



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

Office of General Counsel
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312 Rosa L. Parks Avenue, 2nd Floor,
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Telephone: (615) 532-0131

September 26, 2016

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT NO. 7008 1830 0004 8096 4022

Mr. Robert N. Moore Jr.
Respondent
2406 Goose Creek Bypass
Franklin, TN, 37064

Re: Commissioner's Order, Case No. WPC16-0053
In the Matter of: Goose Creek Inn

Dear Mr. Moore

Enclosed please find an Order issued by Commissioner Robert J. Martineau, Jr., on behalf of the Tennessee Department of Environment and Conservation in the above referenced matter. Please read it carefully and pay special attention to the NOTICE OF RIGHTS section.

Sincerely,

A handwritten signature in blue ink that reads "Stephanie A. Durman".

Stephanie A. Durman
Assistant General Counsel

Enclosure

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

IN THE MATTER OF:

DIVISION OF WATER RESOURCES

**ROBERT N. MOORE, Jr. d/b/a
THE ROBERT N. MOORE
COMPANY,**

CASE NO. WPC16-0053

RESPONDENT.

COMMISSIONER'S ORDER AND ASSESSMENT

NOW COMES Robert J. Martineau, Jr., Commissioner of the Tennessee Department of Environment and Conservation (the "Department"), and states:

PARTIES

I.

Robert J. Martineau, Jr., is the duly appointed Commissioner of the Department. The Commissioner is responsible for administering the *Water Quality Control Act* (the "Act"), Tenn. Code Ann. § 69-3-101 *et seq.*

II.

Robert N. Moore, Jr. (hereinafter "Respondent"), doing business as the Robert N. Moore Company,¹ owns and operates a domestic wastewater treatment system associated with the Goose Creek Inn in Franklin, Tennessee. Service of process may be made on the Respondent at 2406 Goose Creek Bypass, Franklin, Tennessee 37064.

¹ The Permit was issued to the Respondent as the owner of The Robert N. Moore Company. No such company is registered with the Tennessee Secretary of State. The January 31, 2011 renewal application was submitted by Mr. Moore as the owner/operator, and was signed by him, and the deed to the property is in Mr. Moore's name individually.

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JURISDICTION

III.

Whenever the Commissioner has reason to believe that a violation of the Act has occurred, or is about to occur, the Commissioner may issue a complaint to the violator and 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.

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.

Fivemile Creek is a "water of the state" as defined by Tenn. Code Ann. § 69-3-103(44). Pursuant to Tenn. Code Ann. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Board of Water Quality, Oil and Gas for suitable uses. Tenn. Comp. R. & Regs. Chapter 0400-40-04. Accordingly, all waters of the state have been classified for the following uses: 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.

VI.

Tennessee Code Annotated § 69-3-108 requires that a person obtain a permit from the Department prior to discharging pollutants into waters of the state. Rules governing the issuance of water quality permits have been promulgated as Tenn. Comp. R. & Regs. Chapter 0400-40-

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05. Tenn. Comp. R. & Regs. 0400-40-05-.08 requires that discharge permits issued by the Department impose effluent limitations that are sufficiently stringent to ensure adequate operation and performance of treatment units based on applicable technology-based requirements. In addition, Tenn. Code Ann. § 69-3-108(g)(1) requires all such permits to include the most stringent effluent limitations required to implement applicable water quality standards and to impose monitoring and reporting requirements. Furthermore, it is unlawful for any person to violate the conditions of a discharge permit issued by the Department. Tenn. Code Ann. § 69-3-108(b)(6) & Tenn. Comp. R. & Regs. 0400-40-05-.07(2)(a) & -.08(2).

FACTS

VII.

On May 31, 2011, the Department issued National Pollutant Discharge Elimination System (“NPDES”) Permit TN0060216 (the “Permit”) to the Respondent. The Permit became effective on July 1, 2011, and expires on June 30, 2016.² The Permit authorizes the Respondent to discharge treated domestic wastewater from the Goose Creek Inn wastewater treatment plant (“Goose Creek Inn WWTP”) to mile 2.2 of Fivemile Creek in accordance with effluent limitations, monitoring and reporting requirements, and other conditions set forth therein, including a requirement that monitoring and treatment equipment be properly operated and maintained. The receiving waters are in the Harpeth River Watershed and are designated by the Department’s Division of Water Resources (“Division”) as having unavailable parameters for *E. coli* and sedimentation/siltation. The receiving waters have a 7-day, 10-year interval (“7Q10”) low flow of zero. The design average daily flow from the Goose Creek Inn WWTP is 30,000 gallons per day. The Permit requires monitoring of certain effluent parameters and reporting the

² The Respondent reapplied in a timely manner for reissuance of his NPDES permit via application received January 12, 2016. This permit is administratively extended.

results to the Department on Monthly Operation Reports (“MORs”) signed and certified by the Respondent.

