



STATE OF TENNESSEE  
**DEPARTMENT OF ENVIRONMENT AND CONSERVATION**  
**DIVISION OF WATER RESOURCES**

William R. Snodgrass - Tennessee Tower  
312 Rosa L. Parks Avenue, 11th Floor  
Nashville, Tennessee 37243-1102

August 27, 2020

Mr. Russell Baum  
d/b/a Sequatchie County Scrap  
2663 Short Mountain Hwy.  
Smithville, TN 37166

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**RECEIPT # 7008 1830 0004 8092 4163**

Subject: **DIRECTOR'S ORDER NO. WPC18-0127**  
Sequatchie County Scrap  
DeKalb County, Tennessee

Dear Mr. Baum,

Enclosed is a Director's Order and Assessment issued by the Tennessee Department of Environment and Conservation, Division of Water Resources for violations of the Water Quality Control Act, including failing to obtain permit coverage for industrial stormwater runoff, and causing a condition of pollution.

**The violations listed above have resulted in a full penalty of \$7,360.00, with an up-front payment of \$1,472.00, due on or before the 31st day after receipt of this Order and Assessment. The remaining assessment is due only if contingent compliance schedule listed herein is not timely completed.**

**While investigating the violations listed in this Order the Division incurred \$1,039.72 in damages, due on or before the 31st day after receipt of this Order and Assessment. Please read the Order carefully and pay special attention to the Notice of Rights section.**

If you have any questions concerning this correspondence, contact Ryne Ruddock at (615) 532-0665 or [Ryne.Ruddock@tn.gov](mailto:Ryne.Ruddock@tn.gov).

Sincerely,

Jessica Murphy, Manager  
Compliance and Enforcement Unit

EJM:RWRu

cc: Cookeville EFO – Brad Ulmer; Oakley Hall  
OGC – Patrick Parker; Chris Moran  
Russell Baum – [rockislandtruck@gmail.com](mailto:rockislandtruck@gmail.com)  
DWR – Case File WPC18-0127

**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>RUSSELL BAUM d/b/a</b>	)	
<b>SEQUATCHIE COUNTY SCRAP,</b>	)	
	)	
<b>RESPONDENT.</b>	)	<b>CASE NUMBER WPC18-0127</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 (“Division”) by the Commissioner of the Tennessee Department of Environment and Conservation (“Department”).

**II.**

Mr. Russell Baum (the “Respondent”) is doing business as Sequatchie County Scrap where he is operating a scrap recycling operation in DeKalb County, Tennessee (“Site”) without coverage under the Tennessee Multi-Sector Permit for Stormwater Discharges Associated with Industrial Activity (the “TMSP”). Service of Process can be made on the Respondent at 2663 Short Mountain Rd. Smithville, TN 37166.

## 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 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 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.

Pine Creek constitutes “waters” of the state and a “stream”. Tenn. Code Ann. § 69-3-103. All streams have been classified by the Tennessee Board of Water Quality, Oil and Gas for suitable uses. Tenn. Comp. R. & Regs. Chapter 0400-40-04. Pine Creek is classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife, and a trout stream.

## VI.

A person must obtain coverage under a permit from the Department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state, and must comply with that permit. Tenn. Code Ann. § 69-3-108(b). Specifically, coverage under the General National Pollutant Discharge Elimination System (“NPDES”) Permit for Storm Water Discharges Associated with Industrial Activities (“TMSP”) is required for point source stormwater discharges associated with industrial activity. Coverage under the TMSP may be obtained by submitting a complete Notice of Intent (NOI), a site-specific Stormwater Pollution Prevention Plan (SWPPP), and the appropriate fees.

## FACTS

### VII.

On June 6, 2017, Division personnel were accompanied by personnel from the Division of Air Pollution Control (“APC”) during a complaint inspection which alleged open burning at the Site. The Respondent accompanied the Division personnel on the inspection, where Division personnel observed burned scrap material and chemical drums, as well as other uncontained scrap exposed to stormwater.

### VIII.

On June 28, 2017, the Division issued a letter to the Respondent requiring him to submit a completed NOI and site-specific SWPPP to the Division within 30 days of receipt. An NOI application and completion instructions, along with specific guidance for the development of a SWPPP, was included.

**IX.**

On July 24, 2017 the Respondent submitted an NOI to the Division. The Division determined the NOI was incomplete because it lacked the required SWPPP.

