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

May 14, 2008
Mr. Richard Norment
913 Percy Warner Blvd.
Nashville, Tennessee 37205

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7007 2560 0003 3385 7602

Subject: DIRECTOR'S ORDER NO. WPC08-0108
RICHARD NORMENT PROPERTY
DAVIDSON COUNTY, TENNESSEE

Dear Mr. Norment:

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.

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 Stephanie Fisher at (615) 532-3634.

Sincerely,

Patrick N. Parker, Manager
Enforcement and Compliance Section

PNP:SJF

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

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:	)	
	)	
	)	
RICHARD NORMENT	)	**DIVISION OF WATER POLLUTION CONTROL**
	)	
	)	
RESPONDENT	)	**CASE NUMBER WPC08-0108**
	)	

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.

Richard Norment, (hereinafter the "Respondent") is a resident of the state of Tennessee and is the owner of property located on Percy Warner Blvd. in Davidson county (hereinafter the "site"). Service of process may be made on the Respondent at 913 Percy Warner Blvd., Nashville, Tennessee 37205.

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 (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.

IV.

The Respondent is a "person" as defined by T.C.A. § 69-3-103(20) and as herein described, has violated the Act.

V.

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 (hereinafter the "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.

VI.

Vaughns Gap Branch, 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.

FACTS

VII.

On February 27, 2006, division personnel received a complaint regarding a dam constructed at 913 Percy Warner Blvd. restricting water flow downstream and contributing to a large amount of mosquitoes in warm weather.

VIII.

On March 6, 2006, division personnel conducted a complaint investigation at the site and noted that a concrete and rock dam had been constructed across Vaughns Gap Branch. A file review indicated that the Respondent had not requested or been issued written ARAP authorization for this activity.

IX.

On March 22, 2006, division personnel issued a Notice of Violation (NOV) to the Respondent for the violation noted during the March 6, 2006, complaint investigation. The Respondent was instructed remove the dam.

X.

On September 28, 2006, division personnel conducted an onsite meeting with the Respondent to discuss the removal of the dam and alternative options for water withdrawal for lawn irrigation.

XI.

On February 26, 2007, division personnel conducted a follow up inspection and noted that a cut had been made in the left side of the dam to allow more water to be released.

XII.

On October 16, 2007, division personnel conducted a follow up inspection and noted that a weir plate had been placed over the cut on the left side of the dam, causing the flow of Vaughns Gap Branch to be impounded.

XIII.

On April 8, 2008, division personnel conducted a follow up inspection and noted the dam to be intact, and the weir plate in place.

XIV.

During the course of the investigation the division incurred DAMAGES in the amount of SEVEN HUNDRED SIXTY THREE DOLLARS AND NINETY SEVEN CENTS ($763.97).

VIOLATIONS

XV.

By altering waters of the state without authorization under an ARAP, the Respondent has violated T.C.A. §§ 69-3-108(a)–(b), and 69-3-114(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:
>
> (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

XVI.

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 Respondent.

1. Within 15 days of receipt of this ORDER AND ASSESSMENT the Respondent shall submit a corrective action plan (CAP) to remove the dam from Vaughns gap Branch. The CAP is to be submitted to the manager of the Division of Water Pollution Control located at the Nashville Environmental Field Office (NEFO), 711 R. S. Gass Blvd., Nashville, TN 37243 and a copy sent to the manager of the Enforcement & Compliance Section, at 6th Floor L&C Annex, 401 Church Street, Nashville, Tennessee 37243.

2. Within 30 days of approval of the CAP, the Respondent shall fully complete the CAP and submit written documentation and photographic evidence of completion to the manager of the Division of Water Pollution Control located at the NEFO, and a copy shall also be sent to the manager of the Enforcement & Compliance Section, at the addresses listed in Item 1, above.

3. The Respondent shall, within 30 days of receipt of this ORDER AND ASSESSMENT pay DAMAGES to the division in the amount of SEVEN HUNDRED SIXTY THREE DOLLARS AND NINETY SEVEN CENTS ($763.97).

4. The Respondent shall pay a CIVIL PENALTY of TWO THOUSAND FIVE HUNDRED DOLLARS ($2,500.00) to the division, hereby ASSESSED to be paid as follows:

   a. The Respondent shall, within 30 days of receipt of this ORDER AND ASSESSMENT, pay a CIVIL PENALTY in the amount of FIVE HUNDRED DOLLARS ($500.00).

   b. If the Respondent fails to comply with Part XVI, item 1 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of FIVE HUNDRED DOLLARS ($500.00), payable within 30 days of default.

   c. If the Respondent fails to comply with Part XVI, item 2 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of ONE THOUSAND FIVE HUNDRED DOLLARS ($1,500.00), payable within 30 days of default.

The Respondent 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 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 preventive 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.

Further, the Respondent is advised that the foregoing ORDER AND ASSESSMNET 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 AND ASSESSMENT will be one factor considered in any decision whether to take enforcement action against the Respondent 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 14 day of May 2008.

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

NOTICE OF RIGHTS

Tennessee Code Annotated §§ 69-3-109, 115 allow the Respondent 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 setting forth each 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.

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. 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.

At the conclusion of a hearing the Board has the authority to affirm or modify, or deny the ORDER AND ASSESSMENT. This includes the authority to modify the penalty within the statutory confines.

Furthermore, in the event the Board finds that the Respondent is responsible for the alleged violations after a hearing, 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 an administrative law judge and a court reporter.

Any petition to appeal which is filed should be sent to Appeal of an Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548. 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 shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6ht Floor Annex, 401 Church Street, Nashville, TN 37243. The case number should be written on all correspondence regarding this matter.