlined in Tenn. Comp. R. & Regs. Chapter 0400-40-05-.05(4).

## **FACTS**

### **VII.**

On December 6, 2013, the Division transmitted National Pollutant Discharge Elimination System (“NPDES”) permit TN0069787 (“the permit”) to Hommel Construction Company for mining activities at the site. This permit authorized the permittee to discharge treated mine wastewater and stormwater associated with operations at the site to the Pigeon River at river mile 9.0. The permit expired on December 8, 2018.

### **VIII.**

On December 22, 2017, the Division issued a Notice of Expiration (“NOE”) to the Respondent advising that the permit was to expire on December 8, 2018. The NOE reminded the Respondent that he must submit a renewal application at least 180 days before the permit was to expire, or by June 11, 2018.

### **IX.**

On February 15, 2018, Division personnel performed NPDES Compliance Evaluation Inspections (CEIs) at the Highway 73 Quarry and at the Oneil Road site, both operated by the

Respondent. While onsite at the Oneil Road site, Division personnel observed that the treatment system shown in the plans for the site had not been installed. The site lacked the approved sediment basin, pump and pipe system, discharge pit, and culvert under Oneil Road to convey the discharge to the receiving stream. The Division did not consider these issues sufficient to qualify as violations because all water at that time was being adequately controlled and no discharge was noted. The Division issued a letter to the Respondent detailing the results of the inspections on February 21, 2018, and scheduled an on-site meeting with the Respondent and Mr. David Beverly, the Respondent's consulting engineer for March 7, 2018.

#### **X.**

On March 7, 2018, Division personnel met onsite as scheduled with the Respondent and Mr. Ronnie Hommel, operator for the site, to discuss the findings of the February 15, 2018 inspection. During the meeting, Division personnel discussed modifying the site plans to represent the current treatment system rather than constructing the treatment systems called for in the approved plans. The representatives for the Respondent agreed to modify plans for the site to include a treatment basin and wash plant and would include the modifications in the permit renewal application.

#### **XI.**

On March 29, 2018, the Division issued a second NOE to the Respondent reminding him that a renewal application must be received by the Division on or before June 11, 2018.

#### **XII.**

On August 2, 2018, the Division issued a Notice of Violation ("NOV") to the Respondent for failing to timely submit the second quarter 2018 Discharge Monitoring Reports ("DMRs"). The DMRs were due by July 15, 2018, but were submitted electronically on July 19, 2018.

### **XIII.**

On August 31, 2018, the Division issued a NOV to the Respondent for failing to submit a permit renewal application within 180 days of the permit expiration. The NOV required the Respondent to submit the application within thirty days of receipt of the letter and advised that failure to comply could lead to further enforcement action.

### **XIV.**

The permit expired on December 8, 2018. As of January 11, 2019, the Division has not received an application for permit renewal.

### **XV.**

The Respondent has received three Director's Orders from the Division for similar violations including failure to obtain permit coverage and discharging without permit coverage at other sites in Cocke County. Director's Order WPC07-0217 was issued to the Respondent on September 11, 2007, Director's Order WPC10-0067 was issued on August 11, 2010, and Agreed Order WPC12-0144 was entered into on June 11, 2014.

### **XVI.**

During the course of the investigation, the Division incurred DAMAGES in the amount of ONE HUNDRED EIGHTY-ONE DOLLARS AND NINETY-NINE CENTS (\$181.99).

## **VIOLATIONS**

### **XVII.**

By failing to submit an application for permit renewal 180 days prior to the permit expiration and operating without a permit, the Respondent has violated Tenn. Code Ann. §§ 69-3-108(a) and 69-3-114(b) which state in relevant part:

Tenn. Code Ann. § 69-3-108(a):

Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (I), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

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 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.

