

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

IN THE MATTER OF:)	DIVISION OF WATER RESOURCES
)	
)	
VULCAN CONSTRUCTION MATERIALS, LLC)	
)	
)	
RESPONDENT.)	CASE NUMBER WPC18-0080

CONSENT ORDER AND ASSESSMENT

This CONSENT ORDER AND ASSESSMENT is entered into between the Tennessee Department of Environment and Conservation (the “Department”) and Vulcan Construction Materials, LLC (the “Respondent”) for the purpose of resolving the issues set forth herein. The parties hereby stipulate and agree as follows:

PARTIES

I.

Jennifer Dodd is the duly appointed Director of the Tennessee Division of Water Resources (the “Division”) by the Commissioner of the Department.

II.

The Respondent is a foreign limited liability company created in the State of Delaware and is properly registered to conduct business in the State of Tennessee. The Respondent operates the Kingsport Quarry in Sullivan County, Tennessee (the “site” or “facility”). Service of process may be made on the Respondent through its Registered Agent, Corporation Service Company, 2908 Poston Avenue, Nashville, TN 37203.

JURISDICTION

III.

Whenever the Commissioner has reason to believe that a violation of Tennessee Code Annotated (“Tenn. Code Ann.”) § 69-3-101 *et seq.*, the Water Quality Control Act (the “Act”), has occurred, is occurring, 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 Tenn. Code Ann. § 69-3-109(a). Further, the Commissioner has authority to assess civil penalties against any violator of the Act, pursuant to Tenn. Code Ann. § 69-3-115 and has authority to assess damages incurred by the state resulting from the violation, pursuant to Tenn. Code Ann. § 69-3-116. Pursuant to Tenn. Code Ann. § 69-3-107(13), the Commissioner may delegate to the Director any of the powers, duties, and responsibilities of the Commissioner under the Act. David W. Salyers, P.E., Commissioner of the Department of Environment and Conservation, has delegated such authority to Jennifer Dodd, Director of the Tennessee Division of Water Resources (“Director”).

IV.

The Respondent is a “person” as defined by Tenn. Code Ann. § 69-3-103(26) and, as herein described, has violated the Act.

V.

The North Fork Holston River constitutes “waters” of the state as defined by Tenn. Code Ann. § 69-3-103(44). Pursuant to Tenn. Code Ann. § 69-3-105(a)(1), all streams have been classified by the Tennessee Water Quality Control Board for suitable uses. Tenn. Comp. R. & Regs. Chapter 0400-40-04. Accordingly, all streams have been classified for the following uses: to support fish and aquatic life, recreation, irrigation, and livestock watering and wildlife, and may additionally be classified for use as industrial water supply, domestic water supply, and navigation. The North Fork Holston River is an impaired waterbody for mercury and is listed on the State of Tennessee’s 2018 303d list.

VI.

Pursuant to Tenn. Code Ann. § 69-3-108, any person engaged in or planning to engage in the discharge of sewage, industrial wastes or other wastes into waters, or to a location from which it is likely that the discharged substance will move into waters must obtain a permit from the Department. Tennessee Comp. R. & Regs. 0400-40-05-.08 states, in part, that a set of effluent limitations will be required in each permit that will indicate adequate operation or performance of treatment units used, and that appropriately limit those harmful parameters present in the wastewater. Tennessee Comp. R. & Regs. 0400-40-05-.07 and the permit each state, in part, that the permittee shall at all times properly operate and maintain all facilities and systems for collection and treatment which are installed or used by the permittee to achieve compliance with the conditions of the permit. Furthermore, it is unlawful for any person to increase the volume or strength of any wastes in excess of the permissive discharges specified under any existing permit pursuant to Tenn. Code Ann. § 69-3-108(b)(3). It is unlawful for any person to violate the conditions of a discharge permit issued by the Department pursuant to Tenn. Code Ann. §§ 69-3-108(b) and -114(b).

FACTS

VII.

