STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 Church Street
L&C Annex 6th Floor
Nashville, TN 37243-1534

October 31, 2007

Mr. Walter Ray Fisher
1665 Bilbrey Park Drive
Cookeville, Tennessee 38501

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7006 0810 0000 1061 6651

Subject: DIRECTOR'S ORDER NO. WPC07-0231
SPRING CREEK ROAD PROPERTY
JACKSON COUNTY, TENNESSEE

Dear Mr. Fisher:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

It is the Department's position that corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Mark Jordan at (615) 532-0675.

Sincerely,

Vojin Janjic, Manager
Enforcement and Compliance Section

VMJ:MAJ

cc: DWPC – EFO-Cookeville
DWPC – Compliance File
OGC

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 Church Street
L&C Annex 6th Floor
Nashville, TN 37243-1534

October 31, 2007

Mr. Glynn Warden
1515 South Grundy Quarles Highway
Gainesboro, Tennessee 38562

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7006 0810 0000 1061 6668

Subject: DIRECTOR'S ORDER NO. WPC07-0231
SPRING CREEK ROAD PROPERTY
JACKSON COUNTY, TENNESSEE

Dear Mr. Warden:

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DWPC – Compliance File
OGC

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:	)	
	)	
WALTER RAY FISHER	)	
and	)	**DIVISION OF WATER**
GLYNN WARDEN	)	**POLLUTION CONTROL**
	)	
	)	
RESPONDENTS	)	**CASE NUMBER WPC07-0231**
	)	

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 Division of Water Pollution Control by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "division" and the "department" respectively).

II.

Walter Ray Fisher (hereinafter "Respondent Fisher") is a resident of the state of Tennessee and is the owner of property located on Spring Creek Road, in Jackson County (hereinafter the "site"). Service of process may be made on Respondent Fisher at 1665 Bilbrey Park Drive, Cookeville, Tennessee 38501.

III.

Glynn Warden (hereinafter "Respondent Warden") is a resident of the state of Tennessee and was contracted by Respondent Fisher to conduct gravel and rock removal activities at the

site. Service of process may be made on Respondent Warden at 1515 South Grundy Quarles Highway, Gainesboro, Tennessee 38562.

JURISDICTION

IV.

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 (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 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 (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.

V.

The Respondents are "persons" as defined by T.C.A. § 69-3-103(20) and as herein described, have violated the Act.

VI.

Tennessee Code Annotated § 69-3-108 requires a person to 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.

Pursuant to T.C.A. § 69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (ARAP) that is not governed by a general permit or a § 401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

VII.

Spring Creek, described herein, is "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 *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife. Additionally, this segment of Spring Creek has been designated as a State Scenic River.

FACTS

VIII.

On February 17, 2004, the division issued written ARAP authorization to the Jackson County Highway Department for a one-time gravel dredging operation at the site. This written authorization expired on October 1, 2004, and was not reissued.

IX.

On September 9, 2007, division personnel from the Cookeville Environmental Field Office (CK-EFO) conducted a complaint investigation at the site and noted that a bulldozer

belonging to Respondent Warden was dredging gravel and bedrock from the channel bottom and stockpiling it at locations along the banks of Spring Creek. Respondent Fisher stated that the activities were in response to bank erosion and chronic flooding of his property and that he had written ARAP authorization to conduct these activities. Division personnel instructed Respondent Fisher to provide a copy of this ARAP authorization.

X.

On September 21, 2007, a meeting was held at the CK-EFO at the request of Respondent Fisher. Division personnel informed Respondent Fisher that the written authorization previously discussed had been issued to the Jackson County Highway Department for a one-time gravel dredging operation and did not authorize the activities noted during the September 9, 2007, complaint investigation. Respondent Fisher was instructed to place the bedrock back into the stream channel at appropriate locations a beginning corrective measure. Respondent Fisher was additionally instructed to not perform any other stream alterations without valid written authorization and to seek assistance from other agencies such as the Natural Resources Conservation Service (NRCS) in order to address bank erosion and flooding on his property. Potential additional corrective measures including channel restoration and stream bank stabilization were also discussed.

XI.

On September 24, 2007, the division issued a Notice of Violation (NOV) to both Respondents for the violations observed during the September 9, 2007, complaint investigation. The NOV instructed the Respondents to submit to the division by October 5, 2007, a response including a description of corrective actions to be taken and a schedule for completion of the proposed actions.

XII.

On October 2, 2007, Respondent Fisher submitted a response to the division consisting of site photographs showing the locations where bedrock had been placed back into the stream channel as requested by the division and an invoice from Glynn Warden Construction Company for the work shown in the photographs.

XIII.

On October 5, 2007, division personnel conducted a site investigation to determine compliance with the September 24, 2007, NOV and noted that Respondent Fisher had substantially complied with the corrective actions needed to stabilize the streambed.

VIOLATIONS

XIV.

By altering waters of the state without authorization under an ARAP, the Respondents have violated T.C.A. §§ 69-3-108(a)–(b), 114(b), which state in part:

§ 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 (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

§ 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;
(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;

§ 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.

ORDER AND ASSESSMENT

XV.

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

1. The Respondents shall, within 30 days of receipt of this ORDER, complete any remaining stabilization measures requested by the CK-EFO and submit photographic documentation of the completion of those measures to the Water Pollution Control Manager in the CK-EFO at 1221 South Willow Avenue, Cookeville, Tennessee 38506.

2. The Respondents shall apply for and receive written authorization from the division under an appropriate ARAP prior to any other stream alterations.

3. The Respondents shall pay a CIVIL PENALTY of FIVE THOUSAND DOLLARS ($5,000.00) to the division, hereby ASSESSED to be paid as follows:

   a. The Respondents shall, within 30 days of entry of this ORDER, pay a CIVIL PENALTY in the amount of FIVE HUNDRED DOLLARS ($500.00).
   b. If the Respondents fail to comply with Part XV, item 1 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of ONE THOUSAND DOLLARS ($1,000.00), payable within 30 days of default.
   c. If the Respondents fail to comply with Part XV, item 2 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of THREE THOUSAND FIVE HUNDRED DOLLARS ($3,500.00), payable within 30 days of default.

The Respondents 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. In order to be eligible for this time extension, the Respondents 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 Respondents fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondents are advised that the foregoing ORDER 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 will be one factor considered in any decision whether to take enforcement action against the Respondents in the future.

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 31st day of October 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.

Payment of the civil penalty shall be made to "Treasurer, State of Tennessee" and shall be sent to the Division of Fiscal Services, Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L & C Annex, 401 Church Street, Nashville, TN 37243. The case number, shown on the first page of this Order and Assessment, should be included on or with the payment. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6th Floor L & C Annex, 401 Church Street, Nashville, TN 37243.

Violations Summary for Order Number WPC07-0231

Order ID	Site	County	Division	Order Type	Enf Staff
2323	Spring Creek Road - Walter Ray Fisher Property	Jackson	WPC	Director's Order	MAJ

Respondent(s)

Walter Ray Fisher

Glynn Warden

	Violation_Description	Location	Start_Date	End_Date	Min	Max	Unit	Count	Total	Assessed	Assessment_Notes
	Causing a condition of pollution	Spring Creek	19-SEP-07		$2,500	$10,000		1		$2,500	Stream alterations with heavy equipment. Little to no riparian alterations. Minimum assessment due to prevalent dry conditions.
	Unauthorized stream alteration	Spring Creek	19-SEP-07		$2,500	$5,000	$5,000	1		$2,500	Channel bed alterations with heavy equipment to affect flood control on adjacent property. Little to no riparian alteration.
report total:										**$5,000**	

1 - 2