



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
OFFICE OF GENERAL COUNSEL
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August 24, 2005

Mr. Steve Jarboe
121 South Main Street
Jellico, TN 37762

By Hand Delivery

**RE: STEVE JARBOE, JARBOE LOGGING, INC., AND LINDSAY
LAND, LLC. CASE NO. 05-0374**

Dear Mr. Jarboe:

Enclosed please find an Order issued by Commissioner James H Fyke. 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 cursive script that reads "Alan M. Leiserson".

Alan M. Leiserson
Legal Services Director

Enclosure(s)

cc: Chris Moran
Natalie Harris

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

IN THE MATTER OF:)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
STEVE JARBOE, JARBOE)	
LOGGING, INC. AND LINDSAY)	CASE NO. 05-0490
LAND, LLC.)	
)	
RESPONDENTS)	

COMMISSIONER'S STOP WORK ORDER
AND ASSESSMENT OF CIVIL PENALTY

NOW COMES James H. Fyke, Commissioner of the Tennessee Department of Environment and Conservation, and states:

PARTIES

I.

James H. Fyke is the duly appointed Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "Department").

II.

Steve Jarboe (hereinafter "Respondent Jarboe") conducts contracted logging operations in Tennessee and is not certified as a Master Logger. He has been personally involved in the actions described in this Order. Service of process may be made on Respondent Jarboe at 8931 South Highway 25W, Williamsburg, Kentucky 40769.

Steve Jarboe has also held himself out to staff of the Department and the Division of Forestry of the Department of Agriculture as the person in charge of activities of Jarboe Logging Inc. (hereinafter the "Respondent JLI"), which is listed as an active corporation licensed to do business in the State of Tennessee. Service of process may be made on Respondent JLI with the registered agent, Steve E. Morgan, CPA, 121 South Main Street, Jellico, Tennessee 37762

III.

Lindsay Land LLC (hereinafter the "Respondent Lindsay Land") is the landowner of the property on which Respondent Jarboe has been timber harvesting. Lindsay Land LLC is listed as an active limited liability company licensed to do business in the State of Tennessee. Service of process may be made on the Respondent through Deborah R. Black at 2021 1st Tennessee Plaza, 800 Gay Street, Knoxville, Tennessee 37929.

JURISDICTION

IV.

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*, (hereinafter the "Act") has occurred, or is about to occur, the Commissioner may issue a complaint to the violator and may order that corrective action be taken, pursuant to T.C.A. §69-3-109(a) of the Act. Further, the Commissioner has authority to issue a stop work order when certain silvicultural activities have polluted waters of the state as a result of an operator's failure or refusal to use forestry best management practices, pursuant to T.C.A.

§69-3-133; and 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 of Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (hereinafter the "Rule"). The Department has also promulgated rules setting forth the procedure for issuance of Stop Work Orders at Rule Chapter 1200-4-12.

V.

The Respondents are a "person" as defined at T.C.A. §69-3-103(20) and as herein described, have violated the Act.

FACTS

VI.

Cove Creek and Cove Lake and their respective unnamed tributaries, referred to herein, are "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 *Official Compilation of Rules and Regulations for the State of Tennessee*. Accordingly, these water bodies have been classified for the

following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife. Cove Lake is also classified for domestic water supply.

VII.

T.C.A. §69-3-103(35) defines forestry best management practices as those land and water resource conservation measures that prevent, limit, or eliminate water pollution for forest resource management purposes. The Department of Agriculture has promulgated rules setting forth best management practices for forestry at Rule Chapter 0080-7-3.

VIII.

On April 8, 2004, Division personnel and personnel from the Department of Agriculture, Division of Forestry (TDA-F) inspected a logging site along an unnamed tributary to Cove Creek/Cove Lake in Bearwallow Hollow south of Caryville in Campbell County (hereinafter the "Site"). Significant sediment deposition was observed in the unnamed tributary. Division and TDA-F personnel documented stream alterations in the form of skid trails crossing streams and treetops and debris left in the streams as well as a general lack of appropriate Best Management Practices (BMPs) for timber harvesting as recommended by the Tennessee Department of Agriculture, Division of Forestry (TDA-F). These findings were discussed with Respondent Jarboe at the site and Respondent Jarboe agreed to implement a BMP plan in a timely manner.

IX.

Division personnel conducted a follow up visit on April 12, 2004, during a storm event. The unnamed tributary running through the site was extremely turbid. The tributary caused an objectionable color contrast at its confluence with Cove Creek/Cove Lake. Turbidity in water samples obtained from the tributary was very high, ranging from 223-670 NTU. By comparison, turbidity in a water sample obtained within Cove Lake outside of the plume generated by the tributary was 10.3 NTU.

X.

Division and TDA-F personnel conducted a follow up inspection on May 10, 2004. They observed that although logging had ceased, the BMP plan had not been fully implemented. TDA-F was not satisfied with the progress made to date.