**X.**

On July 25, 2017, Division personnel emailed Respondent and informed him the NOI was incomplete because it did not include a SWPPP.

**XI.**

On August 14, 2017, Division personnel conducted a Site visit and observed the scrap recycling was still in operation. A file review revealed the Respondent still had not obtained TMSP coverage. The Respondent was present during the Site visit, where and again Division personnel provided him with information about completing the NOI and developing a SWPPP.

**XII.**

On January 8, 2018, Division personnel spoke to the Respondent on the telephone. The Respondent informed the Division that his sister, Ms. Tara Baum, was helping with the development of a SWPPP. Additional assistance with the SWPPP development was requested by the Respondent.

**XIII.**

On January 30, 2018, Division personnel contacted the Respondent by telephone to provide the requested assistance with the development of a SWPPP. Ms. Tara Baum was not available during the telephone call, and the Respondent asked the Division to call again the following Friday when she was available to discuss the development of the SWPPP.

**XIV.**

On February 9, 2018, Division personnel contacted the Respondent again, at the Respondent's request, and were able to speak with both the Respondent and Ms. Tara Baum. Division personnel provided assistance with the development of the SWPPP as needed.

**XV.**

On March 6, 2018, Division personnel spoke to the Respondent and Ms. Tara Baum again regarding development of the SWPPP. Ms. Tara Baum stated she was working on completing the requirement. Division personnel provided further assistance during the phone conversation in developing a complete SWPPP.

**XVI.**

On May 10, 2018, Division personnel and personnel representing the Division of Solid Waste Management (the "DSWM") visited the Site at the request of Ms. Tara Baum to provide assistance in developing a SWPPP.

**XVII.**

On May 30, 2018, Division personnel returned to the Site to provide example documentation and information on submittal of a SWPPP. The Respondent and Ms. Tara Baum were not at the Site, but Division personnel left the example documents with a mechanic who informed them that he would deliver the documents to Ms. Tara Baum.

**XVIII.**

From May 30, 2018, to June 18, 2018, Division personnel made several attempts to contact the Respondent but received no response. On June 18, 2018, Division personnel conducted a file review and determined that the Respondent still had not submitted a SWPPP. The Division e-mailed the Respondent and requested he submit the required SWPPP.

**XIX.**

On November 27, 2018, Division personnel met the Respondent and Ms. Tara Baum at the Site and observed that the scrap recycling facility was still operating. The Site was photographed by Division personnel, documenting the scrap and recycling material exposed to stormwater, puddled water with a visible chemical sheen, and the Site in relation to Pine Creek. Visual impacts from the Site were not observed in Pine Creek.

**XX.**

On December 4, 2018, the Division issued a Notice of Violation (NOV) to the Respondent for operating an industrial site without TMSP sector 'N' coverage. A response to the NOV was requested no later than 30 days after receipt of delivery.

**XXI.**

On December 10, 2018, the Division received a certified postal receipt for the aforementioned NOV containing Ms. Tara Baum's signature.

**XXII.**

A Division records review indicates that the Respondent still has not submitted a SWPPP. In addition, Division personnel verified that the site is still operating.

**XXIII.**

During the course this investigation the Division incurred damages in the amount of \$1,039.72. The Division also determined the Respondent gained an economic benefit of \$1,200.00 for failing to acquire TMSP sector 'N' coverage, the associated annual maintenance fee, and the annual sampling required by the permit.

## VIOLATIONS

### XXIV.

By failing to obtain coverage under the TMSP, placing chemical and material in a location that increases the likelihood of causing a condition of pollution, and allowing unpermitted discharge, the Respondent has violated the Act:

Tenn. Code Ann. § 69-3-108(a):

Every person who is or is planning to carry out 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 (l), shall file an application for a permit with the Commissioner or, when necessary, for modification of such person's existing permit.

