

**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE  
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY**

**STATE OF TENNESSEE**, ex rel. )  
**JONATHAN SKRMETTI**, in his official )  
capacity as the Attorney General and )  
Reporter of Tennessee, and )  
**DAVID W. SALYERS, P.E.**, in his official )  
capacity as the Commissioner of the Tennessee )  
Department of Environment and Conservation, )  
 )  
Plaintiffs, )  
 )  
v. ) No. \_\_\_\_\_ )  
 )  
**BROWNING LAND & CATTLE** )  
**COMPANY LLC, BROWNING CATTLE** )  
**COMPANY LLC, TRACE BROWNING, and** )  
**RITA NELL BROWNING,** )  
 )  
Defendants. )

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**VERIFIED COMPLAINT**

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This is an original action under the Tennessee Water Quality Control Act, Tenn. Code Ann. §§ 69-3-101 to -148 (WQCA or Act) to enjoin unpermitted discharges from the Browning Cattle Farm, a concentrated animal feeding operation (CAFO) impacting multiple streams within Clay County, Tennessee. Specifically, the State is seeking temporary and permanent injunctive relief to prevent ongoing unpermitted discharges of animal waste, nutrients, sediment, and other pollutants from Defendants' CAFO operations to waters of the state. This is also an original action under the WQCA for civil penalties and recovery of damages, including natural resource damages, associated with Defendants' illegal discharges, illegal CAFO operations, and illegal land clearing activities.

## **I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action in accordance with Tenn. Code Ann. §§ 69-3-115(a)(2)(D) and -117.

2. Venue of this action lies in the Chancery Court of Davidson County in accordance with Tenn. Code Ann. §§ 69-3-115 and -117.

## **II. PARTIES**

3. This action is brought in the name of the State of Tennessee by Plaintiff, Jonathan Skrmetti, in his official capacity as Attorney General and Reporter for the State of Tennessee. The Attorney General is the chief law enforcement officer of the State of Tennessee and of all its departments, commissions, and agencies. Tenn. Code Ann. §§ 8-6-109 and -301. The Attorney General also has authority over litigation involving the public interest. The Attorney General's official residence is in Nashville, Davidson County, Tennessee.

4. This action is also brought in the name of the Plaintiff, David W. Salyers, P.E., in his official capacity as Commissioner of TDEC. Tenn. Code Ann. § 69-3-107 empowers the Commissioner to exercise general supervision and enforcement of the WQCA and to bring suit for any violations thereunder. Attached hereto as Exhibit No. 1 is the Declaration and Verification of Brad Ulmer, Environmental Manager of TDEC's Division of Water Resources (Division) Cookeville Environmental Field Office. The Commissioner's official residence is in Nashville, Davidson County, Tennessee.

5. Browning Land & Cattle Company LLC (Browning LLC) maintains approximately 8,000 cattle on multiple properties in Clay County at or around 3429 Leonard Road, Red Boiling Springs, Tennessee 37150 (the Site). Browning LLC is a "person" as that term is defined in Tenn.

Code Ann. § 69-3-103(27). Process may be served on Browning LLC through its registered agent Trace Browning at 1878 Bakerton Road, Red Boiling Springs, Tennessee 37150.

6. Browning Cattle Company LLC is another company that claims to maintain cattle on the Site. Browning Cattle Company LLC has applied for permit coverage to operate a CAFO containing 9000 cattle at the Site. Browning Cattle Company LLC is a “person” as that term is defined in Tenn. Code Ann. § 69-3-103(27). Process may be served on Browning Cattle Company LLC through its registered agent Trace Browning at 1878 Bakerton Road, Red Boiling Springs, Tennessee 37150.

7. Trace Browning is the owner and an operator of the Site. Trace Browning is a “person” as that term is defined in Tenn. Code Ann. § 69-3-103(27). Process may be served on Trace Browning at 1878 Bakerton Road, Red Boiling Springs, Tennessee 37150.

8. Rita Nell Browning, as trustee of the Stacey W. Browning Family Trust, is the owner of property located off Homer Bray Road and Mitchell Turner Road in Clay County, Tennessee that is being used as an unpermitted CAFO. Rita Nell Browning is a “person” as that term is defined in Tenn. Code Ann. § 69-3-103(27). Process may be served on Rita Nell Browning at 6138 Bakerton Road, Red Boiling Springs, Tennessee 37150.