VIII.

The Goose Creek Inn WWTP is a package plant installed in the 1960s. The plant includes a contact stabilization system that consists of three barscreens at the influent structure, an aeration basin, a clarifier and tertiary filter. Liquid chlorine bleach is used for disinfection, and calcium thiosulfate is used for de-chlorination. The Goose Creek Inn WWTP receives wastewater flow from the Goose Creek Inn and two other businesses near the intersection of I-65 and Goose Creek Bypass (Highway 248): Mapco Service Station and K & T Associates.

IX.

On September 30, 2011, Division personnel conducted a Compliance Evaluation Inspection (“CEI”) of the Goose Creek Inn WWTP. The Division issued a notice of violation (“NOV”) to the Respondent on December 2, 2011, indicating the “wastewater treatment plant was found to be in very poor condition. Maintenance of the facility has been severely neglected and needs immediate attention.” The NOV also cited a number of effluent violations.

X.

On December 21, 2015, Division personnel conducted a CEI of the Goose Creek Inn WWTP. The purpose of the CEI was to verify compliance with the Permit’s self-monitoring requirements, effluent limitations, and other permit conditions. A review of monthly operation reports (“MORs”) submitted from January 2014 through December 2015 revealed that the Respondent reported numerous violations of the Permit’s effluent limitations, including:

- 7 daily maximum concentration violations for total residual chlorine (“TRC”);
- 1 daily maximum concentration violation for ammonia as nitrogen (“NH₃”);

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- 3 monthly average concentration violations for NH_3 ;
- 1 daily maximum concentration violations for *E. coli*;
- 1 daily maximum concentration violations for carbonaceous biochemical oxygen demand (“CBOD”);
- 1 monthly average concentration violation for CBOD; and
- 1 daily minimum concentration violation for dissolved oxygen (“DO”).

The CEI revealed systemic structural problems throughout the Goose Creek Inn WWTP that indicated a failure to properly operate and maintain all facilities and systems. During the CEI inspection, Department personnel observed:

- Severe deterioration and corrosion of the plant’s influent structure, treatment unit walls and structures above the water level, clarifier, emergency overflow weir, other weirs, grill walkway, metal supports throughout the plant, metal air lines leading to the aeration basin, piping and structures in the effluent chamber and effluent weir box, and electrical wiring, as a result of inadequate maintenance and age;
- Only one blower motor to supply aeration, which does not meet the minimum aeration capability required by the Division’s Engineering Design Criteria (Chapter 7, Activated Sludge, 7.4 Aeration Equipment, 7.4.2.2 Special Details) or the Goose Creek Inn permit (Part II, General Provisions, 4. Proper Operation and Maintenance, a.);
- No electrical timer for the blower motor to cycle the air on and off which is needed to prevent overheating and excess wear;
- Uncontrolled air flow (due, in part, to the absence of an electrical timer), resulting in aeration basin DO levels ranging from 6.0 to 12.0 mg/L, most frequently 7.0 to 9.0

mg/L, which far exceeds 2.0 mg/L—the range that supports appropriate micro-organisms required for activated sludge plants to provide efficient and effective biological treatment;

- Inadequate equipment to properly control the chlorine and de-chlorination solution feed rates, causing excess amounts of chemicals to be discharged, leading to white, gray, and black precipitate discharges resulting in adverse impacts to the receiving stream including objectionable color contrast;
- Electrical wiring and control mechanisms that have failed or are inadequate; and
- The inside of the weir box was coated with a white precipitate, and the effluent discharge was discolored white and was opaque. There were deposits of white material, then progressing to gray and blackish deposits in the bottom of the wet weather conveyance leading to the receiving stream. The discolored flow and deposits continued into the receiving stream, and there was discoloration of the receiving stream at and downstream of the discharge. The stream was clear upstream of the discharge point. In the upstream area, there were no deposits or discoloration of the type observed downstream of the plant discharge. It was later determined the discoloration was caused by the chlorination/de-chlorination chemicals, which were adjusted lower by the plant operator.

The CEI concluded that these violations render the plant structurally unsound and incompatible with the Division's engineering design criteria. As a result, the Goose Creek Inn WWTP cannot be operated according to normal treatment practices, and can no longer provide consistent wastewater treatment to meet permit conditions and protect water quality.

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XI.