### **ORDER AND ASSESSMENT**

#### **XVIII.**

WHEREFORE, pursuant to the authority vested by Tenn. Code Ann. §§ 69-3-109, 69-3-115 and 69-3-116, I, Jennifer Dodd, hereby issue the following ORDER and ASSESSMENT to the Respondent:

1. The Respondent shall, within 31 days of receipt of this ORDER and ASSESSMENT, submit an application for renewal of permit TN0069787 to the Division. This application shall be submitted to the following addresses:

Manager, Mining Unit, Division of Water Resources  
[Bryan.Epperson@tn.gov](mailto:Bryan.Epperson@tn.gov)  
3711 Middlebrook Pike  
Knoxville, Tennessee 37921

AND

Manager, Enforcement and Compliance Unit, Division of Water Resources  
[Jessica.Murphy@tn.gov](mailto:Jessica.Murphy@tn.gov)  
William R. Snodgrass Tennessee Tower,  
312 Rosa L. Parks Avenue, 11<sup>th</sup> Floor  
Nashville, Tennessee 37243

2. The Respondent shall maintain compliance with all the provisions of the Act and the rules promulgated thereunder at the Oneil Road Sand & Gravel Borrow Pit site for a period of one (1) year from the date of receipt of this Order. At such time, this Order will be considered closed, provided the Respondent is in compliance with the Order.
3. The Respondent shall pay a CIVIL PENALTY of FOUR THOUSAND, EIGHT HUNDRED NINETY-EIGHT DOLLARS (\$4,898.00) to the Division, hereby ASSESSED to be paid as follows:
  - a. **On or before the thirty-first (31<sup>st</sup>) day after receipt of this ORDER and ASSESSMENT, the Respondent shall pay a CIVIL PENALTY in the amount of NINE HUNDRED SEVENTY-NINE DOLLARS AND SIXTY CENTS (\$979.60).**
  - b. If, and only if, the Respondent fails to comply with item 1 above, the Respondent shall pay a CIVIL PENALTY in the amount of ONE THOUSAND, NINE HUNDRED FIFTY-NINE DOLLARS AND FORTY CENTS (\$1,959.40), payable on or before the thirty-first (31<sup>st</sup>) day after default.
  - c. If, and only if, the Respondent fails to comply with item 2 above as evidenced by receipt of a NOV from the Division, the Respondent shall pay a CIVIL PENALTY in the amount of NINE HUNDRED SEVENTY-NINE DOLLARS AND FIFTY CENTS (\$979.50) per NOV, not to exceed a total of ONE THOUSAND, NINE HUNDRED FIFTY-NINE DOLLARS (\$1,959.00), payable on or before the thirty-first (31<sup>st</sup>) day after default.

4. **On or before the thirty-first (31<sup>st</sup>) day after receipt of this ORDER and ASSESSMENT, the Respondent shall pay DAMAGES to the Division in the amount of ONE HUNDRED EIGHTY-ONE DOLLARS AND NINETY-NINE CENTS (\$181.99).**

The Director of the Division 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. Failure to comply with any of the requirements of this Order and Assessment could lead to further enforcement actions, which may include additional civil penalties, assessment of damages, and/or recovery of costs.

#### **NOTICE OF RIGHTS**

Tennessee Code Annotated §§ 69-3-115, 69-3-109, and 69-3-116 allow the Respondent to appeal this Order and Assessment. To do so, a written petition setting forth the grounds (reasons) for requesting a hearing must be RECEIVED by the Commissioner within THIRTY



(30) DAYS of the date the Respondent received this Order and Assessment or this Order and Assessment will become final (not subject to review).

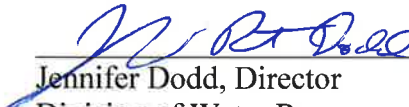
If an appeal is filed, an initial hearing of this matter will be conducted by an Administrative Law Judge (“ALJ”) as a contested case hearing pursuant to the provisions of Tenn. Code Ann. § 69-3-110, Tenn. Code Ann. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Tenn. Comp. R. & Regs. 1360-04-01 *et seq.* (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. This includes the authority to modify (decrease or increase) the penalty within the statutory limits of Tenn. Code Ann. § 69-3-115 (up to \$10,000 per day per violation). 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.

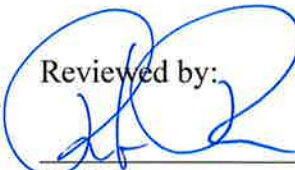
Any petition for review (appeal) must be directed to the Commissioner of the Department of Environment and Conservation, c/o Jenny L. Howard, General Counsel, Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks

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, 10<sup>th</sup> 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, 11<sup>th</sup> Floor, Nashville, Tennessee 37243. Attorneys should contact the undersigned counsel of record. **The case number, WPC18-0116, should be written on all correspondence regarding this matter.**

Issued by the Director of the Division of Water Resources, Tennessee Department of Environment and Conservation, on this 17<sup>th</sup> day of January, 2019.

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

Reviewed by:

  
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