### **III. TENNESSEE WATER QUALITY CONTROL ACT**

9. The WQCA represents a comprehensive program for the protection and preservation of the waters of the state and for the regulation of activities affecting discharges into, and/or alterations of, the waters of the state. The General Assembly has declared that the “waters of Tennessee are the property of the state and are held in public trust for the use of the people.” Tenn. Code Ann. § 69-3-102(a). The WQCA further provides that the State, in its exercise of the

public trust, has a duty to take necessary steps to preserve and protect the public's right to enjoyment of unpolluted waters. *Id.*

10. The Commissioner is empowered to authorize discharges by issuing permits that contain the most stringent effluent limitations, conditions, and water quality standards as necessary to comply with state and federal laws and regulations. Tenn. Code Ann. § 69-3-108(g). The Commissioner is also empowered to conduct inspections and investigations as necessary to enforce the provisions of the WQCA. Tenn. Code Ann. § 69-3-107(5).

11. It is a violation of the WQCA for any person to discharge any substance into the waters of the state, or to cause a substance to be placed in a location from which it is likely the substance will move into waters of the state, except in accordance with the conditions of a valid permit. Tenn. Code Ann. § 69-3-108(b). Each permit imposes a set of numeric and narrative effluent limitations to ensure appropriate treatment and protect water quality. Tenn. Comp. R. & Regs. 0400-40-05-.08.

12. It is unlawful for any person to discharge any substance into the waters of the state or place or cause any substance to be placed in any location where substance, either by themselves, or in combination with others, cause a condition of pollution as defined in Tenn. Code Ann. § 69-3-103, unless such discharge is due to an unavoidable accident or has been properly authorized. Tenn. Code Ann. § 69-3-114(a). The WQCA classifies discharges that cause a condition of pollution as a public nuisance. *Id.* Tenn. Code Ann. § 69-3-103(29) defines pollution to include the alteration of the physical, chemical, biological, or bacteriological properties of waters of the state, including changes in temperature, taste, color, turbidity, or odor, that will:

- A. Result in harm, potential harm, or detriment to the public health, safety, or welfare;

- B. Result in harm, potential harm, or detriment to the health of animals, birds, fish, or aquatic life;
- C. Render waters substantially less useful for domestic, municipal, industrial, agricultural, recreational, or other reasonable uses; or
- D. Leave waters in such condition as to violate water quality standards.

13. It is unlawful to operate an animal feeding operation that requires National Pollutant Discharge Elimination System (NPDES) permit coverage without such a permit. Tenn. Code Ann. § 69-3-108(b)(10). A cattle feeding operation containing more than 1,000 cattle is classified by rule as a Large (Class I) CAFO that must obtain individual NPDES CAFO permit coverage. Tenn. Comp. R. & Regs. TABLE 0400-40-05-14.1. A cattle feeding operation containing 300 to 999 cattle is classified by rule as a Medium (Class II) CAFO that must obtain individual NPDES permit coverage if either of the following conditions are met: (1) pollutants are discharged into waters through a man-made ditch, flushing system, or other similar man-made device or (2) pollutants are discharged directly into waters that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation. *Id.* TDEC may also designate an animal feeding operation as a CAFO based on factors including the amount of waste reaching waters of the state, the location of the facility, and the slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes into waters of the state. Tenn. Comp. R. & Regs. 0400-40-05-.14(4). WQCA regulations define a CAFO as a “point source” that must have individual NPDES permit coverage. Tenn. Comp. R. & Regs. 0400-40-05-.02(67). A NPDES CAFO permit requires a nutrient management plan (NMP) describing how manure and other wastes generated through CAFO activities will be managed. Tenn. Comp. R. & Regs. 0400-40-05-.14(9).

14. The WQCA authorizes TDEC to issue general permits that authorize discharges from categories of activities. Tenn. Code Ann. § 69-3-108(l). Land disturbance of one or more acres requires coverage under a General Permit for Stormwater Discharges Associated with Construction Activity (CGP). CGP coverage may be obtained by submitting a Notice of Intent (NOI), Stormwater Pollution Prevention Plan (SWPPP), and the appropriate fees to the Division.