XI.

On May 18, 2004, the Division issued to the Respondents a Notice of Violation (NOV) with the following requirements:

1. Implementation and maintenance of appropriate Division of Forestry BMPs to assure that no additional sediment has left the site and entered waters of the state.
2. Assessment of the degree of sediment contribution from forestry activities to all streams receiving runoff from the site and reported to the Division within 30 days of receipt of this NOV.
3. Submittal of a plan for restoration of the impacted streams within 15 days of receipt of this NOV.

4. Restoration is to begin within 15 days of approval of the restoration plan.

The NOV also required attendance at a Compliance Review Meeting (CRM) to be held on June 3, 2004, at the Knoxville Environmental Field Office (EFO).

XII.

A CRM was held on June 3, 2004, at the Knoxville EFO and Respondent Jarboe attended, representing Respondent JLI and Respondent Lindsay Land. Forestry BMPs were discussed in detail and Respondent Jarboe again agreed to implement a BMP plan within three weeks. The Division requested a submittal of an update on site conditions and BMP implementation by July 1, 2004.

XIII.

On August 19, 2005, the Division and TDA-F received a complaint from a citizen alleging pollution at a logging site in Bearwallow Hollow in Campbell County. TDEC and TDA-F personnel investigated the complaint that same day and again on Monday, August 22, 2005. They discovered that Respondent Jarboe was again logging on the same tract of land except on the other side of Cross Mountain in Campbell County named Tunnel Hollow that is drained by another unnamed tributary to Cove Creek/Cove Lake. The entire Lindsay Land LLC owned tract, including Bearwallow Hollow and Tunnel Hollow, comprises a total of 3,306 acres. The Respondents had not implemented appropriate Forestry BMPs as provided in Rule 0080-7-3 and point source discharges from a discernible water conveyance were observed. TDA-F and Division personnel observed the following:

- Sediment deposits in the second unnamed tributary, particularly at the stream crossing.
- An approximate 2,900 feet skid-trail going straight up Cross Mountain. This skid trail was constructed without regard to Forestry BMPs, was mud laden, and acting as a conduit to transport sediment to the stream during rain events.
- Additional sediment (mud up to 12 inches deep) left in position at the stream crossing, and the log landing, and the skid trail had no BMPs to prevent the sediment from eroding into the stream during the next rain event.
- Tree waste was pushed into the flood plain of the unnamed tributary to Cove Creek/Cove Lake.
- Discarded hydraulic oil/fuel containers littered the site.

VIOLATIONS

XIV.

By causing or allowing point source discharges of sediment or sediment-laden water from a discernible, confined, and discrete water conveyance to the waters of the state, the Respondents have violated T.C.A. §69-3-108(a)(b), and §69-3-114(b), which provide, in part:

- (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.
- (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;
- (2) The construction, installation, modification, or operation of any treatment works, or part thereof, or any extension or addition thereto,
- (3) The increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing 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;
- (5) The construction or use of any new outlet for the discharge of any wastes into the waters of the state;
- (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;

§ 69-3-114(b) states:

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.

XV.

By causing or allowing pollution of the waters of the state as described herein, the

Respondents have violated T.C.A. §69-3-114(a), which states:

(a) It shall be 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(22), 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.

T.C.A. §69-3-103(22) provides:

(22) "Pollution" means such alteration of the physical, chemical, biological, bacteriological, or radiological properties of the waters of this state including but not limited to changes in temperature, taste, color, turbidity, or odor of the waters:

- (A) As will result or will likely result in harm, potential harm or detriment of the public health, safety, or welfare;
- (B) As will result or will likely result in harm, potential harm or detriment of the health of animals, birds, fish or aquatic life;
- (C) As will render or will likely render the waters substantially less useful for domestic, municipal, industrial, recreational, or other reasonable uses; or
- (D) As will leave or will likely leave the waters in such condition as to violate any standards of water quality established by the board.

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, James H. Fyke, hereby issue the following ORDER and ASSESSMENT to the Respondent:

1. All three Respondents shall immediately cease the silvicultural activities that are contributing to pollution at the site.
2. The Stop Work Order shall remain in effect until the Respondents install forestry best management practices that eliminate existing pollution and prevent further pollution associated with silvicultural activities.