On March 1, 2018, the Division reissued National Pollutant Discharge Elimination System (“NPDES”) permit number TN0066362 to the Respondent for mining operations at the site, which is a limestone quarry and processing facility. The permit authorizes the Respondent to discharge treated wastewater and stormwater to the North Fork Holston River (“NF Holston”) via Outfall 001 (the “outfall”) in accordance with effluent limitations, monitoring requirements, and other

conditions. The permit had an effective date of May 1, 2018, and has an expiration date of April 30, 2023.

VIII.

On May 15, 2006, the Respondent received a Notice of Violation (“NOV”) from the Division for violations of the permit and the Act including an unpermitted discharge of limestone fines via seeps and causing a condition of pollution within the NF Holston. The Respondent implemented corrective actions to address the violations, and follow-up inspections in September 2008 and 2010 revealed no continued violations and a full recovery of the river.

IX.

On July 19, 2018, the Division received a complaint alleging that a milky white discoloration was visible within the NF Holston and that the pollution was due to the Respondent’s facility. The complainant stated that the discoloration would peak roughly 5 hours after heavy rain events. Later that same day, Division personnel performed a complaint investigation and observed discoloration and grey sediment deposits within the river. The discoloration appeared to originate at the facility, but Division personnel were unable to gain access to the river from the Respondent’s property at the location due to the Respondent’s offices being closed. Division personnel contacted the environmental manager for the Respondent and scheduled a site visit for July 31, 2018, to further investigate the source of pollution.

X.

On July 31, 2018, Division personnel with the Mining Unit and the Johnson City Environmental Field Office (“JCEFO”) returned to the site as scheduled to complete the complaint investigation and were accompanied by Mr. Matt Belcher, Ms. Regina Bell, Mr. Keith Austin, and Mr. Mark Cates, on behalf of the Respondent. During the investigation, Division personnel

observed two distinct sediment deltas (“Delta 1” and “Delta 2”) consisting of limestone fines within the NF Holston. Delta 1 was roughly 120 feet (“ft”) upstream from the outfall and was approximately 30 ft by 30 ft and 7 inches in depth. Delta 2 was roughly 50 ft upstream from the outfall and was also approximately 30 ft by 30 ft. The depth of Delta 2 was unknown, but sediment deposition approximately 2 inches in depth was observed on rocks in the middle of the channel beyond the edge of the delta, which was exposed and above the surface of the water. Seeps were identified at each delta and were discharging clear water at the time of the inspection. Water from the outfall was also clear and did not appear to be contributing to the sediment within the river. The flow from the seeps had created visible channels approximately 3 to 4 inches deep within each delta. Although the flow from the seeps was clear at the time, the water disturbed the deposited sediment and created a small plume in the river at the edge of Delta 1. During the investigation, four potential areas of infiltration at the quarry were identified, including a 3 inch hole along a haul road near the southern stockpile, a low area in the central processing area consistently saturated due to dust suppression activities, the sampling tank area, and a ditch near where an abandoned pond had been located. All areas showed evidence that standing or flowing water was uncontrolled and/or infiltrating into the ground.

XI.

On August 3, 2018, the Division issued a NOV to the Respondent for violations observed during the July 31, 2018 complaint investigation. In the letter, the Division stated that the limestone fines sediment deltas in the NF Holston were formed by seeps containing limestone fines from the surface flow of stormwater and process wastewater through fill dirt underlying the processing facility. As a result, the seeps were causing a condition of pollution. In the NOV, the Division requested that the Respondent develop a detailed Corrective Action Plan (“CAP”) to

address the violations and submit the CAP to the Division for review and approval no later than August 31, 2018. The CAP was requested to include a detailed plan with timeframes to remove the accumulated sediment deltas from the river and a plan to eliminate the seeps contributing to the pollution.

XII.