15. Pursuant to Tenn. Code Ann. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses as set forth in Tenn. Comp. R. & Regs. Chapter 0400-40-04. Trace Creek, Wilson Branch, and their tributaries each constitute a “water” of the state and a “stream” as those terms are defined in Tenn. Code Ann. §§ 69-3-103(41) and (45). Each stream is classified for the following uses: fish and aquatic life, livestock watering and wildlife, recreation, and irrigation. Tenn. Comp. R. & Regs. 0400-40-03 and 0400-40-04. The WQCA establishes water quality criteria defining the acceptable levels of pollutants associated with each designated use. The water quality criteria for *e. coli* in streams designated for recreational uses is 126cfu/100ml (colony forming units per one hundred milliliters). Tenn. Comp. R. & Regs. 0400-40-03-.03(4)(f). The water quality criteria for *e. coli* in streams designated for fish and aquatic life is measured using a chronic standard of 630cfu/100ml and an acute standard of 2,880cfu/100ml. Tenn. Comp. R. & Regs. 0400-40-03-.03(3)(l).

16. The Commissioner may administratively assess civil penalties of up to \$10,000.00 per day for each day of violation against persons violating the WQCA or the regulations promulgated thereunder, or he may institute proceedings in court for the assessment of such civil penalties. Tenn. Code Ann. § 69-3-115.

17. The Commissioner may seek injunctive relief in the courts through the Office of the Attorney General to enforce compliance with the WQCA. Tenn. Code Ann. § 69-3-117.

18. The Commissioner may assess damages against any person who violates the WQCA. The damages assessment may include any expenses TDEC incurs in investigating and enforcing this part as well as compensation for any loss or destruction of wildlife, fish, or aquatic life and any other actual damages caused by the pollution or violation. Tenn. Code Ann. §§ 69-3-116(a) and (c).

#### **IV. FACTUAL ALLEGATIONS**

19. The Browning Cattle Farm is located at 3429 Leonard Rd. Red Boiling Springs, Clay County, Tennessee 37150. The Site is approximately 174 acres.

20. On information and belief, the Site is currently being used as a CAFO housing approximately 8,000 cattle.

21. On July 28, 2022, in response to a citizen complaint, Division staff investigated the Site with personnel from the Tennessee Department of Agriculture, the Natural Resource Conservation Service, and the Clay County Soil Conservation District. Trace Browning and Angela Warden, an agricultural consultant for Browning LLC, were present. Division staff noted that animal waste materials and sediments from areas of denuded pasture were being discharged offsite, causing objectionable color changes in an unnamed tributary to Trace Creek originating on the southeastern side of the Site (SE Tributary). The discoloration in the SE Tributary persisted as the stream joined Trace Creek and continued downstream from the confluence of Trace Creek and the SE Tributary.

22. The Division issued the first notice of violation (NOV) for the Site on August 11, 2022. This NOV noted that approximately 4,000 head of cattle were present at the Site. The NOV noted that contaminants were migrating offsite and causing objectionable color changes to Trace

Creek and the SE Tributary. The NOV directed Trace Browning to submit an application for an individual NPDES CAFO permit, including a site-specific NMP, by September 9, 2022.

23. On August 29, 2022, the Division received a letter from Trace Browning in response to the August 2022 NOV. The letter described the intent to develop a waste management plan for the Site but did not include any application materials for the required permit. Defendants failed to submit the NPDES CAFO permit by September 9, 2022, as directed in the August 2022 NOV.

24. On January 6, 2023, Division staff inspected the Site and observed numerous cattle maintained on extensive areas of denuded pasture. Staff observed no erosion protection and sediment control measures (EPSCs) were in place, leaving bare soils exposed to stormwater runoff and sediment discharge. Staff noted objectionable color changes in Trace Creek and the SE Tributary.

25. On January 27, 2023, Division staff inspected the Site and noted continued objectionable color changes in Trace Creek and the SE Tributary. Staff observed unpermitted land disturbance activities exceeding five acres and noted that sediment was being discharged from the Site to locations where it could enter waters of the state.

26. On February 1, 2023, the Division issued a second NOV for the Site to Trace Browning and Browning Cattle Company, LLC, noting the color changes in Trace Creek and the SE Tributary as well as the unpermitted land disturbance activities. The NOV directed Defendants to install EPSCs in all areas disturbed by land clearing and pond construction activities and submit a complete NPDES CAFO permit by February 23, 2023. The NOV also requested that Trace Browning attend a Compliance Review Meeting (CRM) to discuss the violations, Site conditions, and actions necessary to establish and maintain compliance with the WQCA.



