TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
DIRECTOR'S ORDER & ASSESSMENT
WPC CASE No. WPC07-0252

Respondent: Jerry Douglas Smith
9980 Clay County Highway
Moss, Tennessee 38575

The Tennessee Department of Environment and Conservation, Division of Water Pollution Control, conducted an inspection of the Rockcastle Development, Phase I site in Fentress County on September 14, 2007. It was discovered that the Respondent had violated the requirements of the Tennessee General NPDES Permit for Discharges of Storm Water Associated with Construction Activities, Permit Tracking No. TNR170199, (hereinafter referred to as CGP) and the *Tennessee Water Quality Control Act*, Tennessee Code Annotated (T.C.A.) Section 69-3-101 *et seq*. (hereinafter the "Act") as indicated below:

☐ Failed to obtain permit coverage (T.C.A 69-3-108(b) and 114(b)) ☐ Unauthorized non-storm water discharge (CGP Sec. 1.2.3 and/or T.C.A. 69-3-114(a)) ☐ Failed to post the NOC on site (CGP Sec. 3.3.2) ☐ Failed to have a copy of SWPPP or permit available on site (CGP Sec. 5.2) ☐ an incomplete SWPPP (CGP Sec. 3.5) ☐ a SWPPP that was not current (CGP Sec. 3.4.1) ☒ EPSC measures not in accordance with SWPPP (GP Sec. 3.5.1) ☒ EPSC measures not properly maintained (CGP Sec. 3.5.3.1e) ☐ Disturbed greater than 50 acres at one time (CGP Sec. 3.5.3.1k) ☐ Failed to retain buffer zone, where applicable (CGP Sec. 4.4.2) ☐ Failed to have a certified inspector after June 17, 2007 (CGP Sec. 3.5.8.1))☐ Failed to retain sediment on site (CGP Sec. 3.5.3.1a and/or T.C.A. 69-3-114(a)).

When the Commissioner finds that provisions of the Act are not being complied with, he or she is authorized by T.C.A. Section 69-3-109 to issue Orders for correction. Further, Sections 69-3-115 and 69-3-116 give the Commissioner the authority to assess damages and civil penalties against any person who violates the Act. Pursuant to T.C.A. 69-3-107(13), the Commissioner may delegate to the Director of the Division of Water Pollution Control any of the powers, duties, and responsibilities of the commissioner under the Act.

WHEREFORE, RESPONDENT IS HEREBY ASSESSED A CIVIL PENALTY OF $2,000.00

1. **If the Respondent waives the right to appeal this Order and Assessment, as provided below, said assessed penalty is payable as follows:**
   A. $1,000.00 shall be paid to the Division within thirty (30) days after this Order is received, and
   B. The remaining $1,000.00 balance shall be paid to the Division **if, and only if**, another Notice of Violation, addressing a violation at the subject location, is issued by the Division within twelve months immediately following the issuance of this Order and Assessment. In that event, the $1,000.00 balance shall be paid to the Division within thirty (30) days of the Respondent's receipt of the Notice of Violation. Further, in that event, the Division reserves the right to assess additional penalties and to take any and all other enforcement actions that it deems necessary.
2. **If the Respondent fails to pay the amount set out in paragraph 1.A or fails to return the signed Waiver of Right to Appeal within thirty (30) days after receiving this Order and Assessment, subject to the rights to appeal, the full amount of the assessed penalty, $2,000.00, is due and payable to the Division within thirty (30) days of the Respondent's receipt of this Order and Assessment.**

This Order and Assessment is not to be construed as a waiver of any provision of the law or regulations, including but not limited to, future enforcement for violations of the Act and Regulations which are not charged as violations in this Order and Assessment.

Issued this 19th Day of November, 2007 on behalf of James H. Fyke, Commissioner of the Tennessee Department of Environment and Conservation.

BY: Paul E. Davis

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

SEE OTHER SIDE---SEE OTHER SIDE---SEE OTHER SIDE---SEE OTHER SIDE

Penalty payments shall be made payable to "Treasurer, State of Tennessee" and shall be sent to the Division of Fiscal Services, Consolidated Fees Unit, Tennessee Department of Environment and Conservation, 14th Floor L & C Annex, 401 Church Street, Nashville, TN 37243. Please write the Order Number on your payment. Correspondence, other than penalty payments, should 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.

WAIVER OF RIGHT TO APPEAL

The Respondent may resolve this matter by consenting to this Order and Assessment and waiving the right to appeal. To do so, an authorized representative of the Respondent must sign the waiver below and return one copy of this Order and Assessment, along with a check or money order for the penalty amount of $1,000.00 to the Division. If both the signed waiver and payment are not received by the Division within thirty (30) days of your receipt of this Order the full assessed penalty of $2,000.00 is due, unless an appeal has been timely filed. **The Respondent knowingly and voluntarily waives the right to appeal this Order and Assessment as evidenced by the signature below.**

_____	Jerry Douglas Smith	_____
Date	Respondent's Printed or Typed Name	Respondent's Signature

NOTICE OF RIGHT TO APPEAL

Tennessee Code Annotated §§ 69-3-109 and 115, allow the 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 a written petition, with the Office of General Counsel, 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 days of receiving this Order and Assessment. If the required written petition is not filed within thirty 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 Director's Order and Assessment will not be subject to review pursuant to T.C.A. §§ 69-3-109 and 115. **The written petition should be sent to the Office of General Counsel, Appeal of Enforcement Order, TDEC-OGC, 401 Church Street, 20th Floor L&C Tower, Nashville, Tennessee 37243-1534.**

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. of 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. At the conclusion of a hearing the Board has the authority to affirm, modify, or revoke the Director's Order and Assessment. This includes the authority to modify the penalty within the statutory confines (from $0 to $10,000.00 per day per violation).