

**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>ENVIRONMENTAL TRUST COMPANY,</b>	)	
	)	
	)	
<b>RESPONDENT.</b>	)	<b>CASE NUMBER WPC19-0045</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.**

Environmental Trust Company (“Respondent”) is registered to conduct business in the State of Tennessee. The Respondent owns and operates Meadow Branch Landfill Facility (“Facility”) located at 233 County Road 166 in McMinn County, Tennessee. Service of process may be made on the Respondent through its Registered Agent, Corporation Service Company, at 2908 Poston Avenue, Nashville, Tennessee 37203-1312.

## 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 (“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.

The unnamed tributary to Rogers Creek constitutes “waters” of the state and also a “stream.” Tenn. Code Ann. § 69-3-103. All streams have been classified by the Board for suitable uses. *See* Tenn. Comp. R. & Regs. Chapter 0400-40-04; Tenn. Code Ann. § 69-3-105(a)(1). The tributary to Rogers Creek is classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife. The unnamed tributary to Rogers Creek is listed pursuant to Section 303(d) of the Clean Water Act as not supporting of its classified use for fish and aquatic life, due to ammonia discharges from the Facility.

## 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 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. 0400-40-04-.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 June 9, 2015, DWR reissued coverage under the Tennessee Multi-Sector General Permit (TMSP) to the Respondent, with tracking number TNR053001, which was in effect until April 14, 2020. The TMSP authorized the discharge of stormwater associated with industrial activity, specifically, Sectors L (Landfills and Land Application Sites) and P (Motor Freight Transportation Facilities). Sector L established numeric limits for the daily maximum effluent limitations of certain pollutants including ammonia (10 mg/L) and Total Suspended Solids (TSS, 88 mg/L). Receiving waters are the unnamed tributary to Meadow Branch and the unnamed tributary to Rogers Creek. The Facility no longer has coverage under the TMSP; all industrial

stormwater discharges are now authorized under individual Permit TN0067776. The permits do not authorize the discharge of leachate.

#### **VIII.**

On September 14, 2017, the Department's Division of Solid Waste Management (DSWM) personnel conducted a Compliance Evaluation Inspection (CEI) at the facility to determine the Respondent's compliance with the Tennessee Solid Waste Disposal Act, Tenn. Code Ann. §§ 68-211-101 to -124. Inspectors observed leachate in a stormwater drainage ditch which discharges into Sediment Pond 3. On September 26, 2017, DSWM issued a Notice of Violation (NOV) to the Respondent for an unlawful release of leachate, a violation of the SWDA. The NOV instructed the Respondent to take corrective actions immediately.

#### **IX.**

In 2018, DWR personnel collected samples in the unnamed tributary to Rogers Creek as part of its water quality assessment. Samples were collected for several parameters, including but not limited to ammonia, pH, and temperature. Results collected showed a water quality exceedance of ammonia on March 13, 2018, on which date the result demonstrated ammonia was chronically toxic to fish and aquatic life. The Facility's discharge caused this condition of pollution.

#### **X.**

On March 20, 2018, DSWM personnel observed green water in Sediment Pond 3 and notified the Division of the finding. On April 4, 2018, Division personnel investigated Sediment Pond 3 in response to DSWM's observation of green water. Water quality samples taken from Sediment Pond 3 and at Outfall SW3 were determined to contain 27.3 mg/L and 13.7 mg/L

ammonia respectively. On May 1, 2018, DSWM issued a NOV to the Respondent and stated that leachate was getting into the stormwater pond and the stream into which the pond discharges.