27. On February 24, 2023, the Division held the CRM with Trace Browning, Trace Browning's agricultural consultant Angela Warden, Chuck Burgess of Environmental and Civil Engineering Services, and Mark Hudson from the Tennessee Department of Agriculture. Prior to the CRM, Chuck Burgess submitted a Corrective Action Plan (CAP) on behalf of Trace Browning. TDEC requested that Trace Browning submit hydrologic determinations to identify all streams at the Site by March 10, 2023, and submit a revised CAP documenting installation of all EPSCs used as soon as possible. As part of the application process for NPDES CAFO permit coverage, Angela Warden submitted Notices of Intent for two parcels comprising the Site, but the full application remained incomplete.

28. On May 11, 2023, Division staff conducted a Site inspection with Trace Browning and Chuck Burgess present. Staff observed continued objectionable color changes to Trace Creek and the SE Tributary. Staff also observed objectionable color changes to an unnamed tributary to Wilson Branch originating on the northwest of the Site (NW Tributary) that flowed North into a neighboring landowner's pond and ultimately to Wilson Branch. Staff also observed additional, unpermitted land clearing activities and related discharge of sediment onto Max Bean Road. On May 16, 2023, the Division sent a letter of advisement to Trace Browning notifying him of the conditions and violations observed during the Site review on May 11, 2023. The letter also noted that Trace Browning and Browning LLC had failed to submit the updated CAP and hydrologic determinations of on-site streams, as agreed during the February 2023 CRM, and that Defendants' application for NPDES CAFO permit coverage remained incomplete because the required NMP had still not been submitted.

29. On May 24, 2023, Division staff reinspected the Site and sampled surface waters within and exiting the Site. Results of this stream sampling documented levels of *e. coli* above

both the recreational and chronic fish and aquatic life water quality criteria for *e. coli*. Staff observed discoloration in both the SE Tributary and portions of Trace Creek downstream of its confluence with the SE Tributary. Division staff observed few macroinvertebrates and no fish in streams impacted by discharges from the Site. Division staff also sampled water in Trace Creek upstream of its confluence with the SE Tributary in a location that was not impacted by discharges from the Site. Water in Trace Creek upstream of the SE Tributary confluence was clear and contained multiple fish and macroinvertebrates, indicative of a healthy stream. Samples from Trace Creek upstream of the SE Tributary confluence contained levels of *e. coli* that were an order of magnitude lower than those downstream of the SE Tributary confluence and were below the chronic fish and aquatic life water quality criteria.

30. On June 12, 2023, Ms. Warden notified the Division by electronic mail of her resignation as agricultural consultant for Defendants due to Trace Browning's lack of communication. On July 14, 2023, Settje Agri-Services and Engineering, Inc. notified the Division that Trace Browning and Browning Cattle Company, LLC had retained them as a technical services provider.

31. The Division issued a third NOV for the Site to Trace Browning and Browning Cattle Company, LLC on June 14, 2023, noting that the NPDES CAFO permit application remained incomplete and runoff from the Site was causing objectionable biological, chemical, and color changes to waters of the state. The NOV also noted that the Division continued to receive complaints from area residents regarding area water quality. The NOV instructed Trace Browning to complete the NPDES CAFO permit application and submit written proof of elimination of pollutants entering waters of the state by July 17, 2023.

32. The June 2023 NOV noted that 7,000 head of cattle were reported on the Site. This represented an increase of 3,000 cattle compared to the 4,000 cattle that were noted as being present on the Site in the August 2022 NOV. Between August 2022 and June 2023, Defendants dramatically increased the number of cattle on the Site without submitting the necessary NPDES CAFO permit application or ceasing the unpermitted discharges of pollutants from the Site.

33. On July 13, 2023, Division staff performed a watershed stream inspection at the drainages of the Site. Staff noted the odor of cow manure within the NW Tributary, SE Tributary, and Trace Creek, as well as black to gray coloration within the same streams. The objectionable discoloration in Trace Creek persisted from Trace Creek's confluence with the SE Tributary to the confluence of Trace Creek and Bean Branch.

34. On July 18, 2023, the Division issued a fourth NOV for the Site to Trace Browning and Browning Land & Cattle, LLC. The NOV noted that Defendants still had not submitted a complete NPDES CAFO application because the site-specific NMP had not been submitted. The NOV also noted continued discharge of contaminants from the Site were causing objectionable biological, chemical, and color changes to waters of the state. The NOV stated that the Division continued to receive calls from concerned area residents regarding water quality and pollution to nearby streams.