On April 8, 2016, the Department issued a NOV to the Respondent, detailing the above-referenced violations. The NOV required a response detailing corrective actions within 30 days of receipt and submission of an updated engineering alternatives analysis to evaluate future sewerage needs and options within 60 days of receipt. The Respondent's green card for the certified mailing shows receipt on April 18, 2016, so his response was due on May 18, 2016 and his engineering alternatives analysis was due on June 17, 2016. The NOV also identified the ongoing provision of sewer services to two other businesses.

XII.

The Tennessee Regulatory Authority ("TRA") sent an undated letter (a copy of which was received by the Division on April 18, 2016) notifying the Respondent he was required to apply for a certificate of convenience and public necessity ("CCN") from the TRA, or explain why he believes he is not a public utility pursuant to Tenn. Code Ann. § 65-4-101(6) no later than April 28, 2016. On April 26, 2016, a letter was sent by Kim Craddock on letterhead of the Robert N. Moore Company to TRA indicating Mr. Moore was, and had been, out on medical leave. To date, the Respondent has failed to satisfy the TRA's request.

XIII.

On June 24, 2016, Linda Sullivan, P.E., of Civil Infrastructure Associates ("CIA") contacted Division personnel to discuss potential corrective action, focusing on how to abandon the existing package plant and connect to the City of Franklin's municipal sewer system.

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XIV.

On June 28, 2016, Ms. Sullivan sent a response to the NOV on behalf of the Respondent. The response indicated that the Respondent submitted a “request for sewer availability and associated costs” to the City of Franklin on May 27, 2016, and met with city officials on June 24, 2016 to discuss abandoning the existing package plant and connecting to the municipal sewer system. The Respondent has engaged CIA to develop a schedule, plans, and budget to connect to the sewer. The letter indicated that CIA would “need time for meetings and approvals from the City to clearly define the scope of the necessary work.” Since that time, Ms. Sullivan has continued to update Division staff.

VIOLATIONS

XV.

By failing to comply with the terms and conditions of his NPDES permit, the Respondent has violated Tenn. Code Ann. §§ 69-3-108(b)(1), (3) & (6), and -114(b), 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:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
- (3) The increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing permit;
- (6) The discharge of sewage, industrial wastes, or other wastes into water, or a location from which it is likely that the discharged substances will move into waters;

Tenn. Code Ann. § 69-3-114(b):

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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.

XVI.

By causing a condition of pollution in Fivemile Creek, the Respondent has violated Tenn.

Code Ann. § 69-3-114(a) which states:

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.

XVII.

During the course of the investigation the Division incurred DAMAGES in the amount of FOUR HUNDRED EIGHTEEN DOLLARS AND 27 CENTS (\$418.27).

ORDER AND ASSESSMENT

XVIII.

WHEREFORE, pursuant to the authority vested by Tenn. Code Ann. §§ 69-3-109, 69-3-115 and 69-3-116, I, Robert J. Martineau, Jr., hereby issue the following ORDER and ASSESSMENT to the Respondent:

1. No later than forty-five (45) days after receipt of this Order and Assessment, the Respondent shall submit all required design and engineering plans and, if required, ARAP or SOP applications, necessary to connect the Goose Creek Inn to the City of Franklin's sewer system, abandon the existing package plant, and stop discharging from the Goose Creek Inn

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WWTP. These plans shall be submitted to the manager of the Division of Water Resources located at the Nashville Environmental Field Office (N-EFO) at 711 R.S. Gass Blvd, Nashville, TN 37216, with a copy to the Compliance and Enforcement Unit of the Division of Water Resources at the William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 11th Floor, Nashville, TN 37243. All correspondence regarding this Order and Assessment should include the Respondent's name, this Order and Assessment number, and county name. The Respondent WILL NOT be required to submit the plans and permit applications outlined in Item 2 (with the exception of plans to abandon the existing package plant) if he enters into agreement with the City of Franklin for the latter to construct all sewer appurtenances necessary to connect to public sewer within 45 days after receipt of this Order and Assessment.

2. The Respondent shall notify any entities for which it is currently providing wastewater treatment of its plans to abandon the Goose Creek WWTP no later than sixty (60) days prior to ceasing service, and provide copies of the correspondence to the Division at the addresses listed in item 1.

3. No later than ninety (90) days after Division approval of all required plans and permits identified in Item 1, the Respondent shall connect the Goose Creek Inn to the City of Franklin's sewer system, abandon the existing Goose Creek Inn WWTP, stop discharging from the Goose Creek Inn WWTP, and provide written and photographic documentation in duplicate to the Division at the addresses listed in Item 1. If, at any point within 45 days after receipt of this Order and Assessment, the Respondent enters into agreement with the City of Franklin for the latter to construct all sewer appurtenances necessary to connect to public sewer, the Respondent will have 90 days from the date of agreement for all work to be completed. The Respondent shall provide evidence of completion to the Division at the addresses listed in item 1.