On August 29, 2018, the Division received a CAP from Mr. Chris Catron, Senior Project Manager for Civil & Environmental Consultants (“CEC”), and Mr. Jeff Duke, Senior Principal for CEC, on behalf of the Respondent. The CAP was separated into two components: the remediation of existing sediment deltas and the identification and correction of the sources of stormwater transporting the limestone fines. Because the source was not yet identified or corrected, CEC stated that the primary goal was to identify and stop the source of the seeps before cleanup would begin to prevent the need for multiple cleanup efforts. At the time the CAP was submitted, CEC stated that the Respondent had implemented, or was in the process of implementing, measures including: grading areas of concern to direct surface water to existing French drains which would then direct the water to an onsite quarry pit, repairing the leak in the on-site water tank, and performing a dye trace test at another area of concern at the wheel wash sump to determine any connection to the seeps. CEC stated that if the measures described did not address the limestone fines discharges from the seeps, additional low lying areas would be evaluated and graded to direct surface water to the quarry pit.

The CAP also described the proposed method of sediment removal to be performed by the Respondent. All sediment would be removed by hand tools to avoid disturbing the layer of historically contaminated sediments within the river, and removed material would be transported to either a disposal area within the quarry pit or to a temporary staging area for transport at a later

date. If a temporary staging area was determined to be necessary, the stockpile would be protected from flowing water and stormwater by straw wattles and/or an earthen berm covered with plastic sheeting to prevent migration of the sediment to the river. In addition, CEC stated that the Respondent would establish a schedule for routine inspection of the seeps until it was reasonably certain additional deposition of limestone fines would not occur. Should limestone fines laden discharges continue, the Respondent would notify the Division and develop additional corrective measures.

XIII.

On August 27 and 30, 2018, Division personnel from the JCEFO returned to the site to perform a Natural Resource Damage Assessment (“NRDA”) during which measurements and photographs of damage to the river were taken. NRDA determinations are calculated using four metrics – gravity of impact, duration of impact, length of impact in linear feet, and resource quality of the water body. Recent storm events and heavy flow in the NF Holston had moved the original location of the sediment deltas observed on July 31, 2018, by spreading the material further into the river and depositing it in a more linear fashion along the riverbank. During the visit, an additional seep was discovered 150 yards upstream from the original sediment deltas, and a third delta of limestone fines measuring approximately 10 linear feet was observed. Division personnel measured the sediment accumulation at the three discharge locations and measured a maximum limestone deposit depth of 15 inches and an average depth of 4.94 inches. The silt deposits on the river bed extended into the river a maximum of 54 feet and an average of 38.5 feet. Based on measurements, Division personnel estimated that approximately 3,217 cubic feet of silt had accumulated in the river and determined the gravity of impact to be severe. A total of 213 linear feet of impact was measured, and Division personnel estimated the duration of impact to be

between 0 and 1 year without corrective action based on the river's ability to carry the sedimentation away. Division personnel performed a habitat assessment of the NF Holston upstream from the locations of impact and determined the river to be Exceptional Tennessee Waters. However, due to the significant sediment accumulation at the discharge points, no available habitat remained and a habitat assessment could not be performed within the impacted reach of the stream.

XIV.

On September 14, 2018, Division personnel emailed the Respondent stating that the Division had requested CEC to make some changes to the CAP before it could be approved and implemented. The email also advised that Division personnel would perform a site visit on September 20, 2018.

XV.

On September 20, 2018, Division personnel performed the follow-up site visit as scheduled. Division personnel met with Mr. Belcher, Ms. Bell, and Mr. Austin to discuss the CAP, view the active quarry pit and previous areas of concern, and observe conditions in the receiving stream. No active milky discharge was observed during the visit. The seeps were fully submerged and the river was visibly turbid due to recent rain events and the high flow of the NF Holston. The representatives for the Respondent described actions that had been taken since the NOV to address violations.

XVI.

On October 9, 2018, CEC submitted a revised CAP to the Division, which had been updated to include the additional seep location 150 yards upstream from the initial seep locations. In the CAP, CEC stated that the dye trace test had been performed on August 27, 2018, at the

wheel wash sump as described in the original CAP and results indicated that the sump was connected to the discharges. As a result, the Respondent began pumping water from the wheel wash directly to the quarry pit to prevent it from draining to the seeps. The updated CAP reiterated that cleanup efforts would be performed using hand tools and stated that approximately three inches of the bottom layer of limestone fines would be undisturbed to minimize the risk of disturbing historically contaminated sediments. The updated CAP was approved by the Division by email on October 11, 2018.