35. Division staff performed multiple water sampling inspections at locations within Wilson Branch and Trace Creek impacted by discharges from the site in early August 2023. Sampling results for *e. coli* in Trace Creek ranged from 3,840 MPN/100ml (most probable number per 100 milliliters) to 141,460 MPN/100ml. Sampling results for *e. coli* in Wilson Branch ranged from 740 MPN/100ml to 241,960 MPN/100ml. 1 MPN/100ml is equivalent to 1cfu/100ml, which is how the *e. coli* water quality criteria are expressed in the WQCA's regulations. The early August

sampling results indicated levels of *e. coli* in these streams at levels well above both the acute and chronic fish and aquatic life water quality criteria as well as the recreational water quality criteria for *e. coli*.

36. In response to the early August sampling results indicating dangerously high *e. coli* levels, TDEC posted signs on September 7, 2023, warning the public not to swim, wade, or fish in the entirety of Wilson Branch and large portions of Trace Creek. The press release TDEC issued announcing the water contact advisories noted the agency had received several complaints regarding impacts to water quality from the Site.

37. On August 23, 2023, the Division collected representative samples of macroinvertebrates at multiple locations in Trace Creek and Wilson Branch to determine the effect of discharges from the Site on macroinvertebrate populations in the impacted streams. Sampling results indicated moderate to severe impairment in the impacted streams' macroinvertebrate populations. By contrast, representative macroinvertebrate sampling in Trace Creek upstream of its confluence with the SE Tributary found no impairment to macroinvertebrate populations.

38. On August 23, 2023, Division staff performed an inspection at a farm off Homer Bray Road and Mitchell Turner Road in Clay County, Tennessee owned by Rita Nell Browning. The farm contained approximately 1,700 cattle but did not have NPDES CAFO permit coverage. Division staff noticed disposal of cattle carcasses and other wastes in an open pit from which stormwater could carry pollutants to waters of the state. Division staff also observed cattle associated with the farm loitering in a nearby creek named Line Creek. The TDEC Department of Solid Waste Management (DSWM) issued Rita Nell Browning an NOV for unlawful disposal of solid waste on August 29, 2023. On October 5, 2023, DSWM sent Rita Nell Browning a letter confirming the waste disposal violations had been corrected through disposal of the waste in a

permitted landfill and construction of a berm to prevent discharges from the pit to waters of the state.

39. On August 30, 2023, TDEC staff conducted watershed sampling for *e. coli* within Trace Creek to determine the extent of impacts attributable to discharges from the Site. TDEC took water samples at multiple locations downstream from the confluence of Wilson Branch and Trace Creek to the confluence of Trace Creek and Line Creek. All samples within impacted streams indicated exceedances of both the chronic and acute fish and aquatic life water quality criteria as well as the recreational water quality criteria for *e. coli*. TDEC took samples within Bean Branch, upstream of that stream's confluence with Trace Creek, and within Line Creek, upstream of that creek's confluence with Trace Creek. The upstream sampling locations in Bean Branch and Line Creek contained levels of *e. coli* at dramatically lower levels compared to samples taken in streams impacted by discharges from the Site.

40. On September 11, 2023, TDEC staff conducted further watershed sampling for *e. coli* within Line Creek. TDEC staff took water samples within Line Creek near the Kentucky state line, over seven miles downstream of the Site. The September 2023 sampling near the Kentucky state line contained levels of *e. coli* above the chronic fish and aquatic life water quality criteria and the recreational water quality criteria for *e. coli*.

41. Browning Cattle Company LLC submitted a NPDES CAFO permit application, with accompanying NMP, for the Site on October 20, 2023. Browning Cattle Company LLC's NPDES CAFO permit application requests permit coverage for 9,000 cattle on the Site. Pursuant to Tenn. Code Ann. § 69-3-108(g)(2), TDEC may not issue a permit for an activity that would cause a condition of pollution by itself or in combination with other activities.