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4. The Respondent shall pay a CIVIL PENALTY of ONE HUNDRED TEN THOUSAND, THREE HUNDRED DOLLARS (\$110,300.00).

a. The Respondent shall pay an upfront civil penalty of TWENTY-TWO THOUSAND SIXTY DOLLARS (\$22,060.00) in four equal payments of FIVE THOUSAND, FIVE HUNDRED FIFTEEN DOLLARS (\$5,515.00) each. The first payment is due on or before the 31st day after receipt of this Order and Assessment. The second payment is due 180 days after receipt of this Order and Assessment.

b. If the Respondent fails to timely comply with Item 1, then the Respondent shall pay a CIVIL PENALTY in the amount of THIRTY THOUSAND DOLLARS (\$30,000.00), within 30 days of default.

c. If the Respondent fails to timely comply with Item 2, then the Respondent shall pay a CIVIL PENALTY in the amount of THREE THOUSAND, TWO HUNDRED FORTY DOLLARS (\$3,240.00), within 30 days of default.

d. If the Respondent fails to timely comply with Item 3, then the Respondent shall pay a CIVIL PENALTY in the amount of FIFTY-FIVE THOUSAND DOLLARS (\$55,000.00), within 30 days of default.

5. The Respondent shall, on or before the 31st day after receipt of this Order and Assessment, pay DAMAGES to the Division in the amount of FOUR HUNDRED EIGHTEEN DOLLARS AND 27 CENTS (\$418.27).

The Director of the Division 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 Department 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 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 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 Order and Assessment could lead to further enforcement actions which may include additional civil penalties, assessment of damages and/or recovery of costs.

NOTICE OF RIGHTS

Tenn. Code Ann. §§ 69-3-109, 69-3-115, and 69-3-116 allows the Respondent to appeal this Order and Assessment. To do so, a written petition setting forth the grounds (reasons) for requesting a hearing must be RECEIVED by the Commissioner within THIRTY (30) DAYS of the date the Respondent received this Order and Assessment or this Order and Assessment become final (not subject to review).

If an appeal is filed, an initial hearing of this will be conducted by an Administrative Law Judge ("ALJ") as a contested case hearing pursuant to the provisions of Tenn. Code Ann. § 69-3-110 and §§ 4-5-301 *et seq.* (the Uniform Administrative Procedures Act), and Tenn. Comp. R. & Regs. 1360-04-01 *et seq.* (the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies). Such hearings are legal proceedings in the nature of a trial. Individual Respondents may represent themselves or be represented by an

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attorney licensed to practice law in Tennessee. **Artificial Respondents (corporations, limited partnerships, limited liability companies, etc.) cannot engage in the practice of law and therefore may only pursue an appeal through an attorney licensed to practice law in Tennessee.** Low income individuals may be eligible for representation at reduced or no cost through a local bar association or legal aid organization.

At the conclusion of any initial hearing the ALJ has the authority to affirm, modify, or deny the Order and Assessment. This includes the authority to modify (decrease or increase) the penalty within the statutory limits of Tenn. Code Ann. § 69-3-115 (up to \$10,000 per day per violation). Furthermore, the ALJ on behalf of 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 the ALJ and a court reporter.

Any petition for review (appeal) must be directed to the Commissioner of the Department of Environment and Conservation, c/o Jenny L. Howard, General Counsel, Department of Environment and Conservation, 2nd Floor, William R. Snodgrass Bldg., 312 Rosa Parks Avenue, Nashville, TN 37243. 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, 10th Floor, William R. Snodgrass Bldg., 312 Rosa Parks Avenue, Nashville, TN 37243. Technical questions and other correspondence involving compliance issues should be sent to Jessica Murphy, State of Tennessee, Division of Water Resources, 11th Floor, William R. Snodgrass Bldg., 312 Rosa Parks Avenue, Nashville, TN 37243. Attorneys should contact the undersigned counsel of

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record. The case number, **WPC16-0053**, should be written on all correspondence regarding this matter.

Issued by the Commissioner of the Tennessee Department of Environment and Conservation on this 23rd day of September 2016.

Robert J. Martineau Jr. w/perm. gzh
Robert J. Martineau, Jr., Commissioner,
Tennessee Department of Environment and Conservation

Reviewed by:

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