XVII.

During the course of the investigation, the Division incurred DAMAGES in the amount of FOUR THOUSAND, THREE HUNDRED THIRTY DOLLARS AND EIGHTY-TWO CENTS (\$4,330.82).

XVIII.

The Division has calculated NATURAL RESOURCE DAMAGES in the amount of NINE THOUSAND, FIVE HUNDRED FORTY-TWO DOLLARS AND FORTY CENTS (\$9,542.40) based on severe damage to 213 linear feet of the NF Holston for a duration of between 0 and 1 year without corrective action. Depending on the success or failure of corrective actions taken by the Respondent to completely stop the illicit discharge of limestone fines, the Division may elect to perform a follow-up NRDA based on the post-corrective condition of the waterbody and whether the Respondent has completely stopped the source of illicit discharges.

VIOLATIONS

XIX.

By allowing an unpermitted discharge of limestone fines, as described herein, the Respondent has violated Tenn. Code Ann. §§ 69-3-108(b) and 69-3-114(a) which state, in relevant part:

Tenn. Code Ann. § 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:

- (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.

Tenn. Code Ann. § 69-3-114(a):

It is unlawful for any person to discharge any substance into the 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, 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.

XX.

By discharging limestone fines to North Fork Holston River, the Respondent has caused a condition of pollution and has violated Tenn. Code Ann. § 69-3-114, which states in relevant part:

Tenn. Code Ann. § 69-3-114:

- (a) It is unlawful for any person to discharge any substance into the 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, 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.

- (b) In addition, it is unlawful for any person to act in a manner or degree that 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 this part...

ORDER AND ASSESSMENT

XXI.

WHEREFORE, pursuant to the authority vested by Tenn. Code Ann. §§ 69-3-109, 69-3-115 and 69-3-116, I, Jennifer Dodd, order, and the Respondent agrees as follows:

1. The Respondent shall complete all activities outlined in the approved CAP, including any approved revisions and addenda, within three (3) months after execution of this Consent Order and Assessment and submit a report detailing work completed at the site and the success of corrective actions. The report shall include photographs and a timeline of activities. This report shall be submitted in duplicate to the following addresses:

Program Manager, Mining Section
Bryan.Epperson@tn.gov
Knoxville Environmental Field Office
3711 Middlebrook Pike
Knoxville, TN 37921

AND

Manager, Compliance and Enforcement Unit
Jessica.Murphy@tn.gov
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Ave., 11th Floor
Nashville, TN 37243

This case number, WPC18-0080 should be written on all correspondence regarding this matter.

2. The Respondent shall, beginning immediately after submission of the CAP completion report, perform inspections monthly and/or after every rain event and submit reports

quarterly to the Division detailing current conditions at the site. These reports shall be submitted beginning the first calendar quarter after submission of the CAP completion report and should include photographs and written descriptions of conditions in the river at the three seep locations, whether any new or continued limestone fines deposits are observed, and any actions taken by the Respondent during that period to address sediment concerns. These quarterly reports shall be submitted in duplicate to the addresses provided in item 1 and shall be submitted on or before the last day of each calendar quarter. Submission of these reports shall continue until December 31, 2019.

3. The Respondent shall maintain compliance with the provisions of the Act at the site for a period of two (2) years from the date of entry into this Order and Assessment, at such time this case will be considered closed, provided the Respondents are in compliance with the Order and Assessment at that time.
4. The Respondent shall pay a CIVIL PENALTY of THIRTY THOUSAND DOLLARS (\$30,000.00) to the Division, hereby ASSESSED to be paid as follows:
 - a. **On or before the thirty-first (31st) day after receipt of this ORDER and ASSESSMENT, the Respondents shall pay a CIVIL PENALTY in the amount of SIX THOUSAND DOLLARS (\$6,000.00).**
 - b. If, and only if, the Respondents fail to comply with item 1 above, the Respondents shall pay a CIVIL PENALTY in the amount of EIGHT THOUSAND DOLLARS (\$8,000.00), payable on or before the thirty-first (31st) day after default.
 - c. If, and only if, the Respondents fail to comply with item 2 above, the Respondents shall pay a CIVIL PENALTY in the amount of TWO THOUSAND, SIX HUNDRED SIXTY-SIX DOLLARS AND SIXTY-SIX CENTS (\$2,666.66) per report, not to

exceed EIGHT THOUSAND DOLLARS (\$8,000.00), payable on or before the thirty-first (31st) day after notification of default by the Division.