42. Division staff inspected the Site on November 2, 2023, and were joined at the inspection by Trace Browning and his consultant Chuck Burgess. Trace Browning told Division staff that approximately 7,000 to 8,000 cattle were on the property. Division staff observed extensive areas of denuded pasture where cows were being held. Division staff also observed that sufficient environmental controls to prevent discharges of pollutants from the Site, such as EPSCs, silt fences, and vegetated buffers, were not installed. Division staff observed additional land clearing activities for construction of a large holding pond. Due to lack of rainfall in October, staff observed little flow in streams on the Site. Staff noted objectionable discoloration in the NW Tributary.

43. On November 14, 2023, Division staff inspected the Rita Nell Browning farm. An employee of the farm informed TDEC that approximately 600 to 700 cattle were present on the farm. TDEC staff observed that the cattle were penned in areas that lacked vegetation and the farm did not contain sufficient environmental controls to prevent the discharge of pollutants to waters of the state.

44. Pursuant to a memorandum of understanding between TDEC and the Tennessee Department of Agriculture (TDA), TDA conducted an initial review of the NPDES CAFO permit application for the Site. TDA sent Trace Browning and Browning Land and Cattle LLC a letter on or about November 15, 2023, informing them of numerous deficiencies with the NMP that rendered the NPDES CAFO permit application incomplete. For example, the NMP lacked details on best management practices to control runoff of pollutants from land application of manure generated at the Site. TDEC also conducted an initial review of the NPDES CAFO permit application and concurred with TDA that the permit application was incomplete.

45. To date, Defendants have failed to cease discharges of pollutants from the Site, correct the condition of pollution observed within the multiple streams impacted by discharges from the Site, or obtain permit coverage for the Site. Although Defendants submitted an application for NPDES CAFO permit coverage, both TDEC and TDA determined that the application was incomplete.

46. To date, TDEC has incurred damages in the amount of \$8,618.10 in the course of investigating the violations at the Site and the Rita Nell Browning farm.

47. Unpermitted discharges of pollutants from the Site have injured natural resources within the streams impacted by discharges from the Site. TDEC is currently calculating the natural resource damages (NRD) for lost resource values attributable to violations at the Site in accordance with Division policy (Natural Resource Damage Assessment for Surface Waters, DWR-CE-P-01-NRD Assessment-052419) based upon the quality of the streams prior to releases and/or disturbance from the Site, the length of streams impacted, the gravity of impacts, and the estimated duration of natural resource losses.

## **V. CAUSES OF ACTION**

48. By operating a Class I CAFO at the Site containing over 1,000 cattle and discharging pollutants to waters of the state or a location where they may enter waters of the State without a permit, Defendants Browning Land & Cattle LLC, Browning Cattle Company LLC, and Trace Browning have violated Tenn. Code Ann. §§ 69-3-108(b)(4), (6), and (10).

49. By operating a Class I CAFO at the Rita Nell Browning Farm containing over 1,000 cattle without a permit, Defendant Rita Nell Browning has violated Tenn. Code Ann. §§ 69-3-108(b)(4), (6), and (10).

50. By causing a condition of pollution, including causing discoloration, foam, odors, and violations of water quality criteria for *e. coli* within impacted streams, including Trace Creek, Wilson Branch, the NW Tributary, and the SE Tributary, Defendants Browning Land & Cattle LLC, Browning Cattle Company LLC, and Trace Browning have violated Tenn. Code Ann. §§ 69-3-108(b)(1) and 69-3-114(a), (b).

51. By performing land disturbance activities impacting more than one acre without obtaining CGP permit coverage, discharging sediment offsite, and otherwise placing sediment in a location from which it may enter waters of the state, Defendants Browning Land & Cattle LLC, Browning Cattle Company LLC, and Trace Browning have violated Tenn. Code Ann. §§ 69-3-108(b)(4), (6) and 69-3-114(a), (b).

52. In accordance with Tenn. Code Ann. §§ 69-3-115(a)(1)(E) and -115(a)(2)(D) this Court may impose a civil penalty of up to \$10,000.00 per day for each day of violation of the WQCA against any person.

53. In accordance with Tenn. Code Ann. § 69-3-116(c), Plaintiffs are entitled to recover, as damages, any reasonable expenses incurred in investigating and enforcing violations of the WQCA as well as compensation for any loss or destruction of wildlife, fish, or aquatic life and any other actual damages.

