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

| | | |
|---|---|---|
| **IN THE MATTER OF:** | ) | **DIVISION OF WATER POLLUTION CONTROL** |
| | ) | |
| | ) | |
| **ALLEN HOOD** | ) | |
| | ) | |
| | ) | |
| | ) | |
| **RESPONDENT** | ) | **CASE NO. WPC07-0201** |

## DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, Director of the Tennessee Division of Water Pollution Control, and states:

## PARTIES

**I.**

Paul E. Davis is the duly appointed Director of the Tennessee Division of Water Pollution Control (hereinafter the "director" and the "division" respectively) by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "commissioner" and the "department" respectively).

**II.**

Allen Hood (hereinafter the "Respondent") is an individual doing business in the State of Tennessee. The Respondent is the owner/developer of a residential housing development described as Summit View Cabins (hereinafter "the site") located in Sevier

County. Service of process may be made on the Respondent at 1529 Tanbark Way, Sevierville, Tennessee 37876.

## JURISDICTION

### III.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §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 may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee,* Chapters 1200-4-3 and 1200-4-4 (hereinafter the "Rule"). Pursuant to T.C.A. §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 T.C.A. §69-3-103(20) and, as hereinafter stated, the Respondent has violated the Act.

## V.

Bird Creek and its unnamed tributaries are referred to herein as "waters of the state" as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, "Use Classifications For Surface Waters," is contained in the *Official Compilation of Rules and Regulations for the State of Tennessee*. Accordingly, Bird Creek and its unnamed tributaries have been classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.

## VI.

T.C.A. §69-3-108 requires a person to obtain coverage under a permit prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substances will move into waters of the state. Coverage under the Tennessee Construction General Permit for Storm Water Discharges Associated with Construction Activity (hereinafter the "TNCGP") may be obtained by submittal of a Notice of Intent (NOI), a site-specific Storm Water Pollution Prevention Plan (SWPPP) and an appropriate fee.

## FACTS

## VII.

On October 24, 2004, the respondent submitted a NOI, SWPPP, and an appropriate fee to obtain coverage under the TNCGP. On December 14, 2004, the

division issued the Respondent coverage under the TNCGP. The coverage became effective December 14, 2004, and expires upon the division's receipt of a Notice of Termination or upon the expiration of the general permit on May 30, 2010. The permit authorizes the Respondent to discharge storm water associated with construction activity to an unnamed tributary of Bird Creek, in accordance with the TNCGP terms and conditions.

**VIII.**

On March 16, 2006, the Sevier County Stormwater Management Office issued a Notice of Violation (NOV) to the Respondent. The NOV stated that the Respondent failed to implement Erosion Prevention and Sediment Control (EPSC) measures in accordance with the site's SWPPP, and that ongoing construction activities at the site were taking place in areas that were not indicated in the SWPPP.

**IX.**

On June 15, 2006, the division conducted an inspection at the site. Personnel observed that the EPSC measures were inadequate and had not been maintained. The lack of appropriate EPSC measures resulted in the migration of sediment off site. Additionally, the site plan portion of the SWPPP did not accurately represent the current construction and excavation activities either completed or underway at the site.

## X.

On June 23, 2007, the division issued a NOV to the respondent. The NOV went into specific detail about measures the Respondent should take to bring the site into compliance, which included but were not limited to:

- Spoil on the site should be compacted in horizontal lifts before being deposited in the disposal area.
- Fill slopes needed to be stabilized.
- Provide and explanation how newly generated spoils will be disposed of, and designate an area of disposal on a contour map.
- Provide a plan with rock aprons for protecting slopes below culvert outlets.
- Provide a plan for temporary stabilization of cabin lots while cabins are being constructed and a plan for permanent stabilization upon completion.
- Provide calculations for culvert sizing on the site.
- Submit a revised SWPPP.