- d. If, and only if, the Respondents fails to comply with item 3 above as evidenced by receipt of a NOV from the Division, the Respondents shall pay a CIVIL PENALTY in the amount of TWO THOUSAND DOLLARS (\$2,000.00) per NOV for the first four NOVs, not to exceed a total of EIGHT THOUSAND DOLLARS (\$8,000.00), payable on or before the thirty-first (31st) day after notification of default by the Division. Any additional NOVs would not be subject to this provision.

5. On or before the thirty-first day after receipt of this Order and Assessment, the Respondents shall pay damages to the Division in the amount of FOUR THOUSAND, THREE HUNDRED THIRTY DOLLARS AND EIGHTY-TWO CENTS (\$4,330.82).

The Respondents shall pay NINE THOUSAND, FIVE HUNDRED FORTY-TWO DOLLARS AND FORTY CENTS (\$9,542.40) to the Department's Natural Resource Damages Fund no later than sixty (60) days after entry of this Order and Assessment. If the Respondent fails to completely stop the illicit discharge of limestone fines, the Division reserves the right to perform a follow-up Natural Resource Damage Assessment.

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

The Director of the Division may, for good cause shown, extend the compliance dates contained within this Consent 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 Consent Order and Assessment 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 Consent Order and Assessment will be one factor considered in any decision whether to take enforcement action against the Respondent in the future. Failure to comply with any of the requirements of this Consent Order and Assessment could lead to further enforcement actions, which may include additional civil penalties, assessment of damages, and/or recovery of costs. Payments of the civil penalty and/or damages 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, William R. Snodgrass Tennessee Tower, 312 Rosa Parks Avenue, 10th Floor, Nashville, Tennessee 37243. **The case number, WPC18-0080, should be written on all correspondence regarding this matter.**

WAIVER OF APPEAL

The Respondent understands that it has the right to appeal this Consent Order and Assessment pursuant to Tenn. Code Ann. §§ 69-3-109, 69-3-115, and 69-3-116. By signing below, the Respondent knowingly and voluntarily waives any right it may have to appeal this Consent Order and Assessment.

RESERVATION OF RIGHTS

The Respondent does not admit or deny the factual allegations or the alleged violations of law contained in this Consent Order and Assessment. The Respondent reserves its rights to contest

the factual allegations and alleged violations contained in this Consent Order and Assessment in any proceeding other than a proceeding brought by the Department to enforce the terms of this Consent Order and Assessment.

AUTHORITY TO SIGN

The undersigned representatives of the Department and the Respondent hereby represent and warrant that they are fully authorized and competent to execute this CONSENT ORDER and AGREEMENT on behalf of the entity for which they are signing.

Issued by the Director of the Division of Water Resources of the Tennessee Department of Environment and Conservation and agreed to by Vulcan Construction Materials, LLC on this 15th day of April, 2019.




Jennifer Dodd, Director
Division of Water Resources
Department of Environment and Conservation



David Clement, Division President
Central Division
Vulcan Construction Materials, LLC

Reviewed by:


Stephanie A. Durman

By 
w/ permission

Stephanie A. Durman (BPR #027783)
Assistant General Counsel
Department of Environment & Conservation
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 532-3020
stephanie.durman@tn.gov

Counsel for Petitioner


Michael K. Stagg

Michael K. Stagg (BPR #017159)
Waller Lansden Dortch & Davis, LLP
511 Union Street, Suite 2700
Nashville, TN 37219
(615) 850-8876
michael.stagg@wallerlaw.com

Counsel for Respondent