3. All three Respondents shall, for two years after receipt of this Order, notify the Forest Protection Unit Leader, Department of Agriculture, Division of Forestry at P.O. Box 40627, Melrose Station, Nashville, Tennessee 37204 and the Manager of the Enforcement and Compliance Section, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 401 Church Street, L&C Annex 6th Floor, Nashville, TN 37243-1534 before commencement on future logging sites. This notification shall include, but not be limited to, the silvicultural activity and location, estimated acres, anticipated beginning date and duration of activities.
4. All three Respondents shall, for two years after receipt of this Order, set up pre-logging site visits with personnel from both Departments before the commencement of future logging activities.
5. All three Respondents shall, for two years after receipt of this Order, flag each stream crossing, Stream Management Zones, and proposed new haul roads and have these flagged areas approved by both Departments before harvest.
6. All three Respondents shall be responsible for maintaining water quality 12 months after logging ceases, on all logging sites commenced within 3 years after receipt of this Order.
7. Respondent Jarboe shall, within one year of receipt of this Order, attend the Department of Agriculture, Division of Forestry's Master Logger Course, and maintain Master Logger certification by attending continuing education classes for, at least, the next two years.

8. The Respondents shall pay a CIVIL PENALTY of TWENTY THOUSAND DOLLARS (\$20,000.00) to the Department, hereby ASSESSED to be paid as follows:

(a) The Respondents shall, within 30 days of receipt of this ORDER AND ASSESSMENT, pay a CIVIL PENALTY in the amount of FIVE THOUSAND DOLLARS (\$5,000.00).

(b) In the event the Respondents fail to comply with item one above in a timely manner, the Respondents shall submit a CIVIL PENALTY payment in the amount of SEVEN THOUSAND DOLLARS (\$7,000.00), payable within 30 days of such default.

(c) In the event the Respondents fail to comply with item three above in a timely manner, the Respondents shall submit a CIVIL PENALTY payment in the amount of TWO THOUSAND DOLLARS (\$2,000.00), payable within 30 days of such default.

(d) In the event the Respondents fail to comply with item four above in a timely manner, the Respondents shall submit a CIVIL PENALTY payment in the amount of TWO THOUSAND DOLLARS (\$2,000.00), payable within 30 days of such default.

(e) In the event the Respondents fail to comply with item five above in a timely manner, the Respondents shall submit a CIVIL PENALTY payment in the amount of TWO THOUSAND DOLLARS (\$2,000.00), payable within 30 days of such default.

(f) In the event the Respondents fail to comply with item six above in a timely manner, the Respondents shall submit a CIVIL PENALTY payment in the

amount of ONE THOUSAND DOLLARS (\$1,000.00), payable within 30 days of such default.

(g) In the event the Respondents fail to comply with item seven above in a timely manner, the Respondents shall submit a CIVIL PENALTY payment in the amount of ONE THOUSAND DOLLARS (\$1,000.00), payable within 30 days of such default.

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

Further, the Respondents are advised that the foregoing ORDER and ASSESSMENT is in no way to be construed as a waiver, expressed or implied, of any provision of law or regulations. However, compliance with the Order will be one factor considered in any decision whether to take enforcement action against the Respondents in the future. Failure to comply with this order will result in additional penalties.

Issued by the Commissioner of the Tennessee Department of Environment and Conservation on this 24th day of August 2005.



James H. Fyke, Commissioner
Department of Environment and Conservation

NOTICE OF RIGHTS

Tennessee Code Annotated §§ 69- 3-109 and 69 – 3-115, allow the Respondents to secure review of this ORDER AND ASSESSMENT. In order to secure review of this ORDER AND ASSESSMENT, the Respondents must file with the director at the address below a written petition setting forth each of Respondents' contentions and requesting a hearing before the Water Quality Control Board. The Respondents 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 Tenn. Code Ann. §§ 69- 3 -109 and 69 –3-115.

An appeal or request for hearing of any Stop Work Order issued by the Commissioner of the Department of Environment and Conservation shall be made to the Water Quality Control Board in writing by the Respondents and filed with the Commissioner of the Department of Environment and Conservation within thirty days of receipt of notice of the Stop Work Order.

If an appeal or hearing is requested, the respondents shall also be afforded the opportunity to meet with the Commissioner of the Department of Environment and Conservation or, at the Commissioner's option, meet with the deputy or assistant commissioner, within three (3) working days after the hearing request is filed, to discuss the alleged violation and show cause why a stop work order should not have been issued. Such a meeting shall be an informal event in the nature of a settlement discussion and shall not be a contested case within the meaning of the Uniform Administrative Procedures Act, §§4-5-101 et seq.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by Tenn. Code Ann. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act.) and the Dept. 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 Respondents may subpoena witnesses on their behalf to testify.

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. Non-attorneys may participate in any such proceeding to the extent allowed by law.

Payments should be sent to the Treasurer, State of Tennessee, Division of Fiscal Services, Tennessee Department of Enforcement and Conservation, 7th Floor L&C Annex, 401 Church Street, Nashville, TN 37243-1534. All other correspondence regarding this matter should be sent to Alan M. Leiserson, Legal Services Director, Tennessee Department of Enforcement and Conservation, 20th Floor L&C Tower, 401 Church Street, Nashville, TN 37243-1538