

AARON DAVIS,)
)
Plaintiff,)
)
v.) **Civil Action No.:** _____
) **Jury Demand**
TONY J. CAVENDER, THE JONES)
COMPANY OF TENNESSEE, LLC,)
AND OTTER CREEK)
HOLDINGS, LLC,)
)
Defendants.)

4. On August 11, 2020, Plaintiff mailed a notice of intent to file this action under the CWA to the named Defendants, the Administrator of the U.S. Environmental Protection Agency (“USEPA”), the Regional Administrator of USEPA Region 4, and the Commissioner of the Tennessee Department of Environment and Conservation (“TDEC”). A copy of the notice is attached as Exhibit A.

5. More than sixty days have passed since Plaintiff sent the notice letter.

6. The violations identified in the notice letter and in this complaint are continuing at this time and will continue in the future absent a court order for corrective action.

7. Neither USEPA nor TDEC has commenced, nor are they diligently prosecuting a civil or criminal action in a court of the United States to redress the violations of the CWA by Defendants that were identified in the notice letter.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and 33 U.S.C. §1365(c)(1). The CWA violations alleged here have occurred and are occurring in the Middle District of Tennessee.

PARTIES

9. Davis is a property owner downstream from Defendants’ real estate development project, owning approximately 10.44 acres located in Williamson County Tennessee as described fully in Warranty Deed Book 251, Page 804, in the office of the Register of Deeds for Williamson County, Tennessee, and also identified as Parcel 7.00 on Tax Map 95 in the Williamson County Assessor’s office.

10. Defendants are the owners, developers and builders of residential real property known as Otter Creek Springs, Phase 1.

11. Defendant Cavender is a natural person who, upon information and belief, resides in the State of Tennessee and manages the development of Otter Creek Springs, Phase 1.

12. Defendant The Jones Company of Tennessee, LLC is a Missouri limited liability company with its principle address being 16141 Swingley Ridge Road, Suite 109 Chesterfield, MO 63017-1778. The Jones Company of Tennessee, LLC can be served through its agent for service of process, CT Corporation System, 300 Montvue Road, Knoxville, TN 37919.

13. Otter Creek Holdings, LLC is a domestic limited liability company with its principle address being 747 High Point Ridge Road, Franklin, TN 37069. Otter Creek Holdings, LLC can be served through its agent for service of process, Thomas N. Jones, 339 Main Street, Franklin, TN 37064.

14. Defendants The Jones Companies and Otter Creek Holdings, are “persons” within the meaning of 33 U.S.C. § 1362(5) and 1365(a).

STATUTORY BACKGROUND

15. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a point source into waters of the United States unless the discharge complies with various enumerated sections of the CWA. Among other things, Section 301(a) prohibits such discharges not authorized by, or in violation of the terms of, a . National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

16. Among other things, Section 301(a) prohibits such discharges not authorized by or in violation of the terms of, a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

17. The CWA prohibits the discharge of pollutants to waters of the United States, except in compliance with a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to § 402 of the Act. 33 U.S.C. §§ 1311(a), 1342(a).

18. The State of Tennessee has been delegated the authority to implement the permitting programs of the Act by the EPA, including the NPDES permit program, pursuant to 33 U.S.C. § 1342(b). TDEC is the water pollution control agency for purposes of the Act, and has drafted regulations pursuant to that authority implementing the Act’s permitting programs within the State of Tennessee. See Tenn. Code Ann. § 69-3-105(h)(1).

19. Each violation of an NPDES permit-and each discharge of a pollutant that is not authorized by such permit-is a separate violation of the CWA. 33 U.S.C. § § 1311(a); 1342(a); 1364(f)(6).

20. Pursuant to Tenn. Code Ann. § 69-3-105(a)(1), all waters of the State of Tennessee have been classified by the Tennessee Water Quality Control Board for suitable uses.

21. Chapter 1200-4-3 of the Rules of the Tennessee Department of Environment and Conservation set forth the General Water Quality Criteria for all waters of the State of Tennessee. Rule 1200-3-3.03 provides the water quality criteria for water uses, and Rule 1200-4-3.03(3) provides, in pertinent part:

(3) Fish and Aquatic Life

(d) Turbidity, Total Suspended Solids, or Color-There shall be no turbidity, total suspended solids or color in such amounts or of such character that will materially affect fish and aquatic life....

(h) Other Pollutants-The waters shall not contain other pollutants that will be detrimental to fish or aquatic life.

22. The CWA defines a “point source” as “any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, [or] container...from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

23. New River and the unnamed tributaries are waters of the United States.

24. A citizen suit, pursuant to 33 U.S.C. § 1365(a)(1), may be brought for violations pertaining to a standard of performance. 33 U.S.C. § 1365(f)(5).

GENERAL ALLEGATIONS

25. Defendants currently possess coverage under the state’s General NPDES Permit for Discharges of Stormwater Associated with Construction Activities, a National Pollutant Discharge Elimination System (“NPDES”) permit from the Tennessee Department of Environment with Tracking Number TNR 242369 and an Aquatic Resource Alteration Permit (“ARAP”) NR2004 for activities to be conducted on some portions of the Site.

26. On July 8, 2020, the TDEC inspected the Site, its stormwater pollution prevention plan (SWPPP), erosion prevention sediment controls (EPSCs), inspection reports and best management practices (BMPs) for compliance with the Construction Stormwater Permit.

The following violations were found:

- a) EPSCs were missing at Lots 13, 18, 22 and 23 and filters in the storm drains in front and near those lots were clogged with sediment and gravel resulting in sediment entering the open drain on the curb. Furthermore, filters in storm drains all across the Site were not maintained;
- b) The SWPPP and inspection sheets were not available during the inspection and the NOC posting could not be located (CGP 3.3.3, 3.5.8.2.g);

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