#### **XI.**

On March 12, 2019, Division personnel conducted a Compliance Sampling Inspection (CSI) at the facility. During the CSI, inspectors collected water quality samples at each of the Facility's outfalls. The concentration of ammonia at Outfall SW3 was 62.7 mg/L. Additionally, inspectors reviewed the Facility's records and found that the Facility did not conduct and document the required TMSP quarterly visual inspections for the third quarter of 2017, and the second and third quarters of 2018. Furthermore, Division personnel reviewed Annual Stormwater Monitoring Reports from 2016 to 2018. In 2018, at Outfall SW3, ammonia and TSS exceeded the permit limits at 22.4 mg/L and 225 mg/L, respectively. Inspectors observed that the unnamed tributary to Rogers Creek at Outfall SW3 was heavily impacted with sediment.

#### **XII.**

On April 5, 2019, the Division issued a NOV to the Respondent for violations observed during the March 12, 2019 CSI. The NOV, in pertinent part, instructed the Respondent to submit a Corrective Action Plan (CAP) by May 6, 2019, outlining steps the Facility would take to come into compliance.

#### **XIII.**

On May 6, 2019, the Respondent submitted a letter to the Division in which it cited high rainfall amounts in 2018 and early 2019, and acknowledging its difficulty managing leachate generation and breakouts at the Facility. The Respondent attributed the March 12, 2019 ammonia limit exceedance to the clean-out done in Stormwater Pond 3 which caused the mobilization of ammonia and sediment to Outfall 3. The clean-out was completed on March 23, 2019. The

Respondent stated that it took or was taking the following corrective actions: installed three aerators in Sediment Pond 3, continued efforts to stabilize bare slopes, enhancing ground cover and installing French drains to reduce the frequency of leachate outbreaks, and revising the Stormwater Pollution Prevention Plan.

**XIV.**

On June 12, 2020, the Respondent submitted a monthly stormwater monitoring report for May 2020 under individual Permit TN0067776. The concentration of ammonia at Outfall SW3 was 22.7 mg/L.

**XV.**

A file review conducted on October 2, 2020, found that the Respondent did not submit an Annual Monitoring Report required by the TMSP for Outfall SW3 during the 2019 monitoring period.

**XVI.**

During this investigation the Division incurred damages of \$1,247.28.

**XVII.**

The Department calculated Natural Resource Damages (NRD) in the amount of \$11,661.00 for lost resource values to the unnamed tributary to Rogers Creek. The stream was assessed as not fully supporting. The NRD was calculated for impacts to three reaches measuring 100 feet each, for a total of 300 feet of impact. The duration of impact for each reach was determined to be between one and five years. For Reach 1, the gravity of impact was determined to be minor; for Reach 2, the gravity of impact was determined to be moderate, and for Reach 3, the impact was determined to be moderate. The base cost is \$507 per foot. Upon successful completion of a

Division-approved Stream Restoration Plan, the NRD may be recalculated (reduced) based on the actual temporal loss of resource values, calculated at a rate of 3% per year.

## VIOLATIONS

### XVIII.

By exceeding effluent limitations and violating the terms of the TMSP, and by causing a condition of pollution for sediment and ammonia, 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:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
- (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(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 defined 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 or of any rule, regulation, or standard of water quality promulgated by the Board 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

### XVIII.

Pursuant to sections 69-3-109, -115, and -116 of the Act, I, Jennifer Dodd, hereby issue the following Order and Assessment (“Order”) to the Respondent. The case number WPC19-0045, should be written on all correspondence regarding this matter. All documentation relating to corrective action items in this Order shall be received by the Division by the date(s) specified herein. Such documents should be sent electronically to [DWRWater.Compliance@tn.gov](mailto:DWRWater.Compliance@tn.gov) **OR** in duplicate to both addresses below:

Jennifer Innes, Manager  
Chattanooga Environmental Field Office  
Division of Water Resources  
1301 Riverfront Pkwy Suite #206  
Chattanooga, Tennessee 37402