Tenn. Code Ann. § 69-3-108(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:

- (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(a):

It is unlawful for any person to discharge any substance into the waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as identified in § 69-3-103, unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

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 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 to 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**

**XXV.**

Pursuant to the Act, Tenn. Code Ann. §§ 69-3-109, 69-3-115, and 69-3-116, the Respondent is issued the following Order and Assessment. All documentation relating to compliance schedule items in this Order and Assessment should be submitted electronically to [DWRWater.Compliance@tn.gov](mailto:DWRWater.Compliance@tn.gov) or in duplicate to the addresses listed below:

Manager  
Cookeville Environmental Field Office  
Division of Water Resources  
1221 South Willow Ave.  
Cookeville, Tennessee 38506

AND

Jessica Murphy, Manager  
Enforcement and Compliance Unit  
Division of Water Resources  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Ave., 11<sup>th</sup> Floor  
Nashville, Tennessee 37243

1. The Respondent is hereby assessed a total civil penalty of \$7,360.00, to be paid to the Division as outlined in items 2-6 below. Payment of all monetary penalties and damages contained herein 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

2. **The Respondent shall pay \$1,472.00 to the Division on or before the 31<sup>st</sup> day after receipt of delivery of this Order and Assessment.**
3. The Respondent shall, on or before the 31<sup>st</sup> day after receipt of this Order, submit a completed NOI and a complete, site-specific SWPPP to the Division. If the Respondent fails to comply with this requirement (3), the Respondent shall pay \$1,800.00 to the Division, payable within 30 days of receipt of Division notice.

4. The Respondent shall immediately, but no later than 60 days from receipt of this Order, conduct all chemical monitoring required by the TMSP and submit the results to the Division. If a qualifying rain event, *see* TMSP Sector “A” 5.1.2 (providing guidance on a qualifying rain event), does not occur within the prescribed 60-day requirement for sample collection, a written request for extension must be submitted and received by the Division in advance of the compliance date. The written request must include sufficient detail to justify such an extension. Failure to submit a request for extension in advance of the compliance date shall result in a contingent penalty assessment. Additional guidance for a qualifying rain event may also be found at:

[https://www.tn.gov/content/dam/tn/environment/water/documents/permit\\_water\\_tmsp\\_sector-a.pdf](https://www.tn.gov/content/dam/tn/environment/water/documents/permit_water_tmsp_sector-a.pdf).

5. If the Respondent fails to comply with this requirement (4), the Respondent shall pay \$1,088.00 to the Division, payable within 30 days of receipt of Division notice.
6. If any additional items or amendments to the NOI or SWPPP are required upon review, they shall be addressed and resubmitted within 15 days of written notification. If the Respondent fails to comply with this requirement (5), the Respondent shall pay \$1,000.00 to the Division, payable within 30 days of receipt of Division notice.
7. The Respondent shall comply with the Act for a period of 2 years from receipt of this Order. If the Respondent fails to comply with this requirement (6), as evidenced by receipt of an NOV within this two-year period, the Respondent shall pay \$1,000.00 per NOV, not to exceed a total of \$2,000.00, payable within 30 days of receipt of Division notice.

**8. The Respondent shall pay \$1,039.72 in damages to the Division on or before the 31<sup>st</sup> day after receipt of this Order and Assessment.**

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 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 and Assessment could lead to further enforcement actions, which may include additional civil penalties, assessment of damages, and/or recovery costs. This Order shall be considered closed no later than two years from the date of receipt of this Order and Assessment, provided the Respondent has complied with all the requirements of the Order, has paid all assessed penalties and damages, and is in substantial compliance with the Act.

**RESERVATION OF RIGHTS**

In issuing this Order and Assessment, 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(s). 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(s) may appeal this Order and Assessment, Tenn. Code Ann. §§ 69-3-109, -115, and -116. To do so, a written petition setting forth the reasons for requesting a hearing must be received by the Commissioner within 30 days of the date the Respondent(s) received this Order and Assessment or this Order and Assessment will become final.

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, 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 ALJ has the authority to affirm, modify, or deny the Order and Assessment. 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 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, 10th 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, 11th Floor, Nashville, Tennessee 37243. Attorneys should contact the undersigned counsel of record. The case number, WPC18-0127, 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 24 day of August, 2020.

  
Jennifer Dodd (Aug 24, 2020 23:02 CDT)  
Jennifer Dodd, Director  
Division of Water Resources  
TN Department of Environment and Conservation

Reviewed by:

  
(Aug 17, 2020 10:45 CDT)  
Patrick N. Parker  
BPR #014981  
General Counsel  
Department of Environment and Conservation  
312 Rosa L. Parks Avenue, 2<sup>nd</sup> Floor  
Nashville, Tennessee 37243  
(615) 532-0129  
Patrick.Parker@tn.gov