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

July 14, 2008

James E. Smith
P.O. Box 421
Gainesboro, Tennessee 38562

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT # 7006 0810 0000 1061 8976

Subject: DIRECTOR'S ORDER NO. WPC08-0166
JAMES SMITH PROPERTY
JAMES E. SMITH
SMITH COUNTY, TENNESSEE

Mr. James E. Smith:

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.

If you or your attorney has questions concerning this correspondence, contact me at (615) 532-0683.

Sincerely,

B. Paulette Barton
Enforcement and Compliance Section

cc: WPC-CK- EFO, Rita Thompson
Enforcement File

TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
DIRECTOR'S ORDER & ASSESSMENT
WPC CASE No. WPC08-0166

Respondent: James E. Smith
P.O. Box 421
Gainesboro, Tennessee 38562

The Tennessee Department of Environment and Conservation, Division of Water Pollution Control, conducted an inspection of the James Smith Property site in Smith County on June 16, 2008. 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. None, (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 $2,500.00

1. **If the Respondent waives the right to appeal this Order and Assessment, as provided below, said assessed penalty is payable as follows:**
   A. $1,250.00 shall be paid to the Division within thirty (30) days after this Order is received, and
   B. The remaining $1,250.00 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 $1,250.00 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, $2,500.00, 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 14th Day of July, 2008 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 $1,250.00 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 $2,500.00 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.**

_____	James E. Smith	_____
Date	Respondent's Printed or Typed Name	Respondent's Signature

NOTICE OF RIGHT TO APPEAL

Tennessee Code Annotated §§ §§69-3-109, 115, allows the Respondent to secure review (appeal) of this Order and Assessment. To do so, a written petition setting forth the grounds (reasons) for requesting a hearing before the Water Quality Control Board must be RECEIVED by the Department within THIRTY (30) DAYS of the date the Respondent received this Order and Assessment or it will become final (not subject to review).

Artificial Respondents (corporations, limited partnerships, limited liability companies, etc.) cannot carry-on the practice of law. They may secure review (appeal) before the Water Quality Control Board only through an attorney licensed to practice law in Tennessee. Natural Respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. Low- income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Any hearing of this case before the Board will be 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. Such hearings are in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses to testify.

At the conclusion of a hearing the Board has the authority to affirm, modify, or deny the Order and Assessment. This includes the authority to modify the penalty within the statutory confines (up to $10,000.00 per day per violation). Furthermore, 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.