## **VI. PRAYER FOR RELIEF**

a) That this Complaint be filed without cost bond as provided by Tenn. Code Ann. § 20-13-101;

b) That process be issued and served upon Defendants requiring them to appear and answer this Complaint;

c) That the Court, pursuant to Rules 65.01 and 65.04 of the Tennessee Rules of Civil



Procedure and Tenn. Code Ann. § 69-3-117, issue an Order, to be served on Defendants with this Complaint, directing them to appear before this Court for a temporary injunction hearing to determine whether Defendants, their successors, assigns, officers, agents, servants, employees, attorneys, and any other person or entity in active concert or participation with Defendants, should be enjoined from continuing to operate cattle feeding operations at any site within the State of Tennessee within thirty days of the issuance of the injunction and continuing until they can demonstrate to TDEC's satisfaction that such operations can be conducted in accordance with the laws of this State. In accordance with Tenn. Code Ann. § 29-1-107, this is Plaintiffs' first application for extraordinary relief;

d) That upon a trial or final hearing in this matter, the Court issue a permanent injunction against Defendants, in accordance with Tenn. Code Ann. § 69-3-117, and, as applicable, Tenn. R. Civ. P. 65, requiring the Defendants and their successors, assigns, officers, agents, servants, attorneys, and any other person or entity in active concert or participation with the Defendants, to:

- a. Within thirty days of entry of the permanent injunction, submit all remaining items necessary to complete the application for an individual NPDES CAFO permit for the Site and submit permit applications for all other activities requiring permit coverage at the Site;
- b. Within thirty days of entry of the permanent injunction, submit an individual NPDES CAFO permit application for the Rita Nell Browning farm, or notify TDEC that Defendants intend to seek permit coverage for the Rita Nell Browning farm under the same NPDES CAFO permit application as the Site;
- c. Within thirty days of entry of the permanent injunction, submit a CAP for

TDEC approval specifying all actions necessary to stop the discharges of pollutants from the Site to waters of the state. The CAP shall include a schedule with a specific date of completion for each action. The date of final completion shall not exceed ninety days following TDEC approval of the CAP. Upon TDEC approval of the CAP, Defendants must comply with each milestone or compliance deadline of the CAP, including submission of monthly progress reports detailing actions taken up to that point;

- d. Within thirty days of completing activities under the approved CAP, submit an ecological monitoring plan (EMP) for TDEC approval describing monitoring by qualified personnel of the ecological conditions at the Site and streams impacted by discharges from the Site for a period of five years. Upon TDEC approval of the EMP, Defendants must comply with each milestone or compliance deadline of the EMP, including submission of annual reports with photographs and a summary of observations to the Division; and

e) That upon a trial or final hearing in this matter, the Court enter judgment for Plaintiffs against Defendants jointly and severally and assess civil penalties in an amount not to exceed \$10,000 per day for each day of violation, in accordance with Tenn. Code Ann. § 69-3-115, for violations of the WQCA;

f) That upon a trial or final hearing in this matter, the Court enter judgment for Plaintiffs and against Defendants and assess damages representing TDEC's costs incurred to date investigating the violations herein, totaling \$8,618.10 as of the date of this filing, in accordance with Tenn. Code Ann. § 69-3-116;

g) That upon a trial or final hearing in this matter, the Court enter judgment for

Plaintiffs and against Defendants and assess damages representing the loss or destruction of wildlife, fish, or aquatic life and any other actual damages caused by Defendants' pollution or violations in accordance with Tenn. Code Ann. § 69-3-116(c);

h) That the Court award Plaintiffs post-judgment interest on any monetary amounts for which the Court may give judgment, as provided by Tenn. Code Ann. §§ 47-14-121 to 122 until the judgment against Defendants has been satisfied in full;

i) That the Court declare that Defendants Trace Browning, Browning Land & Cattle Company LLC, and Browning Cattle Company LLC are jointly and severally liable for performance of any corrective action ordered by this Court and payment of any civil penalties and/or damages assessed by this Court against Trace Browning, Browning Land & Cattle Company LLC, or Browning Cattle Company LLC arising from violations at the Site;

j) That execution may issue for any monetary amounts adjudged against the Defendants;

k) That all court costs be taxed to the Defendants; and

l) That the Court award Plaintiffs any and all other general and equitable relief to which they may be entitled.

Respectfully submitted,

*/s Jonathan Skrmetti*  
JONATHAN SKRMETTI (BPR No. 031551)  
Attorney General and Reporter  
State of Tennessee

*/s J. Peter Murrey*  
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