## XI.

On July 10, 2006, the Sevier County Stormwater Office issued a second NOV to the Respondent following a complaint investigation at the site. The NOV cited the Respondent for failure to control erosion and sediment on site. Sediment deposits on the complainant's property were traced back to areas of road construction on the site.

## XII.

Following a July 5, 2007, site inspection the division issued a second NOV on July 12, 2007, to the Respondent. EPSC measures were not in accordance with the SWPPP, and the existing measures were inadequate and in need of maintenance. Personnel observed that the Respondent continued to build structures in areas not shown in the SWPPP. The SWPPP specified a retaining wall at a certain area on the property to reduce sediment run off. Upon inspection it was observed that the Respondent had built a cabin in that area. In addition, stabilization of slopes and spoil areas requested in the previous NOV had not taken place.

## VIOLATIONS

## XII.

By causing a condition of pollution to the unnamed tributary of Bird Creek and failing to comply with the terms and conditions of the TNCGP as described herein, the Respondent has violated T.C.A. Sections §69-3-108(b) and 69-3-114(a)-(b):

T.C.A. §69-3-108(b) states, in part:

> (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; [...]
> (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized; [...]

(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;

T.C.A. §69-3-114(a) states:

> It shall be unlawful for any person to discharge any substance into 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(22), 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.

T.C.A. §69-3-114(b) states:

> 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.

## ORDER AND ASSESSMENT

## IX.

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-107, 69-3-109, 69-3-115, and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER and ASSESSMENT to the Respondent:

1. The Respondent shall, immediately upon receipt of this order, initiate all necessary site stabilization activities. Activities should include, but are not limited to, installation of silt fence, rock check dams, sedimentation basin, and temporary stabilization utilizing seed and straw, mulch and other such materials. All professionally designed EPSC measures should be in

accordance with the SWPPP. EPSC measures shall be designed to assure that no sediment leaves the site and enters waters of the state.

2. The Respondent shall provide written notification and photographic evidence of completion, and a copy of the updated SWPPP to the Water Pollution Control manager of the Knoxville Environmental Field Office (K-EFO), located at 3711 Middlebrook Pike, Knoxville, Tennessee 37921 by October 15, 2007.

3. The Respondent shall update the SWPPP for this site as necessary and maintain the updated SWPPP on site and make the updated SWPPP readily available for viewing.

4. The Respondent shall maintain professionally designed EPSC measures until final site stabilization.

5. The Respondent is hereby assessed a CIVIL PENALTY in the amount of THIRTY NINE THOUSAND DOLLARS ($39,000.00).
   a. The Respondent shall pay TEN THOUSAND DOLLARS ($10,000.00) to the division within THIRTY (30) DAYS of receipt of this Order.
   b. The Respondent shall pay EIGHT THOUSAND DOLLARS ($8,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 1 above in a timely manner.

c. The Respondent shall pay EIGHT THOUSAND DOLLARS ($8,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 2 above in a timely manner.

d. The Respondent shall pay EIGHT THOUSAND DOLLARS ($8,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 3 above in a timely manner.

e. The Respondent shall pay FIVE THOUSAND DOLLARS ($5,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 4 above in a timely manner.

6. The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

Further, the Respondent is advised that the foregoing Order is in no way to be construed as a waiver, expressed or implied, of any provision of law or regulations. However, compliance with the Order will be one factor considered in any decision whether to take enforcement action against the Respondent in the future. The director may, for good cause shown by the Respondent, extend for a fixed time period, the compliance dates contained within this 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 director will reply to the Respondent's request 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.

Issued by the Director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 24th day of September, 2007.

Paul E. Davis, P.E.
Director, Division of Water Pollution Control

## NOTICE OF RIGHTS

Tennessee Code Annotated §§ 69-3-109, 115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L&C Tower, 401 Church Street, Nashville, TN 37243-1548".

If the required written petition is not filed within THIRTY (30) DAYS of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. §4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence

at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payments of the civil penalty 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, 14th Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence regarding this matter should be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, at 6th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1534. Please write your case number on all payments and all correspondence concerning this matter.