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 assessed a total civil penalty of \$37,050.00 to be paid to the Division as outlined in Items 2, 4, and 5 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 \$7,410.00 to the Division on or before the 31<sup>st</sup> day after receipt of this Order.**
3. **The Respondent shall pay damages of \$1,247.28 to the Division on or before the 31<sup>st</sup> day after receipt of this Order.**
4. The Respondent shall implement chemical monitoring of samples taken at MB2 and SW3 for all pollutants listed in Exhibit A no later than the 31<sup>st</sup> day after receipt of this Order. Monitoring



shall be conducted and reported quarterly, for a monitoring period of two years, and shall utilize “sufficiently sensitive” analytical methods and detection levels in accordance with Tenn. Comp. R. & Regs. Chapter 0400-40-03-.05(8). For the purpose of this Order, a quarter is defined as any one of the following three-month periods: January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. After evaluating one year of data, the Division may reduce the list of parameters as appropriate. If the Respondent fails to comply with Item 4, the Respondent shall pay \$494.00 to the Division for each day a quarterly report is late, not to exceed a total of \$14,820.00.

5. The Respondent shall maintain substantial compliance with its individual Permit TN0067776 beginning upon receipt of this Order and continuing for a period of two years after completion of the Remediation Plan. If the Respondent fails to comply with Item 5, as evidenced by the receipt of a NOV, the Respondent shall pay \$494.00 to the Division for each NOV, not to exceed \$14,820.00.
6. **The Respondent is hereby assessed Natural Resource Damages (NRD) in the amount of \$11,661.00, payable to the Division’s NRD Fund.** On or before the 31<sup>st</sup> day after receipt of this Order, the Respondent shall pay \$1,166.10. If the Respondent does not implement a Division-approved Stream Restoration Plan in accordance with this Order (including applicable timelines), the Respondent shall pay the remaining \$10,949.10 not later than 30 days after receipt of a demand for payment from the Department. If the Respondent successfully completes a Division-approved Stream Restoration Plan, the Respondent shall pay the remainder of natural resource damages for temporal loss based on the Department’s recalculation at 3% per year, not later than 30 days after receipt of a demand for payment from the Department.

This Order shall be considered closed no later than two years after receipt of this Order, provided the Respondent has complied with all of 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.

### **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 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 may appeal this Order. 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 received this Order or this Order 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. No one may represent another person in a contested case proceeding unless they are an attorney licensed to practice law in Tennessee. Governments and artificial persons (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. 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 Ave., 2<sup>nd</sup> Floor, Nashville, Tennessee 37243. Attorneys should contact the undersigned counsel of record. An appeal may also be filed by sending the petition to the following email address: [TDEC.Appeals@tn.gov](mailto:TDEC.Appeals@tn.gov).

Issued by the Director of the Division of Water Resources, Tennessee Department of Environment and Conservation, on this 15 day of March, 2021.

  
Jennifer Dodd; Mar 15, 2021 17:05 CDT

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

Reviewed by:

  
Katherine Barnes; Mar 16, 2021 11:15 CDT

Katherine Barnes  
BPR No. 032456  
Assistant General Counsel  
Department of Environment and Conservation  
312 Rosa L. Parks Ave., 2<sup>nd</sup> Floor  
Nashville, Tennessee 37243  
615-532-0131  
[katherine.barnes@tn.gov](mailto:katherine.barnes@tn.gov)

## Exhibit A

<b>Surface Water Parameter List for Landfills</b>
Aluminum, Al
Ammonia Nitrogen as N
Arsenic, As
Cadmium, Cd
Chloride
Chromium, Cr
Conductivity (field)
Copper, Cu
Dissolved Oxygen (field)
Iron, Fe
Lead, Pb
Manganese, Mn
Mercury, Hg
Nickel, Ni
Nitrogen NO <sub>3</sub> & NO <sub>2</sub>
pH (field)
Residue, Dissolved
Residue, Suspended
Selenium, Se
Temperature (field)
Hardness (CaCO <sub>3</sub> ) by calculation
Total Kjeldahl Nitrogen
Total Phosphorus (Total Phosphate)
Zinc, Zn